THE FIFA REGULATIONS ON WORKING WITH INTERMEDIARIES

IMPLEMENTATION AT NATIONAL LEVEL

II EDITION

Michele Colucci (ed.)

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INTRODUCTION

The running FIFA landmark regulations on intermediaries define the intermediary as "*a natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract, or represents clubs in negotiations with a view to concluding a transfer agreement*".

Now, anyone with a "self-certified" impeccable reputation and no conflict of interest may qualify as an intermediary.

Targeting the commonly recognised need of upgrading the transparency in the close and economically attractive fields of transfer of players and intermediaries' activities, FIFA has established a new registration procedure. From now on, clubs and players are due to submit to their national associations the relevant documents related to the activities of their intermediaries. In doing so, the latter must be registered every time they assist clubs and players in concluding a transaction.

This radical change in FIFA's approach focuses more on monitoring the intermediaries' transactions rather than the formalities of their access to the profession as it was the case before. However, FIFA regulations require national associations drafting an annual report on the intermediaries' activities and remunerations. Such obligation has been further confirmed by the FIFA circular n° 1519 of 11 January 2016.

The updated comparative analysis outlines the FIFA self-constraint in verifying the national associations' duties in registering intermediaries as well as their transactions and reporting to the international association.

The FIFA regulations aim to better protect the integrity of football and the interests of sports stakeholders. Indeed, footballers engage intermediaries in order to wrangle for the best contracts while clubs' managers rely on them to get the best players at the best conditions.

In this new legal context, the FIFA rules set minimum standards to be implemented by the national associations, which are free to adopt even stricter requirements, if they wish so.

Eventually, the variety of local, legal and traditional sports frameworks heads for various forms and types of implementations of national regulations.

Therefore, the inevitable result is that there is a huge diversity of national measures to govern the profession's activity.

As a consequence, therefore, those who are interested in transferring a player to a given country are obliged to know the relevant intermediaries' regulations if they do not want to put at risk the successful outcome of any relevant transfer.

Starting from the latest official figures and statistics concerning the FIFA regulations, the second edition of this book offers an updated analysis of the implementing measures in 36 national associations.

Finally, it highlights the still existing discrepancies and their impact on the sports stakeholders as well as the best national practices.

Brussels, 30 November 2016

Michele Colucci

SECTION I

ANALYSIS

THE FIFA REGULATIONS ON WORKING WITH INTERMEDIARIES

by *Paolo Lombardi*[*]

1. Introduction

The FIFA Regulations on Working with Intermediaries replace the FIFA Players' Agents Regulations (2008) ("Agents Regulations"). This was the last set of rules through which FIFA had regulated the activities of Players' Agents since their official recognition in the early 1990's. The need for reform in this area has long been understood, not least of all by FIFA itself. In this chapter, I will briefly look at the FIFA Players' Agents Regulations, and explore FIFA's understanding of the need for reform. There will be a detailed review of the Regulations on Working with Intermediaries ("Intermediaries Regulations"), putting them into the context of the current international football industry, and I will conclude with an examination of the main issues coming from the Intermediaries Regulations. It should be noted, however, that at the time of writing, the new regime has been in force for only sixteen months. Although all aspects can and will be discussed, many practical outcomes, such as dispute resolution, essentially remain untested.

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2. The FIFA Players' Agents Regulations

2.1 Becoming a Players' Agent

"Players' agent: a natural person who, for a fee, introduces players to clubs with a view to negotiating or renegotiating an employment contract, or introduces two clubs to one another with a view to concluding a transfer agreement, in compliance with the provisions set forth in these regulations".[1]

From this statement, several things are immediately clear. An Agent could only have been a natural person, acting player to club (representing the player in the negotiation of an employment contract), or club to club (assisting a club to conclude a transfer agreement). As is extrapolated further on in the Agents Regulations, an agent's work was solely based on transfer-related activities, and the Agents Regulations did not cover any other type of work such as image rights, services to coaches or managers or such like. A corporate entity could not act as an agent, however a corporate entity could support a Licensed Agent to assist in administration.

To become a Licensed Players' Agent it was necessary for an individual to firstly apply to the relevant association in which they resided, showing themselves to be a person with an "impeccable reputation".[2] The individual could not simultaneously hold any position at an Association, Confederation, League, or at FIFA.[3] If these basic prerequisite were satisfied, the individual then had to pass an exam, set partly by FIFA, for questions relating to the FIFA Statutes and Regulations, and partly by the association, for questions relating to national subjects. The exam was administered by the association, although minimum pass marks were set by FIFA. Additionally, the individual had to take out appropriate insurance (or provide a bank guarantee) and this was subject to control by the association. Once all these steps had been undertaken, the licence was issued, and the name entered onto a Licensed Players' Agent register.

The Agents Regulations allowed for certain "exempt Individuals" to represent players without being a licensed players' agent. These were either the parents, siblings or spouse of a player, or a legally authorised practising lawyer, and any activity undertaken by them would fall outside of the scope of FIFA.[4]

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[1] FIFA Players' Agents Regulations (2008), Definitions.

[2] FIFA Players' Agents Regulations (2008) define this to be someone who had never had a criminal sentence for a financial or violent crime passed against them.

[3] FIFA Players' Agents Regulations (2008), Article 6.

[4] FIFA Players' Agents Regulations (2008), Article 4.

2.2 Representation Contract[5]

Only upon the conclusion of a representation contract, was an agent properly permitted to represent a party in negotiations. The contract had to be a written mandate and could last for up to two years, with any renewal of the contract effective only with a further written mandate being signed by all parties. An agent was allowed to represent a minor, with the parents or guardians additionally required to sign the mandate.

Crucially, the Agents Regulations stipulated that all conflicts of interest were to be avoided, and under no circumstances could a players' agent represent more than one party to the relevant transaction. The constant jurisprudence of the FIFA Players' Status Committee[6] is adamant in indicating that Article 19 par. 8 of the Agents Regulations was enacted in order to ensure that a players' agent is not remunerated twice for the services he renders in the same transaction.

2.3 Remuneration[7]

Also included in the representation contract were the details of the agent's remuneration. For the representation of a player, the remuneration was calculated with direct reference to the annual basic gross salary, including any fixed remuneration. The amounts could be paid in a lump sum, or in instalments over the course of the playing contract (even if this was longer than the representation contract). If the amount had not been specified in the contract, the Regulations allowed for a default amount of 3% of the basic salary to be paid to the agent.

An agent representing a club would have the remuneration agreed in advance and would be paid in a lump sum.

2.4 Rights and Obligations of Players and Clubs

Under the obsolete Agents Regulations, both the Players and the Clubs, when engaging representation service, were obliged to ensure that the individual engaged was a fully licensed players' agent.[8] They also were to ensure that the name of the agent was noted in the employment contract or transfer agreement. If no agent has been used, the agreement should have noted this explicitly.[9]

The relevant provision of the Agents Regulations clearly provided for the crucial element of proof: while if the agent's name and signature appear in the contract it cannot be denied that the agent took part in the relevant negotiation, if there is no mention of the agent in the relevant contract the activity may hardly be

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[5] FIFA Players' Agents Regulations (2008), Article 19.
[6] Cf. *inter alia* decision number 712988 under www.fifa.com.
[7] FIFA Players' Agents Regulations (2008), Article 20.
[8] FIFA Players' Agents Regulations (2008), Article 27.3.
[9] FIFA Players' Agents Regulations (2008), Article 28.

proven. "The omission of the players' agent's name and/or his signature in a contract rather speaks for his non-involvement in a particular transaction".[10]

The now obsolete Regulations also set forth a prohibition for agents from contacting ("tapping-up") players under an exclusive representation contract with another players' agent. Equally, agents were prohibited from approaching any player under contract to a club with the aim of persuading him to terminate his contract prematurely or to violate any obligations stipulated in the employment contract.[11] The relevant provisions established a presumption, unless established to the contrary, that any players' agent involved in a contractual breach committed by the player without just cause has induced such breach of contract.

The parallel between this provision and the equivalent provision of article 17.5 of the FIFA Regulations on the Status and Transfer of Players, up until its 2014 edition, is rather obvious: ("Any person subject to the FIFA Statutes and regulations (club officials, players' agents, players, etc.) who acts in a manner designed to induce a breach of contract between a professional and a club in order to facilitate the transfer of the player shall be sanctioned".

2.5 Adherence of the National Association

Importantly, these Agents Regulations required that all FIFA member associations implement and enforce them. This was to be achieved by each member drawing up their own version, to incorporate into their existing regulations. All of the main principles were to be established, and a deviation was only permitted if the provisions were in some way contrary to any local law.[12]

2.6 Disputes

Under the Agents Regulations, any agent-related dispute arising in the scope of an international transfer was to be referred to the FIFA Player Status Committee, with the procedures outlined in the FIFA Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber. Disputes arising in the scope of a domestic matter were not to be referred to FIFA, but any case was to be heard taking into account the FIFA statutes and the laws applicable to the territory of the association.[13]

As previously noted, any activity performed by an "exempt individual" was outside of the remit of FIFA, and therefore, any claim by such individual would not have been declared admissible by a FIFA body.

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[10] Decision of the FIFA Players' Status Committee no. 03143842 dated 19th March 2014, par. 13, from www.fifa.com.

[11] FIFA Players' Agents Regulations (2008), Article 22.2.

[12] FIFA Players' Agents Regulations (2008), Article 1.5.

[13] FIFA Players' Agents Regulations (2008), Article 30.

2.7 Sanctions

Any agent, club or player found to be in violation of the Agents Regulations was subject to a range of sanctions.[14] For a domestic matter, the sanction was the responsibility of the national association. For an international matter, the sanction was the responsibility of the FIFA Disciplinary Committee[15] pursuant to the applicable provisions of the FIFA Disciplinary Code. For a players' agent, available sanctions included a reprimand, a fine of at least CHF5,000, a suspension of his licence for up to 12 months, a licence withdrawal, and a ban on taking part in football related activity. The available sanctions on a player included a reprimand, a fine of at least CHF5,000, a match suspension and a ban on taking part in any football-related activity. Available sanctions on clubs included a reprimand, a fine of a least CHF10,000, a transfer ban, a deduction of points, and a demotion to a lower division. Lastly, available sanctions on associations included a reprimand, a fine of at least CHF30,000, and exclusion from competition.[16]

2.8 The need for reform

From the above summary of the main points of the FIFA Players' Agents Regulations, these appear fair, with strong principles at their foundation. However, they were not working in practice. It has been reported that only 25% to 30% of international transfers recorded that a Licensed Players' Agent had been acting for a party in the transfer.[17] This means that either a great many "exempt individuals" were acting in the interests of players, or that a great many people within the industry were able to work without taking heed of these regulations. As noted above, not only had the agents to follow the Agents Regulations, but the Agent Regulations also placed obligations on to both the Players and the Clubs involved. Thus, all of the parties involved appear to have been complicit in their disregard for the regulations.

So what was going on within the industry and its approach to the regulations that permitted such a disregard of the Agents Regulations, which at their heart, had been formulated to increase professionality within the industry and to protect clubs and players alike?

Firstly, the adoption of the Agents Regulations appears to have varied greatly throughout the associations and their national regulations. Some associations were very rigorous in their adoption, and went further in some areas than even the FIFA regulations had prescribed (The FA among others). Some associations tried to vigorously regulate the agents' activities and many were successful. On the other hand, however, whereas all the associations adopted the Agents Regulations into their national regulations as was required, it is probably fair to say that many

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[14] FIFA Players' Agents Regulations (2008), Article 31.
[15] FIFA Players' Agents Regulations (2008), Article 32.
[16] FIFA Players' Agents Regulations (2008), Article 33 – 36.
[17] Marco Villiger, Director of Legal Affairs at FIFA, see http://bit.ly/1x3SLJH.

only paid lip service to the Agents Regulations and either adopted them with the minimum regulation required, or also failed to regulate the activities of the domestic agents.

It is interesting to note that the highest percentage of agents were licensed by the five big European associations, The FA (England), FIGC (Italy), FFF (France), RFEF (Spain) and DFB (Germany). During my time at FIFA, I noted that the approach taken by associations was also reflected in the pass rates of the Players' Agents Exam. In some associations, where it was felt that the buy-in to the regulation process was stronger like in most of the above-referenced associations, the numbers passing the Agents' exam was lower than in some other associations, where regulation was less strong. Therefore, the reality was that licensing in itself was often quite a patchy and ineffective mechanism.

Many agents themselves did not show a massive acceptance of the Agents Regulations. Whilst players are usually and increasingly well represented by their national unions, and by FIFPro at international level, and Clubs are represented by the leagues in which they participate, the agents as a group had no stable union to act on their behalf. As with all groups which operated without a union, the natural fragmentations that occur are laid bare, and there was not one clear voice with which they operated.

When I was involved in the process that led to the approval of the Players' Agents Regulations in 2007, I remember the main issues that were raised by agents in opposition to the impending new regulations were, firstly, that the barriers to entry into the profession were too high and, secondly, they were unhappy that the default position in relation to remuneration was only 3% of the basic annual income of the player.

Considering the first point, the implementation of a system whereby the individual must show themselves to be a person with impeccable reputation, who must pass an exam, and must show they have professional insurance in place obviously was aimed at creating a professionality previously lacking. In fact, the 2008 Agents Regulations required the agents to re-sit the examination every five years.[18] As fragmented as they were, the agents seem however to be undivided in condemning the approval of this specific provision, which put an end to the hitherto longstanding principle whereby a Players' Agent's licence was for life.

The second point is very interesting to consider. The current football industry has become more and more extreme in financial terms. The pursuit of elite players by rich clubs means that basic remuneration packages for these elite players are very high. Three percent of such an amount would usually be a nice commission for any agent. However, on the flip side, mid rank players, or players playing in leagues where there is less money in circulation, may be remunerated with much more modest sums. It may be harder to place these players, and the work involved would require persistence. Thus, a three percent default position was not felt to be reflective of the work involved by many agents.

[18] FIFA Players' Agents Regulations (2008), Article 17.

In addition, several agents preferred not to have their names reported on contracts for reasons of privacy and because they did not wish the remuneration they were receiving to be disclosed.

Another main contributing factor to the failure of the Agents Regulations was the length of time required and the costs involved with taking any dispute arising regarding an international transfer to the FIFA Player Status Committee. The time frame for a case to go through this process was usually over one year.

This constituted a fairly ineffective dispute mechanism.

2.9 The 59th FIFA Congress

In 2009 at the 59th FIFA Congress, the process of reform was started with FIFA highlighting that the Agents Regulations had several shortcomings. As they saw it, these shortcomings were, among others:

- inefficient licensing of players' agents, resulting in the conclusion of many international transfers without the use of licensed agents,
- even transfers concluded with the use of licensed agents were often non-transparent and thereby not verifiable,
- confusion regarding the differences between club representatives and players' agents and their respective financial obligations.[19]

In issuing the new guidelines, FIFA involved several key stakeholders in a process, which has taken almost six years from the consensus that reform was required until the issuance of the Regulations on Working with Intermediaries. FIFA notes the stakeholders involved in this process as "including member associations, confederations, clubs, FIFPro and professional football leagues".[20] Immediately, it is obvious that the stakeholders do not include any group representing the agents, or "intermediaries" interests, as no such united group exists.

3. The FIFA Regulations on Working with Intermediaries

The Regulations on Working with Intermediaries, came into force on 1st April 2015, with the previous Agents Regulations being immediately abandoned.[21]

"Definition of an Intermediary: A natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement".[22]

Even from examining only the definition, some key changes from the Agents Regulations become immediately apparent. Firstly, an intermediary can be a natural or a legal person, whereas an agent had to be a natural person. Secondly,

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[19] www.fifa.com/governance/intermediaries.

[20] Ibid.

[21] FIFA Regulations on Working with Intermediaries, Article 11, Transitional Measures.

[22] FIFA Regulations on Working with Intermediaries, Definitions P4.

an intermediary may represent a player and a club in the same negotiation. This is a huge change as it clearly puts the Intermediary in a potential position of conflict, which needs to be managed. This will be discussed further, later in this chapter.

3.1 Becoming an Intermediary

Under the Intermediaries Regulations, there is now no exam or licensing process. It is the responsibility of every club or player to act with "due diligence"[23] when selecting an intermediary. Each intermediary, whether an individual or an entity, must sign a declaration (the "Intermediary Declaration") outlining their fitness to act in such capacity in any transaction.[24]

The declaration for a natural person includes the following information; that they will comply with all applicable laws and agree to be bound by the FIFA Statutes, that they are not holding an official position,[25] that they have an "impeccable reputation", that they have no contractual relations with, leagues, associations, confederations or FIFA that could lead to a potential conflict of interest, that they shall not accept any payment concerning the transfer of a minor player, and that amongst other things they consent to the relevant association obtaining full details of any transfer in which they act, including financial details, contracts, agreements and all relevant records. In addition, the declaration includes the affirmation that information may be published by the Association.

The declaration for legal persons contains all the same detail, however as well as declaring the fitness of the company, the fitness of the individual signing on behalf of the company, who is also the individual representing the Intermediary within the scope of the transaction, is simultaneously confirmed.

3.2 Registration of Intermediaries[26]

The Intermediaries Regulations specify that each association must maintain a registration system for intermediaries, which is publicly available. Intermediaries must be registered in the system each time they are involved in a transaction. With each entry into the register, the Intermediary Declaration signed for the specific transaction, must be submitted to the association of the relevant club. If the intermediary has been engaged by a player to negotiate an employment contract, the player is responsible for submitting the Intermediary Declaration to the association to which the club is affiliated. If the intermediary has been engaged by a club to assist in the registration of a player, the club must submit the Intermediary Declaration to the association of the club to which the player is to be registered.

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[23] FIFA Regulations on Working with Intermediaries, Article 2, General Principles.
[24] FIFA Regulations on Working with Intermediaries, Annex 1 Intermediary Declaration for natural persons, and Annex 2 Intermediary Declaration for legal persons.
[25] This has the same definition as under the Agents Regulations per footnote 2.
[26] FIFA Regulations on Working with Intermediaries, Article 3, Registration of Intermediaries.

Additionally, if the releasing club engages the services of an intermediary, that club shall also submit a copy of the Intermediary Declaration to its association. The representation contract that the intermediary concludes with a player and/or a club must be additionally submitted to the association when the registration of the intermediary takes place. In addition, the associations may require further information to be submitted by either the player or the club.

Furthermore, the burden of proof that an intermediary involved in any transaction is of impeccable reputation is also put on to the association. They are deemed to have complied with their obligations in this respect if the Intermediary Declaration has been obtained.

3.3 Representation Contract[27]

A representation contract shall be signed by all parties before the Intermediary commences working on the transaction. The contract must specify the nature of the relationship and include, at a minimum, the following details: the names of the parties, the scope of services, the duration of the legal relationship, the remuneration due to the intermediary, the general terms of payment, the date of conclusion, the termination provisions and the signatures of the parties.

If the player concerned is a minor, the player's legal guardians shall also sign the contract, however, as is discussed below, no remuneration can be claimed for work undertaken for a minor.

In contrast with the Agents Regulations, under the Intermediaries Regulations there is no maximum fixed period that a representation contract should last. In fact, the Intermediaries Regulations do not govern the relevant representation contract at all, leaving it to the parties to regulate their contractual relationship how they see fit.

3.4 Disclosure and Publication[28]

As above, for every transaction the Intermediary Declaration should be submitted to the association along with the representation contract. The remuneration paid to an Intermediary should be disclosed to the relevant association. Also under the FIFA rules,[29] clubs involved in an international transfer are obliged upload in the TMS (Transfer Matching System, see below) the name of the intermediary that has acted on their behalf and the relevant commission.

The association involved can furthermore ask for any other document created in relation to the representation by the Intermediary. All contracts should be attached to the transfer agreement or the employment contract, as the case

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[27] FIFA Regulations on Working with Intermediaries, Article 5, Representation Contract.

[28] FIFA Regulations on Working with Intermediaries, Article 6, Disclosure and Publication.

[29] Annexe 3, Article 2 of the 2015 edition of the FIFA Regulations on the Status and Transfer of Players.

may be, for the purpose of registration of the player. Each agreement or contract should be signed by the Intermediary, and if no Intermediary is used, this has to be explicitly made clear. The Intermediaries Regulations make clear that the associations must publish at the end of each March, the Intermediaries who have registered, and every transaction that they acted in. The remuneration must also be published but in a consolidated form showing all remuneration paid to Intermediaries by each Player and by each Club.

3.5 Payments to Intermediaries[30]

The remuneration paid to an intermediary by a player shall be calculated with reference to the gross, basic salary for the duration of the contract. In the Agents Regulations, this calculation was based on the gross, basic, annual salary. The remuneration paid to an intermediary by a club should be paid as a lump sum prior to the completion of the transaction, or in instalments if agreed.

The Intermediaries Regulations stipulate that the percentage to be applied in calculating the remuneration should not exceed 3%, similar to the default position of the Agents Regulations where Agents are entitled to 3%. However, in calculating remuneration by a player, the 3% is calculated on the gross, basic value of the whole contract, and not just on an annual amount. Thus, although the Intermediaries Regulations are prescriptive in this area, the amount calculated should normally be higher if compared to the default position of the Agents Regulations.

If an intermediary has acted for a club in the agreement of a player's contract, the club should also calculate the remuneration due in the same way. However, by way of comment one cannot fail to notice that there is not much incentive for an Intermediary to strive for the lowest wage detail on behalf of the club if this is simultaneously driving down his remuneration. Similar to the Agents Regulations, the payment of any amounts due to other clubs in connection with the transfer of a player, such as solidarity contributions, training compensation or the transfer fee itself should under no circumstances be paid to the intermediary. This includes owning any interest in the transfer compensation or future transfer value of a player.

As previously noted, payment of commission in connection with the transfer of minor player is prohibited.

3.6 Conflicts of Interest[31]

The Intermediaries Regulations note that from the outset of a transaction, all parties should endeavour to ensure that no conflicts of interest exist. However, it is noted that no conflict is deemed to exist if any conflict or potential conflict is fully disclosed

[30] FIFA Regulations on Working with Intermediaries, Article 7, Payments to Intermediaries.
[31] FIFA Regulations on Working with Intermediaries, Article 8, Conflicts of Interest.

to all parties, and written consent signed by all parties is obtained prior to the commencement of the negotiation.

Furthermore, as noted from the analysis of the definition of an Intermediary, an Intermediary can actually be engaged by both the player and the club in a transaction. Again, written consent should be obtained by all parties prior to the start of the negotiation and it should be clearly noted which party will be responsible for the remuneration of the Intermediary (player and/or club). This is clearly a change of position on an important issue by FIFA, as this was previously not allowed under the Agents Regulations.

It is interesting to note, however, that under The FA's Agents Regulations implemented in 2007, the idea of dual representation by agents was permitted, as long as the player involved in the transaction gave consent. Moreover, FIFA itself had initially considered the inclusion of a relaxation of the principles in this area *en route* to the re-issuing of the Agents Regulations in 2008, but dropped the proposal as being too inconsistent with the stringent nature of the Agents Regulations.

3.7 Sanctions[32]

In a departure from their previous position under the Agents Regulations, associations are responsible for the imposition of sanctions for any individual who registers with them for a specific transaction and who contravenes the regulations. There is no detail as to what sanctions may be applied. Any decision taken should be published and notified to FIFA. At this point the FIFA Disciplinary Committee would have the power to extend the sanction to have effect at worldwide level in accordance with the FIFA Disciplinary Code.[33]

3.8 Enforcement of Association's obligations[34]

As with the Agents Regulations, the Intermediaries Regulations are required to be implemented the regulations of national associations, and should provide only the minimum standards to be adhered to. The only deviations permitted is when they are somehow not in accordance with national laws.[35] FIFA will monitor the adoption of the national rules and is empowered to take appropriate measures if the relevant principles are not complied with.

Interestingly, there is neither a time frame specified for the adoption of the principles, nor is there a specific indication of the measures that FIFA may take if an association fails to comply but instead refers to the FIFA Disciplinary Code.

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[32] FIFA Regulations on Working with Intermediaries, Article 9, Sanctions.
[33] FIFA Disciplinary Code (2011) Article 136.
[34] FIFA Regulations on Working with Intermediaries, Article 10, Enforcement of Associations' Obligations.
[35] FIFA Regulations on Working with Intermediaries, Article 1, Scope.

Under this code, any sanction can be adopted from a warning, reprimand or fine, return of awards, up to being excluded from a competition.[36]

3.9 Transitional Measures[37]

As noted previously, as soon as these Intermediaries Regulations had been introduced, the old licensing regime under the Agents Regulations was abandoned at once, without any interim period. In spite of the title of Article 11, in the Intermediaries Regulations there are actually no transitional measures in place whatsoever.

Indeed FIFA has already made very clear that any dispute lodged with them after 1st April 2015 by someone who, prior to that day, was a Licensed Players' Agent, cannot be admitted as FIFA does no longer have jurisdiction to deal with agents-related matters.

This position of FIFA also applies to all claims filed after 1st April 2015, even if the relevant representation contract was signed, or the relevant disputes arose, under the obsolete Agents Regulations.

By way of comment, one may rightfully question FIFA's decision not to adopt a transitional period, contrary to what it had previously done on all occasions when adopting new regulations.[38] To this end, former Players' Agents concluding representation contracts under the Agents Regulations (and providing for FIFA as the competent body to deal with any dispute) may have been under the legitimate expectation that FIFA would still offer protection, at least until expiry of the relevant representation contract.

4. Considerations on the Intermediaries Regulations

Firstly, it should be noted that the major change in approach between the Agents Regulations and the Intermediaries Regulations is that under the former, the emphasis was on regulating the agents' activities and in the latter, the emphasis has been instead placed on the regulation of the transaction.

To this end, during the six years leading to the approval of the Intermediaries Regulations, FIFA often pointed out that its intention was not to put in place a deregulation, but to switch the focus from the agents to the single football transactions. In this respect, I believe it is fair to say that, while on one hand the single transfers have indeed now become the focus, on the other hand the players' agent as a profession has undeniably been deregulated. The provisions of the Intermediaries Regulations that I have analysed in the previous section speak volumes about the fact that FIFA has ultimately ceased to regulate the agents, and has done so abruptly, without wishing to look back.

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[36] FIFA Disciplinary Code (2011) Article 10 and Article 12.

[37] FIFA Regulations on Working with Intermediaries, Article 11, Transitional Measures.

[38] Cf., inter alia, Article 26 of the 2015 edition of the Regulations on the Status and Transfer of Players.

This new approach is consistent with another major change that has occurred within FIFA in the past five years or so, namely the introduction of the Transfer Matching System (TMS). Through the TMS, the electronic submission of prescribed documents for every transaction attempts to make the system easier to manage, but above all more transparent. As observed above, the applicable rules[39] require a club involved in an international transfer to upload in the TMS the name of the intermediary that has acted on its behalf and the relevant commission.

Given the increase in volume of transactions, the implementation of a more procedure-based system with registration has clear advantages in terms of its management.

It is worth noting that since the FIFA Players Agents' system was introduced in its first incarnation in 1991, both the number and the value of the transfers have increased enormously. There obviously comes a point when, due to wide-impacting changes, any system will no longer be fit for purpose. In my opinion, one can safely sustain that with the Agents Regulations system the change may well be seen as overdue.

However, as noted in the first part of this chapter, the previous system had sound principles, but essentially failed to work because it was implemented and regulated in such a varying scale across the different FIFA member associations worldwide. Although with the new system the compliance should be easier to monitor, essentially the success of the Intermediaries Regulations will again depend on its adherence. Given that the Intermediaries Regulations are not overly prescriptive or stringent on the requirements of the associations to adopt the regulations, there is every chance that these Intermediaries Regulations, in common with the Agents Regulations, will be implemented in varying manners.

Furthermore, by not setting any deadlines or being specific in what will happen should an association fail to adhere, FIFA confirmed that they absolutely do not want to regulate intermediaries in the same way they attempted to regulate agents. This is further underlined by associations now being tasked with the implementation of sanctions against any intermediary registered with them, rather than just dealing with national matters.

Moreover, given that there are no transitional measures, FIFA has quite literally washed its hands of dealing with any residual agent-related dispute filed after 1st April 2015. One positive effect of these changes may be that the referral of violations (and disputes?) to the relevant national association would hopefully mean that cases are dealt with in a more timely manner.

The Intermediaries Regulations as a whole are shorter and a lot less prescriptive than the Agents Regulations. The change of stance on the issue of conflicts of interest, to name but one, along with the allowance of the intermediary to represent both parties in a negotiation, subject to full disclosure, is very illuminating. The representation of both sides to the transaction was surely happening

[39] Annexe 3, Article 2 of the 2015 edition of the FIFA Regulations on the Status and Transfer of Players.

frequently, if secretly, under the Agents Regulations. FIFA, essentially attempted and failed to prohibit this. The change in this stance is therefore a pragmatic one by FIFA: they cannot prohibit it so they are now attempting to regulate this area by requiring full disclosure. Again, this fits with the above-mentioned approach of FIFA of taking a massive step back in the Agents/Intermediaries area. Whether allowing an intermediary to represent both sides in a negotiation is a desirable notion, is an entirely different matter. In such a situation, even with full disclosure, there may always be a party in a less advantageous position.

Additionally, the Agents Regulations limited the maximum duration of a representation contract to two years. There is no such limit in the Intermediaries Regulations. Instead, the representation contract should state the duration of the relationship. There is therefore no prohibition on the representation agreement being an open-ended contract. This may be seen as detrimental to players', and their free will, especially if such a contract is signed at an early age.

The reaction from the formerly licensed agents is interesting to note. With the previous regulations, one main issue was the barriers to entry, especially the requirement to re-sit the examination every five years. Ironically, the lack of barriers to entry is now a perceived problem by many agents.

To this end, many of the critics of the new regime call attention to the risks connected with the intermediaries not having to pass an exam in order to operate in the industry. In my opinion, the former agents' remark that "any random chap at the pub down the road" can now become involved in a transfer, cannot be taken too seriously: the formerly licensed agents who have thus far operated professionally and successfully in the business will no doubt continue to do so also under the new regime. Moreover, considering the unlikely high pass rate of the now obsolete players' agents examination in certain national associations, I am not entirely sure whether the passing of the exam alone could be seen as an indication of the level of professionalism of the licensed players' agents.

On the other hand, others believe that the new system may actually be seen as advantageous for the players, as it allows them to choose to be represented by a person close to them, a person they know and trust, without this person having to feature among the licensed players' agents. One may even argue that the Intermediaries Regulations have opened the door to a more responsible choice by the players of their representatives ("I ask you to represent me because I trust you", as opposed to "I have to choose you as my representative because you have a licence").

Be as it may, no doubt the new regime has a major effect on the professional figure of the player's representative. As anybody, including legal persons, can now act as intermediaries without having to carry a licence, the title of Players' Agent is *de facto* meaningless. And if one considers that numerous Licensed Players' Agents continued to use the title of "FIFA Players' Agents" in spite of this being no longer possible, and in fact prohibited, since 2001, it is easy to comprehend the cultural impact that the Intermediaries Regulations has on the former Licensed Players' Agents.

Another main issue was the default position of 3% commission. In the Intermediaries Regulations, 3% is stated as the maximum percentage to be applied to the value of the gross basic contract in the calculation of intermediary remuneration. As a typical contract length is three years, this would work out as 9% of the annual basic salary. Experience shows that a typical agent's fee would be between 5% to 10%, so this specification should satisfy many former agents. However, it is fairly uncontroversial to state that many agents were earning in excess of this.

These Intermediaries Regulations recommend that no more than 3% should be earned. Are the provisions contained in these Intermediaries Regulations strong enough to prevent former agents earning more than this 3% cap? The mechanism to prevent this is that the contract or agreement, with the intermediary remuneration shown, is submitted along with the Intermediary Declaration to the association.

Furthermore, the association has the power to ask for any additional contracts or agreements, which may exist.

Firstly, there is the possibility of an Intermediary claiming a permitted amount on the transfer agreement or contract, but perhaps signing a side agreement, ostensibly for other services but instead, implicitly for intermediary services. The morality of the intermediary in the signing of the Intermediary Declaration would play a part in this. The side agreement would not necessarily be submitted, instead this would depend on the specific rules adopted by the association. If this agreement were submitted (and perhaps there is the possibility that any side agreement may initially be "overlooked" by the parties involved), the association may simply take this at face value (or perhaps on a "don't ask /don't tell" policy). Thus, on two occasions in this simple example, the success of the regulations depends on the vigour of the association in question. Or, instead, the transfer agreement or employment contract may state that no intermediary was used at all, with a side agreement being made to remunerate the intermediary. Without further inquiry by the association, the role of the intermediary would remain undisclosed.

The role of the association is clearly key in the success of the Intermediaries Regulations. Even though FIFA has stated that the standards should be adopted at a minimum, there may be many associations who adopt the Intermediaries Regulations but make changes to them, perhaps under the auspice of conflict with national laws.

Furthermore, as discussed initially, the clubs and players were all complicit in the failure to operate correctly under the Agents Regulations. Are these Intermediaries Regulations going to have an impact on their behaviour? As the reporting function falls on players and clubs, are they any more likely to report correctly, taking into account the examples just discussed? Again, the behaviour of the clubs and players is often habitual and to effect a change, a strong response of inquiry and regulation by the association would be required.

Additionally, as sanctions for any wrongdoing are now applied in the first instance for all cases by the association of the jurisdiction in question, rather than

referred to FIFA for any "international" matter, it is again down to the strength of the association's response to deter further infringements. Because the burden of regulation falls primarily on the association, and indeed the regulations are not very prescriptive in measuring FIFA's response for associations failing to implement the procedures, I can immediately see a large variation in permitted behaviour across the 209 associations.

The issue of jurisdiction in the event of a dispute is also an interesting one. Under the previous regime, in the event of a dispute with some international element, the referral to FIFA, as an independent body, was mandatory. In theory, the referral to World's Football Governing Body removed the issue of bias from the decision. If an intermediary lodges a claim in front of an association other than the one of his nationality, and where he is registered as being the intermediary in a transaction with a club for example, he may feel disadvantaged, or may feel that the association dealing with the dispute may favour the club in the outcome. If a similar international case involved a player or a coach instead, before declining jurisdiction in favour of the national association, FIFA would ensure that the relevant national arbitration tribunal were an independent one guaranteeing fair proceedings and the respect of the principle of equal representation.[40]

Pursuant to the Intermediaries Regulations, whom are the parties to a representation agreement going to refer their disputes to, among the available sports tribunals? As we have observed above, the Intermediaries Regulations are silent on this issue, as FIFA no longer offers dispute resolution facilities for such matters.[41] Interestingly though, Article 66 of the 2015 edition of the FIFA Statutes reads that FIFA recognises the independent Court of Arbitration for Sport (CAS) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials, *intermediaries* (emphasis added) and licensed match agents.

Therefore, in addition to the national associations, which FIFA has already heavily tasked with a number of obligations in relation to the intermediaries, CAS can also resolve disputes between parties in relation to intermediaries-related matters. In fact, because of CAS' independence, it is very likely that the majority of representation agreements between parties with an international element will feature an arbitration clause indicating CAS as the competent court for resolving any dispute.

Any decision reached by CAS in such matters could then be enforced, where necessary, either through the New York Convention, or through the national association of the obliged party.[42]

On a separate issue, FIFA has tried in these Intermediaries Regulations to strengthen the protection afforded to minors. In variance with the Agents Regulations, clubs and/or players are expressly forbidden from making payments to intermediaries for their services if the player concerned is a minor. This is no

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[40] Article 22 of the 2015 edition of the FIFA Regulations on the Status and Transfer of Players lit b) and c).

[41] Article 22 of the 2015 edition of the FIFA Regulations on the Status and Transfer of Players.

[42] Article 68 of the 2015 edition of the FIFA Statutes.

surprise, as recent jurisprudence in other areas has reaffirmed FIFA's strong commitment in the protection of minors. Yet again, we have to consider, are these Intermediaries Regulations offering a strong protection mechanism? Of course, there is the possibility of side agreements playing a part. As the wording of this article is not particularly tight, there is also the possibility of delaying remuneration under the player is of age. Again, a lot of this depends on the individual approach adopted by the relevant association.

Looking back at the three issues raised at the 59th FIFA Congress, it can be seen that FIFA may view the Intermediaries Regulations as overcoming such issues. By abolishing the idea of a licensed agent, they have immediately eliminated the problem of many transfers being concluded without the use of a licensed agent. By empowering the associations with the right to full disclosure by the parties involved, they have put in place a mechanism in which the use of intermediaries (agents) is, in theory, more easily verifiable. And finally, by amending the rules of conflicts of interest the intermediaries can now be both club representative and players agent, albeit with clarity on who is remunerating the intermediary.

I have copiously emphasised that the success of the Intermediaries Regulations depends on the monitoring and enforcement by the member associations. This is also on the basis that they are adopted as FIFA issued them. Already many associations seem to have implemented the relevant regulations without inclusion of the 3% remuneration cap, as the following chapters will surely reveal. It should also be noted that there is currently a case pending at the European Commission relating to this.

The case has been brought by AFA (the Association of Football Agents) which contends that by FIFA setting a cap in the amount an intermediary can charge for their services is tantamount to price fixing. As it will be made clear in the following chapters, so as not to open themselves up to legal challenges, The FA decided not to specify a cap in their regulations (they would defend their position by stating that the inclusion of a cap would contravene domestic laws). However, some countries in South America seem to have included a cap at a higher percentage.

In conclusion, FIFA has in essence admitted defeat in its attempt to regulate players' agents, and it has abandoned the Agents Regulations in their entirety, discontinuing the recognition of Licensed Players Agents as a profession. The Intermediaries Regulations are interesting in their approach as they now focus on the regulation of the transaction, rather than the regulation of the individual (agent). Enforcement and regulation are firmly in the hands of the member associations so the success, or otherwise, of the Intermediaries Regulations depend on them. History so far has shown that associations vary greatly in their adoption and policing of the Intermediaries Regulations. Furthermore, the mechanism specified for sanctions and enforcement of the associations' obligations are not particularly rigorous.

I have endeavoured to identify some of the positives and the risks potentially arising out of the new FIFA regulatory system, but ultimately only time

will tell whether football as an industry has benefitted from the abandonment of the licensed players' agents system in favour of the adoption of the new Intermediaries Regulations.

FIFA REGULATIONS ON WORKING WITH INTERMEDIARIES AN ANALYSIS AND OPINION FROM THE INTERMEDIARIES' PERSPECTIVE

by *Roberto Branco Martins*[*]

1. Introduction

Since the development of modern organised football, players' agents have been active in the industry.[1] In the Bosman aftermath, the activities of players' agents as advisers in negotiations concerning employment and transfer contracts increased as players experienced more freedom in the choice of their employer and the value of the player's contracts became more significant and the payment of high transfer fees remained intact.[2] FIFA delivered the core for the regulation of players' agent activity since the mid-nineties by means of a licensing system and the Player Agent Regulations (PAR) that connected individuals via their licence to the 'football family'. However, as from 1 April 2015 FIFA no longer targets players' agents as the centre of their regulations. After a critical assessment FIFA decided to end its bond with players' agents and shifted its attention to the regulation of the activity, and not of the individual.[3] FIFA published the Regulations on Working with Intermediaries

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[1] KEA, CDES and EOSE (2009), *Study on sport agents in the European Union,* a study commissioned by the European Commission (Directorate-General for Education and Culture).

[2] This is one of the outcomes of the FIFA TMS research on the Big 5 2015 transfer window analysis, more information on: www.fifatms.com/en/Reports/reports-2014/.

[3] Numerous articles have been written about the reason for the deregulation by FIFA. The author suggest the following articles for a more in-depth analysis: Branco Martins, R & Parrish, R, *Players' agents,* in J.A.R. Nafziger & S.F.Ross (Eds.), *Handbook in international sports law,* 545-557, Cheltenham: Edward Elgar; Branco Martins, R, *The Laurent Piau case of the ECJ on the status of players agents,* In Gardiner, S., Parrish, R. & R.C.R. Siekmann (Eds.), *EU, sport, law and policy, regulation, re-regulation and representation,* Asser international sports law series, 247-258, The Hague: T.M.C. Asser Press and various contributions in *Football Legal, The International journal dedicated to football law,* volume 3 June 2015, issued by droitdusport.com.

(RWWI) as a regulatory benchmark and offered a possibility to its members to go beyond these minimum standards.[4]

This contribution represents the views that derive from the activities of The European Football Agents Association (EFAA) in recent years. The introduction of EFAA is followed by a record of issues that were problematic according to it, prior to 1 April 2015, and that needed to be properly addressed when a new regulatory framework was drafted. Are the current RWWI such a framework? After the attempt to answer this question, a (non-exhaustive) elaboration on threats to the overall applicability of the RWWI in the European Union (EU) shall follow. Finally, the need for regulation of the agents and a suggestion on a best practice approach shall be illustrated. The latter may serve as a potential basis for a solid form of harmonization in the European Union.

The perspective of this contribution shall be that of the European Union. It takes into consideration that it is part of a collection of articles that go into more detail about the content of the RWWI in general and the agent regulations on the level of the member football associations (FA's) of FIFA. Therefore, when referring to national regulations only elements that are most relevant for supporting the arguments in this contribution shall be mentioned.

2. EFAA: Background and Objectives

In 2007, the EFAA, a not-for-profit association according to Dutch law, was founded.[5] Members of EFAA can only be national agent associations, so no individual agent can become a member. Currently there are 12 European associations, including the "big 5 league" countries, represented in the EFAA. In addition, EFAA has accepted associated memberships of Brazil, Argentina, Japan and Australia. In countries where there are no agent associations, EFAA assists in establishing one. Recently, EFAA has expressed support for the creation and adherence of agent associations in Turkey, Bulgaria, Serbia and Hungary.

A goal of EFAA is to try to improve the general image of agents. The other goals of EFAA are laid down in Article 2 of the organization's statutes and focus on creating common ground amongst agents in Europe and to support the creation of national agent associations. Article 2.2 goes on to state that: "*The Association tries to achieve these objectives inter alia by: promoting the cooperation, amicable relations and unity of the Member Associations and their Members, the FIFA licensed players' agents; aiding the exchange of information between the Member Associations and supplying information about developments that are important to the collective and individual position of the Member Associations in Europe; promoting the interests of the Member Associations while considering the collective affairs important for said Associations in the fields of economics, social economics and employment law; promoting and improving*

[4] FIFA Regulations on Working with Intermediaries, Preamble and article 1 sub 3.
[5] More information: www.eufootballagents.com.

the interests of players' agents in possession of a FIFA licence in all respects while safeguarding the general interests of the Member Associations; promoting the co-operation, intermediary activities and relations among organizations, sports institutions, professional football clubs or any other entities and the individual Member Associations, in particular in the field of management, consultancy and all forms of employment in the professional sector of football; concluding collective agreements; all other lawful and permitted means that may be conducive to the objectives." After the deregulation of FIFA the statutes shall be adopted to the new situation as the FIFA licence (via the national FA) ceased to exist.

In the aftermath of the announcement of the deregulation of the profession by FIFA, EFAA drafted a list of issues and malpractices needed to be tackled in European football. This list served as the basis for discussions with football stakeholders.[6] The list, with some explanatory comments, was as follows. There was a need for:

1. *The creation of a solid legal framework for the regulation of the activities of agents, clubs and players concerning all issues related to transfers and representation.*

   The regulatory framework for the activities of players' agents in the European Union is far from harmonised. Many states of the European Union regulate the activity of sport agents through general statutory interventions or common laws such as contract law, agency work laws or laws on job placement. Others have established a sport specific statutory basis for agent regulation. The complexity in this legal environment is aggravated by the rule making activities of international sports federations, most clearly of FIFA. The mandatory transposition of international sports regulations by national associations has increased legal inconsistencies and conflicts in the European Union professional football sector.

   There is an absolute necessity for a source of regulation that is in line with the hierarchy of laws (EU law– National law- Association law) in order to create legal certainty in the regulation of the profession of agents and transfer of players. Such regulation needs to be applicable to a well-defined area of activities.
2. *A transparent sanctioning system for agents, players and clubs in case of malpractices related to transfers.*
3. *A ban on the activities of unlicensed "agents", on the activities of unlicensed exempt individuals and a better control on licensed agents working as a façade for unlicensed agents.*
4. *Better protection of youth players and minors.*

   This problem involves all stakeholders. It is a wide issue and many aspects must be analysed including the proper limits to the professional influence agents should be entitled to have on football players below the age of 16.

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[6] See also: www.pro-agent.nl/index.php?cid=4&aid=163&start=0.

Important elements are the criteria for the entry of minors on the territory of the EU. It should be avoided that parties carrying out malpractices in this respect are able to go "forum shopping" in order to traffic minors or to benefit from the most beneficial regulatory frameworks to support their personal benefit. In relation to the above, a thorough analysis of the negative effects of the home grown player rule is strongly endorsed by the agents.

5. *A ban on the tolerance of the ownership of "athlete's registration rights" or "federative rights" (TPO).*
6. *The harmonization and simplification of the method of payment of agents, enabling agents to be paid directly by players as well as by clubs on behalf of players.*

   There is no uniform method for agents' remuneration. In some countries it is illegal to let the worker pay for the services rendered to him by intermediaries in the employment sector. In other countries it is illegal for the club to pay the agent for his services. There should be clarity on this issue in order to avoid malpractices and serve efficiency.
7. *The compulsory permanent education for players' agents including a yearly seminar conceived, managed and controlled by the Football Associations, ECA and EFAA.*
8. *The guidelines on the "legal and allowed" services rendered by agents to clubs.*

   A clear overview on the services, in combination with a standardised and/or uniform system of payments and invoicing is a first step towards transparency. A better definition of the activities of agents leads to a better functioning of the market.
9. *The participation and representation of EFAA in official football governing bodies.*

3. The FIFA RWWI: EFAA's Perspective

The RWWI of FIFA shifted the emphasis of the regulation from the 'individual' to the 'activity'. However, has it been able to tackle the problems that were identified by EFAA? The answer is crystal clear: No. The arguments for this negative answer are described below. For the sake of clarity the description shall follow this structure: lack of a solid legal framework, protection of players, and professional requirement for agents.

4. Lack of a solid legal framework

Instead of creating a solid legal framework, and in its slipstream a unified international system of regulation, the RWWI became the source of an American quilt type system of regulatory frameworks. The RWWI leave an opening for national member Football Associations (FA) to go beyond the minimum standards of FIFA.

Apparently in the EU many national FA's feel the need to go beyond the RWWI and introduce stricter regulations. This has led to many different regulations and intermediary registration systems in the EU. The differences in these systems create serious obstacles to the free movement of services. Clear examples of such obstacles are (without being exhaustive) the fact that in Italy only an Italian resident may work as an agent;[7] in Spain an interview needs to be carried out before a person may be registered as an agent; in France there is still the need for a licence; in the Czech Republic the activities of agents are only open to nationals (and EFAA member agents). Every country requires that as an essential element for the registration of a transaction the representation contract between the agent and player is registered in the jurisdiction of the country of the relevant FA, which creates a serious impediment on the freedom to contract. The Agents may only be active in a country after registration, this requires a fee to be paid per country, in order to be active in the total area of the EU an agent needs to pay (cumulative) fees for registration of more than 20.000 euro.[8] In essence: the requirements for registration differ considerably.

In relation to the payments of agents, the RWWI have introduced an incomprehensible element. The much debated recommendation for the 'cap' on agent fees of 3% lacks any well-argued basis. The recommendation is included in the RWWI's minimum standards that require a compulsory implementation on the level of the members of FIFA. However, apparently due to the fact that it is a recommendation, a number of FA's have decided not to implement this recommendation, which is contrary to what could have been expected. Of the big 5 leagues, Germany and Spain have no recommendation of the 3% in their regulations.[9] Italy and England have included the 3% recommendation. France is atypical and bases its regulations on specific public law provision,[10] the maximum amount is regulated in France, the fees connected to a negotiation of an employment contract or of a transfer negotiation is 10%. For the sake of comparison: Portugal includes a cap of 5% of the transfer fee or player's wage;[11] Croatia introduces a cap of 10%

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[7] Unless the Italian FA has recognized the other FA's regulations as compatible with theirs. However, this must be a mutual recognition and for the time being this has not been the case.

[8] The amount for registration differs per country, the minimum amount seems to be 500 euro (Netherlands) and the maximum amount seems to be 3700 euro (Czech Republic). However, in countries such as Denmark (payment for the registration, which is compulsory, for every individual representation agreement) and Romania (1500 euro registration and the compulsory use of standard contracts that must be acquired from the FA in batches of 10 contracts at 500 euro per batch) the amount for the registration may rise substantially. In essence, taking into consideration that before the entry into force of the RWWI no individual registration was necessary, an individual agent could work in every country of the EU without extra costs. A broad calculation, taking into consideration an average registration fee of 750 euro per Member State, clarifies that the minimum amount that needs to be paid to have access to the EU market as a whole is 21.000 euro. This is per individual agent, so for companies employing a number of agents this amount rises substantially.

[9] Germany: DFB Reglement für Spielervermittlung; Spain: Reglamento de Intermediarios de la RFEF.

[10] France: Loi du 9 juin 2010 encadrant la profession d'agent sportif; England: FA regulations on working with intermediaries; Italy: *Regolamento per i Servizi di Procuratore Sportivo*.

[11] Article 11 (3) sub a, b and c of the Regulamento de Intermediarios.

of the transfer fee or the player's wage;[12] the Czech Republic has no mention of any cap or recommendation;[13] the Netherlands include a minimum amount of 3% of the players' wage[14] (no mention of the transfer fee); and Cyprus has introduced a cap of maximum 3% of the transfer fee or of the player's wage.[15]

These first effects may be placed next to the recent numbers of FIFA Transfer Matching System GmBH (FIFA TMS). In the big five leagues the total amount spent on agent fees apparently grew by 8%.[16] Although, this figure does not reflect the total amount spent in the EU and it focuses only on transfers with an international dimension, but it does indicate that the expected decrease in the amount of agent fees is not very likely. These developments place the inclusion of the recommendation into an interesting perspective. Prior to the implementation of the RWWI it has been argued that in the perception of agents the fees that they incur, and that are set by the market range from 5% to 10% of the wage of a player.[17] For the sake of transparency it would have been helpful to understand why the working group that drafted the RWWI[18] agreed upon a recommendations of 3% if the average industry standard was (more than) double. The recommendation is the main source of a legal action carried out by the Association of Football Agents (AFA), against the overall validity of the RWWI.[19] A decision is to be expected around the beginning of 2016.

5. Protection of Players

It is clear that the football player is a vulnerable worker with a short career. He is young, works in a legally complex environment, with an international dimension and with relatively big amounts of money circulating in the industry. The RWWI undermine the protection of the worker in many ways. The player that signs a representation contract with an agent needs to adapt this contract to the rules and

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[12] Articles 16 and 17 of CFF Regulations on Working with Intermediaries. See also the contribution of Dr. Vanja Smokvina in this book.

[13] Article 12 of the Czech Intermediary Regulations. See also the contribution of Martin Procházka in this book.

[14] Article 8(6) KNVB Reglement Intermediairs.

[15] Article 7 Cyprus FA Regulations on Intermediaries.

[16] "Football players cash in on global transfer market", 8 September 2015, BBC News, www.bbc.com/news/business-34172417.

[17] DeMarco, N.,*The New FA Football Intermediaries Regulations and the Disputes Likely to Arise, Blackstone Chambers lawfirm website*, 27 April 2015 and also Antonov, G., *Is FIFA prixing the prices of intermediaries? An EU competition law analysis,* Asser Sportslaw blog, to be found at: www.asser.nl/SportsLaw/Blog/post/the-new-fifa-regulations-for-intermediaries-and-the-recommended-maximum-remuneration-an-eu-competition-law-analysis-by-georgi-antonov-asser-institute.

[18] Apparently consisting of leagues, FIFPRO and members of FIFA: *FIFA Working with Intermediaries, Background paper, April 2015:* www.fifa.com/mm/Document/AFFederation/FootballGovernance/02/58/08/50/BackgroundPaper-WorkingwithintermediariesreformofFIFAsplayersa..._Neutral.pdf.

[19] See supra 18.

regulations of the FA where he shall be registered. However, the agent may go forum shopping and conclude multiple contracts with the player and solely use the representation contract in the country where the player is registered for the registration purposes of the transaction in order to receive the remuneration. The other contract(s) may contain a choice of law clause that is favourable for the agent. Also, if the agent chooses a country that has implemented the RWWI without additions the contract may be for a duration superior to two years, with negative consequences for the player.[20]

A player can also be unreasonably bound by an agent by means of a general management contract that does not specify the intermediary activity as the sole service of the agent. This contract does not fall within the scope of the RWWI.

As a source for protection, the RWWI include a prohibition on the payment for the intermediary services provided to minors, which are players under 18. However, current regulatory developments in European football induce clubs to place more emphasis on recruitment of youth players. The 'home grown player rule',[21] financial fair play regulations,[22] squad size limits[23] and the abolishment of high training compensation for youth players have fuelled the trend for the internalisation of youth academies at European clubs.[24] With this international recruitment, that takes place in a legally complex environment, the role of advisers can be crucial for the choice of a player's career development. Taking away the financial incentive for an agent to receive remuneration for the provision of services for minors deprives the minor and his family of proper consultation.

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[20] See also the contribution of Wil van Megen in this book.

[21] A home grown player is under the UEFA definition a locally-trained or 'home grown' player who, regardless of their nationality, have been trained by their club or by another club in the same national association for at least three years between the age of 15 and 21. Up to half of the locally-trained players must be from the club itself, with the others being either from the club itself or from other clubs in the same association. Clubs participating in UEFA competitions need to have at least 8 home grown players in their 25 man squad. See also Dalziel, M., Downward, P., Parrish, R., Pearson, G., Semens, A. (2012), *Study on the Assessment of UEFA's 'Home Grown Player Rule',* Negotiated procedure EAC07/2012. This is a research project carried out by the University of Liverpool and Edge Hill University, funded by the European Commission, 8.

[22] According to UEFA Financial Fair Play is an obligation for clubs, over a period of time, to balance their books or break even. Under the concept, clubs cannot repeatedly spend more than their generated revenues, and clubs will be obliged to meet all their transfer and employee payment commitments at all times. Higher-risk clubs that fail certain indicators will also be required to provide budgets detailing their strategic plans. See also Geey, D. and Reck, A. (2011), *Third Party Ownership and UEFA's FFPR: A Premier League Handicap,* Sport and the EU Review, Vol. 3, Nr. 2, December 2011, and Geey, D. (2012), *The UEFA Financial Fair Play Rules: a Difficult Balancing Act,* Entertainment and Sports Law Journal, Vol. 9, Nr. 1.

[23] Limits to squad sizes have been promoted to encourage the elevation of local talent, an interesting article in this respect is a research published by the Gazetta dello Sport, *Serie A, Ecco la riforma: rose da 25, in 4 dal vivaio piú cresciuti in Italia* (20 November 2014), www.gazzetta.it/Calcio/Serie-A/20-11-2014/serie-a-ecco-riforma-rose-25-4-vivaio-piu-4-cresciuti-italia-1004498048.shtml?refresh_ce-cp.

[24] ECA Report on Youth Academies in Europe, page 158 onward, to be found at: www.ecaeurope.com/Research/ECA%20Report%20on%20Youth%20Academies/ECA%20Report%20on%20Youth%20Academies.pdf.

The current rules do not offer a solid and reasonable method to fill this gap. After all, the agent cannot receive the fee for the payment of his services when the players turns 18, as the payment would still be considered as related to the contract signed with a minor. Also, entering into a representation agreement for a longer duration than the duration of the initial players' contract (according to the Regulations on the status and transfer of players, employments contracts with minors cannot have a longer duration than three years) and guaranteeing the presence of the agent in the negotiation of the next employment contract, is practically impossible in the countries with a maximum duration of two years for the representation agreement. In countries where such a maximum duration does not exist, long-term representation contracts with minors are not desirable for the reasons mentioned above, such as a disproportionately long bond with an agent that has used the most favourable jurisdiction to protect his potentially malicious personal benefit.

Other unnecessary burdens on players are the fact that a player himself is responsible for filing and disclosing the contract(s) with his agent.[25] This in practice is complex: a football player uses the services of his advisor to take away the administrative burden that shifts the focus from his sportive ambitions and activities. It is the creation of a topsy-turvy world.

The tapping-up of players and the chase on players by agents shall increase. Agents are aware of the fact that before they sign a player no sanctioning framework limits their activities: no licence means no control. The mere fact that the agent is present at the moment of signing and files the standard representation contract makes the agent entitled to receive the fees, even with the 'protection' of the TMS system with proof in the registration system of the FA. Any prior contracts entered into by the player with another agent, that may include the payment of damages in case of non-compliance with exclusivity clauses, are the problem of only the player. The latter may be taken to a civil court by his previous agent(s) in order for the agent to secure an award of damages. This can lead to a burden for the player due to a long process of litigation, especially if he moves to another country before the end of the legal dispute. The only contractual relation that the registered agent that did the transaction has, is the entitlement to remuneration and this does not affect any of his other business activities.

6. Professional requirements for agents

One of the arguments for the regulation of agent activity was to promote proper behaviour amongst agents. This is a broad and vague concept, but under proper behaviour a number of issues may be placed. For example, the transparency in payments. Under the RWWI as minimum standards, and under the national regulations that may go beyond these standards, there seems to be a *quasi* transparency in relation to payments to agents. The RWWI make a misjudgement

[25] Article 6(1) RWWI.

in the fact that only one agent is involved in the move of a player. In fact, in the majority of cases, there is a collaboration between multiple agents. This collaboration is mostly governed by means of a properly constructed 'mandate'. The various registration systems only recognise one agent per transaction. Therefore, the payment is done directly from the club to the agent that registers the transaction. However, this agent shall share his fee with the agent with whom he collaborated. Where there are more parties that are part of a 'deal' then, for the sake of transparency the registration system should allow a club or a player to pay more than one agent and to register these payments.[26]

The party, mostly the club that receives such a mandate, may rely on the validity of such a mandate. The agent, or player, that gives a mandate to a third party, normally requires extra assistance in an area where he could use the specific qualities (e.g. network, language) of the mandated individual. From the perspective of the player, an exclusive mandate for a limited number of clubs for one specific agent lead to the player remaining free to work with more than one agent. Many players have a preference for such a method. A collaboration with another mandated agent might also be suggested by the 'overall' exclusive agent of the player. The practical problem under the RWWI is that a mandated agent may no longer negotiate a player's contract with a club. Hence, for carrying out intermediary activities (the negotiation of a contract) the agent needs to have a representation agreement with the player. The club is obliged, under the due diligence requirement,[27] to ascertain that the agent is of proper conduct[28] and that the agent has a representation contract with the player. However, if the agent is mandated he does not have a representation

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[26] Practical example: an agent from Uruguay receives a request for one of his exclusively represented players from a club in Italy. The agent from Uruguay is unable to register in Italy. He does not have a network in Italy but is forced, through the national intermediary regulations in Italy, to work with an Italian agent. He mandates the Italian agent but the Italian agent must, according to the rules of the FIGC, be the only agent that represents the player. The club needs to, under the due diligence rules, confirm that this is correct, otherwise the club would not perform its duties. So, the Italian agent needs to sign a representation agreement with the player that is exclusively under contract with the Uruguayan agent. This representation agreement is registered at the FIGC in the name of the Italian agent. It is reasonable to assume that the club shall pay the agent on the player's behalf. The conditions of payment are defined in the contract between the club and the agent, the commission agreement, which is a constituting part of the registration of the player. It is understandable that the Uruguayan agent does not agree with becoming dependant on the Italian agent to receive the payment for the services that he has actually carried out for his client, namely managing the player's career and assisting the player in negotiating his contract with the Italian club, as it is logical that the player, that has had his reasons for working with the Uruguayan agent, shall not 'switch' to an Italian agent whom he does not know and, on top of that, shall be paid by the Italian club. This situation leads to a negative impact on the player and on the Uruguayan agent. The consequence is that the Uruguayan agent shall seek to receive a direct payment from the Italian club, or at least a form of certainty to secure his part of the commission. These agreements fall outside of the scope of the RWWI and therefore have a contrary effect as to the supposed objectives of the RWWI.

[27] RWWI article 2(2).

[28] In order to facilitate this due diligence test FIFA has introduced as the sole requirement that the club must ascertain that the agent has signed the Intermediary Declaration that is part of the RWWI as an annex.

contract with the player, only the limited mandate. A large number of transfer negotiations take place on the basis of a mandate, for reasons that are mentioned above. Basically, the RWWI have placed the widespread practice of the use of mandates in a regulatory twilight zone without any clear enforcement and sanctioning possibilities in the case of malpractices.

The topic of mandates may also serve as an example of the potential impact of the lack of legal certainty in the case of conflicts. If a club, that agrees to work with an agent on the basis of a mandate that defines that specific club as the exclusive scope of negotiation of the mandated agent, enters into a conflict with that mandated agent, no recourse to FIFA exists. It is imaginable that the club and the mandated agent reach an agreement, perhaps even a payment has already occurred. At the moment that the club wishes to sign the player, the original agent of the player enters the scene and denies the existence of a contract or wishes to change the terms of the contract. The dispute with an international dimension that then arises should be brought before a civil court. The civil court option is more likely than sports arbitration under the ordinary procedure at the Court of Arbitration for Sport (CAS), as for sports arbitration the consent of both parties is needed. It is not very likely that a defendant would agree voluntarily to submit a claim of a club to resolution by the CAS. So, in such a case where there is no prior contractual liaison between the parties and therefore no choice of forum and/or choice of law is defined, the civil court that is competent is determined by complex rules of international private law. The litigation procedure in such a case may take very long and shall potentially follow procedure on procedure: to determine the court and the applicable law, first instance procedure, potential appeal, execution in an international dimension... such a lengthy procedure is not only time consuming but also, in general, very expensive. Therefore the club, also driven by the pressure of the limited duration of the transfer window, would reasonably choose not to pursue such a complex and lengthy process and just rest with this decision. In such a case the legal uncertainty therefore remains. This example could be adapted to the other relevant parties as well, namely the agent or the player that have been deceived. The lack of legal certainty in agency activities of an international dimension applies to all parties involved.

Another aspect that causes uncertainty is the effect of the RWWI on the freedom to negotiate between the agent and a player. The recruitment phase of the agent starts, normally, in his country of origin. The player and the agent agree on a collaboration and decide to detail it in a contract. Obviously the contract is drafted in accordance with the laws and regulations of the country of preference of the parties. However, when the player transfers to another country than the country of origin of the contract, the contractual relation between the parties needs to be adapted to the rules and regulations of the country where the player shall be registered. This includes the conclusion of a new contract with a mandatory choice of law and forum clause. Amongst the member nations there are differences in clauses. Above, the differences in remuneration have already been mentioned. To

these differences also the maximum duration of the contracts may be added. In a number of nations the maximum duration of a representation contract is limited to two years,[29] however in other nations the RWWI standards apply on this subject and in those countries there is no maximum duration of a representation agreement. These differences, in combination with a lack of an international tribunal for dispute resolution, create legal uncertainty for the stakeholders involved, after all which contract is applicable and which contract predials and under which circumstances?

Taking all of these three distinctions into consideration, the interim conclusion is that the RWWI have not addressed EFAA's concerns. On the contrary, clear impediments to the free movement of services have been created due to the differences in national agent regulations. The players are more vulnerable than ever, there is a bigger risk on the lack of financial transparency due to a vague recommendation of three percent and a prohibition to be remunerated for services involving minors and last but not least, anyone can become an agent without any qualitative restrictions.

In the following section, a threat to the current method of regulation shall be described, followed by a general conclusion and recommendation.

7. German Court Ruling

A German regional court in Frankfurt am Main decided in April 29, on the request of German agent company Rogon in a case against the German FA (DFB) that this compulsory submission of the agent to the rules of the DFB was disproportionate.[30] [31] The agent could be asked to register, to file a criminal record and to pay a fee for such a registration, which could be justified solely for administrative reasons. The purpose of the registration could not entail that the agent in question would be forced to follow the rules and regulations of the DFB without becoming a member of the DFB.[32] The court considered that the objectives that the DFB intended to attain could be reached by a proper enforcement of auxiliary regulations of the DFB. It was unnecessary to create extra rules that would place such a burden on the service providers in job placement for professional footballers.

The court issued an injunction that is considered to be an interim solution. The case shall go into appeal but in the meantime the applicability of the compulsory registration in Germany is suspended. The case is of relevance for the complete territory of the EU because the court used article 101(1) TFEU, and the connected

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[29] Such as England, The Netherlands, Spain, Portugal, etc.

[30] Case Az. 2-06 O 142/15*, *Firma Rogon Sportmanagement v Deutschen Fußball-Bund (DFB)*, Landgericht Frankfurt am Main, 29 April 2015.

[31] See also Misic, T., *The New FIFA Intermediary Regulations under EU Law fire in Germany,* Asser Sports law blog: www.asser.nl/SportsLaw/Blog/post/the-new-fifa-intermediaries-regulations-under-eu-law-fire-in-germany-by-tine-misic.

[32] Supra 31, par. 72-73.

"double test"[33] to condemn the effects of the registration at the DFB. It is clear that a similar consequence of the registration is present in all of the Member States of the EU. A fragile element of the method of regulation of the agent activity has arisen. In addition, the court decided that two other aspects of the DFB regulation where contrary to article 101(1) TFEU.

The German Landesgericht argued that obliging the club to pay the agent in the form of a lump sum flat fee in advance was unjustified. This requirement prohibited the agreed fee to be expressed in a percentage related to the cumulative transfer sum. The Court therefore allowed agents to receive a percentage of the transfer-fee related to the sale of the player, as it did not see how the restriction of these types of payments could serve the purpose of attaining the objectives of the regulations. The RWWI seem ambiguous on this topic, on the one hand article 7 of the RWWI prescribes that a lump sum payment as a remuneration for the activities of the agent is compulsory, to be defined in advance. On the other hand, the recommendation clearly refers to a percentage of the transfer fee. It seems obvious that parties use the amount of the expected transfer fee as a parameter to define the height of the commission fee. In accordance to what has been mentioned before, concerning the rationale and process of decision making in relation to the height of the recommendation for 3% also applies here: if industry standards have developed a workable *status quo*, why would the working group that drafted the RWWI step away and introduce new methods of payment?

The German court also ended the prohibition on the payment of a fee for the service provision to a minor. Indeed it stressed that minors needed to be protected, however, in considering the sometimes high transfer amounts paid for minors a prohibition of the payment of a negotiation fee did not seem reasonable.[34]

In this context it is relevant to note that the German court did agree with the DFB that the intermediary should not be allowed to receive a share of the transfer fee.[35] This means that if an agent negotiates the employment contract of a player, he may not own part of the economic rights that are involved with the future transfer of the player. The transfer regulations forbid a third party to have an interest in such a payment. This requirement is in line with the prohibition on third party ownership, a phenomenon that is strongly condemned by FIFA and UEFA.[36]

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[33] First, a three-tier test of the compatibility of the rule with the requirements of 101(1) TFEU. This assessment analyses whether the RWWI contain a legitimate aim, if it adopts appropriate and necessary ways to achieve the implementation of its aim. The second test is the test based on 101(3) TFEU, namely if the anti-competitive elements of the agreement are justified by the positive effects of the agreement on the consumers by providing them a fair share of the benefits of the restriction and if competition is not eliminated.

[34] Supra 31, par. 89-91.

[35] Supra 31, par. 86-87.

[36] A leading publication on Third Party Ownership is EPFL's Sports Law Bulletin, nr.10, June-October 2012, to be found at: http://epfl-publications.com/slb10/.

As said, the impact of the court case in Germany may be felt on the whole territory of the EU. In the case that on appeal the decision remains unchanged, the basis for a similar outcome in every individual EU Member State can be expected.

8. Conclusion and recommendation

It has become clear that EU law infringements are likely to occur on the level of the member FA's of FIFA in the European Union. In order to avoid these infringements one needs to take the impact of EU law into consideration when drafting new agent activity regulations. However, it must be recognised that there shall always be a restrictive effect if a system requires prior registration. Such a restriction is prohibited, unless a justification for such an approach is justified under the given circumstances.

From this perspective it would be wise to allow the participation of the workers in the negotiation of agent regulations as well as the agents themselves and clubs. Potential restrictions could in that sense be justified by the argument that apparently players, agents and clubs deem it necessary to make rules that go beyond minimum standards in order to protect a market and its participants.

In the Netherlands such a structure has become effective. The Dutch FA organized a specific working group on agent issues. In this group there were present the FBO (Dutch Employers organisation, member of EPFL), VVC (players' union member of FIFPRO), ProProf (the second players' union in the Netherlands), individual clubs PSV Eindhoven, Ajax Amsterdam and Heracles Almelo and Pro Agent (the association of players' agents). These parties have agreed on a system whereby the RWWI have been implemented in the Netherlands but where they go beyond these regulations.

The working group agreed on an introduction of a maximum duration of representation contracts, agents have to register and they fall under the jurisdiction of the FA, no recommendation of 3% is included and clubs have the obligation to respect contracts entered into with agents. In addition the parties have decided to introduce a quality certificate for agents. Agents that are a member of Pro Agent receive a quality certificate that is given to Pro Agent by the FA. Pro Agent agrees that its members take on permanent education (developed together with the stakeholders in the player agent committee), that they take out a liability insurance and that they register once a year at the FA, that they provide legal assistance to their members, that it has an internal code of conduct with sanctioning possibilities and that it sets standards for membership such as the presentation of a business plan before one can become a member. Clubs are not forbidden from doing business with non-Pro Agent agents. However, the advantage is that Pro Agent members have a guaranteed level of professionalism and trust as they will have the backing of their association (providing legal, fiscal, practical assistance) and that in case of malpractices the member can be sanctioned and lose its quality certificate. Clubs shall promote the services of Pro Agent amongst their players; this is done, amongst

others, by means of presentations given by Pro Agent staff to (parents of) (young) players. This system is the proof that negotiation on a national level may lead to a solid framework of regulations. The Dutch FA is part of the so-called 'Group of Six'; this is an informal grouping of the FA's of Italy, England, Spain, France, Germany and the Netherlands. It has already been agreed that the Dutch FA shall promote the idea of accepting the Dutch agents that have the quality certificate in the other Group of Six countries without having the necessity to register, besides the registration of the individual transaction.

This movement could be fundamental for the creation of uniformity and legal certainty in the rest of the European Union. The mirror image of the stakeholders on the level of the Netherlands on the European level are the EPFL, ECA, FIFPRO Europe and EFAA. In the case that these parties agree on a common European certification procedure and requirements, then the UEFA may assist in imposing its EU members, and maybe non-EU members, to recognize the agents that have a certification and that intend to work in another EU / UEFA state.[37]

Such a system could take away the restrictions on EU law. The European Commission (EC) is the guardian of the Treaty and has as its duty to combat any restriction to the fundamental freedoms of the EU. Also, on the basis of article 165 TFEU the EC may support the sports movement in the creation of policy in a specific sports sector. The EC is regarded as relatively neutral by all the relevant stakeholders involved and it may as such exercise its role as a policy broker in this complex area of (inter)relations. Therefore, the logical step would be for the EC to create and support a forum where the harmonisation of the current national rules on agent activity may be negotiated.

The ball is in the court of the European Commission. This development is something that should be further promoted and the EC has the tools to do so in this respect. A solution that promotes self-regulation in the context of EU law requirements is within reach. It is up to the EC to influence the direction of this development. Eventually, just like in the Bosman case, an EU framework for regulation could be the inspiration for a system of regulation and certification that is also applicable outside Europe, but first an initiative needs to be taken in the EU.

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[37] UEFA has expressed and agreed with the European Commission that these organisations shall together improve good governance standards, and that UEFA can also play a role in seeking appropriate solutions in issues pertaining to players' transfers and agents at European level. To be found in article 2.10 of the Commission decision of 10 October 2014 C(2014) 7378 Final, Adopting the Arrangement for cooperation between the European Commission and the Union of European Football Associations.

Addendum – EFAA Objectives and Strategy

As early as 2009 FIFA sought to move away from how it regulated football players' agents via a licensing system and other means. In doing so, FIFA sought to rely on statistics that although never made publicly available, purportedly demonstrated that approaching 30% of all transfer fees were going to agents or third parties. Moreover FIFA also claimed that in the order of only one in five transfers was being completed through a licensed agent.

Rather than focus on enhancing enforcement and transparency FIFA essentially moved to 'deregulate' players' agents. Some six years later on the 1 April 2015 FIFA's Regulations on Working With Intermediaries ('RWWI') became operational. At arriving at this point, FIFA consulted with clubs, players and associations, but EFAA as the peak international body-representing agents was not consulted. Whilst the specifics of the RWWI are not the focus here, essentially a paradigmatic shift occurred in regulatory emphasis where FIFA moved to regulate the 'activity' of agents via its Member Associations (MA's) (who were now defined more broadly as 'intermediaries') and not the profession itself. Therefore critically, a number of quality control ('qc') criteria were dispensed with such as agent examinations, professional indemnity insurance, and as noted the abolishment of the licensing system.

Given this, it is unsurprising that the RWWI's conceptual approach was the subject of extensive criticism from not just EFAA, but also academics, administrators and legal professionals. These not only centred on the undesirability of dispensing with qc mechanisms, but also the RWWI's compatibility with EU law where provisions suggesting a cap on remuneration and the 'American quilt' approach to inconsistent implementation across MA's, were liable to contravene provisions relating to competition law and the freedom to provide services.

Indeed, these conceptual criticisms now match the everyday reality of the RWWI and its unworkability. Here the AFA in the UK has filed a complaint with the European Commission on competition law grounds, and elements of the DFB's (German) implementation of the RWWI were successfully challenged in a decision by the Regional Court in Frankfurt Am Main. Moreover a multitude of issues have emerged in terms of the freedom to provide services such as different registration requirements across MA's, divergent sanctioning systems, inconsistent provisions regarding representation contracts with minors and associated forum shopping issues, and conflict of law problems, to name only a few.

EFAA, as above, has been alive to these issues from the outset and is proactively advocating for a more sophisticated regulatory approach that not only resolves some of the issues around qc requirements, but also ensures compatibility with EU law. To this end, through its Dutch affiliate Pro Agent, several important initial developments have been made. Firstly in collaboration with the Dutch FA (KNVB) and player's association (VVCS), Pro Agent has developed a code of conduct for 'intermediaries' to start as of 1 June 2017, that whilst voluntary goes

some way to addressing otherwise absent qc criteria, as to carry an endorsement through Pro Agent this will have to be complied with. As Pro Agent is the only body capable of obtaining, and dispensing, this endorsement to its members, compliance with the code acts as a 'kite mark' system to consumers of intermediary services. Secondly, a system of 'permanent education' has been devised that if agents wish to have the benefit of this label of endorsement from Pro Agent, then requirements here will have to be met.

Whilst the early steps in the Netherlands are positive EFAA is now preparing to examine the feasibility of aspects of this approach across Europe. This is of the utmost importance to EFAA given in particular the difficulty that now exists with the provision of cross-border professional services in football, a truly cross-border marketplace. To this end a number of workshops will be offered by EFAA in 2017 where it will be examined whether the early steps taken in the Netherlands are capable of implementation in other, initially European, football markets. EFAA looks forward to organising these workshops with the relevant stakeholders in professional football in order to resolve these regulatory issues, and play its part in ensuring the integrity of the world game.

FIFA REGULATIONS ON WORKING WITH INTERMEDIARIES. ANALYSIS FROM THE PERSPECTIVE OF THE CLUBS

by *Ornella Desirée Bellia*[*]

1. Introduction

The new FIFA Regulations on Working with Intermediaries (hereafter the "FIFA Regulations") is probably the most important recent change to the FIFA regulatory framework. The main objective of the new Regulations consists in setting up a more transparent system, whereby players and clubs are able to choose any parties as intermediaries, as far as certain minimum requirements are met. Therefore the new system aims to seek a broader control over individuals who represent players and/or clubs in the negotiations of employment contracts and transfer agreements, but also to control the activity itself rather than the access to such activity.

Thus, for the sake of transparency, a registration system for intermediaries is set up at national level, where intermediaries shall be registered each time a player or club engages his services. As the old licensing system ceased to exist, being replaced by the registration system, the mandatory procedure to become an intermediary is now much simpler than before.[1]

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[1] According to the new FIFA regulatory framework, the applicant no longer has to pass an examination, nor has to conclude professional liability insurance or provide a bank guarantee for a minimum amount of CHF 100,000. However, in implementing their own regulations, some National Associations have maintained the prerequisite to pass an exam (Mexico) or an interview (Spain); several associations have maintained the prerequisite to have a professional liability insurance (e.g. Brazil, Mexico, Portugal).

In the aforementioned registration process, clubs play an active role as several duties are to be carried out by them when signing a representation contract with an intermediary.[2]

Clubs engaging the services of an intermediary have to:

i) act with due diligence, ensuring that the intermediary has filled in and signed the so-called *intermediary declaration*,[3]
ii) submit such a declaration to the relevant association, i.e. the association where the player is to be registered, or to the previous association in the event the club engaging the services is the releasing club,[4]
iii) disclose to their respective association the full details of any and all agreed remuneration or payments of whatsoever nature that they have made or that are to be made to the intermediary.[5]

In addition to the foregoing, clubs have a general obligation to ensure that any transfer agreement or employment contract concluded bears the name and signature of such intermediaries, if any. Therefore, in the case that no intermediaries have been involved in the negotiations, clubs have to ensure that the relevant documentation contains a specific disclosure of this fact.[6] For the sake of completeness, it shall be noted that on occasion of international transfers, specific information in this respect also has to be uploaded onto the FIFA Transfer Matching System (TMS).

Furthermore, when signing a representation contract, the club has to specify the nature of the services offered by the intermediary for each specific transaction: for instance, consultancy in view of concluding a transfer agreement or an employment contract, or any other kind of services.

Last but not least, clubs must declare whether the intermediary acts exclusively on behalf of the club itself or also on behalf of the player, as a specific duty of disclosure is provided in the latter case. In fact, the FIFA Regulations introduced the possibility for clubs and players to engage the services of the same intermediary for the same transaction. The dual representation, which was forbidden and sanctioned in the previous system, is now allowed as long as both the club and the player give their express written consent prior to the start of the relevant negotiations and specify who will remunerate the intermediary for his professional services.[7]

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[2] It shall be noted that in practice, even in those cases where the intermediary is engaged exclusively by the player, it is unlikely that the latter will put in place all the commitments required by the new rules, for the simple reason that he has neither the expertise nor the willingness to do so. Players engage intermediaries in order to receive their assistance during the negotiations and in administrative activities associated with football transactions. Thus, in practice it is the acquiring club that takes care of those activities rather than the player.

[3] Art. 2.2 FIFA Regulations.

[4] Art. 3.2 FIFA Regulations.

[5] Art. 6.1 FIFA Regulations.

[6] Art. 6.2 FIFA Regulations.

[7] Art. 8.3 FIFA Regulations.

2. Pros and cons of the new Regulations with a focus on the clubs' perspective

As already pointed out, the new regulations provide a much simpler process for those wishing to execute intermediary activities, since the applicant no longer has to pass an examination, nor has to conclude a professional liability insurance or provide a bank guarantee.[8]

However, it appears that, while the new rules have facilitated the access to the profession for those wishing to conduct intermediary activities, the bureaucratic activities of football clubs may have been burdened, particularly on occasion of those transfers conducted with the services of foreign intermediaries.

As it will be explained in the following paragraph, the system appears now particularly fragmented due to the discrepancies existing between national regulations and FIFA Regulations. Indeed, National Associations have been entitled to go beyond the minimum standards/requirements established by the FIFA regulatory framework[9] and have had wide autonomy in the implementation of their own rules. Such a "de-internationalisation" has led to a system where international transactions may be complicated due to several factors explained below.

In addition to the foregoing, the new system has brought more commitments and liability on clubs (and players). It is interesting to note that, while the previous Regulations governed the activities, duties and responsibilities of agents, the new rules regulate the activities, duties and responsibilities of clubs and players in their relationship with intermediaries, rather than the intermediary's activity itself.

The different wording in the titles of the Regulations – the previous and the current ones – is quite eloquent in this respect.[10]

a) Registration with the national associations

According to the new FIFA Regulations "*Intermediaries must be registered in the relevant registration system every time they are individually involved in a specific transaction".*[11]

Therefore, in principle, intermediaries have to be registered with the association where they perform their activities from time to time, irrespective of the fact that they have already been registered in the association of their own country or in any other association.

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[8] As mentioned above, in implementing their own regulations according to Art. 1.2 FIFA Regulations, several National Associations have maintained some prerequisites, such as to conclude professional liability insurance.

[9] Art. 1.3 FIFA Regulations.

[10] FIFA could have opted for titles such as "Intermediaries' Regulations" or "Regulations for Intermediaries' Activity", rather than "Regulations on Working with Intermediaries". The title reflects the content of the Regulations, which has as direct subjects clubs, players and associations, rather than the Intermediaries. It shall be noted that the previous Regulations were entitled "Players' Agents Regulations" rather than "Regulations on Working with Players' Agents".

[11] Art. 3.1 FIFA Regulations.

However, it shall be noted that depending on the relevant national regulations, the legal conditions to be registered with a national association may vary.[12] For example, in Italy foreign intermediaries cannot be registered with the FIGC,[13] since one of the pre-requisites for such a registration is to be a legal resident in Italy.[14] However, Italian clubs and players registered in Italy may be represented by foreign intermediaries as long as the latter are registered with another association and the representation contracts are sent to FIGC.[15] It means that a foreign intermediary does not need to be registered with FIGC, but still has to be registered with his own association.

In the UK, foreign intermediaries have to carry out the registration process with the FA, irrespective of any other registration in other countries.[16] Similarly in Brazil, foreign intermediaries have to be registered with the CBF[17] or alternately they have to provide their services through an intermediary registered with the CBF.[18]

In practice it means that in the majority of countries, whenever a club requires the activities of a foreign intermediary, the latter has to register in the club's association and it is likely he would seek the support of the club to properly carry out the registration process, as the rules for such a registration vary from country to country.[19]

Indeed, it is unlikely that intermediaries are familiar with each national regulations, especially in view of the fact that such regulations are not translated into other languages.

Let us assume, for example, that an English intermediary has to represent a Spanish club or a player moving to a Spanish Club. In this case, the relevant registration process shall be carried out through the RFEF rather than with the English FA. Presuming that the intermediary is not familiar with the procedure to be followed in Spain – especially if it is the first time that he acts in that market after the entering into force of the new regulations – he would seek assistance from the club in order to complete the entire registration process.[20]

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[12] Indeed, each Association were allowed to go beyond the minimum standards/requirements provided by the FIFA Regulations and thus each of them have implemented different requirements for the registration.

[13] Federazione Italiana Gioco Calcio.

[14] Art. 4.3 *Regolamento per i servizi di procuratore sportivo* lstCapitoli_0_upfFileUpload_it.pdf.

[15] Alternatively, foreign intermediaries are entitled to act in the national market, through another intermediary duly registered in Italy.

[16] FA Regulations on Working with Intermediaries.

[17] It shall be noted that although this option is allowed in principle by the Regulations, at this stage, foreign intermediaries wishing to register with the CBS may experience some difficulties.

[18] Art. 8.2.I. Regulamento Nacional de Intermediarios.

[19] As already mentioned, even though the intermediary acts exclusively on behalf of the player, it is likely that the intermediary will count on the support of the acquiring club rather than of the player - who engaged the agent with the main aim of not having to deal with contractual and administrative issues.

[20] In Spain, the prerequisite for rendering intermediary activities, are even stricter. Indeed intermediaries need to send an application to the Federation and have to pass a phone interview

To conclude, practice has shown that the current system, which was supposed to be simpler than before, may result in heavier administrative burdens. The intermediaries shall be obliged to put in place several registrations in several countries and pay several fees from time to time, according to different national regulations. Thus, the practice has shown that in order to conclude a transfer, clubs are requested to assist and support those foreign intermediaries who are not familiar with the national procedures and the language. This might become an inconvenience for those 'last minute' transfers which are concluded during the deadline day.

b) Payment to Intermediaries

Clubs that engage the services of an intermediary shall remunerate him by payment of a lump sum agreed prior to the conclusion of the relevant transaction.[21]

However, while taking into account the relevant national and international laws, and as a recommendation, clubs may adopt the following benchmarks: the total amount of remuneration per transaction due to the intermediary should not exceed

i) 3% of the player's eventual basic gross income for the entire duration of the relevant employment contract, when the intermediary has been engaged in order to conclude an employment contract with a player,
ii) 3% of the eventual transfer fee paid in connection with the relevant transfer of the player.

Thus, the Regulations attempt to provide for an overall rationalisation of fees paid to intermediaries by recommending a cap.[22] The proposed cap reflects FIFA's intention to provide a more favourable market for its main stakeholders, the clubs and the players.

It shall be outlined that, under the previous framework there was no recommendation as to the *fee* to be paid.[23] Under the old system, practice had shown that sometimes the agents' commissions were higher than the transfer fee itself. As a lawyer operating in the sport industry, indeed the Author has witnessed

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which is aimed at determining whether he is capable of rendering such professional services. Once all the requirements are met and the interview has been passed, the RFEF will authorise the registration to operate at national level, by providing the intermediary with a registration number which is personal and non-transferable. Then, following the registration, the club shall be entitled to submit to the RFEF the *intermediary declaration* as well as the representation contract.

[21] Art. 7.2 FIFA Regulations.

[22] However, not all National Associations have added this recommendation into their Regulations. The Spanish Regulations do not set any recommendation at all; the Dutch Regulations neither. The Portuguese one, has raised it to 5 %, while the Ukrainian Regulations have raised it to 10% .

[23] Art. 20 FIFA Players' Agents Regulations 2008 Ed. foresaw that if the players' agent and the player could not reach agreement on the amount of remuneration to be paid or if the representation contract did not provide for such remuneration, the players' agent was entitled to payment of compensation amounting to three per cent of the basic income which the player is due to receive from the employment contract negotiated or renegotiated by the players' agent on his behalf.

situations in which the commission to be paid to the agent was even three times larger than the total amount due to the releasing club for the transfer fee. Judges and Arbitrators eventually recognised disproportionate commissions as legitimate.

Actually, the introduction of this cap is aimed to contrast this phenomenon and to avoid large amounts of money flowing away from the "football family".

It is indisputable that the recommendation of a cap on fees represents an important element of the overall framework. However, as the aforesaid limit consists only in a recommendation, parties remain free to agree different financial terms.

Moreover, irrespective of the nature of such a cap, it might be used as a parameter in potential disputes arising between intermediaries and clubs/players. In the future, the jurisprudence might play an important role in this respect and we will see whether such a recommendation could somehow influence the decisions of judging bodies, for instance, when the agreed commission is disproportionate and excessive in the context of a transfer.

From the clubs' perspective, even though the recommendation represents an important change in the new regulations, a more effective rule would be desirable. It has been argued that such a cap may infringe national and EU law,[24] therefore an in-depth study of the matter would be needed in order to establish a suitable and legitimate rule.

It is important to highlight that capping intermediaries' fees would prevent clubs from overspending money and jeopardize their financial sustainability over the long term. Moreover, since the intermediary's activity may be used to circumvent the FIFA provisions on Third Party Ownership (TPO), the cap would prevent such detrimental behaviour.

Thus, from the clubs' perspective the introduction of the recommendation as to the maximum percentage to be agreed in football deals, can be seen as a virtuous choice.[25]

Last but not least, it is worth mentioning that as the new Regulations allow dual representation, i.e. allow an intermediary to act at the same time in the interest of both the player and the club, the payment of the commission by the club – on behalf of the player – could trigger important tax consequences. This might occur especially in those countries where domestic legislation provides that income of players includes, in addition to the ordinary remuneration, any sort of benefits, including those granted in kind (e.g. Italy, Spain). As a consequence, in cases of dual representation, the commission paid by the club – on behalf of the player –

[24] In principle, a cap in the intermediary fee is likely to restrict competition according to the meaning of art. 101 TFEU. However a cap may be lawful as long as i) it is pursuing a legitimate objective ii) it is necessary for achieving this legitimate objective iii) it is proportionate.

[25] However, in some jurisdictions, the associations have provided a cap only in conjunction with payment to be made by the players, while no limits have been established in connection with payments by clubs (for instance, in Switzerland). In the author's view this solution does not appear to be reasonable.

might be regarded as a taxable benefit in kind on which the player itself is liable for personal income tax.

c) Disciplinary Sanctions

The clubs (and the players) violating the provisions of the FIFA Regulations are subject to disciplinary sanctions that may be imposed by the National Associations.

In this respect, an interesting issue from the clubs' perspective concerns the case of non-submission of the *Intermediary Declaration*, since the clubs (and the players) bear the responsibility to submit it to the association as well as any additional documentation required by the association.[26]

What happens then if the *Intermediary Declaration* is not submitted? As mentioned above, the onus lies on the clubs who must submit the Declaration duly filled in and signed by the Intermediary. Thus, should the form not be submitted, possible sanctions could be imposed on clubs.

Similarly, clubs are required to disclose the full details of any and all remuneration or payments of whatsoever nature that they have made or that are to be made to an intermediary, as well as, all contracts, agreements and records, upon request of the competent bodies of leagues, associations, confederation and FIFA.

Last but not least, clubs (and players) are prohibited from making any payments to intermediaries in the event that the player concerned is a minor.[27]

At first sight, it would seem that intermediaries would not face any sanctions in these events, as from the wording of the FIFA provisions it seems that the responsibilities lie only on clubs and players.

Art. 9.1 of the FIFA Regulations sets forth that "*Associations are responsible for the imposition of sanctions on any party under their jurisdiction that violates the provisions of these regulations, their statutes or regulations*".

The question is whether intermediaries may be considered "*parties under the jurisdiction of the national associations*" since the spirit of the reform seemed to exclude intermediaries from the international football family.[28]

However, the intermediaries are also subject to disciplinary sanctions in accordance with the wording of art 9.2 of the FIFA Regulations, which states that *"Association are obliged to publish and to inform FIFA of any disciplinary sanctions taken against the intermediary".*

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[26] Art. 3.3 – 3.4 FIFA Regulations.

[27] Art. 7.8 of FIFA Regulations.

[28] As mentioned above, the new title of these Regulations is eloquent. Moreover, FIFA has also decided to no longer have jurisdiction on intermediaries for those transactions at international level, which under the previous system were covered under its jurisdiction.

[29] Art. 9.32 FIFA Regulations.

It follows that the registration determines that intermediaries are subject to the jurisdiction of the respective associations with which they register from time to time. In fact, by signing the *Intermediary Declaration*, the intermediary agrees to be bound by the Statutes and Regulations of the Associations and Confederations, as well as the Statutes and Regulations of FIFA.

Even though such a matter does not have any implication under merely the clubs' perspective, at this stage it is interesting to note that once the intermediary registers with the foreign association, the latter shall have jurisdiction over the imposition of potential sanctions for any violation occurred in the registration process, as well as a violation of internal regulations and statutes.

Just to make an example, an Italian intermediary representing an Italian player registered with the Russian Association shall be subject to disciplinary proceeding by the latter in Russia, whenever national regulations or statutes are violated in the context of the activities executed as intermediary in that country.

National associations bear the obligation to inform FIFA of any disciplinary sanctions taken against the intermediary. FIFA will then decide whether to extend the sanction on a worldwide basis in accordance with the FIFA Disciplinary Code.[29]

However, it shall be noted that, as the competence to impose sanctions lies on national associations even in relation to transactions with an international dimension, FIFA will have no control, nor be able to suggest any uniform practice or procedure, being only entitled to extend the sanctions on a worldwide basis.

d) Dispute Resolution

While under the previous system the Players' Status Committee (PSC) was granted exclusive jurisdiction over any dispute with an international dimension, under the new system FIFA has no involvement in the dispute resolution process.[30]

Some national regulations provide that disputes arising out of an intermediary relationship under their jurisdiction are resolved by national dispute resolution chambers.[31]

Other national regulations do not refer disputes to a particular national arbitration or judicial body. Under some, jurisdiction is explicitly allowed the recourse under ordinary courts.

In international transactions, intermediaries are unlikely to agree to devolve future disputes to national arbitration bodies or to national ordinary courts. Then, the number of jurisdiction clauses devolving the competence to the Court of Arbitration for Sport (CAS) is likely to increase. Referring an intermediary dispute to the CAS would alleviate several issues related with ordinary courts' litigations and, from a more general point of view, will result in more consistent results at international level.

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[30] The only jurisdiction that FIFA retains is over issues that arise as to whether national associations have complied with the terms of the FIFA Regulations (Art. 10).

[31] Just to name some examples, the English FA Regulations and the Spanish RFEF Regulations contain this provision.

However, since disputes referred to the CAS would follow the so-called "ordinary arbitration proceeding", the enforcement of these CAS decisions will be quite problematic. This is because decisions rendered in the CAS "ordinary proceeding" no longer fall under the scope of art. 64 of the FIFA Disciplinary Code.

From merely a clubs' perspective, this situation would most likely favour the clubs (and players) since in the majority of the cases, legal actions are taken by intermediaries for the non-payment of commissions.

3. Conclusion

A review of intermediary regulations in multiple jurisdictions reveals several discrepancies and inconsistencies between the FIFA Regulations and the national regulations.

It is understood that the different administrative burden at national level has in some cases complicated the international transactions. Under this new system based on a multi-national regulatory framework, intermediaries acting at global level are now obliged to apply for different registrations in different jurisdictions, as well as to pay fees for all jurisdictions they pass through. Moreover, in some jurisdictions, they are not entitled to be registered since the national associations have enacted discriminatory rules to the detriment of foreign intermediary.[32]

As already mentioned, the new regime has also increased the commitments and liability of both clubs and players. In fact, they are responsible for submitting the Intermediary Declaration, they have the onus to disclose all payments made or to be made to intermediaries as well as the burden to ensure that payments to be made to another club in connection with a transfer are not paid to intermediaries.

Such responsibilities potentially lead to determine the potential imposition of sporting sanctions in those cases where the clubs (or the players) fail to duly accomplish their duties in their relationship with the intermediaries.

However, the requirements as to when the clubs or the players will be considered to have fulfilled their obligations are unclear and quite ambiguous. For instance, among other liabilities, they have to act with due diligence when engaging the intermediary; in other words, they have to make sure that the intermediary has signed a declaration that should prove his impeccable reputation, the absence of any conflict of interest and so on. Question arises as to whether the submission of such a declaration would really certify and really verify and ensure that the above pre-conditions are met.

After more than one year and a half from the introduction of the new rules, it appears clear that amendments to the new system would be needed. The

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[32] For examples, in countries such as Mexico and Turkey, while the registration is mandatory to be entitled to render intermediary activities, the pre-requisite for such a registration is the domicile within the country. Thus, foreign intermediaries are not entitled to act personally in that market.

football industry is a highly globalized sector where harmonization and homogeneity are required to give consistency to the entire legal framework.

However, it is indisputable that the current system has increased the level of transparency in the football world. The *ratio* behind the reform, i.e. to create a wide control over football transactions, their main actors and their revenues, is laudable and is in line with the need to improve the financial situation of clubs. In the upcoming years practical application will confirm whether and to what extent the final objective of the reform has been successfully achieved.

In the Author's opinion, even though some amendments are needed in order to give more consistency to the system, the right path has already been taken. A system which is aimed to get more transparency and reduce the number of unclear money transactions will definitely result, in the long term, in an improvement of the entire football industry.

THE FIFA REGULATIONS ON INTERMEDIARIES. THE PLAYERS' POINT OF VIEW

by *Wil van Megen*[*]

1. Introduction

When speaking about agents/intermediaries with club representatives it regularly appears that they are considered as an unavoidable evil. Agents are described as greedy people taking too much money out of football. In fact not many people empathize with football agents. However, it is those same clubs, paying the fees they describe as exceptional. In the end it is always a matter of budget. Do the transfer sum, the player's remuneration and the fee for the agent/intermediary fit into the budget?

In fact this means that the more the intermediary receives, the less the player earns. The point is that players don't always realize this and presume that their representatives are paid by the club and not – indirectly – by themselves. On the other hand, it is true that players need someone to negotiate the best possible result for them at a reasonable price.

FIFA started to regulate agents' activities back in 1996. By introducing the regulations in 2001, FIFA introduced a sophisticated framework for agents' activities in football. A free service of FIFA for agents to collect unpaid fees was part of the package.

The system seemed to function to a certain extent and was updated on several occasions. In October 2007 the FIFA Executive Committee decided to increase the standard of players' agents with new criteria. One of these criteria was the renewal of the license every five years in combination with a new exam for each agent.

The new criteria triggered a group of, mainly Belgian, agents to take action against these changes. According to their lawyers this decision was illegal. They argued that a private organization was not allowed to regulate a profession – only a government could do so. A court case was prepared in order to have preliminary questions for the ECJ.[1]

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[1] www.espnfc.com/story/514392/des-agents-de-joueurs-attaquent-la-fifa-pour-abus-de-pouvoir.

Before this, in 2005, we had the Piau-case before the ECJ in which FIFA strongly defended the Agents' Regulations.[2] Piau complained about the FIFA Regulations on Agents, on the grounds of competition law, as he felt that those rules included unjustified restrictions on trade, like the exam and the financial deposit. He also argued that FIFA abused its dominant position and that the Regulations infringed the freedom of movement of services regarding players' agents.

After the European Commission rejected the complaint, the case ended up in the Court of First Instance.

It is important to notice that the Court stated that FIFA is an association of undertakings within the meaning of Article 101(1) TFEU and therefore is subject to EU competition law. The work of agents is an economic activity that falls under EU-law and so were the FIFA Regulations regarding agents.

The Court ruled that the Commission was right in rejecting the complaint, because there was sufficient justification for the system since the measures were proportionate and necessary, keeping in mind the specific demands of the industry.

The initiative of the Belgian group, in combination with the implications of the Piau-case, triggered the process for the new regulations. Looking at the considerations of the Court, we can assume that the new Regulations also fall within the scope of Article 101(1) TFEU.

2. Relevant regulations

FIFA delegated the authorization of making regulations to the national Federations. The FA's will set their own regulations based on the FIFA Regulations on Working with Intermediaries.

According to the International Trade Union of Football Players (from henceforth FIFPro) the system needed improvement on five main issues:

- Regulation of agents' remuneration, since a substantial number of payments were extremely disproportionate in relation to the work performed;
- Protection of minors;
- Conflict of interest by representing both parties (club and player);
- Prevention of tapping up contracted players;
- Lack of professional competence.

These points match, more or less, a resolution by MEP Doris Pack on behalf of the Committee on Culture and Education on 18 March 2010.[3]

Participation in the FIFA Working Group on Intermediaries gave FIFPro a possibility for direct influence on the new system.

By regulating the activity, rather than the profession, FIFA tried to prevent

[2] Case T-193/02 Piau v Commission [2005] ECR II-0209.[1] Case T-193/02 Piau v Commission [2005] ECR II-0209.

[3] MOTION FOR A RESOLUTION 18.3.2010 B7 0000/2010 further to Question for Oral Answer B7 0000/2010. pursuant to Rule 115(5) of the Rules of Procedure on players' agents in sports.

Piau-like cases. The efforts of the working group resulted in a set of minimum requirements for intermediary activities.

When we look at these requirements, we see that the first step is registration instead of licensing. The new regulations require registration of the representation contract, by the national federation, as well as every transaction (art. 2.3 and art. 3.1).

The fact that intermediaries can be either natural persons as legal persons might lead to problems in case the regulations are violated. Legal entities can turn into "hiding places " for less respectable activities. An infringement of regulations can only be performed by persons. If the intermediary is a legal person the people involved in intermediary activities must also qualify as an intermediary. The question is what to do in case of sanctions. Does a sanction against a legal person affect only the legal person itself or also the people involved or only the person who violated the regulations? Also the liability in case of mistakes can be problematic, especially now that there is no longer a requirement for liability insurance. The person violating the regulations can hide behind a bankrupt legal entity if things go wrong – neither the FIFA requirement, that the individuals representing the legal entity within the scope of the transaction in question have an impeccable reputation, nor the Intermediary Declaration for legal persons will help here. The single recommendation of the English FA in the Declarations, Acknowledgments and Consents for Legal Persons regarding insurance needs strengthening, as a recommendation cannot be enforced.

3. Remuneration

Looking at the figures of the FIFA TMS system there were indications that agents took out much more money than the recommended 5% fee of the first year of the player's contract.[4]

The aim of the new regulations is to provide a better balance in intermediaries' fees. The system now applies, not only to the former players' agents, but to all who represent players and/or clubs in negotiations with a view to concluding an employment contract.

According to TMS, only 25-30 % of transfers were managed by official FIFA licensed agents.[5] In order to cover every form of representation of players, the exceptions for relatives and lawyers as representatives were excluded. Each transaction needs registration with a mandatory mention of the details of the intermediary involved.

Regarding the remuneration, there is a strong recommendation to limit the remuneration to 3% of the fixed income of the player for the entire duration of the contract. It needs to be seen whether this recommendation can be maintained,

[4] http://ec.europa.eu/sport/library/documents/xg-gg-201307-final-rpt.pdf.
[5] http://ec.europa.eu/sport/library/studies/final-report-eu-conference-sports-agents.pdf.

as it might infringe competition law principles.[6]

There is some fear that such a limitation will lead to illegal payments and inventive ways to generate money while subverting this cap.[7]

4. Registration

The system changed from licensing to registration, thus exams are not needed anymore.

Whenever an intermediary is involved in a transaction, he shall be registered (art. 2 section 3 FIFA Regulations). This is for the sake of transparency.

Intermediaries must be registered within the relevant registration system every time they are individually involved in a specific transaction (art. 3 par. 1). The Register of Intermediaries will be public and will include all the operations they participate in. Registration shall take place every year. Clubs and players who engage the services of an intermediary must submit at least the Intermediary Declaration to the Federation (art. 3 par. 2).

Players and clubs must notify the Federation each time any activity within the scope of Article 1 Paragraph 1 of these Regulations takes place.

According to art. 4 par. 5 the representation contract that the intermediary concludes with a player and/or a club (cf. art. 5 below) must be deposited with the association when the registration of the intermediary takes place.

A representation contract for a longer term than the activity required is not necessary. A player can engage the services of an intermediary in case he intends to move to another club or when he likes to renegotiate the terms of his contract. He can do this for one single activity needed for a transfer. Exclusivity is not required, so he can choose to have multiple intermediaries and see what they have to offer. By allowing players not to be contractually bound to a specific intermediary for a specific period of time, the bargaining position of the player when engaging the services of an intermediary is likely to increase.

Should the player sign a representation contract concerning more than the next transaction, it will not be limited to a certain duration. This gives rise to certain concerns especially when minors are involved. However, Federations have the capacity to limit the duration of these contracts. This gives rise to certain concerns, especially when minors are involved. However, Federations have the capacity to limit the duration of these contracts.

Dual representation is limited, but not excluded, by the regulations. FIFPro believes that prohibition of dual representation is an attractive alternative for increasing transparency and making intermediaries more accountable to players for their fees. To be effective, however, these prohibitions would need to be absolute.

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[6] In the Piau-case the Court considered a recommendation regarding remuneration potentially subject to competition law.

[7] www.lawinsport.com/articles/item/a-critical-review-of-fifa-s-working-with-intermediaries-regulations-2015.

The success of this system hinges on proper enforcement and application of sanctions. As this is a responsibility of the associations, it has to be seen what the effects will be.

The new system leaves space for self-regulation as suggested in the Piau-case. Some groups of intermediaries think of a kite-mark in order to give clients a kind of professionalism guarantee . A kite mark is anofficial mark of quality and reliability for the branch. It is likely that this will also include liability insurance as this is lacking in the FIFA Regulations. The obligation for insurance can also be applied by the associations.

A problem regarding the registration appeared in the Rogon-case in Germany.[8] In a lawsuit challenging the new regulations for players in professional football, consultant company, Rogon Sport Management, has won a partial victory against the German Football Association (DFB). The District Court of Frankfurt/ Main has allowed a request to the Agency for an injunction. Rogon claimed that the new FIFA Regulations on Intermediaries were an inadmissible interference on the freedom to provide services. The agency won the case regarding the obligation of registration, the capping of fees and the prohibition on charging a fee when services are provided for minors. It is unclear now to what extent the judgment may bring the DFB difficulties in enforcing the FIFA regulations.

5. Integrity issues

The new regulations also deal with integrity issues regarding intermediaries.

Some issues have been regulated while others are left open.

First of all, there is the requirement of an impeccable reputation (art. 4.2). This is not elaborated further, but is instead left to the federations to define. The minimum standard is that they must never have been convicted of economic or violent offenses.

The English FA imposes a higher threshold when minors are involved. An extra test is required.[9]

A specific stipulation in order to prohibit intermediaries from being involved in TPO-arrangements is lacking and would be really helpful for encountering this phenomenon, which FIFA banned in circular letter 1464. FIFPro has found that in an increasing number of cases, intermediaries are involved in TPO-arrangements or are even third-party owners themselves in order to create new moneyflows. This is a missed opportunity at tackling problems like corruption and other forms of malpractice.

Another problem arises when players are brought to countries where there are problems with overdue payments and a very low impetus to pay on time persists on the clubs' side. Numerous players who move to these countries can

[8] Landesgericht in Frankfurt am Main 29 April 2015, Case Az. 2-06 O 142/15 (Firma Rogon Sportmanagement v Deutschen Fußball-Bund (DFB).

[9] The Disclosure and Barring Service check' (CRB check).

expect not to be paid, but intermediaries do not seem to care as they are the ones who are paid up front. Here we observe a clear conflict of interests between players and intermediaries that needs further consideration.

An approach that demonstrates integrity has been introduced by the Dutch players' association, VVCS, by giving their members advice on areas that are likely to give rise to problems".[10]

Although not addressed before, we can observe that buy-out clauses also create integrity issues in the relationship between players and intermediaries. Buy-out clauses, especially when they rise to extreme levels, surely limit the free movement of players which has been accepted to a certain extent in the informal agreement between the stakeholders in professional football and the European Commission. This limitation has a maximum duration of three years where buy-out clauses last throughout the full period of the contract. As this exceeds the limits of the agreement, it means that buy-out clauses, as such, infringe players' rights. This is something that really needs to be challenged before the ECJ.

Article 17 of the FIFA RSTP requires objective criteria for compensation in case a contract has been terminated without just cause. It is obvious that buy-out clauses that transcend the total value of the contract usually cannot be regarded as reasonably fitting the criteria of art. 17. Nevertheless, FIFPro observes that, apparently intermediaries seem to have no problem in advising their clients to agree to these extravagant conditions where common sense should say otherwise.

This is also something to be addressed in the regulations.

6. Role of national FAS

The center of gravity in the new regulations is now with the national associations. This implies an extra responsibility. Associations must secure their need to regulate and monitor the activities of intermediaries with care. Their obligations must be followed up thoroughly, especially regarding disclosure and the sanctioning of irregular activities. Associations must be pro-active in preempting or responding to undesired developments in the market. Protection of the players must be a key element in the associations' policy.

7. Protection of minors

FIFA makes efforts to protect minors. In order to have a valid representation contract with a minor, FIFA requires the signatures of the player's legal guardians and the contract has to be in compliance with national law (art. 5 par. 2). Art. 19 of the RSTP prohibits international transfers of minors.[11] Art. 19bis protects minors educated by non-club academies.

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[10] http://vvcs.nl/nieuws/1454-negatief-transferadvies-voor-servie.

[11] Exceptions are regulated in art 19 par 3 FIFA RSTP.

In practice we see that this requirement is bypassed by intermediaries who become legal guardian of a player. This needs further attention.

At national level in England we see that domestic regulations say that if the intermediary wishes to act on behalf of minors, he must obtain a specific authorization from the FA. He will need to provide the FA with the 'Disclosure and Barring Service check' (CRB check).[12] On top of that, regulation B8 of the FA Regulations prohibits approaching or entering into agreements with a player before the start of the calendar year in which he turns 16.

For minors transferring internationally there is a separate TMS-procedure in place.[13]

Another measure in order to protect minors can be found in art. 7 par. 8 of the Regulations on Working with Intermediaries . In case the player is a minor there is a prohibition on clubs and players to pay an intermediary involved in their transfer.

There has been a lot of criticism on this clause as it might have an adverse effect".[14]

The clause could create circumstances which could be worse than having no regulation at all. If intermediaries could sign long term agreements with minors, they would not only have a TPO- investment in the player as a guarantee for return of their services, but they could have a direct influence over the player, in that they are negotiating the Player's contracts and advising him on his moves. Limiting the maximum duration of a representation contract will reduce the risk of abuse and dependency of players. This will also be the case when players and their parents realize that the new system requires neither long term representation contracts nor exclusivity.

Mel Stein, chairman of the London-based Association of Football Agents said: "Of particular concern is how the changes will affect players under the age of 18. The FA has prohibited intermediaries entering into agreements with youngsters before the year they turn 16 but FIFA's rules do not forbid such contracts. Under the FIFA guidelines no intermediary is allowed to be remunerated for a transfer or contract deal with a player under 18. The FA is examining this aspect of the recommendations, with some believing that any money owed to an agent for work with a youngster will be backdated until the player in question turns 18".[15]

It is obvious that FIFA takes this matter very serious. A possible ban for Barcelona resulted in a halt on the signing of youth players.[16] This shows that enforcement can be effective.

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[12] This regulation enables in the UK to make better informed recruitment decisions by identifying candidates who may be unsuitable for certain work, especially involving children, or an equivalent for non-English intermediaries.

[13] Annexe 2 Procedure governing applications for first registration and international transfer of minors (article 19 para. 4).

[14] Nick De Marco 31 March 2015 www.lawinsport.com/articles/item/the-new-fa-intermediaries-regulations-disputes-likely-to-arise.

[15] www.theguardian.com/football/2015/mar/31/football-agents-fifa-reforms.

[16] www.mirror.co.uk/sport/football/news/barcelona-fear-another-fifa-transfer-6416458.

8. *Other concerns*

The sanction system is left to the associations. This means that there can be different levels of supervision by the association, and various standards for the same offences worldwide. The enforcement of the new regulations could also turn out to be problematic, especially in countries where intermediaries have influence or even control over the association. It is unlikely that flawed behavior will be severely punished there.

9. *Conclusions*

The system offers some new and creative mechanisms, like the disclosure of the transactions and the respective amounts involved. The opportunity for players and clubs to use contracts for single intermediary activities, instead of fixed term representation contracts, gives them more bargaining power. As there is no exclusivity anymore, there will be competition between intermediaries resulting in more balanced pricing of their services and more professionalism. Dual representation really needs to be disallowed.It is not possible to serve the interest of two parties in a setting like this. Education of players and their parents will be an important role for the associations and player unions.

This system for protecting minors must be carefully watched to ensure it is effective . Monitoring by FIFA and an early evaluation of the system will work in this regard. Enforcement of the new regulations will be important - if associations fail here the situation could end up in the mess that several parties predicted. It can pave the way for intermediaries that look for ways to find new money flows through a higher percentage for other services provided to the player and TPO-constructs. It can easily lead to the exploitation of players. Vigilance is necessary.

EU LAW AND PRINCIPLES APPLIED TO FIFA REGULATIONS

by *Jean-Michel Marmayou* [*]

1. Introduction

Are the FIFA Regulations on Working with Intermediaries ("FIFA Regulations"), applicable since 1 April 2015, compatible with European Union law?

There are eminent reasons for raising this question.

Compliance with the 2008 FIFA Players' Agents Regulations,[1] which the FIFA Regulations supersedes, was checked in relation to European competition law.[2] There is no reason why the new version, although it claims to consist of a "deregulatory measure", should be exempted from a similar examination.

There is no doubt that since the *Meca Medina*[3] case the powers of sports federations to create norms, whether national or international, are also covered by European competition laws and have to satisfy its requirements, in particular those of Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).

In the *Piau* case, the European commission reserved the right to review the regulations in question, a decision that the court strongly approved of.[4] This change in the regulations offers a major opportunity to carry out this review.

The purpose of the following paper is to compare the new FIFA Regulations with all European Union laws in order to check their compatibility: EU competition laws, EU fundamental freedoms and EU Charter of Fundamental Rights.[5]

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[1] Adopted on 29 October 2007, applicable in part since 1 January 2008.

[2] ECFI, 26 January 2005, Case T-193/02, *Piau,* [2005] ECR II-0209. – On appeal: ECJ, 23 February 2006, Case C-171/05P, [2006] ECR I-37. – In the same case: CA Rennes 18 May 2010, RG n° 09/02939. – Cass. 1re civ. 1er February 2012, n° 10-24843, Cah. dr. sport n°27, 2012, 161, S. Le Reste. – CA Paris 13 April 2016, RG n°13/20972.

[3] ECJ, 18 July 2006, Case C-519/04 P, *Meca-Medina*, [2006] ECR I-06991.

[4] ECFI, 26 January 2005, Case T-193/02, *Piau, op. cit.,* §104.

[5] Since the Treaty of Lisbon, The Charter forms part of EU primary law: Art. 6.1 Treaty on the European Union.

It is not for us to describe in detail the contents of the new FIFA regulations since this description has already been made in the preceding chapters.[6] We will examine just some of its provisions in order to compare them with European Union law.

We feel that the following provisions need to be analysed:

- the general principle of prior registration with a National Federation and the system of registration every time an intermediary is individually involved (Art. 3 & 4);
- the technique of the "Intermediary Declaration" (Art. 2, 3 & 4);
- the recommendations regarding the amount of the intermediary's commission (prohibited from minors, 3% cap in other cases) (Article 7.5);
- a mention of the payment (in principle the intermediary must be paid by his client) (Article 7.5);
- the transparency obligations impose detailed disclosure to the public of the amounts paid to intermediaries (Art. 6).

Obviously, this selection is not entirely arbitrary. It results from an uncertainty that arises, although somewhat intuitive, on a first reading of these new regulations that indicate that there are some apparently obvious incompatibilities. This uncertainty has to be eliminated by a more detailed examination that can only express a personal opinion since the last word on the matter will lie with the EU Court of Justice.

Therefore we will examine the compatibility of these five provisions with all EU law, both the principles of competition law (I) and the principles of fundamental freedoms and rights (II).

2. Conflict with the Principles of Free Competition Inside the EU

For EU competition law to apply to regulations such as the FIFA Regulations on Working with Intermediaries, we have to first examine whether or not it concerns an economic activity. There can be no doubt on this question. Not only is sport an economic activity,[7] but more specifically an intermediary involved in the signature of contracts relating directly (promises of employment, employment contracts, etc.) or indirectly (loan contracts, transfers, etc.) to employed sports persons, including professional footballers, is by definition exercising an economic activity subject to EU law.

Therefore everything leads us to compare the 2015 FIFA Regulations with the principles of the law on agreements between undertakings (A) and the abuse of a dominant position (B).

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[6] See in this present book : P. Lombardi, "*FIFA Regulations on Working with Intermediaries*" – R. Branco Martins, "*The agent's perspective*" – W. Lambrecht, "*The Clubs' perspective*" – W. Van Megen, "*The Players' perspective"*.

[7] See e.g. : ECJ, 12 dec. 1974, Case 36/74, B.N.O. *Walrave*, [1974] ECR 01405. – ECJ 15 December 1995, Case C-415/93, *Bosman*, 1995 ECR I-04921. – ECJ, 18 July 2006, Case C-519/04 P, *Meca-Medina, op. cit.*

A. Illegal Agreements Between Undertakings

The mechanism set up by Article 101 of the TFEU which prohibits anti-competitive agreements is fairly simple. It first sets out the conditions for agreements to be considered illicit (Art. 101, §1), and then gives the penalties to be applied to these illicit agreements (Art. 101, §2) and finally, offers the opportunity, although limited, of avoiding the contract being considered void (Art. 101, §3).

The conformity of the FIFA Regulations will be examined in two stages. Firstly, we will check whether there are reasons for considering that an agreement is illicit (1), and then we will see whether it may avoid being rendered void by a particular exemption (2).

A.1 Prohibited Agreements

In order to analyse the compliance of the new FIFA Regulations with Article 101 of the TFEU, we must first briefly recap the analysis that emerges from both ECJ case law and the various guidelines issued by the European Commission.[8]

The first step is to check whether the FIFA Regulations may be defined as "agreements between undertakings, decisions by associations of undertakings and concerted practices" (a).

The second step is to check whether the FIFA Regulations may "affect trade between Member States". The practice of the Court would certainly suggest that this check should only constitute the third stage.[9] However our analysis will follow the much more logical order of the text contained in Article 101 of the TFEU[10] (b).

The third step is to check whether the purpose of the FIFA Regulations is "to have as their object or effect the prevention, restriction or distortion of competition within the internal market" (c).

a) Decision by Association of Undertakings

The FIFA Regulations on Working with Intermediaries constitutes "an association of undertakings". Indeed, there is no doubting this conclusion. The ECJ[11] and the

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[8] Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty, 27 April 2004, [2004] OJ C 101/07, 27.4.2004, 81. – Guidelines on the applicability of Article 101 of the TFEU to horizontal co-operation agreements, [2011] OJ C 11, 14.1.2011, 1. – Guidelines on the application of Article 81(3) of the Treaty, [2004] OJ C 101, 27.4.2004, 97.

[9] ECJ, 28 April 1998, Case C-306/96, *Javico International et Javico AG contre Yves Saint Laurent Parfums SA (YSLP)*, [1998] ECR I-01983.

[10] ECJ, 21 January 1999, joined Cases C-215/96 & C-216/96, *Carlo Bagnasco e.a. v/ Banca Popolare di Novara soc. coop. arl. (BNP) & Cassa di Risparmio di Genova e Imperia SpA (Carige)*, [1999] ECR I-00135.

[11] ECFI, 26 January 2005, Case T-193/02, *Piau, op. cit.*

Commission[12] have so firmly confirmed this, that there is almost no need to pursue the discussion on this point further.

Firstly, it is accepted that FIFA is an "association of undertakings":[13] "*it is common ground that FIFA's members are national associations, which are groupings of football clubs for which the practice of football is an economic activity. These football clubs are therefore undertakings within the meaning of Article 81 EC and the national associations grouping them together are associations of undertakings within the meaning of that provision*".[14] It even presents itself as an association of undertakings since Article 10 of its Articles recommends that all FIFA members (i.e. national federations) "*involve all relevant stakeholders in football in their own structure*". The fact that as an international sports federation it has no profit motive and derives no direct benefit from regulating the commercial activities of intermediaries changes nothing.[15] Neither does the fact that it states that it is driven by a social and cultural ideal. Indeed, the fact that the majority of the FIFA members are involved in amateur football through associative structures (i.e. non-profit-making) has even less effect.[16]

Secondly, FIFA cannot claim any public power prerogatives that would exclude its activity from the economic sector and protect it against the application of Article 101 TFEU.[17] Even if it did (granted by whom?), the economic activity would have to be separated in order to examine it through the lens of competition law.[18] As we shall see, the regulation of an activity such as sports intermediation (i.e. sports agents) necessarily involves an economic activity. In a country such as France, the delegation of a public service role to sports federations has no effect on this analysis. Firstly, the new FIFA Regulations do not apply to it because the regulations on sports intermediaries are indeed part of the public authority powers granted to the French Football Federation (FFF). Secondly, by the combined application of the general principles of French administrative law and the provisions of Articles 106 and 107 TFEU, the rules published by the FFF will be considered administrative instruments[19] whose internal and external legality may be controlled under French public order law in which European competition rules play a large part.[20]

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[12] Commission staff working document "*The EU and sport: background and context"* accompanying document to the White Paper on Sport, 66.

[13] In the sense given by cases *Höfner* (ECJ, 23 April 1991, Case C-41/90, [1991] ECR I-01979) & *Frubo* (ECJ, 15 May 1975, Case 71/74, [1975] ECR 00563).

[14] ECFI, 26 January 2005, Case T-193/02, *Piau*, *op. cit.,* §69.

[15] ECJ, 1 July 2008, Case C-49/07, *Motoe*, [2008] ECR I-4863.

[16] ECJ, 11 April 2000, Joined Cases C-51/96 & C-191/97, *Deliège (C-51/96) & François Pacquée (C-191/97)*, pt. 46, 2000 ECR I-02549.

[17] ECJ, 19 January 1994, Case C-364/92, *SAT Fluggesellschaft mbH v/ Eurocontrol*, [1994] ECR I-00043

[18] ECJ, 24 Octber 2002, Case C-82/01 P, *Aéroports de Paris v/ Commission of the European Communities*, [2002] ECR I-09297.

[19] CE, 22 November 1974, n° 88828, *Fédération des industries françaises d'articles de sport*, Lebon, 577. J. Théry.

[20] F. Buy, J.-M. Marmayou, D. Poracchia et F. Rizzo, *Droit du sport*, LGDJ 2015, n° 301 et s.

Thirdly, regulations such as the ones on working with intermediaries, undoubtedly constitute a "decision". The fact that the FIFA Regulations are not enacted unanimously but by a majority does not alter this, nor should the fact that it takes the form of a "mere recommendation" lead to it being underestimated. EU law has its own understanding of the concept of a "decision" and readily accepts that a recommendation, even when not mandatory (which is the case of the 2015 Regulations), may be considered a decision under Article 101.[21] Like the 2001 Regulations in their time,[22] the 2015 law is "*binding on national associations that are members of FIFA and on clubs, players and players' agents*".[23] These Regulations are "*the reflection of FIFA's resolve to coordinate the conduct of its members with regard to the activity of players' agents*".

b) Effect on Trade Between Member States

The FIFA Regulations on Working with Intermediaries "may affect trade between member states". Once again, there is little room for doubting this statement. Court of Justice jurisprudence[24] and the decision-making practices of the rules that the Commission[25] adopted in 2004[26] on associations of undertakings leave no room for doubting that the regulations of an association of undertakings that recommend a maximum price for a service and are designed to apply in each of the association's member states, and to the benefit of economic operators within the different member states, may significantly "affect trade between member states" within the meaning of the TFEU.

First of all, the Regulations seek to regulate an economic activity in so far as the intermediaries in question are "*natural or legal persons who, for a fee or free of charge, represent players and/or clubs in negotiations with a view to concluding an employment contract or represent clubs in negotiations with a view to concluding a transfer agreement*".[27] Hence, the activity is the same as the one that the Court had to analyse in the *Piau* case.[28]

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[21] ECJ, 29 October 1980, Case C-209/78, *Heintz van Landewyck SARL v/ Commission,* [1980] ECR 3125. – ECJ, 8 November 1983, joined Cases C-96-82 to 102/82, 104/82, 105/82, 108/82, 110/82, *IAZ v/ Commission,* [1983] ECR 3369. – EU Comm., 5 December 1984, Case COMP 85/75, *Fire insurance*. On appeal : ECJ, 27 January 1987, Case C-45/85, *Verband der Sachversicherer v/ Commission,* [1987] ECR 405. – ECFI, 11 March 1999, Case T-136/94, *Eurofer v/ Commission*, [1994] ECR II-263. – EU Comm., 24 June 2004, Case COMP/A.38549, *Belgian Architects' Association,* [2005] OJ L4/10. – ECJ, 18 July 2013, Case C-136/12, *Consiglio nazionale dei geologi v Autorità garante della concorrenza e del mercato.*

[22] ECFI, 26 January 2005, Case T-193/02, *Piau*, *op. cit.,* §75.

[23] See also art. 13, FIFA' statutes.

[24] ECJ, 19 February 2002, Case C-309/99, *Wouters*, [2002] ECR I-01577.

[25] EU Comm., 24 June 2004, Case COMP/A.38549, *Belgian Architects' Association, op. cit.*

[26] Guidelines on the effect on trade concepts contained in Articles 81 and 82 of the Treaty, 27 April 2004, [2004] OJ C 101/07, 27.4.2004, 81.

[27] FIFA, Regulations on working with intermediaries 2015, «*Definition of an intermediary*», 4.

[28] See : §73 : «*As regards, second, the concept of a decision by an association of undertakings, it is apparent from the documents before the Court that the purpose of the occupation of players' agent,*

Secondly, the purpose of the FIFA Regulations is to determine the behaviour of all its members in all the countries in which it is active. As this concerns all EU member states, it is clear that the "trade between member states is likely to be affected". In practice, the fact that none of FIFA's European associations will follow its recommendations does not affect this aspect since there is "*potential for a sufficient degree of probability on the basis of a series of objective factors in law or in fact*" for the new FIFA Regulations to apply. Even assuming that just one European national federation was to follow the FIFA recommendations, it would still have an effect on trade between member states. Indeed, by acting to influence the price on a domestic market, the partitioning off of the market in question would have a knock-on effect on other national markets.[29] This type of recommendation on pricing has necessarily a "*direct or indirect influence, current or potential, on the pattern of trade between member states*". And the fact that FIFA has its headquarters in Switzerland does not alter this conclusion since it is only the finality of the agreement that counts, not the location of the member undertakings.

c) Restraints on Competition

In this case, the reasoning is not obvious since the analysis of the third condition of Article 101 of the TFEU is the most complicated to apply. However, we feel that the new Regulations have not only the *effect* but have as their *main purpose* the creation of restraints on normal competition.

First of all, the FIFA Regulations impose a special registration procedure that could be considered a barrier to anyone wishing to enter the market of sports intermediation. The effect of the new registration system will clearly delay the start of a business activity and slow down the progress of each of its operations by the requirement to complete registration formalities which will also generate fees.

In fact, it is difficult to imagine that the national federations will carry out the checks that FIFA requests without asking the undertakings involved to pay the administrative costs of examining each application. These formalities and additional costs will obviously constitute an obstacle to certain candidates becoming sports agents. It could well be argued that the new regulations will act more as a moderator than a barrier, and it has to be said that they are certainly less complicated than the previous Regulations which required licensing by passing an exam, whereas the new ones remove the exam and consist in the simple registration on the start-up of

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under the very wording of the amended regulations, is 'for a fee, on a regular basis [to introduce] a player to a club with a view to employment or [to introduce] two clubs to one another with a view to concluding a transfer contract'. This is therefore an economie activity involving the provision of services, which does not fall within the scope of the specifie nature of sport, as defined by the case-law (Case 13/76 Donà [1976] ECR 1333, paragraphs 14 and 15, Case C-415/93 Bosman [1995] ECR 1-4921, paragraph 127, Deliège, paragraphs 64 and 69, and Case C-176/96 Lehtonen and Castors Braine [2000] ECR 1-2681, paragraphs 53 to 60)».

[29] ECJ, 17 October 1972, Case 8/72, *Vereeniging van Cementhandelaren*. – ECJ, 11 July 1985, Case 42/84, *Remia BV*, [1985] ECR 02545.

the business and the recording of each transaction. In fact, the new Regulations have abandoned the previous cumbersome procedure that was considered restrictive and preferred a certainly less heavy although iterative procedure in its place.[30] But isn't the cumulative effect of these repetitive checks just as dissuasive as an entrance exam? Moreover, FIFA requires that federations, clubs and players to do everything possible[31] to persuade the agent to sign the "intermediary declaration". Indeed, although this declaration constitutes a contractual agreement, in reality it is a sort of trap that ensures that the agents are tied to the FIFA Regulations. In his capacity as a sports agent, an intermediary is not subject to the FIFA legal system. However, he will contract in if he signs the declaration. This is the purpose of the famous "intermediary declaration" that clubs and players will have to extract from agents whose services they require to use. Nevertheless every attempt to obtain an intermediary declaration will be a further impediment to the exercise of the sports intermediary's activity.

Secondly, the FIFA Regulations recommend that its members cap the remuneration of intermediaries' fees at 3% of the contract amount. This can be described as horizontal price-fixing, i.e. a price cartel. According to some,[32] this is an "unjustifiable" agreement as it creates a restriction on prices that is a restraint on competition "*in one of its fundamental forms*".[33] Article 101 §1 TFEU is clear when it targets decisions by associations of undertakings which involve "directly or indirectly fixing the purchase or sale price or other transaction conditions". The Court of Justice takes the view that a simple indicative scale of prices drawn up by professional associations constitutes an illicit agreement.[34] The European Commission is of the same opinion[35] and the Guidelines concerning the applicability of Article 101 TFEU to horizontal cooperation agreements do not even mention it.[36] However, there is no difficulty in recognising that the purpose of such a pricing

[30] ECFI, 26 January 2005, Case T-193/02, *Piau*, *op. cit.,* §101. – Note that the FIFA regulations had been qualified as unlawful agreement by the French competition authority and the administrative courts because its licensing and financial warranty system restricted market access: Cons. conc., avis n° 99-A-20, 23 November 1999. – CAA Paris, 14 June 2010, n° 08PA00502, *Scalet*, set aside TA Paris, 6 sect., 1re ch., 11 December 2007, *Scalet*, no 0320569/6-1.

[31] Compare: art 2.2 («*reasonable endeavours*») & art. 4.4 «*Associations are considered to have complied with their obligations under paragraphs 1 to 3 above if they obtained a duly signed Intermediary Declaration*[…]», Regl. FIFA 2015.

[32] N. Petit, *Droit européen de la concurrence*, Domat Droit privé, Montchrestien, 2013, n°1473 et s.

[33] EU Comm., 19 December 1984, Case COMP IV/29.725, *Wood pulp*, [1985] OJ L, 26.3.1985, 1 (§114).

[34] ECJ, 17 October 1972, Case 8/72, *Vereeniging van Cementhandelaren v/ EC Commission*, *op. cit.* – ECJ, 27 January 1987, Case C-45/85, *Verband der Sachversicherer v/ Commission, op. cit.* – ECFI, 22 October 1997, Joined Cases T-213/95 & T-18/96, *Stichting Certificatie Kraanverhuurbedrijf (SCK) and Federatie van Nederlandse Kraanbedrijven (FNK) v/ Commission of the European Communities*, [1997] ECR II-01739.

[35] EU Comm., 24 June 2004, Case COMP/A.38549, *Belgian Architects' Association, op. cit.* – EU Comm., 5 June 1996, Case COMP/96/438, *Fenex*, [1996] OJ L181/28.

[36] Guidelines on the applicability of Article 101 of the TFUE to horizontal co-operation agreements,

agreement is to constitute a restriction on competition within the meaning of Article 101 §1 and therefore exempts us from the need to examine the actual or potential effects on the market.[37]

The content of the FIFA Regulations is clear in that "the total amount of remuneration per transaction due to intermediaries […] should not exceed 3% […]", its aim is to achieve the same result: that is to say reduce the cost of services used by FIFA members. The economic and legal context in which it fits reveals that the most important aspect of the FIFA Regulations concerns not the process of professionalisation of the profession (i.e. the abandonment of selection based on quality), but the reduction in the price of the service.[38] The fact that the FIFA Regulations come in the form of a "recommendation" does not alter our conclusion: the clubs and players have a common interest in ensuring that it is applied and the national federations are obliged to make every effort to transpose it into their own domestic rules. In any event, particularly in view of the publicity given to it, the recommendation provides all persons involved in football with a guide to negotiations that will necessarily have an effect on the contracts signed. The only argument that could possibly be put forward to save this recommendation is by simply justifying that it has neither the *aim* nor the *effect* of restricting competition. But this is a counter-intuitive argument. One could indeed erase the wording used in the FIFA Regulations "*while taking into account the relevant national regulations and any mandatory provisions of national and international law, and as a recommendation […]*". In fact, domestic laws in EU countries do indeed impose compliance with European competition law. Therefore, these FIFA Regulations could not be incorporated by the national federations of EU *de facto* and *de jure.* Therefore they would only apply outside the EU but without any restraining effect inside the European market. This argument is absurd.

Thirdly, these FIFA Regulations can still be described as a pricing cartel the purpose of which is to restrict competition because it imposes an enhanced free of charge principle when the intermediary is involved in an operation that concerns a minor. In this case the intervention takes place to the benefit of the club and the minor. Needless to say, the elimination of the price of the service by applying a ban

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[2011] OJ C 11, 14.1.2011, 1. – *Adde* : Guidelines on the application of Article 81(3) of the Treaty, *op. cit*., pt. 21.

[37] Failure to recognize that the FIFA Regulations have a restrictive *purpose* means that it is impossible for us to demonstrate that it does not have a *restrictive* effect within the meaning of Article 101(1) TFEU. It is simply sufficient to apply the principles of "counterfactual analysis". Today, without the implementation of the new Regulations, the prices in the market of the sports intermediaries (already limited in some countries like France) are around 5 to 10% of the contract singed by the intervention of the intermediary (UEFA, The European Club footballing landscape - Club Licensing Benchmarking Report, Financial year 2012: www.uefa.org/MultimediaFiles/Download/Tech/uefaorg/General/02/09/18/26/2091826_DOWNLOAD.pdf).

If the national federations, clubs and players follow the recommendation, the price range established in an almost free market will change, which is itself sufficient to demonstrate a restrictive effect on competition.

[38] These are the 3 criteria put forward to assess the anti-competition nature of an agreement.

on paying for this service constitutes an agreement which is designed to fix a price … at 0.

Fourthly, it is pointless to justify the restrictive effect by the application of the well-known "inherence" criterion that would result according to the European commission[39] from the *Wouters* precedent.[40] It has to be remembered that this test of "inherence" is argued, by some, as negating the qualification of the restraint by *object* by offering some sort of exemption under the first paragraph of article 101 TFEU (a simpler exemption because it is based on only two conditions), without needing an exemption under the third paragraph (exemption based on the four conditions), which is almost impossible to obtain in cases of restriction by *object*. On the one hand, the *Wouters* test should not be used as an exemption from an illicit agreement based on proof of its restrictive effect by assessing its "overall context". Indeed, the *Wouters* case, like others after it,[41] is only the illustration[42] of what the guidelines call "ancillary restraints".[43] In other words, these restraints are merely ancillary to the principal decision not covered by the TFEU according to the decision-making regime… *accessorium sequitur principale* (the decision on the main issue applies to associated issues).

Furthermore, although this test has been used in the rule-making powers of sports federations, in particular the *Meca Medina* case,[44] it has to be noted that it is more a kind of procedure that makes it possible for the Court to economise its resources and reasoning efforts in cases which involve both the principles of competition law and those of fundamental freedoms.

This test therefore constitutes a syncretism of motivation and does not imply that the normal working of Article 101 TFEU has to be set aside. Finally, when wanting to apply this kind of balance between the pro-competition and anti-competition effects of measures,[45] FIFA is unable to claim any public service powers that would imply for example that certain aspects of its regulatory powers should be treated differently from its business activities. It should also be noted that it has no non-profit-making aim of defending the public interest but rather the specific

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[39] White paper on sport, 11 july 2007, COM(2007) 391 final : « *As is explained in detail in the Staff Working Document and its annexes, there are organisational sporting rules that – based on their legitimate objectives – are likely not to breach the anti-trust provisions of the EC Treaty, provided that their anti-competitive effects, if any, are inherent and proportionate to the objectives pursued* ». – Adde : J.-L. Arnaut, Independant european sport review, 2006, 47 : « *rules concerning players' agents are inherent to the proper regulation of sport and therefore compatible with European Community law* » (the review was funded by UEFA).

[40] ECJ, 19 February 2002, Case C-309/99, *J. C. J. Wouters, e. a, op. cit.*

[41] ECJ, 28 February 2013, Case C-1/12, *Ordem dos Técnicos Oficiais de Contas v/ Autoridade da Concorrência*, [2013] ECR -00000. – ECJ, 4 September 2014, Joined Cases C-184/13 to C-187/13, C-194/13, C-195/13 and C-208/13, *API.*

[42] D. Bosco et C. Prieto, *Droit européen de la concurrence – Ententes et abus de position dominante*, Bruylant 2013, n°575 et n°598 et s.

[43] Guidelines on the application of Article 81(3) of the Treaty, *op. cit.*, §2.2.3.

[44] ECJ, 18 July 2006, Case C-519/04 P, *Meca-Medina, op. cit.*

[45] Which should only take place in the context of Article 101 $3 of the TFEU : see 11 of the «Guidelines» on the application on Article 81(3) of the Treaty, *op.cit.*

interests of its members who are also the customers of the sports intermediaries. Therefore, it has no legitimacy that would make its intervention "essential" when regulating the profession of the sports intermediary. In particular, fixing the maximum price for a sports intermediation service is far from being the measure which is most suitable and appropriate for "moralising" the business of the intermediaries in football, or ensuring the transparency of transfers.

All this shows that the FIFA Regulations on collaboration with intermediaries constitute an illicit agreement within the meaning of Article 101 §1 of the TFEU, and as such merit nullification under Article 101 §2. However the question then arises as to whether they can avoid nullification by an individual exemption under Article 101 §3 of the TFEU.

A.2 The Possibility of an Individual Exemption

According to Article 101 §3 TFEU, an individual exemption may be granted if four cumulative conditions are met.[46] Thus, as an exception to the principle of free competition, an agreement between undertakings may survive if it leads to increased efficiency (condition 1), a fair share of this gain benefits the users (condition 2), it is not unnecessary or disproportionate to the aims pursued (condition 3), and it does not eliminate competition (condition 4). Even though the guidelines recommend a different order when considering these four general conditions in Article 101 §3 TFEU, and the absence of one of them makes the examination of the other three pointless, we will nevertheless consider the full TFEU list.

However, before proceeding to this analysis, one has to examine whether the fact that the 2015 FIFA Regulations designate an agreement between undertakings as illegitimate can be justified? The question is perfectly valid since there may be agreements that are so harmful to competition that they constitute unjustifiable practices. These agreements are not excluded *de jure* from the scope of Article 101 §3 but it is highly "*unlikely*" that in practice they can cumulatively meet the four conditions for exemption. In this case we often speak of "hardcore restrictions".[47] Indeed these "hardcore restrictions" include price-fixing agreements, and the 2015 FIFA Regulations introduce such price fixing measures.

a) Increased Efficiency

In order not to be declared void, an agreement must first contribute to improving the production or distribution of goods, or the promotion of technical or economic progress. It must have a pro-competition economic effect and/or a non-economic benefit of improved well-being. This effect is assessed relative to the aim pursued

[46] The burden of proof that the four cumulative conditions are met lies with the creators of the agreement.

[47] See pt. 23, 46, 55, 79 & 82 of the Guidelines on the application of Article 81(3) of the Treaty, *op. cit*.

in the form of an agreement that restrains competition. To justify that its new regulations pursue the aims of increased efficiency, FIFA has to demonstrate that it pursues the legitimate aim of allowing more competition in the sports agency sector, or an improvement in the quality of the service.

In this respect, FIFA takes care to set out its aims, which are *"to promote and safeguard high ethical standards in the relations between clubs, players and third parties, and thus to live up to the requirements of good governance and financial responsibility principles*"; "*to protect players and clubs from being involved in unethical and/or illegal practices and circumstances in the context of transfer agreements and employment contracts between players and clubs* "; "*to enable proper control and transparency of player transfers".*

Are these aims legitimate?

This question is easily conceded, at least in theory. Imposing ethical obligations on professionals in order to promote the protection of deals, the quality of service provided to the consumer or the user, and reduce opportunities for fraud, are in the public interest, i.e. the interest that leads States to regulate certain professions (lawyers, architects, accountants, travel agents, etc.) or certain types of contracts (sales contracts, credit agreements, etc.).

In more practical terms, the legitimacy of FIFA's concern for the public interest may be questioned. It can even be addressed openly as was the case before the Court in the *Piau*[48] hearings:

«*Pt. 74 :* […] *the Players' Agents Regulations were adopted by FIFA of its own authority and not on the basis of rule-making powers conferred on it by public authorities in connection with a recognised task in the general interest concerning sporting activity (see, by analogy, Case C-309/99 Wouters and Others [2002] ECR I-1577, paragraphs 68 and 69). Those regulations do not fall within the scope of the freedom of internal organisation enjoyed by sports associations either (Bosman, paragraph 81, and Deliège, paragraph 47).* […].

Pt. 76 : With regard to FIFA's legitimacy, contested by the applicant, to enact such rules, which do not have a sport-related object, but regulate an economic activity that is peripheral to the sporting activity in question and touch on fundamental freedoms, the rule-making power claimed by a private organisation like FIFA, whose main statutory purpose is to promote football (see paragraph 2 above), is indeed open to question, in the light of the principles common to the Member States on which the European Union is founded.

Pt. 77 : The very principle of regulation of an economic activity concerning neither the specific nature of sport nor the freedom of internal organisation of sports associations by a private-law body, like FIFA, which has not been delegated any such power by a public authority, cannot from the outset be regarded as compatible with Community law, in particular with regard to respect for civil and economic liberties.

Pt. 78 : In principle, such regulation, which constitutes policing of an

[48] ECFI, 26 January 2005, Case T-193/02, *Piau, op. cit.*

economic activity and touches on fundamental freedoms, falls within the competence of the public authorities […] ».

In this case, the Court considered, and its analysis is still valid, that an association governed by Swiss private law is not able to pass rules concerning an economic activity such as sports agency on European Union territory.[49] However, in the *Piau* case, and despite this doubt, the Court validated the former Regulations. Indeed it could not do otherwise, because, in the context of this litigation "*the rule-making power exercised by FIFA, in the almost complete absence of national rules, can be examined only in so far as it affects the rules on competition, in the light of which the lawfulness of the contested decision has to be assessed, while considerations relating to the legal basis that allows FIFA to carry on a regulatory activity, however important they may be, are not the subject of judicial review in this case"*. Therefore, it is for a procedural reason that the Court did not "divest" FIFA of a competence that it had unlawfully adopted.[50]

No very positive changes affecting FIFA have taken place since then.

Indeed, it is still unable to authorize any delegated public interest mission that would have conferred on it a state or EU public authority role. Worse, it is now forced to deal with all the national regulations in force in EU countries. Indeed, in 2015 at least five countries adopted special laws on sports agents (France, Greece, Portugal, Bulgaria, Hungary), and other countries have also regulated this profession even if they only do so through general employee placement laws. The result is that FIFA cannot even claim that the public authorities are failing to deal with a necessary but abandoned law-making competence.

Moreover, the justification put forward by FIFA for dealing with this question is misleading. Is it really seeking to protect the players? Why would FIFA have the law-making capacity to regulate all contracts signed by these players on the pretext that footballers are easy prey because they earn so much money and FIFA would prefer that they concentrate on football without financial motives? The agreement to purchase a property, open a bank account, take out an insurance, sign an electricity supply contract, contract a gardener, contract to purchase a vehicle: do not all these contracts contain an element of risk with potential for fraud? So why does FIFA not deal with them too? The reason is that it is only the sports agency contract that interests FIFA. Why? Because it considers that the agent is a vector for extracting money that belongs to the footballing world. It is guided by the same principles as when it decided to ban the technique of the TPO, i.e. protect the boundaries of the football economy from outside interference.

If we take a step back to review this question, we realize that in absolute terms there are not that many agents in Europe, their activity is not risky in itself, the world of football needs the agents, they exercise their business in a competitive environment without asymmetry that should be corrected, and it has no impact on

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[49] Recently, the Paris Court of Appeal recognized FIFA's legitimacy to regulate an economic activity that is peripheral to the sporting activity (CA Paris 13 April 2016, RG n°13/20972).

[50] See also ECFI, 26 jan. 2005, Case T-193/02, *Piau, op. cit*., pt.81.

the sporting competition. And although some would like us to believe this, in fact it is only a smokescreen.

A player does not always change club because the agent has put forth the prospect of greener grass to him. But perhaps because the player, unfaithful to his advisers, is no more faithful to his employer and it may also be because his first employer has failed to maintain the grass as green as a neighbouring club employer. It is not clear how the agent could be held responsible for competitive tension on the employment market of sporting talent. It is an indisputable fact that talent is rare and the clubs are willing to pay dearly for it. This only means that the financial decisions lie with the clubs, not the middlemen who set up the relations with such talents, even if these intermediaries are involved in the negotiations. It would be a good thing for clubs to assume the financial decisions they make without attempting to identify the agent as a sacrificial victim of their own mediocrity. In particular, what makes the regulation of this profession completely unnecessary is that it can be dealt with perfectly well by private investment laws. Moreover, this is the choice made in many European countries (Germany, Spain, Netherlands, UK, etc.).

Finally, the increased efficiency that the Court had implicitly recognized in the *Piau* case has disappeared as a result of the so-called deregulation brought in by the new FIFA Regulations. Indeed, as an argument in support of the exemption that had been granted to the former regulations, it was noted that the system of the prior compulsory licensing delivered by way of an exam was more "*a qualitative selection, appropriate for the attainment of the objective of raising professional standards for the occupation of players' agents, rather than a quantitative restriction on access to that occupation*".[51] In fact, there is no disputing that the new Regulations do not establish restrictions on the numbers entering the sports agency market since simple registration still leads to fewer participants than screening by prior examination. It no longer offers the slightest guarantee of agents' improved professional standards, nor does it guarantee improved efficiency. The first condition for the exemption is thus not met.

b) Shared Profit to the Benefit of the User

According to the ordoliberal vision of European competition law, saving an illegal association of undertakings or cartel can only be envisaged if the potential positive effects of the agreement, i.e. those which counterbalance the harm of the cartel on competition, benefit economic players who are not party to the agreement. This requires an equitable share of the increased efficiency gained by the agreement is passed on to the final consumer, to any intermediary, or to any user of the service or product.

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[51] ECFI, 26 jan. 2005, Case T-193/02, *Piau, op. cit*., pt.103.

By analysing the aims of the 2015 FIFA Regulations or the potential effects of its provisions in relation to price, the temptation is to say that the users of sports agents' services (clubs and players) will necessarily see a fall in the agents' prices following the implementation at national level of the 3% cap recommendation. At first glance this appears obvious.

However, this would be to make a dual error of judgement.

First of all, the argument is so strong that there is no need to discuss the second error. The users of the service, that is to say, the clubs and the players, are parties to the agreement. They are not third parties to the decision of the undertakings to associate and form an illegal cartel. And, the end user cannot be allowed to set the price of the service he uses on the grounds that the increased efficiencies will be equitably distributed. This is not a case of equitable sharing of the profits; this is a case where the user is granted this benefit by means of the agreement in which he is an interested party.

Some would have us believe that the final beneficiary is the spectator, i.e. if clubs and players had to pay their agents less, they would be able to offer a better spectacle. Besides the fact that this does not automatically follow, it has to be noted that this analysis does not take place on the most relevant market.[52] Indeed, the relevant market for the 2015 FIFA Regulations is that of the intermediary, and not the sporting spectacle, nor the audiovisual rights, nor sponsorship, but that of sports agency services. And by wanting to eventually expand the market, we can only do so via the employment of more players or by more transfers, two markets on which the dominant operators are once again the clubs and the players, that is to say the parties to the agreement between undertakings.

Secondly, and although the discussion of this argument is needless in view of the strength of the first one, it is far from certain that players will benefit from this price cap. Indeed, a price cap on this type of service down to a level that would not allow the agent to cover his costs on certain transactions,[53] can only lead to a decline in the quality of service. A decline that is all the more substantial as a player's salary decreases. It should not be thought that all football players in Europe have huge salaries, quite the contrary in the case of all those in the lower divisions.

And what about minors who are certainly most in need of advice but can only hope that it will be adequate and appropriate since the services provided to a minor are free of charge to begin with. The argument that the agent invests for the future by offering his services free of charge to a minor is not convincing. A

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[52] See pt. 43 of the Guidelines on the application of Article 81(3) of the Treaty, *op. cit*.

[53] For instance, let us assume that an agent in Paris assists a young player to join a club in Marseille for 2 years at a gross salary of •5000/month. At 10% commission, the agent will receive •12000 net which will cover both his negotiation and surveillance expenses over the 2 year period and provide him with a margin. However, at 3% commission, he will receive only •3600 net which is insufficient to pay for 3 return journeys in order to check on the player, cover the other costs and generate a margin.

"future" at 3% rather than 5 or 10% is not an incentive that would persuade a professional agent to invest his time, especially when the loyalty and consistency of footballers is well known.

c) Proportionality Test

The examination of the third condition consists in checking the essential nature of the restriction on competition in relation to the stated objectives. These should normally be increased efficiency and the fair sharing of the resulting benefits with third-party users. Therefore, with respect to the said objectives which we have already been discussed, this review requires us to assess the extent to which the restraint on competition is necessary and proportionate. This requires a triple check as to whether there is a measure as effective but less intrusive, or whether there is a more effective and as intrusive a measure, and whether there is a measure that is more effective and less intrusive. Moreover, *each one* of the restrictive measures has to be reviewed while noting that *all* the measures can be considered effective and proportionate in the given context although one of the said measures, taken in isolation, may prove to be unnecessary or disproportionate.

Regarding the registration rules set out in Articles 3 and 4 of the FIFA Regulations, it may well be accepted that they are appropriate in promoting the "ethics" and "morals" of the profession of agent. Indeed, it is a measure widely used by States wanting to check the morality and capacity of persons wishing to engage in an activity, especially an intermediary.[54] In the *Piau* case, the Court also considered that the Commission did not commit a manifest error by considering that a system of compulsory licensing could constitute an appropriate and adapted measure towards achieving "*a dual objective of raising professional and ethical standards for the occupation of players' agent in order to protect players, who have a short career*".[55] But in the *Piau* case the compulsory licensing system involved a qualitative selection that was regarded as potentially effective by the Commission at the time. In the current context however, it is uncertain as to whether the new Registrations are deemed fit for purpose. All the more so because their application will have to be objective, effective and impartial, and with no distortions between the different national federations responsible for applying them (i.e. list of documents to be provided, length of the checking process, cost control, dispute procedures, etc.) that would result in unnecessarily partitioning of domestic markets.

However, with regard to the "intermediary declaration" that players and clubs should strive to have signed by the agents, it is difficult to envisage that these will be fundamental in achieving the stated objectives. While some of the clauses of this "forced" contract may contribute to more transparency and higher ethical standards, most have no connection with these objectives. In addition, certain

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[54] For instance, in France this type of measure is applied to estate agents, artists' agents, travel agents, and so on.

[55] ECFI, 26 jan. 2005, Case T-193/02, *Piau, op. cit.,* §102 & 104.

statements made by the agent are not necessarily the most effective for achieving impeccable ethical standards. It is also a source of great inequality between agents who accept (or comply with) the declaration and those who are strong enough to resist it.

Are the provisions regarding the price of the intermediary's services (cap, mention of payment, and so on) needed? To ask this question is almost to answer it: setting a price cannot have a positive effect on the ethics and morals of the players, the transparency of operations, or the fight against illegal practices. On the contrary, by setting a low ceiling, it is clear that to maintain their level of remuneration and retain the complicity of the clubs in a competitive market, the agents will be tempted to disguise their operations in order to circumvent the cap. Therefore, this measure is inadequate and counterproductive relative to the objective it is intended to achieve. And even if it was associated with a loophole-proof check, it would only be really effective if the price was set at 0. This would have the effect of preventing any form of fraud, extortion or money laundering and, correspondingly, any form of competition via the price, which is prohibited. This simple (absurd) test of the 0 price therefore leads yet to the conclusion that the measure is not essential since it would only be useful by being totally disproportionate.

As to the provisions concerning the prohibition on receiving remuneration from a minor, the disproportion of this measure is self-evident. There is no doubt that a minor needs more protection than a major. But how could a ban on payments prevent fraud, extortion or bad advice? The regulations imposed on sports agents contain an underlying presumption of immorality which, once the agent is involved with minors, becomes irrefutable. In other words, a minor may well not receive quality advice from an agent of impeccable and verified morality simply because good advice from a professional comes at a price! The ban is not only disproportionate but also counterproductive.

Regarding the transparency obligations which require detailed public disclosure of the amounts paid to agents. Once again it can be easily demonstrated that there is a measure that is both more effective and less intrusive but which achieves this goal of transparency and legality of operations. Indeed, rather than providing the public with all the information on all financial transactions in which the agent takes part, which would have no other effect than to reinforce a demagogic view of football, it is better that this information is transmitted to a supervisory authority composed of specialized and experienced persons required to satisfy various obligations of morality, impartiality and confidentiality.

In order to highlight the inappropriateness of FIFA's measures, other systems of regulation that are more effective and less intrusive compared to the aims sought may be envisaged.

First of all, FIFA should encourage players to group together and regulate themselves in a professional association that would have more authority in defining the standards of morality, quality and transparency in the exercise of the activity

of sports agent. Instead of wasting energy and money to structure the profession, why not fund the creation of an international professional association? There are already well-organized agents' professional associations in some countries. There is also a European Union association and it is these entities that FIFA should rely on to encourage the creation of an industry self-regulatory body, and then let it live independently. Without the same characteristics as the legal profession or medical practitioners who can claim to have a single hegemonic order, the agents' own order could initially create a collective quality label that would be attractive to both clubs and players. They would be free to make use of "non-labelled" agents, but knowingly and under an obligation to assume any disappointments.

Secondly, it does not appear that the prior review measures are the most appropriate or adapted to fight against fraud. In order to implement such measures, it has to first prove that the fraud has taken place and its extent and demonstrate the ineffectiveness of the measures retrospectively. This means that a subsequent review, if necessary reinforced and practised by the competent and legitimate authorities (the police are such), is certainly more in keeping with the realities of the problem. This further confirms that FIFA does not have the legitimacy to regulate an economic activity such as that of the sports agents.

d) Non-Elimination of Competition

The economic assessment made by combining the first three conditions of Article 101 §3 TFEU, if positive (which is not the case in our hypothesis), may eventually justify restricting the competition. It remains that a positive economic result does not validate the elimination of the competition argument. The agreement between undertakings must not allow its promoters to eliminate competition in the market for sports agents or in their own market.

Once this rule has been recalled, one does not need to be an economist to see that regulations such as FIFA's, which do not meet the conditions of Article 101 §3 and therefore do not merit an exemption, do not on a first approach have the power to eliminate competition between players' agents. It will deter many candidates from entering the market, and make the activity of small structures and small agents very difficult, and perhaps convince some of them to change their activity or even to abandon it as insufficiently profitable. But it does not necessarily reserve the market to the larger existing operators, the actual market power of whom is not known exactly. However, the elimination of competition is not that simple, i.e. solely by market share. Indeed, other parameters must be taken into account, and in this respect price competition requires particular attention. The Commission states bluntly: *"The last condition for exception under Article 81(3) is not fulfilled if the agreement eliminates competition in one of its most important expressions. This is particularly the case when an agreement eliminates price competition* […]".[56] However, by setting a price cap at 3%,

[56] Guidelines on the application of Article 81(3) of the Treaty, *op. cit.*, pt. 110.

which is not reasonably high enough, any financial flexibility that would enable agents to compete on the quality/price of their service is eliminated.

In addition, consideration must also be given to the competitiveness of potential new entrants who will begin their careers by working with young players or players on low incomes compared to the agents running an established business who can work with highly paid players. By applying the 3% cap on small operations, these newcomers will not be able to invest in their development and compete with incumbents who benefit from regular incomes, real though reduced, achieved on more financially viable operations.

Therefore, this fourth condition is not met either.

B. Law on the Abuse of a Dominant Position

The wording of Article 102 TFEU, which prohibits the abuse of a dominant position, is not as clear as Article 101. Indeed, although its provisions lay down the principle of prohibition, they are silent on those that allow, exceptionally, its avoidance. Yet according to the jurisprudence of the Court of Justice and the decisional practices of the Commission, there are many cases of well-founded justification in the abuse of dominance. We will deal with the new FIFA Regulations with a two-step analysis. Firstly, we will check if it constitutes an abuse of dominance (1) and then we will check whether the ban could be avoided as a well-founded objective justification (2).

B.1 Abuse of a Dominant Position

Like Article 101, Article 102 TFEU has its own "analysis grid" and the conformity of the new FIFA Regulations will be analysed by applying this grid.

As a first step, we have to check whether FIFA can be described as an undertaking holding a dominant position on the internal market or a substantial part of it (a).

Secondly, we have to rationally examine whether the FIFA Regulations could "affect trade between member states". However, this check has already been carried out in the analysis of Article 101 and we would therefore refer the reader to the aforesaid text.

As a third step, we have to check whether the FIFA Regulations characterise the abuse of a previously demonstrated dominant position (b).

a) Dominant Position

The dominant position prohibited by Article 102 TFEU means dominance on a market that is designated under the name "relevant market". It is this relevant market that decides whether or not one or several undertakings occupy a dominant position.

The market on which the FIFA Regulations on collaboration with intermediaries are challenged is the market of sports agency services, that is to say, a market on which clubs and players are both the principals and users, while the sports agents are service providers. If we were to reduce this to a simple economic description, while ignoring strict legal considerations, it could be said that, on this market, the sports agents are "sellers" and the clubs and players are "buyers".

The FIFA Regulations do not seek to regulate anything other than this market. However, they also have indirect effects on the transfer market and the market for sporting talent which are necessarily affected by regulations specifically targeting the intermediaries involved in transfer operations and players' placement in employment. And on these two associated markets, once again we find the clubs and the players. However, FIFA is present on none of these sports agency markets, the transfer market, or the sporting talent market. While it is clear that FIFA is an actor on the sports organisation market on which its dominant position is evident,[57] it is also clear that it does not itself participate in the sports intermediation market. Can FIFA be in a dominant position on a market in which it is not involved? As FIFA is an association of undertakings grouping the economic players on the market in question, the answer is necessarily in the affirmative. Indeed, FIFA has already been recognized as such, especially in the *Piau* case when the Court held that FIFA is "*the emanation of the national associations and clubs, actual buyers of the services of players' agents, and it therefore operates on this market through its members*".[58] We regret that the Court only partially analysed this question because FIFA, due to the effect of its pyramidal structure, groups together not only the clubs but also the players, who are also the "buyers" in the relevant market.

Another theoretical question arises: can FIFA be both an association of undertakings within the meaning of Article 101 TFEU and a dominant undertaking within the meaning of Article 102? This is a legitimate question because behaviour can be, both considered and eventually penalized when viewed from the antitrust law standpoint and its abuse of dominance. However, these two qualifications seem incompatible at first sight. But this is not the case, because Article 102 TFEU has two hypotheses: one where "a business" has a dominant position and one where "several companies" occupy the same dominant position. It is from this second hypothesis that the concept of "collective dominance" has arisen and was applied to FIFA in the *Piau* case.[59] Indeed, it is through FIFA that the clubs (purchasers of sports agency services) presented themselves in the eyes of the Court as "a collective entity". [60] In our view, they always present themselves as

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[57] Commission White Paper on Sport, COM(2007) 391 final, Annex I, 68. – ECJ, 1 July 2008, Case C-49/07, *Motoe, op. cit.*

[58] ECFI, 26 January 2005, Case T-193/02, *Piau, op. cit.,* §112 & §116.

[59] In France, the collective dominant position of FIFA has already been recognized regarding the sale of tickets to a competition : Cass. com., 8 July 2003, n°01-17015.

[60] ECFI, 26 January 2005, Case T-193/02, *Piau, op. cit.,* §113.

such and one must also associate the players with this collective entity since it is the players who procure the services of sports agents and are covered by FIFA Regulations as members of national associations grouped within FIFA.

Therefore, even though FIFA is not active in the relevant market, as it may be for example in the market for the organization of sporting events, it should be regarded as occupying a dominant position in the intermediation market on the sole grounds that it exercises its business through its members. All the more so in that it includes an entire category of market participants, in this case the "buyers". Indeed, no buyer escapes from this regulatory power because, by definition, all European football clubs and all players who are employees participate in this "collective entity". It is therefore clear that by dictating the behaviour of all the buyers on a particular market, an association that groups them within a single undertaking and without exception will occupy a dominant position, because it is in a "position of strength that makes it a mandatory partner".[61] The question that then arises is whether this constitutes an abuse.

b) Abuse

Does FIFA abuse its position of collective dominance by enacting a regulation which recommends a maximum price for sports agency operations, prohibits payments in transactions involving minors and imposes various transparency and registration measures? Indeed, recognizing that FIFA occupies a dominant position is not sufficient to condemn its regulations since *"finding that an undertaking has a dominant position is not in itself a recrimination but simply means that, irrespective of the reasons for which it has such a dominant position, the undertaking concerned has a special responsibility not to allow its conduct to impair genuine undistorted competition on the common market"*.[62] The question is then whether or not the new regulations lead FIFA to adopt *"the behaviour of an undertaking in a dominant position which is such as to influence the structure of a market"*.[63]

In order to answer this question, it is sufficient to highlight the restraints on competition demonstrated through the application of article 101 TFEU insofar as any effective restraint on competition renders the market dominance that it derives from this situation abusive.

There is no real doubt as to the answer regarding the provisions creating the 3% cap or prohibiting any payment when acting for minors. This type of

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[61] ECJ, 13 February 1979, Case 85/76, *Hoffmann*, pt. 41, 1979 ECR 461.

[62] ECJ, 9 November 1983, Case 322/81, *Michelin*, pt. 57, 1983 ECR 3461. – ECFI, 7 October 1999, Case T-228/97, *Irish Sugar*, pt.112, 1999 ECR II-02969.

[63] ECJ, 13 February 1979, Case 85/76, *Hoffmann*, *op. cit*., pt. 91. – ECJ, 9 November 1983, Case 322/81, *Michelin*, op. cit. – ECJ, 3 July 1991, Case C-62/86, *AKZO Chemie BV v/ Commission*, pt.69, 1991 ECR I-03359. – ECFI, 7 October 1999, Case T-228/97, *Irish Sugar*, *op. cit.*, pt.111. – ECFI, 25 June 2010, Case T-66/01, *Imperial Chemical Industries Ltd v/ European Commission*, pt.193, 2010 ECR II-02631.

practice is targeted by Article 102 TFEU, which states that the abuses it intends to combat "*may, in particular, consist in: (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions*". It has to be repeated: fixing a price in normal market supply and demand forces according to the European ordoliberal vision is the most obvious proof that competition is not free in this market. Therefore, the reasoning followed concerning Article 101 TFEU is equally relevant concerning Article 102.

The answer may not be so clear on the provisions for the registration of agents and each of their operations as, strictly speaking, they cannot be authorized directly by the TFEU. Once again, the reasoning concerning Article 101 can be transposed onto Article 102. Indeed, the application of a simple test of the counterfactual situation allows us to say that such measures have the effect of slowing down new market entrants or even discouraging them, and needlessly complicates the exercise of the activity to the detriment of its end users. All these provisions are therefore likely to influence the market structure.

This is because the new FIFA Regulations, although they come with many precautions in the form of simple recommendations, are in fact mandatory for direct and indirect members of FIFA (such as the national federations, clubs and players) that cannot withdraw without risking a penalty. And an agent who refused to pander to clubs and players responsible for implementing the FIFA obligations would be immediately excluded from the market. He/she would be excluded not because the quality of service was less or too expensive compared to other competing agents, but only because of his refusal to sign the "intermediary declaration" and agreeing to all the resulting obligations. In other words, he would be excluded from the market without being able to make use of the normal competition tools such as normal market pricing, the conditions of its proposal, the quality of its service, or its capacity for innovation.

Therefore, the new FIFA Regulations have sufficient potential to influence the conditions in which the sports agency operations or interventions are carried out on the relevant market.

The question that then arises is whether the service user, "consumer" within the meaning of Article 102 TFEU, suffers prejudice due to the measures criticised. Indeed, if we follow the recommendations of the Commission, the restrictions on competition and the eviction of competitors can only be taken into account to the extent that they are harmful to consumers. However, this issue takes a very particular turn in the case that concerns us here because the contested regulations emanate from the users of the service in question. One could then argue that, as authors of the measure agreeing to restraints on competition, the consumers will suffer no prejudice. But this argument is false for at least two reasons.[64] The first is that the quality of service will only be diminished when the providers are unable to adjust the price of their interventions or contractual conditions.

[64] Two reasons already developed regarding efficiency gains achieved by agreements between undertakings.

The second is that the consumer referred to in the Commission's recommendations is necessarily a third party. Indeed, by the logic of the prohibition on abuses of dominance, one can be both a consumer that has to be protected and an undertaking in a dominant position whose actions have to be monitored.

B.2 Justification of an Abuse

Although Article 102 TFEU cannot serve as justification for an abuse of a dominant position, in practice two sources of exemption are accepted by the Commission[65] and the Court of Justice.[66] The first is to argue that the criticized measure is not directly attributable to an undertaking in a position of dominance only acting under duress from state legislation. The second is to justify the criticized conduct by an "objective necessity".

a) State Constraint

FIFA can expect nothing from the first line of defence. No Member State has ordered it to regulate the profession of sports agents and it does not claim any specific legal obligation emanating from a constraint or a state or supra-state order. Certain national federations may hide behind the laws of their country, but only provided it regulates the profession of sports agents. This is the case in France for example, where the provisions of the *Code des Sports* [sports laws] require a prior authorization in order to exercise the business of sports agents, set a cap (although 10%) and various transparency obligations (less cumbersome). Still, even in these very particular cases, the defensive measures have to be put into perspective. Indeed, it has to be emphasised that state compulsion is only marginally accepted as justification,[67] and that it must itself be objectively justified by an overriding public interest in relation to which the legislation in question must be strictly proportionate. In addition, it should be recalled that European Union law[68] resents that States take or retain measures, even of a legislative or regulatory nature, that may render ineffective the competition rules applicable to undertakings.[69] Thus, the States do not have the powers to withdraw the "official"

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[65] Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, [2009] OJ C 45, 24.2.2009, 7.

[66] ECJ, 17 February 2011, Case C-52/09, *TeliaSonera*, pt.75, 2011 ECR I-00527. – ECJ, 27 March 2012, Case C-209/10, *Post Danmark*, pt. 40. This hypothesis had already been asked (ECFI, 7 oct. 1999, Case T-228/97, *Irish Sugar*, *op. cit.* pt. 218. – ECJ, 15 March 2007, Case C-95/04 P, *British Airways plc v/ Commission*, pt.69, 2007 ECR I-02331).

[67] ECJ, 20 March 1985, Case 41/83, *Italia v/ Commission,* 1985 ECR p.873, pt. 19. – ECJ, 10 December 1985, joined Cases 240/82 to 242/82, 261/82, 262/82, 268/82 & 269/82, *Stichting Sigarettenindustrie e.a. v/ Commission*, 1985 ECR p.3831, pt. 27 to 29. – ECJ, 9 September 2003, Case C-198/01, *CIF*, 2003 ECR, I 8055, pt. 67.

[68] See art. 4, TEU & art. 106 TFEU.

[69] ECJ, 5 December 2006, Case C-94/04, *F. Cipolla v/ R. Portolese*, & Case C-202/04, *S. Macrino & C. Capoparte v/ R. Meloni*, 2006 ECR, I-11421, pt. 46. – ECJ, 1 July 2010, Case C-393/08,

nature from their own legislation by delegating to private operators responsibility for taking decisions in the economic sphere.[70] They therefore cannot delegate to national federations the task of setting the price of a service that would normally be left to the free play of supply and demand.

b) The "Objective Necessity"

FIFA cannot count on the second line of defence either. Indeed, to be accepted, it requires that convincing evidence be provided of the three cumulative conditions, it being stipulated that the onus of proof would be on FIFA. Therefore it has to demonstrate that its new regulations have led to a gain in efficiency, that part of this economic gain is shared with the user, that the new regulations are necessary and strictly commensurate with achieving the progress it is pursuing, and does not have the effect of eliminating competition.[71]

If FIFA wishes to save its regulations under Article 102, it must ultimately justify the existence of conditions identical to those in the context of Article 101. However, as we have already shown, none of these conditions can be fulfilled convincingly by the new FIFA Regulations. Moreover, the Court of Justice accepts this defence only if the objective pursued by the company in a situation of dominance is not only legitimate, which in our view is not the case, but also results from an "external factor",[72] which is even less the case here. Indeed, the principle governing the application of Article 102 is that it is normally for the public authorities to set up and enforce national standards in the public interest such as public health, safety, environment, or consumer protection. In principle therefore, it is not for the company in a dominant position to take initiatives to meet such goals, and it can only be as an exceptional measure and after having justified both the urgent need for action and the failure of the State, that a dominant undertaking can legitimately argue that it constitutes an impediment to competition. But we do not see how FIFA could be convincing on all these conditions when the sports agency business is already regulated, albeit to varying degrees, by European states and that it is not

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Emanuela Sbarigia v/ Azienda USL RM/A and others, pt.31, 2010 ECR I-06337.

[70] ECJ, 5 October 1995, Case C-96/94, *Centro Servizi Spediporto Srl v/ Spedizioni Marittima del Golfo Srl*, pt. 21, 1995 ECR I-02883. – ECJ, 16 November 1977, Case 13/77, *Gb-Inno-Bm*, 1977 ECR, p. 2115, pt. 29-31. – ECJ, 21 September 1988, Case 267/86, *Van Eycke*, 1988 ECR, p. 4769, pt. 16. – ECJ, 18 June 1998, Case C-35/96, *Commission v/ Italia*, 1998 ECR, I-3851. – ECJ, 19 febr. 2002, Case C-35/99, *Arduino*, 1988 ECR, I-01529. – ECJ, 9 September 2003, Case C-198/01, *Consorzio Industrie Fiammifieri & Autorità Garante della Concorrenza e del Mercato*, 2003 ECR, I-8055.

[71] Should the Court of Justice not seem to take account of this fourth condition (ECJ, 17 February 2011, Case C-52/09, *TeliaSonera*, *op. cit*. pt. 76. – ECJ, 27 March 2012, Case C-209/10, *Post Danmark*, *op. cit*.), it is nevertheless listed by the Commission in its recommendations (Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, *op. cit.* §30).

[72] Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, *op. cit.* §29.

for an association governed by Swiss law to judge the sufficiency or insufficiency of states' regulation of a profession or economic activity.

This is even less evident in that the FIFA Regulations' aim is to liberate direct and indirect members from any reflection, innovation or negotiation in transactions with the agents, without it being able to reasonably describe the clubs and players as weak and vulnerable consumers who should be protected from the harsh realities of market conditions. Finally, the demonstration of these four conditions seems all the more improbable for FIFA to meet in that the latter might well be regarded as in a "super dominant position"[73] since it groups together all the "buyers" of the service on the entire European market, and even worldwide, and that based on this consideration the objective justifications that it might put forward would examine even more severely.

3. Compatibility with EU Principles of Fundamental Freedoms and Rights

The analysis of the conformity of the 2015 FIFA Regulations with EU law can be approached from different angles. Its obvious incompatibility with the principles of competition law does not prevent its continued examination under the different angles of EU fundamental rights and freedoms. It is now for us to compare the fundamental freedoms under the Treaty on the Functioning of the European Union (A) and the fundamental rights under EU law (B).

A. Fundamental Rights Under the Treaty

Out of the four main freedoms under the TFEU, three are directly affected by the 2015 FIFA Regulations: freedom of movement of capital (1), freedom of movement of workers (2) and the freedom of establishment and services (3). The freedom of movement of goods does not concern sports agents and can be ignored.

A.1 Free Movement of Capital

At a first glance, the new FIFA Regulations do not infringe the free movement of capital guaranteed by Article 63 of the TFEU. Indeed, one cannot really argue convincingly that the prior registration of the agent, the registration of each of its operations or the publication of details of the commissions paid, will directly affect the movement of capital between Member States. The free movement of capital has its own function and is not intended, in principle at least, to render services more fluid, other than those relating to the world of finance. But a sports agency service is not a provision of financial services such as, for example, the provision of TPO services.

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[73] About this issue: ECJ, 16 march 2000, joined Cases C-395/96 P, C-395/96 P & C-396/96 P, *Compagnie maritime belge transports SA (C-395/96 P), Compagnie maritime belge SA (C-395/96 P) and Dafra-Lines A/S (C-396/96 P) v/ Commission*, 2000 ECR I-01365.

Nevertheless, FIFA Regulations can affect the "payments" made between Member States or between Member States and third countries. These are prohibited by Article 63 §2 TFEU. By preventing sports agents from receiving any payment when intervening in a transaction involving a minor, do not the FIFA Regulations potentially involve a restriction on cross-border payments (seeing as it has already been shown that the sports agency business is cross-border)? By requiring that the payment of the agent can only be made by its principal,[74] do not the FIFA Regulations restrict payments within the meaning of Article 63 §2?

The answers to these questions seem positive insofar as we accept that there is interference with the free movement of capital and payments as soon as a legal or *de facto* barrier has the aim or effect of preventing or limiting, directly or indirectly, movement of capital or a payment. And once again, this condemns the FIFA Regulations, especially as the principle of the freedom of movement of capital is not subject to the application of a *de minimis* rule, and even a minor breach is sanctionable.[75]

Some claim that the payment for a service is not part of the operations specifically covered by the list of capital movements given in Annex I to Directive 88/361/EEC of 24 June 1988. However, this directive is only indicative and the Court has always recognized that it was neither comprehensive nor exhaustive.[76]

Some also claim that Article 63 TFEU is only meant for application by Member States and EU institutions, and therefore private individuals are not covered by its provisions. However, doctrine recognises without difficulty, and it is unclear what would lead the Commission and the Court of Justice not to do the same, that the terms of Article 63 TFEU are very close to those applicable to other freedoms and are therefore, like others, also applicable to individuals.[77] To give practical effect to Article 63 TFEU, it should apply to both Member States and to private entities such as banks, credit institutions, professional bodies and appropriate associations of undertakings, such as the UEFA or FIFA.

Some also claim that the FIFA Regulations are worth retaining by applying the rule-of-reason principle. But this would require evidence proving that the restraining measure is authorized by an "overriding public interest" and is strictly proportionate to the aim pursued.[78] Based on the evidence we have examined, the conditions for exemption are roughly the same in terms of competition law.

In fact, the most relevant argument for preventing the application of Article 63 TFEU to the new FIFA Regulations results from the freedoms guaranteed by the TFEU. Indeed, the free movement of capital is naturally extensive in nature insofar as it is intended to cover all movements of money whatever their source.

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[74] Art. 7.5, R. FIFA.

[75] ECJ, 1 July 2010, Case C-233/09, *Dijkman*, pt.42, 2010 ECR I-06649.

[76] ECJ, 16 March 1999, Case C-222/97, *Manfred Trummer and Peter Mayer*, 1999 ECR I-01661. – ECJ, 7 November 2013, Case C-322/11, *K. v/ Finland*, 2014 OJ C 9, 11.1.2014, 3.

[77] F. Picod, "*Les entraves aux libertés de circulation d'origine privée : une nouvelle denrée communautaire?*", in Mélanges G. Vandersanden », Bruxelles, Bruylant, 2008, 635.

[78] e.g. : ECJ, 13 May 2003, Case C-463/00, *Commission v/. Spain*, 2003 ECR I-04581.

But this means that, as an alternative or at least a supplement, the freedom of capital movement is likely to be invoked with all the other freedoms of movement. It can even be invoked for all competition issues related to the concept of a price cartel. Does not the price mechanically cause an obstacle to the free movement of capital? Therefore we need to define the scope of the freedom of movement of capital. By means economy worries, as a general rule the Court of Justice will only examine the compatibility of state regulations or private measures under investigation from one freedom: freedom which is mainly hampered, and this by examining the aim of the measure in question.[79] Regarding the FIFA Regulations, it appears that its principal aim is the regulation of a service and secondly the movement of sums generated by the provision of the services in question. The result is that in this case the freedom of movement of services has to prevail and that there is no need to examine the FIFA Regulations in relation to the free movement of capital.

A.2 Workers Freedom of Movement

Do the FIFA Regulations constitute an obstacle that may hinder or render less attractive the exercise by footballers, nationals of the Member States, of their freedom of movement as guaranteed by Article 45 TFEU[80] and Article 15.2 of the EU Charter of Fundamental Rights? This simple question does not immediately spring to mind when reading the FIFA Regulations because it directly targets sports agents and displays an intention to protect the players. However, by hampering the activity of the agents, does it not contribute to reducing the freedom of the sportspersons, users of intermediary services, to find an employer, change employers and negotiate with employers? The question is all the more justified in that the football authorities have often highlighted that the role of sports agents was essential in these transactions and that it was moreover necessary to establish rules in order to limit the continued expansion of players' movements.

Consequently, if it is considered, as we do, that the *aim* and *effect* of the FIFA Regulations is to restrict competition between agents at the expense of newcomers on the market and small players, and impede the latter's freedom to set up and offer a service, we must logically conclude that the decrease in the number of agents and the quality of their services will impact the placement of players in terms of their wages and hence on their freedom of movement as workers. The player who receives no help in negotiating a salary and benefits will not achieve the working conditions he merits. He could consider the prospect of

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[79] e.g.: ECJ, 24 March 1994, Case C-275/92, *Schindler*, 1994 ECR I-01039. – ECJ, 3 October 2006, Case C-452/04, *Fidium Finanz AG v/ Bundesanstalt für Finanzdienstleistungsaufsicht*, 2006 ECR I-09521. – ECJ, 24 May 2007, Case C-157/05, *Winfried L. Holböck v/ Finanzamt Salzburg-Land*, 2007 ECR I-04051.

[80] ECJ 31 March 1993, Case C-19/92, *Dieter Kraus*, 1993 ECR I-01663. – ECJ 15 December 1995, Case C-415/93, *Bosman*, *op. cit*. – ECJ, 16 March 2010, Case C-325/08, *Bernard*, 2010 ECR I-02177.

having to find a new employer without the help of an agent less attractive and thus be deterred from changing clubs and thus from exercising his freedom of movement. Obviously the market for professional footballers will not entirely shut down, but it is well known that there is no *de minimis* test on the free movement of workers; once again even a minor infringement should be punished.

This will require that FIFA provide evidence that the four conditions are cumulatively met in order to justify its regulations in the light of Article 45 TFEU. In other words: (i) it applies without discrimination; (ii) it is justified by overriding reasons of the public interest; (iii) it is appropriate to guarantee the attainment of the objective pursued; and (iv) it does not go beyond what is necessary to achieve it. This test is well known and has already been implemented in a slightly different form, by applying Article 101 TFEU.

A.3 Freedom of Establishment and Freedom to Provide Services

Do the 2015 FIFA Regulations breach the generally associated principles of freedom of establishment (Articles 49 to 54 TFEU) and the freedom to provide services (Article 56 TFEU)? An answer in the affirmative appears obvious insofar as these Regulations set up real obstacles for which no convincing justifications can be put forward.

a) The Obstacles

Within the meaning of the TFEU, a service provider is an independent business that is eligible for remuneration, no matter the business sector in which it offers the service. As such, it is accepted without question that the brokerage business, the activity of an agent, and more broadly the activity of the intermediary, do indeed constitute economic activities.[81] In this respect, the placement of employees has been recognized as an economic activity[82] and therefore there is nothing surprising in the Court applying Article 56 TFEU[83] to the services offered by the sports agents, provided that this activity has undoubtedly a European-wide dimension since it provides a cross-border service.

In general, measures that impede access to national markets are considered contrary to the principles of freedom as well as those that make less attractive the exercise of the freedom of establishment and to offer services.

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[81] ECJ, 6 June 1996, Case C-101/94, *Commission v/ Italia*, [1996] ECR I-02691. – ECJ, 26 November 1975, Case 39-75, *Robert-Gerardus Coenen and others v/ Sociaal-Economische Raad*, [1975] ECR 01547.

[82] ECJ, 23 April 1991, Case C-41/90, *Höfner, op. cit.* – ECJ, 10 December 1991, Case C-179/90, *Merci convenzionali porto di Genova SpA v/ Siderurgica Gabrielli SpA.*, [1991] ECR I-05889. – ECJ, 19 October 1995, Case C-111/94, *Job Centre Coop. arl.*, [1995] ECR I-03361. – ECJ, 11 December 1997, Case C-55/96, *Job Centre (2) coop. Arl.* [1997] ECR I-07119. – ECJ, 8 June 2000, Case C-258/98, *Giovanni Carra and others*, [2000] ECR I-04217.

[83] ECFI, 26 January 2005, Case T-193/02, *Piau, op. cit.*

Whether there is discrimination or not does not change the concept of an impediment, which is an indistinctly applicable measure that may be considered prejudicial. In this context, the Commission and the Court of Justice are equally attentive to the aim and to the effect of the disputed measure. A measure that does not aim to regulate the conditions of establishment or the exercise of a service may have an *effect* on access to the market in question and thus be challenged under the provisions of the TFEU.[84] Furthermore, the nature of the measure in question is irrelevant. Whether statutory, administrative or judicial, state or private, a measure removing or diminishing the freedom of establishment and to offer services must be regarded as an impediment.[85] Moreover, it is irrelevant that an infringement is minor since according to the *de minimis* principle (the law does not care for small things), it does not apply to freedom of movement of services.[86]

In our opinion, the FIFA Regulations, and especially the provisions concerning the prior registration of agents, the registration of each operation together with its stipulations regarding the disciplinary sanctions constitute flagrant breaches of the freedoms guaranteed by the TFEU. Indeed, it is accepted that a measure that submits the exercise of a profession to licensing, registration or prior authorisation constitutes an obstacle that delays the start-up of businesses and may, in certain circumstances, lead to additional costs and therefore discourage the interested parties from setting up and running a business although perfectly legal. As we have already said, the 2015 FIFA Regulations set up a stepped control procedure, the cumulative effect of which is much more intrusive and dissuasive than the examination that existed previously. Hence, the FIFA Regulations appear to be in direct conflict with the TFEU. Any national federation that incorporates them in its own internal regulations would also be in conflict with the TFEU and run the risk of being penalised by its domestic courts.

There is even more of a risk of a penalty when the activity of the sports agent or intermediary is subject to the Services Directive 2006/123/EC dated 12 December 2006. Indeed, this type of business is not excluded from its scope, nor is that of agent or employee placement. It simply excludes the services performed by temporary employment agencies, which is not the same thing, and does so because there is a specific harmonising directive.[87] As a result, it targets the activities of estate agents, travel agents and also textually targets services relating to recruitment.[88]

As a matter of principle, this Services Directive only accepts "authorisation schemes", to which it applies an independent and very broad

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[84] e.g. : ECJ, 18 July 2006, Case C-519/04 P, *Meca-Medina, op. cit.*

[85] See Services Directive n°2006/123/CE, 12 December 2006, art. 4.

[86] ECJ, 1 April 2008, Case C-212/06, *Government of Communauté française and Government wallon v/ Government flamand*, [2008] I-01683.

[87] Directive n°2008/104/EC, 19 nov. 2008, on temporary agency work, [2008] OJ L 327, 5.12.2008, 9.

[88] See: Whereas n°33.

definition, as exceptions requiring justification,[89] and systems for declarations, registration, service contracts, etc.[90] It considers that an obstacle is created when the service provider is fettered by an unjustified procedure when setting up his business or providing services. However, it also considers that an obstacle is created when the consumers' (or users') recourse to a service is slowed down or rendered more complex, for instance by a prior declaration or by registration with an administrative organisation.[91] In fact, by requiring that the clubs and players do everything possible to ensure that the agent signs the "intermediary declaration", the FIFA Regulations also hamper the service provided by the agent and infringe the freedoms established by the TFEU.

Moreover, it has to be pointed out that in the case of the service providers, the Services Directive prohibits the Member States (in fact, anyone since the States have to ensure that they do not assist with the creation of a restraining system) from imposing "*the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed*".[92] Above all, it has to be underlined that the Services Directive applies in particular to certain requirements and measures by the states that are subject to an assessment regarding the freedom of establishment objective that they pursue. In this respect, they specifically target "*fixed minimum and/or maximum tariffs which the provider must comply with*"[93] that it assumes have a detrimental effect. In fact, we have seen that the 2015 FIFA Regulations set a maximum tariff in the form of a 3% cap and prohibit any payment when the player in question is still a minor.

b) The Possibility of a Justification

Since the "Cassis de Dijon" case,[94] the rule-of-reason principle applies to the freedom of movement and any interference with this freedom may be justified if five cumulative conditions are met: (i) the field has not been harmonised, (ii) the measure in question is applied in a non-discriminatory manner, (iii) the measure is justified by the overriding reason of public interest, (iv) the measure is necessary, objective and effective in order to achieve its pursued aim and (v) the measure is proportionate to the aim pursued.

To examine the first two conditions, that seem closely related, we need to return to the *Piau* case. Indeed, at the time of the *Piau* judgement the question of the international and harmonized regulation of the sports agency business could

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[89] Art. 9.

[90] Whereas n°39.

[91] Whereas n°92 & Art. 19. – See also: ECJ, 28 April 1998, Case C-118/96, *Jessica Safir*, [1998] ECR I-01897.

[92] 1 Art. 16, 2°, d).

[93] Art. 15, 2°, g).

[94] ECJ, 20 February 1979, Case 120/78, *Rewe-Zentral AG v/ Bundesmonopolverwaltung für Branntwein*, [1979] ECR 00649.

have arisen. At the time it was possible to envisage and eventually agree with FIFA that its regulations on sports agents satisfied a public interest need, and this, although it was a self-attributed competence, should in principle belong to the State. Today, after the *Piau* judgment, the White Paper on sport,[95] following the Study on sports agents in the European Union,[96] and after some Member States have opted for legislation and others to make no change, we consider it reasonable to conclude that the need for harmonised regulations on European territory does not seem important in the eyes of the Member States. Since the *Piau* judgement, they have all been aware that they have not implemented harmonisation. Therefore today, no-one can be above the States which have expressed their sovereignty, some by legislating, others by reinforcing their existing legislation, and others by maintaining the activity of sports agents within the sphere of ordinary investment activities. Today, FIFA cannot assume that it has the right to regulate this activity on EU territory.

We should probably consider that the protection of the users of a service is part of these "overriding reasons relating to the public interest" referred to in the Services Directive, as well as the protection of fair trade and the fight against fraud.[97] But it is for the Member States to justify these overriding reasons of public interest when their own measures constitute barriers to these two freedoms. It is for the States to set out their concept of the general interest and when necessary to regulate any particular services on their territory so that a quality of service is guaranteed. And even when it concerns the public interest, the States are obliged to meet obligations that guarantee the exercise of EU freedoms: mutual recognition of diplomas; system of equivalence, obligation to give reasons for the refusal, appeal process, etc. In fact, the general interest only allows strictly justified and proportionate obstacles to be set up. The Court has often stated[98] and the Commission is convinced that, "*an authorization scheme*[99] *should be permissible only where a subsequent inspection would not be effective because of the impossibility of ascertaining the defects of the services concerned afterwards, due account being taken of the risks and dangers which could arise in the absence of a prior inspection*".[100] And yet it must be said that the possibility of a justified authorisation scheme can only really be understood regarding the freedom of establishment and not the freedom of enterprise,[101] and a restriction on the free movement of services cannot benefit from an exception unless it is "*consistent*

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[95] White Paper on Sport, 11 July 2007, COM(2007) 391 final.

[96] KEA & *alii*, Sports agents in the European Union, Study conducted in 2009 for the European Commission.

[97] Whereas n°40 & Art. 4.

[98] ECJ, 22 January 2002, Case C-390/99,
Canal Satélite Digital SL v/ Adminstración General del Estado, and Distribuidora de Televisión Digital SA (DTS), [2002] ECR I-00607.

[99] In the sense given by the directive: Whereas n°39.

[100] Whereas n°54 & Art. 9.

[101] See and compare: Art. 9 & Art. 16.

with fundamental rights which form an integral part of the general principles of law enshrined in the Community legal order".[102]

Therefore, the conclusion is clear: the 2015 FIFA Regulations do not comply with Articles 49, 54 and 56 TFEU. It has to be said that it does not define a correct method for cleaning up the profession of sports agent and protecting the interests of sportspersons. If it is wished to pursue these objectives it would be better to follow the recommendations of the Services Directive which encourages the Member States and the Commission to work towards the creation of professional associations and the drafting of good practice codes.[103]

B. Fundamental Rights

Article 6 §3 TFEU, recognises that "*the fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law*". Examining the compatibility of the 2015 FIFA Regulations with EU law makes necessary a comparison with the corpus of the Council of Europe laws (this *other* body of European law), and with the EU's Charter of Fundamental Rights, which has been an integral part of EU primary law since the Lisbon treaty. In this dual corpus of law, a selection must be made in order to only retain the most relevant aspects with regard to the contents of the FIFA Regulations. This is why we will only concern ourselves with the freedoms of enterprise and work (1), the right of employees to placement free of charge (2), and the right to non-disclosure, corollary to the right to privacy (3).

B.1 Freedom to Work and Freedom of Enterprise

The EU Charter of Fundamental Rights devotes two articles to professional freedoms: Article 15 on professional freedom and the right to work (Freedom to choose an occupation and right to engage in work) and Article 16 on the freedom of enterprise (Freedom to conduct a business).

Article 15 differs little from the TFEU. Indeed, its second paragraph merely reaffirms the principles of free movement of workers (Art. 45 TFEU), the freedom of establishment (Art. 49 TFEU) and the freedom to provide services (Art. 56 TFEU). In doing so, it implicitly refers to the conditions and limitations under the TFEU developed by Court of Justice case law; conditions we have already amply examined. That said, its first paragraph establishes the right of everyone to work and to pursue a freely chosen or accepted occupation; right that is not specifically listed in the TFEU. This right to choose its activity freely is part of the EU's liberal rationale and involves the removal of all unjustified barriers

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[102] Whereas n°83.

[103] Whereas n°7 & 113 & Art. 37.

(rules, conditions, formalities, etc.) that restrict the free meeting of minds between employers and employees. It requires not only a prohibition of all discrimination in employment but also the right of employees to be recruited on the sole consideration of their professional skills and abilities. In this regard, it appears that the 2015 FIFA Regulations have the effect of limiting this freedom to the extent that it requires that employed players only contract, on risk of sanctions, with duly registered agents and signatories of the famous "intermediary declaration". The sanctions are also applicable to employers (the clubs). Indeed, it could well happen that a player may not be recruited by a club on the grounds that his agent is not in compliance with the FIFA Regulations.

For its part, Article 16 of the Charter of Fundamental Rights confirms one of the essential principles that constitute European law, the freedom of enterprise being a cornerstone of the single market. Like the freedom of movement, it is not absolute and may be subject to restrictions. However, these have to satisfy the conditions of Article 52 of the Charter which states, by adopting the well-known method of freedoms set out in the TFEU that "*any limitation on the exercise of rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others*". Indeed, in the light of this principle of freedom of enterprise, it appears evident that the 2015 FIFA Regulations, in particular the stipulations regarding the registration of intermediaries and those concerning disciplinary sanctions, define unjustified restrictions on the freedom of enterprise. By delaying the start of a business activity, by complicating each operation, by rendering more cumbersome the exercise of the business of sports agent by a system of stepped declarations, the FIFA Regulations could discourage persons wishing to set up sports agency businesses without this being justified by a very questionable desire to clean up the profession and protect its users. Once again, the FIFA Regulations do not pass the proportionality test.

B.2 Right of Workers to Free Placement

Is Article 7.5 of the FIFA Regulations on Working with Intermediaries compatible with the fundamental principles of European social law? In our opinion the answer to this question can only be negative.

According to this Article, "*any payment for the services of an intermediary shall be made exclusively by the client of the intermediary to the intermediary".* This provision applies together with what might be called a strict prohibition on payment and, by correlation, the prohibition on the agent to be paid by anyone other than his principal. The fact that Article 7.6 stipulates that "*after the conclusion of the relevant transaction and subject to the club's agreement, the player may give his written consent for the club to pay the intermediary on his behalf*" does not alter this prohibition in principle. It simply

sets out an exception that can only take place in one situation. Before his intervention has achieved its goal, the agent is unable to "offer" his services to his principal, the player, and have the cost borne by the club. Above all, the debt for the payment of the commission owed to the agent is from the outset part of the principal's assets (usually the player), even though the parties subsequently agree that the commission will be paid in whole or only in part, by the club.

In fact, where the placement of employees is involved, one of the principles is that the costs of the placement are borne entirely by the employer without any payment being due by the employee.[104]

Article 7 of Convention C181 on private employment agencies signed in 1997 under the auspices of the International Labour Organisation stipulates:

"1. Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.
2. In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies.
3. A Member which has authorized exceptions under paragraph 2 above shall, in its reports under article 22 of the Constitution of the International Labour Organization, provide information on such exceptions and give the reasons therefore".

In other words, one of the principles within the meaning of this international convention[105] is that the costs of any placement are not charged to the employee, although a derogation may be agreed, but only if this is in the interests of the employee. In this case, it is difficult to see how it would be in the interests of a professional sportsperson to bear the costs of his placement.

Similarly, the Code of Conduct of the International Confederation of Private Employment Agencies (CIETT) explicitly prohibits any requests for payment from workers:

"Principle 3 – Respect for free-of-charge provision of services to jobseekers".

"Private employment services shall not charge directly or indirectly, in whole or in part, any fees or costs to jobseekers and workers, for the services directly related to temporary assignment or permanent placement".

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[104] J.-M. Marmayou et F. Rizzo, "*L'agent sportif au centre des intérêts*", Cah. dr. sport n°32, 2013, 37.

[105] This Convention was ratified by 30 countries including Spain, Belgium, Italy, Japan, Poland, and Uruguay. However it has still not been ratified by France, although it has to be said that France has ratified Conventions C2 on unemployment (1919), C88 on employment services (1948) and C96 on paid placement businesses (1949) which all set out the principal of employee placement services free of charge.

Above all, it has to be noted that Article 29 of the EU Charter of Fundamental Rights confers on this "free of charge" principle a fundamental workers' right: "*Everyone has the right of access to a free placement service*".

Finally, a free placement service is a principal from which there can be no derogation unless this is in the interests of the employee in question.

Once the placement has been completed, and when the employee has accepted by a binding and clear consent to pay all or part of the placement agent's remuneration, it has to be assumed that he has realised that it is in his interest to do so. However, when the FIFA Regulations, or a law,[106] let it to be understood that the remuneration automatically constitutes a debt on the assets of a sportsperson who appoints an agent to find him a contract, the interests of the sportsperson can no longer be assumed. Even less so when practice demonstrates the contrary: sports persons refuse to bear the costs relating to their placement.

It would be preferable if the rules governing sports agents resembled those applicable to the business of artists' agents, and mentioned that the agent's commission will be paid by the employer.

The view that sportspersons can largely afford the costs of their investment and must therefore bear the burden of the remuneration of their agent will certainly be opposed. However, those who put forward this argument only consider sportspersons to be the biggest stars, those who have the largest salaries. But the vast majority of sportsmen and sportswomen, who use an agent, are those with the greatest need (lower division footballers) and earn far from huge salaries. They have relatively short careers and it would significantly reduce their income if the costs of their placement were to be charged to them as a matter of principle. The sportsperson in general should be considered an employee like any other and deserves the same protection, and possibly even greater protection.

B.3 Non-disclosure and Privacy

Is a private organisation able to require its members to publish economic and financial information on the contents of the agreements that they pass with their contracting parties outside the organisation? Can FIFA, as it is expecting to do under Article 6 of its Regulations on Working with Intermediaries, oblige players and/or clubs to disclose to their respective associations (cf. article 3 paragraphs 2 and 3) the full details of any agreed remunerations or payments whatsoever their nature made to an intermediary? Can FIFA impose on its national federations a requirement to publish the details of transactions involving the agents, the total amount of the remuneration or payment made to them by the players and the clubs, and the total cumulated amount involving all the players, and the total cumulated amount by each club?

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[106] See the French law: art. L.222-17, C. sport.

This requirement may be considered legitimate in a society where transparency[107] appears to be a cardinal virtue. Since the footballing world is accused of money laundering, tax fraud and corruption, the transactions that take place in this world should be placed under the spotlight so that the public at large are informed of the sums that leave the clubs and the players only to pass into the hands of an agent. Ultimately, this measure will match the societal movement that multiplies the obligations for economic transparency in times of crisis and the measures to fight against a lack of transparency in the business world and particularly that of international finance.

But on the other hand would not the injunction confront the other facet of the law that allows an entity, whether an individual or corporation, to live and act in secret?

Indeed, although it is difficult to argue that a non-disclosure right, especially in business matters, can be directly guaranteed by EU law. It has to be recognised that a rather effective form of the law on non-disclosure can be found in the wake of the law on personal privacy.[108] Although transparency doubtless authorises the right to information that can be broken down into a freedom of expression and a right to access information on the grounds of a public need, this cannot be taken as total or absolute. It has to have boundaries and these are formed by the laws on personal privacy, certainly not absolute, but just as fundamental.

On the one hand therefore the right to privacy including the right to business secrets[109] is one facet. It is guaranteed by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 7 of the Charter of Fundamental Rights of the European Union, it benefits both individuals and corporate entities and even breaks down according to the European Court on Human Rights into a right to the protection of the "*business*" domicile.[110] The European Court of Justice[111] has also recognised the right to the privacy of business premises. It has even considered that it cannot be considered that the notion of privacy has to be interpreted as excluding business

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[107] Rapport annuel de la Cour de cassation 2010 : Le droit de savoir.

[108] About this issue : P. Spinosi, «*Le secret des affaires et le secret du patrimoine face aux droits et libertés individuels*», Dr. et patr., 2014, 233. – V. Magnier, *Transparence du patrimoine et société*, RLDA 2012/68, 107. – M.-C. de Lambertye-Autrand, *Transparence du patrimoine et droits fondamentaux*, RLDA 2012/68, 79.

[109] F. Moulière, «*Secret des affaires et vie privée*», D. 2012, 571.

[110] ECHR, 16 April 2002, Case 3797/97, *Société Colas Est et autres v/ France*, Rec. ECHR 2002, III, § 41. – ECHR, 4e sect., 16 October 2007, Case 74336/01, *Wieser et Bicos Beteiligungen GmbH v/ Austria*, § 45. – ECHR, 1re sect., 3 July 2012, Case. 30457/06, *Robathin v/ Austria*, § 39. – In France, this right was recognised by the Conseil constitutionnel (Cons. const., 29 December 1983, décis. n°83-164 DC, JCP 1984. II. 20160, R. Drago et A. Decocq) and by The Cour de cassation (Cass. crim., 23 mai 1995, Bull. crim. n°193; RTD civ. 1996, 130, J. Hauser; Rev. sociétés 1996, 109, B. Bouloc).

[111] ECJ, 22 October 2000, Case C-94/00, *Roquette SA*, § 29.

activities of individuals as well as corporate entities.[112] It has already recognised "the legitimate interest of undertakings to prevent their business secrets from being revealed" and that "business therefore benefit from a special protection by the application of a European law 'general principle'".[113]

On the other hand, the right to information draws its strength from Article 10 ECHR, on the freedom of expression. This gives journalists the right to inform the public on any subject that might interest them and even obliges states to take positive actions in some areas (such as the environment) so that the public is properly informed, and the activities of private individuals and whistle-blowers are sufficiently protected.[114] In order to "*strike a fair balance when protecting two values guaranteed by the Convention"*,[115] it is now accepted that journalists and whistle-blowers can unveil secret practices if the information revealed "*contributes to a public discussion on an issue of general interest*"[116] or if "*citizens have a major interest in seeing"*[117] the said information[118] *"disclosed or published*".

It is therefore appropriate to question the legitimacy of FIFA's right to claim for itself a freedom that benefits journalists (unthinkable) and whistle-blowers (why not?). The question arises as to whether the information on the amounts paid by clubs to agents and correspondingly the amount collected by these agents is of sufficient public interest to justify the setting aside of the right to privacy. The question also arises as to whether such information results from sufficient public interest to require States to take positive transparency actions, such as on environmental matters.

The legal answer would appear to be obvious. FIFA does not have this authority. However, it has adopted a political standpoint: it has raised this question in order to place it in the spotlight, present it as a problem, place it at the centre of

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[112] ECJ, 14 February 2008, Case C-450/06, *Varec SA v Belgique*, § 48. Note that European Directive (Dir. n°2002/58/EC dated 12 July 2002) concerning the processing of personal data and the protection of privacy in the field of electronic communications recommends that an identical protection of privacy and personal data should also apply to individuals and corporate entities (consid. 12).

[113] ECJ, 24 June 1986, Case 53/85, *AKZO Chemie BV & AKZO Chemie UK Ltd. v/ Commission*, § 28. – ECJ, 19 May 1994, *SEP v/ Commission*, Case C-36/92 P, [1994] ECR I-1991. – *Adde* : ECJ, 1 july 2008, *Chronopost & La Poste v/ UFEX e. a.*, Case C-341/06 P & C-342/06 P, [2008] ECR I-4777.

[114] ECHR, sect. 2, 10 January 2012, Case 30765/08, *Di Sarno et a. v/ Italia*. – ECHR, sect. 3, 30 march 2010, Case 19234/04, *B cil v/ Roumanie*. – ECHR, sect. 3, 27 January 2009, Case 67021/01, *T tar v/ Roumanie*. – ECHR, 5 December 2013, Case 52806/09 & 22703/10, *Vilnes & a. v/ Norvège*.

[115] ECHR, gr. ch., 7 February 2012, Case 39954/08, *Axel Springer AG v/ Germany*, § 84.

[116] ECHR, gr. ch., 21 January 1999, Case 29183/95, *Fressoz et Roire v/ France*. – ECHR, sect. 1, 1 March 2007, Case 510/04, *Tonsbergs Blad AS & Haukom v/ Norway.*

[117] ECHR, gr. ch., 12 February 2008, Case 14277/04, *Guja v/ Moldavia*. – ECHR, sect. 5, 21 July 2011, Case 28274/08, *Heinisch v/ Germany*.

[118] This search for a balance between the right to privacy in business matters and the freedom of expression can be found in the Directive Proposal on the protection of expertise and business secrets against the illegal obtaining, using and revealing information, COM(2013) 813 final. – *Adde* : J. Lapousterle, "*Les secrets d'affaires à l'épreuve de l'harmonisation européenne*", D. 2014, 682.

debates, etc., and in the longer term require the Court of Justice to rule and state with certainty that it is not for FIFA to deal with this problem but rather to confirm that the problem exists and has to be dealt with by the States, either directly or indirectly, with the assistance of private instances (the national sports federations) to which they will grant public power prerogatives.

However, this is to forget that although the right to privacy may also yield before the needs of the public authority, it will in any event enjoy the benefits of procedural safeguards. Even before public interests as imperative as the need for truth in criminal cases and the effectiveness of the tax legislation, the right to non-disclosure would only be waived when this becomes absolutely necessary (proportionality test) and that it is accompanied by the right to effective remedies[119] and the right to a fair trial.[120]

To the simple yardstick of the proportionality test, we can already answer that the transmission of contracts to a specialized supervisory authority (but held in secret) would seem to be more effective and less intrusive than the indiscriminate public disclosure of detailed financial information.

From all this it results that the 2015 FIFA Regulations do not fully comply with the legal requirement of a respect for privacy.

However, it can be further underlined that this regulation rightly stipulates that the agent has signed an "intermediary declaration" in which he agrees "*that the association concerned holds and processes all data for purposes of publication*". In fact, the right to privacy, in the wake of which is the right to non-disclosure, is a self-defining right, the extent of which is determined by the person himself who decides whether or not to include a particular item of information in his own sphere of privacy. This argument might have some force if the sports agent were perfectly free to define the boundaries of his private world, if he were not placed under an obligation, and if his signature were not a pre-requisite for him entering this market. Consequently, this pseudo-consent does not protect the system, the intrusiveness of which goes well beyond what is required.

Conclusion

On completion of this paper, we believe that the new FIFA Regulations on Working with Intermediaries are not compatible with EU law for 3 reasons.

First, they are contrary to European competition law since they realize an hardcore restriction unjustifiable under Article 101 TFEU and an abuse of dominance under Article 102 TFEU.

Second, they cause intolerable harm to three freedoms: Free Movement of Capital, Workers Freedom of Movement and Freedom of Establishment and to Provide Services.

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[119] Art. 13, Conv. PHRFF.

[120] Art. 6, Conv. PHRFF.

Third, they violate the fundamental rights guaranteed by the EU's Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Specifically, they undermine the Freedom to Work and Freedom of Enterprise, the right of workers to a free placement and the right to privacy.

FIFA REGULATIONS FROM THE TAXATION "CORNER"

by *Mario Tenore*[*]

1. Introduction on the new FIFA Regulations

This contribution deals with the tax treatment of players' intermediaries from an international context. In particular it aims at illustrating from a general standpoint the main international tax issues which may arise insofar a club pays an intermediation fee to a foreign intermediary.

Before entering the analysis of the tax aspects, I will elucidate through a general summary the most relevant sections of the new FIFA regulations (hereafter simply "FIFA Regulations") from the point of view of the tax expert. In particular, the features of the FIFA Regulations which are relevant from the tax standpoint are the following:

- the services of an intermediary can either be aimed at: a) concluding an employment contract between a player and a club, or b) at concluding a transfer agreement between two clubs;
- the relevant representation contract must specify the nature of the legal relationship;
- for example, whether the intermediary's activities constitute a service, a consultancy, a job placement or any other legal relationship;
- the representation contract to be entered into between a player and/or club and an intermediary must be recorded in writing prior to the intermediary commencing his activities. The representation contract must contain some minimum details, namely: the names of the parties, the scope of services, the duration of the legal relationship, the remuneration due to the intermediary, the general terms of payment, the date of conclusion, the termination provisions and the signatures of the parties;

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- FIFA Regulations also dictate some standards for calculating the remuneration of the intermediary, in particular:
  - if an intermediary has been engaged to act on a player's behalf such remuneration shall be calculated on the basis of the players' basic gross income for the entire duration of the contract;
  - if an intermediary has been engaged to act on a club's behalf such remuneration is paid on a lump sum basis agreed prior to the conclusion of the relevant transaction. If agreed, such a payment may be made in instalments;[1]
- any payment for the services of an intermediary shall be made exclusively by the client of the intermediary to the intermediary. After the conclusion of the relevant transaction and subject to the club's agreement, the player may give his written consent for the club to pay the intermediary on his behalf. The payment made on behalf of the player shall be in accordance with the terms of payment agreed between the player and the intermediary.

2. International tax issues in an international transfer

2.1 When does an intermediary fee paid to a non-resident intermediary become taxable in the State of residence of the club paying such fee?

After this preliminary introduction on the FIFA Regulations (limited to the sections which could be relevant from a tax angle), the analysis will now focus on the tax issues that may arise in connection with an international transfer of a player.

The analysis will seek to illustrate the relevant domestic law issues (bearing in mind that each State has its own tax regime) and will assume (unless otherwise stated) that all the States concerned have concluded tax treaties which are in line with the OECD Model Tax Convention (hereafter the "OECD MTC").

For those who are non-tax expert, tax treaties are bilateral agreements that are mainly aimed at sharing the taxing rights between two or more contracting States. Tax treaties are not the source of taxing rights, i.e. tax treaties may not impose a tax, since the exercise of taxation has to be grounded in domestic law. By contrast, the function of tax treaties is that of limiting or mitigating the taxing rights that a Contracting State is willing to exercise (based on its domestic law)

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[1] As a recommendation, players and clubs may adopt the following benchmarks:
a) The total amount of remuneration per transaction due to intermediaries who have been engaged to act on a player's behalf should not exceed three per cent (3%) of the player's basic gross income for the entire duration of the relevant employment contract.
b) The total amount of remuneration per transaction due to intermediaries who have been engaged to act on a club's behalf in order to conclude an employment contract with a player should not exceed three per cent (3%) of the player's eventual basic gross income for the entire duration of the relevant employment contract.
The total amount of remuneration per transaction due to intermediaries who have been engaged to act on a club's behalf in order to conclude a transfer agreement should not exceed three per cent (3%) of the eventual transfer fee paid in connection with the relevant transfer of the player.

upon the income of either a resident or a non-resident taxpayer. As a general matter, in tax treaties consistent with OECD MTC, income earned by an intermediary deriving from the activity performed in the course of a transfer negotiation falls under the rule dealing with business income (i.e. Article 7 "Business income").[2] This is due to the fact that the term "business" is defined in article 3(1)(h) of the OECD MTC and it encompasses professional services and other activities of an independent character.

According to art. 7 of the OECD MTC, the intermediation fee is taxable exclusively in the State of residence of the intermediary unless the intermediary carries out the relevant activity in the other State through a "permanent establishment" located therein.

In the majority of cases intermediaries do not run negotiations in the State of the club through a permanent establishment.

But when is this the case and accordingly is the intermediary liable to tax on the intermediary fee in the State in which the activity was carried out (i.e. the State where the club is resident)?

The term "permanent establishment" is defined in Article 5 of the OECD MTC (the same definition should be found therefore in treaties consistent with OECD MTC).[3]

There are several instances in which a permanent establishment could be found to exist.

When it comes to intermediary activities, two instances could be particularly relevant namely, the so called "material" permanent establishment (hereinafter as well "Material PE") and, in some limited cases, the so called "agency" permanent (hereinafter "Agency PE").

The two types of permanent establishment are further illustrated below.

2.1.1 The so called "Material PE"

According to Art. 5(1) of the OECD MTC a "material" permanent establishment could be found to exist insofar as the foreign intermediary maintains in the State of the Club a "fixed place of business through which the business of an enterprise is

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[2] Burgers, I.J.J., 'Commentary on Article 7 of the OECD Model treaty', in: Burgers, Ostaszewska & Betten (eds), The Taxation of Permanent Establishments, loose-leaf ed.

[3] Aigner, H.-J. & Züger, M. (eds), Permanent Establishments in International Tax Law (2003); 1 Brugger, F. & Plansky, R (eds), Permanent Establishments in International and EU Tax Law (2011); Bruins Slot, W. & Gerrits, E.D.M., Vaste inrichtingen, FP, blz. 12 et seq. (2006/13); IFA (ed.), The Position of Permanent Establishments in National and International Fiscal Law, 34a CDFI (1957); IFA, 'The Development in Different Countries of the Concept of a Permanent Establishment', 52 CDFI (1967); IFA, 'The Taxation of Enterprises with Permanent Establishments Abroad', 58a CDFI (1973); IFA, 'The OECD Model Convention, 1997 and Beyond - Current Problems of the Permanent Establishment Definition', 22a IFA Congress Seminar series (1999); IFA, 'Taxation of Income Derived from Electronic Commerce', 86a CDFI (2001); IFA, 'Is There a Permanent Establishment?', 94a CDFI (2009); Reimer, E., Schmid, S. & Orell, M., Permanent Establishments. A Domestic Taxation, Bilateral Tax Treaty and OECD Perspective, 3rd ed. (2013).

wholly or partly carried on". According to Art. 5(2) of the OECD MTC the term "permanent establishment" includes especially "an office" located in the State in which the business activity is carried on. The term "office" is referred as an example which can be regarded, prima facie, as constituting a permanent establishment. As these examples are to be seen against the background of the general definition given in paragraph 1, it is assumed that the Contracting States interpret the terms listed, i.e. "an office" in such a way that it constitutes permanent establishments only if it meets the requirements of paragraph 1.

These requirements are therefore illustrated thereafter.

The term "place of business" covers any premises, facilities or installations used for carrying on the business of the enterprise whether or not they are used exclusively for that purpose. A place of business may also exist where no premises are available or required for carrying on the business of the enterprise and it simply has a certain amount of space at its disposal. It is immaterial whether the premises, facilities or installations are owned or rented by or are otherwise at the disposal of the enterprise.

Interestingly, the place of business may be situated in the business facilities of another enterprise. This may be the case for instance where the foreign intermediary has at its constant disposal certain room in the office of a resident intermediary of the State of the club.

The place of business has to be a "fixed" one. Thus in the normal way there has to be a link between the place of business and a specific geographical point. Since the place of business must be fixed, it also follows that a permanent establishment can be deemed to exist only if the place of business has a certain degree of permanency, i.e. if it is not of a purely temporary nature. A place of business may, however, constitute a permanent establishment even though it exists, in practice, only for a very short period of time because the nature of the business is such that it will only be carried on for that short period of time.

OECD Commentary recognizes that it is sometimes difficult to determine whether this is the case. With regard to the timing requirement, this is considered to be met insofar as the place of business is maintained for a period longer than six months.

One exception has been where the activities were of a recurrent nature; in such cases, each period of time during which the place is used needs to be considered in combination with the number of times during which that place is used (which may extend over a number of years).

Another exception has been made where activities constituted a business that was carried on exclusively in that country; in this situation, the business may have short duration because of its nature but since it is wholly carried on in that country, its connection with that country is stronger.

2.1.2 The so called "Agency PE"

The definition of Agency PE is contained under Art. 5(5) of the OECD Model Tax Convention insofar as "a person […] is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise […]".

According to the OECD Commentary, persons whose activities may create an Agency PE do not need to be employees of the enterprise. Such persons may be either individuals or companies and need not be residents of, nor have a place of business in, the State in which they act for the enterprise. According to Art. 5(5) only persons having the authority to conclude contracts can lead to an Agency PE for the enterprise maintaining them. In such a case the person has sufficient authority to bind the enterprise's participation in the business activity in the State concerned. The use of the term "permanent establishment" in this context presupposes, of course, that that person makes use of this authority repeatedly and not merely in isolated cases.

The OECD Commentary clarifies that the phrase "authority to conclude contracts in the name of the enterprise" does not confine the application of the paragraph to an agent who enters into contracts literally in the name of the enterprise; the paragraph applies equally to an agent who concludes contracts which are binding on the enterprise even if those contracts are not actually in the name of the enterprise.

The authority has to be habitually exercised in the other State; whether or not this is the case should be determined on the basis of the commercial realities of the situation. A person who is authorised to negotiate all elements and details of a contract in a way binding on the enterprise can be said to exercise this authority "in that State", even if the contract is signed by another person in the State in which the enterprise is situated or if the first person has not formally been given a power of representation.

The extent and frequency of activity necessary to conclude that the agent is "habitually exercising" contracting authority will depend on the nature of the contracts and the business of the principal. It is not possible to lay down a precise frequency test. Nonetheless, the same sorts of factors considered in paragraph 6 would be relevant in making that determination.

2.1.3 When does the intermediary maintain a permanent establishment in the State of the Club?

The assessment regarding the existence of a permanent establishment is a facts-finding process, namely all facts and circumstances are to be taken into account.

Ordinary business practice shows that intermediaries usually travel to the State of the club, in which they run the negotiation to return to their own country (very often after a limited period of time) upon the conclusion of the negotiation.

Given the short physical presence of the intermediary in the State of the Club it is therefore very unlikely that the latter shall be deemed to operate in such State through either a Material PE or an Agency PE. I will hereinafter illustrate some situations in which nonetheless there is a risk for intermediaries that tax authorities of the State of the Club could seek to claim the existence of a permanent establishment of the intermediary in such State (again, the analysis will rely on rules which are contained in the OECD MTC and which have been described under § 2.1.1. and § 2.1.2).

The most recurrent risk of permanent establishment could arise if the foreign intermediary works for a sport agency which maintains an office in the State in which the relevant intermediary activity is carried on (assuming that such State coincides with State of the Club). Art. 5 paragraph 2 of the OECD MTC mentions the office as a positive example of permanent establishment. Provided that such place of business meets the requirement described in § 2.1.1., the office of the sport agency could be regarded as a Material PE of the intermediary or of the sport agency itself. The risk of permanent establishment could even materialize if such office has a representative function or in any case if the negotiations are carried out not at that distinct place.

Another risk element for the existence of a permanent establishment could arise insofar it is the foreign intermediary acts in a given State through persons (e.g. a resident intermediary) which are resident of this State and who represent the foreign intermediary vis à vis anyone would be interested to engage the services of the foreign intermediary.

In this case tax authorities of the State of the Club could either claim that (i) the office of the resident intermediary is at the disposal of the foreign intermediary and that such office constitutes a Material PE of the foreign intermediary in the State of the Club or that (ii) the foreign intermediary maintains an Agency PE in the State of Club insofar as the resident intermediary is authorized to negotiate all elements and details of a representation contract with the Club in a way binding on the foreign intermediary, even if the contract is ultimately signed by the latter.

It could be said in general that the higher is the number of clubs/players which the foreign intermediary assists in a given State, the higher is the risk that tax authorities could challenge the existence in that State of a permanent establishment of the foreign intermediary and could therefore claim that the income derived therein by the intermediary is taxable.

In case the foreign intermediary is deemed to maintain a permanent establishment in the State of the Club, the intermediation fee becomes taxable therein under Art. 7 ("Business Profits") of the relevant tax treaty (assuming that such treaty is consistent with OECD MTC).

From a practical standpoint, several domestic legislations impose on the foreign intermediaries the obligation to submit to the Club a specific set of documentation in advance for the payment. Such documentation consists in particular (i) in an official statement issued by the State of residence of the intermediary confirming that the latter is tax resident for purposes of domestic law and of the tax treaty stipulated with the State of the Club and (ii) a statement (so called "affidavit") issued by the foreign intermediary in which the latter affirms to not maintain a permanent establishment in the State in which the club is resident and to be the beneficial owner of the income paid by the club. With regard to the beneficial ownership requirement, the latter could be considered satisfied insofar as the payment is not received by the intermediary as a nominee but the intermediary is the real economic owner of the income which is derived from the intermediary activities.

2.2 Tax treatment of the intermediary fee paid to a foreign intermediary: some examples

This section provides some answers on the tax treatment of intermediary fees paid to non-resident intermediaries.

From a tax perspective the payment of an intermediary fee may have consequences (i) firstly, for the intermediary itself (e.g. in case of non-resident intermediaries if the fee is taxable in the State of the club) and (ii) secondly, for the player (not always, but still not rarely).

Let us then assume the following scenario under which Club A resident in State A engages intermediary resident in State B to act on the club's behalf in the course of negotiation regarding a player. The intermediary receives a lump sum payment which is agreed prior to the conclusion of the relevant transaction.

Let us consider the following assumptions:

a) under its domestic law, State A is willing to tax the lump sum payment (by mean of a withholding tax).
b) State A and State B has entered into a tax treaty based on the OECD Model Tax Convention.

The scenario above illustrated presents a rather straightforward situation, in which the intermediary resides in a country (State B) which has a tax treaty with the State in which the club is resident (State A) and is therefore "treaty protected" vis à vis the intermediary fee earned as a result of an activity performed in the latter State. This means that insofar as the intermediary does not maintain a permanent establishment in the State of the club, Article 7 [i.e. the business income article] of the tax treaty stipulated by the two countries concerned (State A and State B) forbids the State of the Club (State A) from taxing the intermediary fee paid to the non-resident intermediary.

Accordingly, in the case under discussion, State A is no longer entitled to apply its withholding tax on lump sum payment made by Club A in favor of the intermediary.

This conclusion would not change in case the following variations would be taken to the above illustrated scenario, namely:

a) the intermediary is paid by the Player and he acts on behalf of the latter;
b) the intermediary is paid by the Club and he acts on behalf of the latter;
c) the intermediary acts under a dual representation contract (i.e. both for the benefit of the Club and of the Player) and is paid by the Club.

The variants under b) and c) above raise some possible tax consequences in the hands of the player which are dealt with in the following section 2.3).

2.3 Can the intermediary fee be qualified (and taxed) as a "remuneration" for the player's activities?

FIFA Regulations envisage the possibility that, after the conclusion of the relevant transaction and subject to the club's agreement, the player may give his written consent for the club to pay the intermediary on his behalf. The payment made on behalf of the player shall be in accordance with the terms of payment agreed between the player and the intermediary.

In this scenario some consequences could arise in the hands of the player. In particular, subject to domestic law of the State in which the Club is resident, the payment made by the club to the intermediary could be considered income taxable in the hands of the player. In other words, the payment triggers in the hands of the player an income in kind, i.e. a so called "fringe benefit". In particular, the player received a taxable benefit from the club, since the club relieves the player from the payment of the intermediary fee which otherwise the player should have paid himself (on the assumption that the intermediary acts on a player's behalf).

The fact that the fee is taxable as employment income of the player should not prejudice the taxation of the income in the hands of the intermediary.

Specific rules were in force in Italy prior to 1 January 2016.[4] In particular, article 51(4-bis) of the Italian Tax Code introduced a special fringe benefit for professional sportspersons (with effect as from 1 January 2013), which was in fact meant to apply mainly to professional soccer players. According to this provision, the sportsperson was subject to tax upon a portion of the intermediary's fee which is paid by the club that acquires the sporting performances of the athlete. The deemed income in kind was computed in the amount of 15% of the intermediary's fee. The sportsperson was however entitled to deduct from the such amount the fees paid to his own agent (if any).

The underlying rationale of the provision considered that the sportsperson has taken advantage of the services provided by the intermediary appointed by the club. With regard to the existence of the benefit in kind, article 51(4-bis) (now

[4] See M. Tenore, Italy: footballers' tax liability resulting from agent's remuneration paid by the club, www.lawinsport.com/articles/item/italy-footballers-tax-liability-resulting-from-agent-s-remuneration-paid-by-the-club. See also M. Tenore, Italy, in Taxation of Entertainers and Sportspersons Performing Abroad, G. Maisto (ed)., 2016, 477-488.

abrogated) was grounded upon a non-rebuttable presumption, i.e. the sportsperson was unable to give contrary proof that he did not receive any benefit from the activity of the intermediary (which was rendered therefore to the exclusive benefit of the club).

Article 51 (4-bis) of the ITC applied to the extent the intermediary was involved in the negotiation of the sport performance. This was the case, for example, if the intermediary's scope of activities dealt with the resolution or the extension/ renewal of the existing contract between the sportsperson and the club. On the contrary, the provision did not apply if the activity of the agent regards other matters, such as the exploitation of image rights.

Where the sportsperson had appointed his own intermediary it was questionable whether in fact he could have derived any benefit from the activity rendered in the course of the negotiation by an agent who had been appointed by the club. Article 51(4-bis) of the ITC did not allow any contrary proof by the sportsperson (that no benefit was derived from the service rendered by the agent appointed by the club). This preclusion raised doubts as to whether the provision violates the ability to pay principle set out in article 53 of the Italian Constitution.

The provision has been recently eliminated by article 1(8) of Law 208 of 28 December 2015 (Budget Law 2016) with effect as from 1 January 2016.

The elimination of the provision does not mean though that tax authorities are now unable to claim the existence of a fringe a benefit taxable in the hands of the player. This is still the case indeed insofar as Italian tax authorities are able to demonstrate that the intermediary – despite being remunerated by the Club and not by the player – has nonetheless acted exclusively or partially in the interest of the player in the course of the negotiation with the club.

Based on the new FIFA Regulations the existence of a fringe benefit could be straightforward if (i) the services of an intermediary are aimed at concluding an employment contract between a player and a club and (ii) after the conclusion of the relevant transaction and subject to the club's agreement, the player may give his written consent for the club to pay the intermediary on his behalf.

On the other hand the existence of a fringe benefit is less straightforward in case an intermediary has been engaged to provide services in connection with the conclusion of a transfer agreement between two clubs. In cases of pure "intermediation" between two clubs, the benefit of the player (i.e. which is required to identify the existence of a fringe benefit) could not be immediate.

This stated, tax risk exposure may arise in the following two scenarios:

(i) In cases of pure intermediation, tax authorities could find some factual evidence to demonstrate that the intermediary still provided a service in the interest of the player;

(ii) In case of dual representation, tax authorities could challenge that the fee paid by the player is underestimated and that club is therefore bearing a portion of such fee with a view to alleviate the player from the intermediation

cost. The issue here is however whether and to what extent tax authorities would be in a position to challenge that the amount agreed between the player and the intermediary is too low vis à vis the amount paid by the club to same agent.

SECTION II

THE IMPLEMENTATION OF FIFA REGULATIONS

COUNTRY REPORTS

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN ARGENTINA

by *Martin Auletta*[*]

1. Introduction

The FIFA Regulations on Working with Intermediaries replaced the old FIFA Players' Agents Regulations, abandoned the licensing system and established a new set of rules, with minimum standards and requirements that National Associations shall implement. FIFA's objective was to promote and safeguard considerably high ethical standards in the relations between clubs, players and third parties, and thus to live up to the requirements of good governance and financial responsibility principles.

FIFA Circular no.1417 warned its member associations that the new Regulations were to come into effect on 1 April 2015, giving them almost a year to adapt their internal Regulations to the new system.

In spite of that, the Argentine Football Association (hereinafter the "AFA") did not approve its own Regulations on Working with Intermediaries until 10 June 2015.[1] Therefore, for 2 months and 10 days ranging from 1 April to 11 June 2015, in Argentina the old AFA Players' Agents Regulations[2] remained in force, although it was absolutely incompatible with FIFA's new Regulations on Working with Intermediaries.

That is the reason why in its preamble, the AFA Regulations on Working with Intermediaries established their retroactive effect, as of 1 April 2015.

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[1] Published on 11 June 2015 through AFA Special Bulletin no. 5047, available in the following link: www.afa.org.ar/upload/reglamento/Bolet%C3%ADn%20Especial%205047%20-%20Reglamento%20sobre%20las%20Relaciones%20con%20los%20Intermediarios%20(4).pdf.

[2] Approved by the AFA Executive Committee on 13 April 2004 and published in its Special Bulletin no. 3606 one day later. For more information about the old legal framework, see: M. Auletta, "Los agentes de futbolistas en Argentina. Marco normativo. Inconsistencias del régimen. Propuesta para una mayor seguridad jurídica", Mayo de 2012, available in the following link: http://iusport.es/images2/stories//auletta-agentes.pdf.

Additionally, on 23 September 2015 the AFA published its Special Bulletin no. 5086,[3] creating the Special Commission for the treatment and application of the Regulations on Working with Intermediaries (hereinafter the "Special Commission"). The Special Bulletin no. 5086 also regulates some aspects of the intermediary's registration procedure and complements the Regulations, as it will be explained below.

2. Relevant national law

In Argentina there is no state rule specifically intended to regulate the activity of agents or intermediaries in football. There is neither national law nor provincial act regulating the activity of sports agents in general or the activity of football players' agents in particular.

In this context, it's important to take into consideration the following articles of the Argentine brand new Civil and Commercial Code:[4]

- articles 358-381, which regulates the representation relationship;
- articles 1319-1334, which regulates the mandate contract; and
- articles 1479-1501, which regulates the agency contract.

There is no consensus in Argentina regarding the legal nature of the representation contract. Therefore, the aforementioned articles that regulate the mandate contract or the agency contract should be applied to the representation contract, depending on which theory is adopted.

On taxation, Argentine tax authority AFIP[5] approved on 3 January 2013 its General Resolution no. 3432/2013,[6] creating the Professional Football Players Representatives Register (articles 23-33), in which all natural and legal persons who represent professional football players must be registered. This Resolution also obliges the agent to inform to AFIP each and every player he represents and all the payments received from them.

3. Principles

As explicitly recognized in its preamble, the AFA Regulations on Working with Intermediaries have been redacted in compliance with FIFA's mandate. Specifically, article 1.2 of the FIFA Regulations requires National Associations to implement and enforce, at a national level, the minimum standards and requirements established by FIFA's new set of rules.

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[3] Available in the following link: www.afa.org.ar/upload/boletines/5086%20(23-09-2015)%20-%20Comisi%C3%B3n%20Especial%20Reglamento%20Intermediarios.pdf.

[4] Passed on 1 October 2014, it came into force on 1 August 2015. Available in the following link: www.infoleg.gob.ar/infolegInternet/anexos/235000-239999/235975/texact.htm.

[5] *Administración Federal de Ingresos Públicos* (Federal Administration of Public Revenues).

[6] Available in the following link: www.infoleg.gob.ar/infolegInternet/anexos/205000-209999/206906/norma.htm.

Therefore, the AFA Regulations reproduce almost literally many provisions of the FIFA Regulations. We may find the first example of this in article 1, which defines the scope of the AFA Regulations, stating that their provisions are aimed at players and clubs who engage the services of an intermediary to:

a) negotiate an employment contract between a player and a club, or
b) conclude a transfer agreement between two clubs.

Article 2 of the AFA Regulations includes the same general principles set out in the FIFA Regulations:

- players and clubs are entitled to engage the services of intermediaries when negotiating an employment contract or a transfer agreement;
- players and clubs shall act with due diligence in the selection and engaging process of intermediaries; they shall verify the intermediary is properly registered before AFA. Also, they shall use reasonable endeavors to ensure that the intermediaries sign the Intermediary Declaration and the representation contract concluded between the parties;
- any intermediary involved in a transaction shall be registered before AFA;
- the engagement of officials as intermediaries by players and clubs is prohibited.

In addition, the AFA Regulations include other general principles, which state the following:

- clubs or players shall not engage, contract or pay any person to perform activities provided by the Regulations, unless he is registered as an intermediary and he acts protected by a representation contract;
- the intermediary's activities may only be subject to the representation contract and in full accordance with FIFA and AFA provisions. The player shall not be conditioned on the acceptance of a particular intermediary;
- where the intermediary is a legal person, all the individuals representing the legal entity shall be registered before AFA and comply with all the requirements for natural persons who act as an intermediary. Signing representation contract by people who have not been previously registered as individuals representing the legal entity is prohibited.

4. Definitions

In its first section, the AFA Regulations define the intermediary in the same terms as the FIFA Regulations:

- *Intermediary:* a natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement.

Furthermore, the AFA Regulations include the following definitions:

- *Registration number:* registration identification assigned by the AFA which enables one to act as an intermediary.

- *Official:* every board member, committee member, referee and assistant referee, coach, superior administrative employee and any other person responsible for technical, medical and administrative matters in FIFA, South American Football Confederation (CSF), AFA, League or Club as well as all other persons obliged to comply with the FIFA and CONMEBOL[7] Statutes (except players).
- *Applicant:* natural or legal person seeking to obtain their registration before AFA to act as an intermediary.

Finally, the AFA Regulations also include the same clarification contained in the FIFA Regulations, warning that terms referring to natural persons are applicable to both genders as well as to legal persons. Any term in the singular also applies to the plural and vice-versa.

5. Registration

According to article 16 of the AFA Regulations, with the coming into force of the new Regulations, the previous licensing systems shall be abandoned. All existing licenses will lose validity with immediate effect and shall be returned to the AFA. The AFA will not register as an intermediary any agent who has not previously returned his license.

The previous licensing system is replaced with the new public Intermediaries Registry, in which any natural and/or legal persons wishing to engage in the negotiation of an employment contract between a player and a club or in the negotiation of the transfer of a player between two clubs shall register.

The AFA is obliged to keep its Intermediaries Registry up to date and shall assign each registered intermediary with a registration number, that will be published on AFA's website in order to ensure the system's publicity.

As anticipated above, the registration procedure is also regulated by the AFA Special Bulletin no. 5086 (hereinafter the "Special Bulletin").

To be registered as an intermediary, the applicant shall submit a written application to the Management of AFA Players Registry (article 4.1). Applications from foreign persons shall only be accepted if the applicant has residence in Argentina (article 1.1 of the Special Bulletin).

If the application is admissible (the Regulations does not specify any reasons to reject the application), the AFA shall summon the applicant for a personal interview, in order to determine if he seems suitable for advising a player or club (article 4.2).

This personal interview will be conducted by the Special Commission and will last for a minimum of ninety minutes and a maximum of one hundred and twenty minutes. The applicant shall be evaluated on his knowledge of the national Regulations, the FIFA Regulations, the Collective Agreement and specific rules of the intermediary's activity, as to his legal liability (article 1.1 of the Special Bulletin).

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[7] CONMEBOL is an acronym derived from *CONfederación sudaMEricana de FútBOL* (South American Football Confederation).

What criteria are used to determine if the candidate "seems suitable" to act as an intermediary? The Regulations do not answer this important question. Therefore and unlike the previous system, in which the candidates needed to pass a written examination,[8] the new Regulations seem to give the AFA a discretionary power to decide on the applications admissibility.

Although the Regulations provide that personal interview of the applicants for intermediary will occur in two annual dates in April and September, article 1.1 of the Special Bulletin annulled this provision establishing that the interviews will take place in May and November.

6. Requirements and conditions

If the personal interview is considered positive (whatever that may mean), the applicant shall fulfill a number of prerequisites to obtain his registration as an intermediary (article 4.3), including the following:

a) a copy of the National Identity Card (for natural persons and/or individual representatives of legal persons) or Fiscal Code number (for legal persons);
b) a copy of the power of attorney granted by a notary that designates the applicant as an individual representing the legal entity;
c) two recent photographs of the applicant, passport size;
d) applicant's CV, with special reference to any link he may have with sports, in order to allow the AFA evaluate his ability to act as an intermediary;
e) a copy of FIFA Code of Professional Conduct duly signed and a written commitment that he shall perform his activity guided by its principles;
f) the Intermediary Declaration duly signed, included in Annexes 1 or 2 of the Regulations, and the applicant's criminal record issued by the National Recidivism Registry;
g) if the applicant is a players' agent with the AFA license, he shall return his license to the AFA.

Applicants shall pay an annual fee of USD 500 (article 1.1 of the Special Bulletin). If the intermediary is a legal person, the annual fee shall be paid for each individual representing the legal entity. Although not prescribed in the AFA Regulations, article 1.3 of the Special Bulletin also requires applicants to pay a registration fee of USD 1000.

Once all the above-mentioned requirements have been satisfied by the applicant, the AFA shall authorize his registration in the Intermediaries Registry. The registration is personal and not transferable; it allows the intermediary to act in organized football at national level, with due respect to the applicable Regulations (article 5.1).

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[8] The examination consisted in a multiple-choice test with twenty questions about the Regulations of football in both FIFA and AFA (especially in connection with transfers) and basic principles of Argentine national law (personal rights and the law of contract). Fifteen questions were referred to the international regulations and set by FIFA, while the other five questions were related to national regulations and set by the AFA.

Also according to article 5.1, applicants shall submit to the AFA professional liability insurance in their own name with a reputable insurance company that satisfies the AFA.[9] The insurance shall adequately cover any claim for damages of players, clubs or another intermediary that may arise in the future as a result of the intermediary's activity. The minimum amount to be covered has been set at Euro 300.000 (article 1.1 of the Special Bulletin).

The decision of setting the cost of the annual fee, the registration fee and the minimum amount to be covered by the insurance in foreign currency (USD and Euro) is highly questionable, when they should have been established in Argentine pesos.

Once the authorization to be registered has been obtained, the intermediary may add to his name the title of "Intermediary registered before the AFA" (article 5.2).

Intermediaries are expected to meet the requirements and conditions for their registration and to maintain them while performing the activity. They should update, communicate and provide all documentation regarding any changes that might occur to the AFA, within thirty days from its occurrence. The AFA is responsible for monitoring compliance of this obligation (articles 5.3 and 5.4).

The AFA may cancel the intermediary registration, following any violation or circumstance contrary to the Regulations (article 3.3 and article 6), such as the following:

- default in any of the requirements for registration (if it can be remedied, the AFA may give the intermediary a reasonable period of time to meet this requirement);
- not communicating to the AFA any change in his registration data;
- express request of cancellation submitted by the intermediary 30 days in advance;
- termination of the activity, for reasons beyond his work.

Article 1.2 of the Special Bulletin provides that if the application is rejected "on formal grounds" by the Special Commission, the applicant may appeal within five consecutive days (seven consecutive days when the applicant lives over 100 kilometers from Buenos Aires). Although the appeal must be filed with the AFA, article 1.2 provides, quite surprisingly, that the FIFA Players' Status Committee will decide on the issue.

It's really hard to believe that the FIFA Players' Status Committee will hear these cases, when: a) there is no international contact point; and b) since April 2015 FIFA has no jurisdiction over claims related to agents and or intermediaries.

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[9] Article 5.1 reads as follow: "*…applicants who passed the exam… shall submit to the AFA…*" which is an obvious drafting error, since there is no exam in the new Regulations. The exam provided in the old AFA Players' Agents Regulations has been replaced by a personal interview, as already explained.

Therefore, article 1.2 of the Special Bulletin appears to be an unenforceable provision, which may have been inspired by the old article 7 of the FIFA Players' Agents Regulations.[10]

7. Impeccable reputation

According to the Regulations, the intermediary registering a transaction or the individuals representing a legal entity within the scope of the transaction (when the intermediary is a legal person) shall have an impeccable reputation (article 3.2). The problem is that the AFA Regulations on Working with Intermediaries does not define the concept of "impeccable reputation".

However, the Regulations do oblige the applicant to submit to the AFA a criminal record certificate issued by the National Registry of Recidivism, as the AFA Players' Agents Regulations used to demand. Consequently, it can be assumed that the AFA will maintain the same old criteria and require the applicant not to have any criminal convictions in order to be registered as an intermediary.

8. The Special Commission

The AFA Special Commission for the treatment and application of the Regulations on Working with Intermediaries was created three months after the approval of the AFA Regulations, by Special Bulletin no. 5086, in order to handle all administrative work related to the activity of intermediaries.

The numerous tasks assigned to the Special Commission are listed in Article 2 of the Special Bulletin, among which are the following:

- to implement the AFA Regulations on Working with Intermediaries;
- to prepare everything inherent and related to applicants' requests for registration;
- to control, approve or reject insurance policies submitted by the applicants;
- to propose to the AFA Executive Committee reforms to the intermediaries regulations in order to adapt them to the needs of the activity and facilitate the fulfillment of its objectives;
- to supervise the activities of intermediaries and due compliance with the provisions of the Regulations, with full powers to request reports and make requirements to them;
- to judge any violation of the Regulations incurred by intermediaries, players or clubs, may punish with reprimands, fines, suspension or remove the license;

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[10] Article 7 of the FIFA Players' Agents Regulations reads as follow: "*The association is responsible for ascertaining that an application satisfies the relevant prerequisites. If any prerequisite is not met, the application shall be rejected. In such cases, the applicant may submit all the relevant documents to the FIFA Players' Status Committee and request a reassessment of whether his application fulfils the relevant prerequisites. If the prerequisites are deemed to have been satisfied, FIFA shall instruct the relevant association to continue with the licensing procedure. If the applicant is not eligible to be issued with a licence, he may subsequently reapply for a licence at such time as he is able to fulfil the prerequisites for applying*".

the Special Commission may impose sanctions consisting of reprimands, fines, suspension or "cancellation of the license" (which is an obvious drafting error);
- to call the attention of players and/or clubs' authorities that engage in negotiations with persons who are not duly authorized to act as intermediaries;
- to approve the appropriate resolutions for the compliance of the AFA Regulations on Working with Intermediaries.

Article 3 of the Special Bulletin has serious and obvious drafting problems, since it contains provisions that have been evidently copied from the previous Players' Agents Regulations. Thus, article 3 provides that the Special Commission should "prepare the examinations and organize the evaluation of the applicants" (paragraph c) and "set the questions for the examinations, according to FIFA guidelines" (paragraph d).

It is quite shocking that the Special Bulletin requires the Special Commission "to take any necessary measures in order to ensure that intermediaries shall comply fully with the awards of the Court of Arbitration for Sport (CAS)" (article 3 paragraph c), when the AFA Regulations do not establish the CAS jurisdiction to resolve any conflict. Clearly, this provision has been wrongly extracted from the previous system, in which the CAS had jurisdiction to resolve the appeals filed against the decisions of the FIFA Players' Status Committee in international disputes related to the activity of players' agents.

The Special Bulletin 5086 says nothing about how the Special Commission should be composed, how its members should be elected or how long they last in office. It can be deduced that the Special Commission should be composed of three members, since article 3 establishes that its decisions "shall be valid with the vote of two thirds (2/3) of its members, therefore there is a possibility that one may abstain from voting or vote in dissent".[11]

Again, article 3 provides that the Special Commission resolutions "may be appealed to FIFA in the same way as established in article 1" (i.e., to the FIFA Players' Status Committee) and that the filing of an appeal shall not stay the appealed resolution. The same objections raised above in paragraph 6 are applicable to this provision.

9. Registration of operations

In line with the FIFA Regulations on Working with Intermediaries, the AFA Regulations establish the obligation to register all transactions concluded with the services of an intermediary, provided that the intermediary has been previously registered in the Intermediaries Registry (article 3.1).

The obligation to register transactions concluded with the services of an intermediary falls on the person who hired their services, i.e., the player or the club:

[11] At the time of writing this chapter, the Special Committee had not been put into operation.

a) when the player signed an employment contract with a club (or its renegotiation) with the services of an intermediary, he must send to the AFA the Intermediary Declaration and any other documentation upon request (article 7.1);
b) when the club concluded a transfer agreement with another club with the services of an intermediary, it shall submit to the AFA the Intermediary Declaration and any other documentation upon request (article 7.2).

When a player is registered before the AFA, the representation contract and any other document related to the intermediary's activity shall be attached to the transfer agreement or the employment contract. Clubs or players shall ensure that any transfer agreement or employment contract concluded with the services of an intermediary bears the name and signature of such intermediary. In the event that a player and/or a club have not used the services of an intermediary in their negotiations, the pertinent documentation lodged within the scope of the respective transaction shall contain a specific disclosure of this fact (articles 7.4 and 7.5).

10. Conflicts of interests

The conflict of interest issue was one of the main subjects in which FIFA focused its attention when drafting the proposal to reform the agents licensing system. That's why both the FIFA and the AFA Regulations on Working with Intermediaries force players and/or clubs to do everything they can to avoid any conflict of interest that may arise (article 12.1).

No conflict of interest would be deemed to exist if the intermediary discloses in writing any actual or potential conflict of interest he might have with one of the other parties involved in the transaction and he obtains the express written consent of all the other parties involved prior to the start of the relevant negotiations (article 12.2).

Another novelty of the Regulations is the permission of dual representation, i.e., one intermediary representing for the purpose of a transaction both the player and one of the clubs involved, at the same time. For this to be permitted, the intermediary shall obtain express written consent prior to the start of the relevant negotiations from the player and the club concerned, and shall confirm in writing which party will remunerate him. The parties shall inform the AFA of any such agreement and accordingly submit all the aforementioned written documents within the registration process (article 12.3).

11. Intermediary's obligations

The AFA Regulations impose a number of obligations on intermediaries, among which are the following:

a) to respect and to comply with the statutes, Regulations, directives, circulars and decisions issued by the competent bodies of FIFA, the CSF and the AFA (articles 4.4 and 13.1);
b) to avoid any contractual relationship with leagues, associations, confederations or FIFA that could lead to a potential conflict of interest (article 3.2.);
c) to carry out personally the activities included in the representation contract, since the Regulations prohibit to delegate or transfer them (according to article 3.2, any clause stating the contrary shall be null and void); and
d) to guarantee the compliance of the provisions, Statutes, Regulations, directives, circulars and decisions of the competent bodies of the FIFA, the CSF, the AFA and any corresponding National Association as well as the Argentine legislation, in every transaction in which the intermediary is involved.

Article 11 of the Regulations prohibit the intermediary from engaging directly or indirectly with a player or club who has signed an exclusive representation contract with another intermediary, unless they had decided to terminate their relationship or he obtains written consent of the exclusive intermediary.

12. The representation contract

Article 8 regulates the representation contract and highlights its importance, stating that the intermediary shall only represent a player or a club if he has already signed a written representation contract with them (article 8.1).

Article 8.2 of the AFA Regulations reproduces almost literally article 5.1 of the FIFA Regulations, which provides that clubs and players shall specify in the representation contract the nature of the legal relationship they have with their intermediaries.

The same applies to article 8.3 of the AFA Regulations, which replicates article 5.2 of the FIFA Regulations, stating that the representation contract shall include the main points of the legal relationship entered into between a player and/or club and an intermediary and must contain the following minimum details: the names of the parties, the scope of services, the duration of the legal relationship, the remuneration due to the intermediary, the general terms of payment, the date of conclusion, the termination provisions and the signatures of the parties.

If the player is a minor, the player's legal guardian(s) shall also sign the representation contract in compliance with the national law of the country in which the player is domiciled (article 8.5).

Nevertheless, the AFA went further than FIFA in regulating the representation contract. Thus, for instance, clauses of automatic or unilateral extension are prohibited in Argentina (article 8.4)

An important change from the previous Players' Agents Regulations is that in the new Regulations there is no time limit regarding the duration of the legal relationship between the player and/or club and the intermediary. The old limitation

of two years has been repealed and now the duration of the contract depends on what the parties agree.

In terms of formalities, the representation contract shall be drafted in three copies (in four copies if the player is registered before a foreign federation) and signed by both parties. Within ten days after the signing, the intermediary shall send all copies to the AFA for registration: AFA shall retain one copy, the intermediary shall keep another and the player or the club the third one (the National Association in which the player or the club is registered will keep the fourth copy, when it's a different association than the AFA). If the contract is written in a foreign language it shall be accompanied with a translation to Spanish issued by a certified translator (article 8.6). Any subsequent amendment to the contract shall be also registered before the AFA (article 8.7).

13. Remuneration

The AFA Regulations also follow the principles set out by FIFA when dealing with remuneration of intermediaries.

Although article 10.1 provides that the amount of remuneration due to an intermediary who has been engaged to act on a player's behalf shall be calculated on the basis of the player's basic gross income for the entire duration of the contract, this principle is practically overridden by article 10.2, which allows forclubs and/or players that engage the services of an intermediary to remunerate him by payment of a lump sum, fixed or variable, agreed prior to the conclusion of the relevant transaction. If agreed, such a payment may be made in installments.

Paragraphs 3 to 6 of article 10 of the AFA Regulations reproduce, almost literally, paragraphs 4 to 7 of the FIFA Regulations.

Thus, clubs shall ensure that payments to be made to another club are neither paid to, nor made by intermediaries. This applies but is not limited to owning any interest in any transfer compensation or future transfer value of a player (article 10.3).

The same article 10.3 prohibits the assignment of claim. However, this prohibition is contrary to Argentine law and could be easily challenged in Courts, if the assignment of claims was made according to the pertinent provisions of Argentine Civil and Commercial Code.

The general principle is that any payment for the services of an intermediary shall be made exclusively by the client of the intermediary to the intermediary (article 10.4). Nevertheless, article 10.5 allows that after the conclusion of the relevant transaction, and subject to the club's agreement, the player may give his written consent for the club to pay the intermediary on his behalf.

While the FIFA Regulations recommend a maximum limit on the remuneration payable to intermediaries (3% of the agreed player's basic gross income in case of conclusion of an employment contract or 3% of the transfer compensation in case of conclusion of a transfer agreement) the AFA Regulations do not contain any recommendation or benchmark in this subject.

Instead, the AFA Regulations reproduce the prohibition of making any payments to the intermediary when players and/or clubs engage his services for the negotiation of an employment contract and/or a transfer agreement related to a minor player (article 10.7).

This provision is one of the most questionable of the Regulations. On one hand, because in Argentina a club can sign an employment contract with a player from the age of sixteen.[12] Then, if the services of an intermediary are engaged to conclude an employment contract for a player of sixteen or seventeen years, why should the Regulations prohibit making payments for these services? The prohibition does not seem reasonable even in cases of amateur players, if the activity performed by the intermediary is legal and generates a profit for the player and/or the club.

14. Obligation of disclosure

Another objective of FIFA's reform was to increase transparency in activities involving intermediaries. Article 9 of the AFA Regulations follows article 6 of the FIFA Regulations, requiring players and/or clubs to disclose to the AFA the full details of any and all agreed remunerations or payments of whatsoever nature that they have made or that are to be made to an intermediary. The Regulations also oblige players and/or clubs to disclose, upon AFA's request, any agreement they might have signed with an intermediary

This obligation clearly exceeds the scope of the Regulations on Working with Intermediaries, which according to article 1 is limited to engaging the services of an intermediary to negotiate employment contracts or transfer agreements. Therefore, why should players and/or clubs have to disclose to the AFA any payments made to an intermediary related to different activities (eg, the negotiation of image contracts)? There is no justification at all. The right thing for the AFA to do would have been to limit the obligation of disclosure to the payments related to the negotiation of employment contracts or transfer agreements.

Following the idea of increasing transparency, article 9 provides that at the end of March every year, the AFA shall publish a report on its official website, detailing:

- the names of all intermediaries they have registered,
- the single transactions in which they were involved,
- the names of intermediaries to which the registration was canceled, and
- the total amount (consolidated) of all payments actually made to intermediaries by their registered players and their affiliated clubs.

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[12] In Argentina, the majority is acquired at 18 years.

15. Disciplinary powers and sanctions

In the matter of disciplinary sanctions, the provisions of the AFA Regulations are quite poor. Article 15, the only one referring to this subject, provides that any contravention of the Regulations may be sanctioned "*according to the existing rules and Regulations of Argentine Football Association*" (article 15.1).

The provision does not contain any detail referred to the punishable behavior, nor what kind of sanction would be applicable for each violation. The procedure that should be followed in order to sanction a violation is also not described. This leads us to presume that no violation will be punished by the AFA, as happened in the previous system.

If any, sanctions will be published on the AFA's official website and shall be informed to FIFA (article 15.2). The FIFA Disciplinary Committee will then decide on the extension of the sanction to have worldwide effect in accordance with the FIFA Disciplinary Code (article 9.2 of the FIFA Regulations on Working with Intermediaries).

16. Dispute resolution

Finally, we should analyze the controversial article 14, which designates the AFA Dispute Resolution Body (*Órgano de Resolución de Litigios de la AFA*) to hear and resolve any dispute of an economic nature that may arise between intermediaries and clubs and/or players, related to the representation contract signed between them (article 14.1).

The first problem of article 14 is that, despite being included in the AFA Players' Agents Regulations of 2004 (articles 16 and 17), the Dispute Resolution Body is not constituted and has no current operation. That is to say, in fact, it does not exist.

An obvious question arises: who would establish in a contract, the competence of a dispute resolution body that does not exist in reality?

The other paragraphs of article 14 seem to acknowledge this reality, since they do nothing but contemplate causes that may justify the AFA Dispute Resolution Body to be excused from deciding a particular case. In this line, article 14.2 provides that the AFA Dispute Resolution Body shall only be competent if:

a) the transaction that caused the conflict has been previously registered before the AFA;
b) the parties have not violated any provision of the AFA Regulations on Working with Intermediaries; and
c) the representation contract states clearly and unambiguously, the previous and voluntary competence of the Dispute Resolution Body.

If any of these requirements is not met, the AFA Dispute Resolution Body may dismiss the claim.

But there is more. Because even though each and every competence prerequisite is met, article 14.3 allows the Dispute Resolution Body to inhibit the hearing of a case when one of the parties has decided to submit the dispute to ordinary Courts of Justice.

This provision is completely opposite to article 16.1 of the old AFA Players' Agents Regulations, which expressly prohibited submitting any dispute to ordinary Courts.

In this way, the AFA Regulations seem to covertly admit that its Dispute Resolution Body exists only on paper and does not work in reality. Therefore, all disputes between clubs and/or players and intermediaries shall be settled before the ordinary Courts of Justice or any Arbitration Court that the parties may choose.

Finally, in the same vein and without any explanation, article 14.4 provides that the Dispute Resolution Body will not decide any dispute related to a representation contract signed with a minor player.

17. Conclusion

Unfortunately, after having analyzed the AFA Regulations on Working with Intermediaries, our impression is rather negative.

On one hand, the AFA did not respect FIFA's intention to facilitate access to the activity. In the previous system, any (natural) person who intended to act as an agent representing a club or a player needed to obtain the AFA Players' Agents License. Now, according to the AFA Regulations, any (natural or legal) person who wants to act as an intermediary representing a player and/or a club shall obtain their registration before the AFA. The situation is quite similar.

It could be said that there is only one change, and not for the better. In the previous system, getting the Players' Agents License depended on compliance with objective conditions (the most important was to pass the written examination). Now, the registration as an intermediary relies on the result of a personal interview, in which the AFA discretionarily determines if the applicant seems suitable for advising a player.

Consequently the new Regulations give the AFA a subjective and dangerous power to grant access to the intermediary's activity, without establishing proper limits or controls to avoid any possible arbitrariness.

On the other hand, the new Regulations seem to have been drafted in a hurry, combining provisions with gross drafting errors (article 5.1, for instance, speaks of "*...the candidates who passed the examination...*"), provisions unenforceable in reality (for example, those related to the nonexistent Dispute Resolution Body) and provisions copied from the Regulations of other National Associations (the idea of a personal interview was taken from the Spanish Football Federation).

Unfortunately, the AFA has missed an opportunity to create an appropriate regulation for an activity of great importance in modern football, since its

intermediaries Regulations seems to be only a mere combination of the old AFA Players' Agents Regulations with the new FIFA Regulations on Working with Intermediaries. Instead of creating a proper legal framework for the activity that would help to achieve the objectives proclaimed by FIFA's reform, the AFA's new Regulations barely fulfilled the mandate received from FIFA and they can hardly be described as beneficial for the Argentine football business.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN AUSTRIA

by *Igor Lukic*[*]

1. Introduction

The new FIFA Regulations on Working with Intermediaries ("FIFA Regulations"), which entered into force on 1 April 2015, aim to provide a framework for tighter control and supervision of the transactions relating to transfer of football players in order to enhance transparency. It replaced the FIFA Players' Agents Regulations (2008) with immediate effect, requiring national associations to implement and enforce at least the minimum standards/requirements of the new FIFA Regulations. However, Article 1 para. 2 and 3 of the new FIFA Regulations also expressly reserve associations the right to go beyond these minimum standards/requirements.

In light of the above, the Austrian Football Association (Österreichischer Fußball-Bund, "ÖFB") implemented the first version of the ÖFB Regulations on Working with Intermediaries[1] ("ÖFB Regulations"), which became effective on 1 April 2015. In addition, this first version was replaced by the current edition of the ÖFB Regulations, which entered into force on 1 July 2016 and contains clarifications or minor modifications with respect to the previous version of the ÖFB Regulations. With the entry into force of the ÖFB Regulations, the former existing licensing system in Austria was overridden. All existing Players' Agents licenses lost their validity with immediate effect and must be returned to the ÖFB. In the case of disputes pending before the entry into force of the ÖFB Regulations, the date of receipt of notification shall decide which version of the (old) ÖFB Regulations for Players' Agents will be applicable.[2]

This contribution briefly examines the relevant national laws regarding intermediaries' activities in Austria and gives an overview of the ÖFB Regulations,

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[1] The current version (applicable from 1 July 2016) of the ÖFB, "*ÖFB-Reglement zur Arbeit mit Spielervermittlern*" is available on www.oefb.at/downloads-pid598 (31 October 2016).

[2] ÖFB Regulations Article 11 para. 3 and 4.

the key principles and requirements, as well as its differences to the FIFA Regulations.

2. Relevant National Law

The legal foundations for the activities of intermediaries in Austria are mainly formed by the new ÖFB Regulations, which entered into force on 1 July 2016. Additionally, various national laws have an impact on the activities of an intermediary. However, the ÖFB does not control any of the below mentioned requirements of national laws, since the intermediary pledges to respect and comply with any mandatory provisions of applicable national laws by signing the Intermediary Declaration (see below).

2.1 Austrian Labour Market Promotion Act

At national level the Austrian Labour Market Promotion Act (Arbeitsmarktförderungsgesetz, AMFG) has the most significant impact on the activities of intermediaries regulating the so-called "job placement". In this context, Article 2 para. 1 AMFG characterises the term "job placement" as any activity that aims to connect jobseekers with employers in order to establish employment relationships. The services of an intermediary, therefore, fall under job placement according to the AMFG. The placement of amateur players is not subject to the AMFG, since they normally are not considered as employees. However, according to Article 4 para. 1 point 4. AMFG it is necessary to obtain a business license in order to conduct the abovementioned service. To this end, Article 94 number 1 in conjunction with Article 16 et seq. of the 1994 Industrial Code (Gewerbeordnung 1994, GewO) define the services of job placement as a regulated profession and therefore requests a qualification certificate in order to be able to legally conduct this kind of services.[3]

Concerning professional sportsmen, Article 5 para. 3 AMFG sets out that the intermediary fee has to be in an adequate proportion to the effort of the intermediary and stipulates a limit on intermediary fees of 10 % of the total gross earnings of the sportsmen. This intermediary fee limit only applies in cases where the intermediary acts for a player and will be paid by the latter. Furthermore, an intermediary fee may be claimed only if the corresponding employment contract was concluded validly.

2.2 Austrian Law on Commercial Agents

Intermediaries working for clubs have additionally a further legal basis in the Austrian legal system. The Austrian Law on Commercial Agents

[3] *Reisinger*, Rechtsgrundlagen der Spielervermittlung im österreichischen Recht, Causa Sport 2010, 40 (43-48).

(Handelsvertretergesetz, HVertrG 1993) shall apply to independent commercial agents, who are entrusted by an entrepreneur with the mediation or conclusion of transactions (except for immovable property) on behalf and on the account of the latter. Commercial agents carry out their activities independently and professionally. Clubs participating in the two highest football leagues of Austria usually meet the criteria of "entrepreneur" as required by this law. Furthermore, legal entities can act as commercial agents in accordance with the HVertrG 1993. In this context it is worth mentioning that intermediaries operating on behalf of players do not fall under the abovementioned definition of Article 1 para. 1 HVertrG 1993 and therefore they are not subject to this law.[4] However, according to a judgment of the Austrian Supreme Court (OGH) in 2000,[5] an intermediary operating for a club was considered as a commercial agent as stipulated in the HVertrG 1993.[6]

2.3 Austrian General Civil Code

It is worth mentioning that regarding the intermediary fee, the Austrian General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB) can be applicable in some particular cases. For example, Article 879 para. 1 ABGB stipulates the general principle that a contract which violates a legal prohibition or good morals is void. Accordingly, the abuse of the private autonomy shall be prevented by ordering the nullity of the unwanted transactions.[7] This provision is applicable in cases, where the amount of the intermediary fee seems unfair and therefore is violating good morals. In this context, each case must be analysed individually to find out if the agreed intermediary fee is violating good morals as stipulated in Article 879 para. 1 ABGB. Furthermore, Article 1152 ABGB states that if no remuneration is stipulated in the contract and no free of change was agreed, an appropriate remuneration shall be deemed to be agreed. With this in mind, the OGH considered in the abovementioned judgement an intermediary fee of 15% of the transfer fee as appropriate.[8] Since intermediaries rarely act without representation contracts or without provisions regulating the remuneration, this provision has no big impact and only little practical relevance in the football industry.[9]

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[4] *Reisinger*, Causa Sport 2010, 40 (43-48).

[5] Decision of the Austrian Supreme Court (OGH), 17 May 2000, 6 Ob 209/99z.

[6] *Reisinger*, Causa Sport 2010, 40 (47).

[7] *Krejci* in Rummel/Lukas, ABGB Kommentar zum Allgemeinen bürgerlichen Gesetzbuch[4], § 879 Rz 1.

[8] In this case the involved intermediary was contacted by an Austrian football club in order to transfer a Russian player to Austria. The involved intermediary offered a player of Dinamo Moscow and delivered additional information about him. As the intermediary fee appeared too high for the Austrian club (15% of the transfer fee), they proposed their offer directly to Dinamo Moscow. The transfer was subsequently concluded with the President of Dinamo Moscow, without involving the intermediary. In response, the intermediary took legal actions and demanded 15% of the transfer fee as the intermediary fee.

[9] *Reisinger*, Causa Sport 2010, 40 (43).

3. *Definition and scope*

In accordance with the FIFA Regulations, the ÖFB Regulations define an intermediary as "*a legal or natural person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or representing a club in negotiations with regard to concluding a transfer agreement*".[10]

Additionally, the ÖFB Regulations highlight the scope to regulate the engagement of the services of an intermediary by players and clubs, to conclude (a) an employment contract between a player and a club, or (b) a transfer agreement between two clubs ("*Scope*"). The ÖFB Regulations do not affect the validity of the relevant employment contract and/or transfer agreement.[11]

Since the ÖFB Regulations adopt the same wide definition as the FIFA Regulations, it is not clear to which extent it maybe also be applicable to individuals or legal entities working permanently for a club (i.e. legal departments of clubs). These individuals may, but need not, be lawyers, sports directors or other legal representatives who are involved in the negotiations with regard to concluding a transfer agreement or in negotiations with a view to conclude an employment contract for their clubs. This means that in a strict sense, these individuals/legal entities may also be considered as intermediaries in the sense of Article 1 para. 1 of the ÖFB Regulations and therefore be subject to the provisions of the ÖFB Regulations as described later on (i.e. registration of intermediaries). However, it is still not clear if the definition of an intermediary provided by the ÖFB and FIFA was intended to be applicable for the above mentioned cases.

4. *Principles*

The ÖFB Regulations have four main principles reflecting the same principles as the FIFA Regulations, by using almost the same wording and adding some further aspects:

As a first step, the ÖFB Regulations entitle players and clubs to engage the services of intermediaries when concluding an employment contract and/or a transfer agreement. Additionally, in the selection and engaging process of intermediaries, players and clubs are obliged to act with due diligence. In this context and following the same principles as already provided in the FIFA Regulations, due diligence means that players and clubs shall use reasonable endeavours to ensure that the intermediaries sign the relevant Intermediary Declaration and the Representation Contract concluded between the parties. The third principle states that whenever an intermediary is involved in a transaction, he

[10] ÖFB Regulations Article 1 para. 1.
[11] ÖFB Regulations Article 1 para. 2 and 3.

shall be registered pursuant to Article 3 of the ÖFB Regulations. These mentioned principles use the same wording as the FIFA Regulations.[12]

Finally, the fourth and final principle states that *officials*[13] are not allowed to work as an intermediary in the scope of Article 1 of the ÖFB Regulations. Furthermore, *officials* are not allowed to hold a corporate function, have a share in, or work for a legal entity conducting services in the scope of Article 1 of the ÖFB Regulations. The same applies for individuals, which were banned from these functions in the sense of the above provisions. Players and clubs may not engage individuals mentioned in Article 3 para. 6, 7 and 8 of the ÖFB Disciplinary Regulations, or individuals who are banned from the aforementioned functions.[14]

5. Registration

To ensure transparency, the ÖFB is required to maintain a register of intermediaries that has to be published as foreseen in Article 6 para. 3 of the ÖFB Regulations. According to Article 3 para. 1 of the ÖFB Regulations, intermediaries must be registered each time they were involved in a specific transaction. The ÖFB publishes at the end of March of every calendar year, for example on their of official website,[15] the names of all intermediaries they have registered as well as the single transactions in which they were involved. Furthermore, the publication contains the total amount of all remunerations or payments actually made to intermediaries by their registered players and by each of their affiliated clubs. The figures to be published are the consolidated total figure for all players and the individual clubs' consolidated total figure.[16]

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[12] ÖFB Regulations Article 2 para. 1 to 3.

[13] Article 3 of the ÖFB Regulations referrers in this context to the three types of definitions of Article 3 para. 6 (*officials*), 7 (*players*) and 8 (*match officials*) of the ÖFB Disciplinary Regulations to define an *official*. However, clearly it is only necessary to fulfil one of the three definitions to be considered as an *official* for the purpose of the ÖFB Regulations: 1. An *official* (Article 3 para. 6 of the ÖFB Disciplinary Regulations) is any individual (except players), whose activities in an association or club are in connection with football, regardless of their position, the type of activity (administrative, sports or any other), its duration and the nature of their employment (i.e. full-time or voluntary). However, *officials* according to this Article 3 para. 6 of the ÖFB Disciplinary Regulations are in particular managers, coaches, instructors and doctors. 2. *Players* (according to Article 3 para. 7 of the ÖFB Disciplinary Regulations) are all individuals who are registered with a club or participate in a match. 3. *Match officials* (Article 3 para. 8 of the ÖFB Disciplinary Regulations) are referees, assistant referees, fourth officials, the game observers, the referee observers, the security officers, and any other individuals who perceive a responsibility in the implementation of a match on behalf of the ÖFB or an association. Individuals who meet one of the above-mentioned definitions of the ÖFB Disciplinary Regulations are *officials* in the sense of the ÖFB Regulations and can therefore not work as an intermediary.

[14] ÖFB Regulations Article 2 para. 4.

[15] See current publication of the ÖFB: "*Veröffentlichung aufgrund der FIFA-Spielervermittler-Bestimmungen zum 31.03.2016"* available on www.oefb.at/downloads-pid598 (31 October 2016).

[16] ÖFB Regulations Article 6 para. 3.

For this reason, it is necessary that clubs and players who engage the services of an intermediary submit the Intermediary Declaration in accordance with annexes 1 and 2 of the ÖFB Regulations. The ÖFB Regulations additionally explicitly declare the right of the ÖFB and its members to request further information and/or documents.[17]

Slightly different from the FIFA Regulations, Article 3 para. 3 of the ÖFB Regulations states an obligation for the player to make sure that the club submits the required documentation. Therefore, following the conclusion of the relevant transaction, a player engaging the services of an intermediary within the scope of Article 1 para. 1 of the ÖFB Regulations must assure, that the club with which he signed the employment contract submits to the association responsible for the registration (Regional association/Austrian Football-Bundesliga), the Intermediary Declaration and any other documentation required by the association. In case of renegotiation of an employment contract, again the player engaging the services of an intermediary must make sure that the club with which he renegotiated the employment contract, provides to the association responsible for the registration, the Intermediary Declaration and any other documentation required.

On the other hand, a club engaging the services of an intermediary must submit the Intermediary Declaration and any other documentation required to the association of the club, with which the player in question is to be registered. Additionally, if the releasing club engaged the services of an intermediary, that club shall also submit a copy of the Intermediary Declaration to its association.[18]

According to Article 3 para. 5 of the ÖFB Regulations, the aforementioned notification by players and clubs must be made each time any activity within the scope of Article 1 para. 1 of the ÖFB Regulations takes place.

In summary, it must be emphasised that the ÖFB Regulations hereby state a broad obligation of the club to submit the Intermediary Declaration and any other documentation to the association responsible for the registration of the intermediary. Even in case of the engagement of an intermediary by a player, the club has to submit the documents required by the responsible association. In this particular case, the player needs to ensure that the club submits the aforementioned documents. The ÖFB has chosen this wording different from the FIFA Regulations to avoid including an additional party (the player) into the registration process. However, the obligation ("*a player engaging the services of an intermediary […], has to ensure, that the club, […] submits the Intermediary Declaration and any other documentation required by the association*") remains theoretically a player's obligation, but at the same time, makes it almost impossible for a player to deliver the needed documents himself. The biggest issue in this case is, which possibilities a player has to ensure that the club really submits the above-mentioned documentation necessary for the registration of an intermediary. Sadly, the ÖFB Regulations do not regulate such a case and therefore leave an important issue

[17] ÖFB Regulations Article 3 para. 2.
[18] ÖFB Regulations Article 3 para. 4.

unstated: How can a player "*ensure*" that a club submits the Intermediary Declaration and any other documentation? Since Article 9 of the ÖFB Regulations states a possible sanction for any party (i.e. also a player) that violates the provisions of the ÖFB Regulations, it would be necessary to know which measures a player has to adopt to fulfil his obligation in order to avoid sanctions. For example, a player should not be sanctioned if he submits all needed documentation to the club, since in this case the player has ensured that the club has all conditions to submit the documentation to the association responsible for the registration of the intermediary.

6. Requirements and conditions

Besides the information required for submission in accordance with Article 3 of the ÖFB Regulations (i.e. Intermediary Declaration), and before the relevant intermediary can be registered, according to Article 4 para. 1, 2 and 3 of the ÖFB Regulations, the association responsible for the registration will at least have to be satisfied

a) that the intermediary involved has an impeccable reputation and
b) that while carrying out his activities, the intermediary has no contractual relationship with leagues, associations, confederations or FIFA that could lead to a potential conflict of interest.

According to Article 4 para. 4 of the ÖFB Regulations, the association fulfils their legal obligations as described above, if they obtain a duly signed Intermediary Declaration as per annexes 1 or 2 of the ÖFB Regulations from the intermediary concerned. The use of the particular annexes of the ÖFB Regulations in German is mandatory.

Finally, the Representation Contract concluded by the intermediary with a player and/ or a club shall be deposited with the association responsible for the registration of the intermediary. Therefore, in order to finalise the registration process, the parties involved engaging the services of the intermediary will have to submit – apart from the relevant main agreement (i.e. transfer agreement or player contract) – at least an Intermediary Declaration and a Representation Contract. The association responsible for the registration has to forward the Representation Contract to the ÖFB upon request.[19]

7. Representation Contract

The requirements for the minimum standards of the Representation Contract are regulated in Article 5 of the ÖFB Regulations, which adopt the same wording as Article 5 of the FIFA Regulations. According to this article, clubs and players shall specify in the relevant representation contract the nature of the legal relationship they have with their intermediaries.

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[19] ÖFB Regulations Article 4 para. 5.

Furthermore, the representation contract must contain at least the names of the parties, as well as the date of birth of the player. Besides that, it must contain the scope of services, the duration of the legal relationship, the remuneration due to the intermediary including the general terms of payment, the date of conclusion, the termination provisions and finally the signatures of the parties. This provision does not contain a maximum duration of the Representation Contract. In case the player is a minor, the player's legal guardian(s) must also sign the Representation Contract in compliance with the national law of the country in which the player is domiciled.[20]

8. Intermediary Declaration / Intermediaries' obligations

As set out in Article 4 para. 4 of the ÖFB Regulations, the Declaration as per annexes 1 or 2 of the ÖFB Regulations must be used mandatorily. It is important to emphasise in this context that the Intermediary Declaration in annex 1 and 2 of the ÖFB Regulation is only available in German. The ÖFB does not provide any translation of its regulations or of the Intermediary Declaration.

By signing the mentioned Declaration, the intermediary pledges to respect and comply with any mandatory provisions of applicable national and international laws, including in particular those relating to job placement when carrying out the activities as an intermediary. Furthermore, the intermediary agrees to be bound by the statutes and regulations of associations and confederations, as well as by the statutes and regulations of FIFA in the context of carrying out his activities as an intermediary.[21]

The Intermediary Declaration in annex 1 and 2 of the ÖFB Regulations basically reflects the principles which were regulated in the ÖFB Regulations and set out before in this contribution. Again, the ÖFB decided to almost completely adopt the annex 1 and 2 of the FIFA Regulations while adding just minor modifications.

Therefore, adopting almost the same wording of the Intermediary Declaration of the FIFA Regulations, the intermediary declares that he does not hold the position of an official nor will he hold such a position in the foreseeable future; he has no contractual relationship with leagues, associations, confederations or FIFA that could lead to a potential conflict of interest, he shall not accept any payment to be made by one club to another club in connection with a transfer (i.e. transfer compensation, training compensation or solidarity contributions), as well as he will not accept any payment from any party if the player concerned is a minor. Moreover, the intermediary acknowledges neither taking part in betting, gambling, lotteries and similar events or transactions connected with football matches nor having stakes in companies, concerns, organisations, etc. that promote, broker, arrange or conduct such events or transactions.

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[20] ÖFB Regulations Article 5 para. 2.

[21] Intermediary Declaration, Annex 1 of the ÖFB Regulations Point 1.

Furthermore, the intermediary consents to submit to the ÖFB and its members full details of any payment of whatsoever nature made to him by a club or a player for his services as an intermediary. The intermediary obliges himself to submit all contracts, agreements and records in connection with his activities as an intermediary to the leagues, associations, confederations or FIFA, for the purpose of their possible investigations. This obligation is also valid for any other relevant documentation from any other party advising, facilitating or taking any active part in the negotiations for which the intermediary was responsible. Additionally, the Intermediary Declaration contains the consent, regarding the holding and processing of any data for the purpose of publication by the ÖFB and its members. Moreover, the intermediary gives the consent to the ÖFB and its members to publish details of any disciplinary sanctions taken against him and to inform FIFA accordingly. In Point 13 of the Intermediary Declaration, the intermediary has to disclose the relevant payments, as well as the party making the payment. Finally, in the event that any of the above-mentioned information changes, the intermediary has to notify the ÖFB and its members immediately.[22]

Annex 2 of the ÖFB Regulations contains the corresponding Intermediary Declaration for legal entities. In signing, the person acknowledges the obligations as set out above on behalf of the legal entity.

It is important to point out that, as already set out above, according to Article 4 para. 4 of the ÖFB Regulations using the Intermediary Declaration provided in annex 1 and 2 is mandatory. Other associations[23] also provide translated versions in English, but the ÖFB decided to force intermediaries to use the Intermediary Declaration in German as provided in annex 1 and annex 2 of the ÖFB Regulations. Considering the international influence of the football industry and, in particular, the international services of intermediaries, it appears that this approach is a big disadvantage for the ÖFB, as well as the persons involved and creates legal uncertainty. It is advisable for the ÖFB to also provide the Intermediary Declarations in English in the future, in order to substantially improve the registration process for intermediaries operating internationally and may not speak German.

9. Impeccable reputation

As previously mentioned, one of the criteria the association responsible for the registration has to ensure is that the intermediary involved has an impeccable reputation. The same applies if the intermediary concerned is a legal person; in

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[22] Intermediary Declaration, Annex 1 of the ÖFB Regulations Point 10 to 13. See in this context also ÖFB Regulations Article 6.

[23] See for instance the German Football Association (DFB) which provides the Intermediary Declaration in German and especially also in English. For example DFB, "*Annex 1: Intermediary Declaration for natural persons"*, available on www.dfb.de/verbandsservice/pinnwand/spielervermittlung/reglements/ (31 October 2016).

this case, the association responsible for registration also has to be satisfied that the individuals representing the legal entity within the scope of the transaction in question have an impeccable reputation.[24]

For the sake of clarification, it should be noted that the Intermediary Declaration contains the declaration of the intermediary as following: "*I declare that I have an impeccable reputation and in particular confirm that no criminal sentence has ever been imposed upon me for a financial or violent crime*".[25] It therefore has to be concluded that it is sufficient that the intermediary has no corresponding criminal sentence regarding financial or violent crime and delivers the signed Intermediary Declaration in order to demonstrate an impeccable reputation. However, since the ÖFB has decided to completely adopt almost the entire wording of the Intermediary Declaration of FIFA, it neither gives additional information to determine an impeccable reputation nor requires further facts or evidence in the form of documents.

10. Conflicts of Interests

Article 8 of the ÖFB Regulations deals with the issue of "the conflict of interest" with respect to the intermediary. Like most of the parts of the ÖFB Regulations, they contain the same wording as in Article 8 of the FIFA Regulations for the provisions on the conflicts of interests. Accordingly, players and/or clubs have a duty to ensure that no conflicts of interest exist or are likely to exist either for the players and/or clubs or for the intermediaries.[26] As a result, players and/or clubs have the obligation to "*use reasonable endeavours"* to ensure that no conflicts of interests arise for any party involved (player, club or intermediary) in the transaction. Should players and/or clubs fail to fulfil their obligations, they (and not the intermediary) face a possible sanction as set out in Article 9 of the ÖFB Regulations.

However, the ÖFB stipulates an exception of the above prohibition. According to Article 8 para. 2 of the ÖFB Regulations, no conflict of interest would be deemed to exist if prior to the start of the relevant negotiations (a) the intermediary discloses in writing any actual or potential conflict of interest he might have with one of the other parties involved in the matter (in relation to a transaction, representation agreement or shared interests) and (b) obtains the explicit written consent of all other parties involved.[27]

If a player and a club decide to engage the services of the same intermediary within the scope of the same transaction, they both have to give their explicit written consent prior to the start of the relevant negotiations. Furthermore, the ÖFB Regulations require them to confirm in writing which party (player and/

[24] ÖFB Regulations Article 4 para. 1 and 2.
[25] Intermediary Declaration, Annex 1 of the ÖFB Regulations Point 3.
[26] ÖFB Regulations Article 8 para. 1.
[27] ÖFB Regulations Article 8 para. 2.

or club) will have to pay the intermediary. In this case, the parties shall inform the relevant association of such an agreement and submit all the aforementioned written documents for the registration process.[28]

Apparently, in these cases, the ÖFB Regulations do not prohibit the sharing/delegation of the remuneration of the intermediary. Article 8 of the ÖFB Regulations is therefore the only expressive exception of the principle that any payment for the services of an intermediary must be made exclusively by the client of the intermediary to the latter.[29]

11. Remuneration

Article 7 of the ÖFB Regulations regulates the remuneration of an intermediary. Again, the ÖFB has decided to adopt Article 7 of the FIFA Regulations almost completely, adding only minor modifications. With this in mind, the ÖFB Regulations stipulate that the remuneration due to an intermediary engaged to act on a player's behalf shall be calculated on the basis of the player's basic gross income for the entire duration of the contract, whereas on the other hand, clubs engaging the services of an intermediary shall remunerate him by payment of a lump sum agreed prior to the conclusion of the relevant transaction.[30]

While Article 7 para. 2 of the ÖFB Regulations offers a possibility to the club that such a payment may be made in instalments, it does not explicitly stipulate such an option for the payment to an intermediary engaged to act on a player's behalf as set out in Article 7 para. 1 of the ÖFB Regulations. Since the ÖFB decided to adopt the same wording as the FIFA Regulations, it should be considered that, containing no explicit prohibition of payment by instalments, these kinds of agreements should also be possible for players engaging the services of an intermediary. However, attention must be drawn to the fact that in such cases, the legal consequence seems to be uncertain.

Corresponding to Article 7 para. 3 of the FIFA Regulations, the ÖFB has implemented a 3% limit as a recommendation for calculating the remuneration of the intermediary. However, the parties may also consider the relevant national regulations and any mandatory provisions of national and international laws. Furthermore, this "*recommendation"* is applicable for an intermediary acting on a player's behalf or on a club's behalf in order to conclude an employment contract with a player; therefore, the total amount of remuneration per transaction "*should not"* exceed 3% of the player's basic gross income for the entire duration of the relevant employment contract. The same recommendation applies to intermediaries acting on behalf of clubs in order to conclude a transfer agreement. The total amount of the particular remuneration in this case should not exceed 3% of the eventual transfer fee paid in connection with the relevant transfer of the player.

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[28] ÖFB Regulations Article 8 para. 3.
[29] ÖFB Regulations Article 7 para. 5.
[30] ÖFB Regulations Article 7 para. 1 and 2.

Regarding Austria laws, the remuneration for the intermediary should not exceed 10% of the total gross salary (for players) or 15% of the transfer fee (for clubs).

As provided in the FIFA Regulations, the ÖFB Regulations state that clubs have to ensure that payments be made between two clubs in connection with a transfer (i.e. transfer compensation, training compensation or solidarity contributions) are neither paid to intermediaries nor paid by the latter. The prohibition of Article 7 para. 4 of the ÖFB Regulations includes, but is not limited to, the intermediary owning any interest in any transfer compensation or future transfer value of a player. Furthermore, the assignment of claims is also prohibited by the ÖFB.[31]

Article 7 para. 5 of the ÖFB Regulations stipulate that any payment for the services of an intermediary shall be made exclusively by the client of the intermediary to the latter. However, the only exception of this principle is the above-mentioned Article 8 of the ÖFB Regulations. Accordingly, if a player and a club decide to engage the services of the same intermediary within the scope of the same transaction, Article 7 para. 5 in conjunction with Article 8 para. 3 of the ÖFB Regulations permits in this particular case expressively to agree in writing which party (player and/or club) will remunerate the intermediary. In this context, it is important to note that the ÖFB decided not to adopt Article 7 para. 6 of the FIFA Regulations, which states that subject to the club's agreement, the player may give his written consent for the club to pay the intermediary on his behalf. From a legal perspective, this option should still be possible within a tripartite agreement according to Austrian laws. However, the legal consequences seem again unsure.

Moreover, officials[32] are prohibited from receiving any payment from an intermediary of all or part of the fees paid to that intermediary in a transaction. Infringement of this regulation can result in disciplinary sanctions.[33]

Finally, according to Article 7 para. 7 of the ÖFB Regulations, players and/or clubs engaging an intermediary in the scope of the ÖFB Regulations are prohibited from making any payments to the latter if the player concerned is a minor.

12. Disciplinary powers and sanctions

According to Article 9 of the FIFA Regulations, the ÖFB is responsible for the imposition of sanctions on any party under its jurisdiction that violates the provisions of the ÖFB Regulations, statutes, or other regulations. Accordingly, the Supervisory Committee of the association responsible for the registration may impose sanctions in accordance with the ÖFB Disciplinary Regulations on individuals who violate

[31] ÖFB Regulations Article 7 para. 4.
[32] As defined in Article 3 para. 6, 7 and 8 of the ÖFB Disciplinary Regulations (see above).
[33] ÖFB Regulations Article 7 para. 6.

the provisions of the ÖFB Regulations at the request of the ÖFB Committee for Intermediaries and/or the associations (Austrian Football-Bundesliga/Regional association).[34]

The Supervisory Committee is the first instance in regard to the ÖFB Disciplinary Regulations and according to Article 6 para. 6 d) of the ÖFB Disciplinary Regulations responsible for the disciplinary actions against violations of the ÖFB Regulations regarding the work with intermediaries, as well as disputes in connection with the activities of intermediaries operating in Austria. Regarding the initiation of the procedure before the Supervisory Committee, Article 82 para. 6 of the ÖFB Disciplinary Regulations, stipulates that in matters relating to the ÖFB Regulations, all notifications must be made to the ÖFB Committee for Intermediaries, which then assigns them to the responsible Supervisory Committee. The local jurisdiction of the Supervisory Committee for a club is defined by its association membership, whereas for players, it depends on their eligibility to play for a club in the association. Regarding intermediaries, the local jurisdiction depends first on the association membership of the club, for which the intermediary was operating. Then, the local jurisdiction is defined by the players' club membership (eligibility to play), for which the intermediary acted on behalf and finally by the place of residence of the intermediary. In case of doubt, the ÖFB Committee for Intermediaries decides on the local jurisdiction. It should be pointed out that this decision is final and, therefore, not subject to appeal. Whereas appeals against the decisions of the Supervisory Committee may be brought in following the corresponding provisions of the ÖFB Disciplinary Regulations and the ÖFB Statues.[35]

Article 132 of the ÖFB Disciplinary Regulations regulates penalties, which should apply to breaches of the ÖFB Regulations. According to this provision, a player violating his obligations under the ÖFB Regulations, can be punished with an admonition, a ban of 2 to 8 competition matches, and/or a fine of EUR 500 to EUR 50.000. Clubs violating the ÖFB Regulations face a possible admonition, a fine of EUR 1.000 to EUR 50.000, a transfer ban, deduction of points and/or enforced relegation. Officials violating the provisions of the ÖFB Regulations will be punished with an admonition and/or a ban of 3 to 24 months. An intermediary, who operates in Austria and violates the regulations or his obligations under the ÖFB Regulations, is subject to an admonition, a fine of EUR 1.000 to EUR 50.000, or a ban. Evidently, it should not be possible to cumulate the penalties for intermediaries, since the ÖFB Disciplinary Regulations use the wording "*or*" instead of "*and/or*". In addition, the ban of an intermediary is not defined by a possible maximum period of time, while, on the other hand, both players and officials are aware of the maximum penalisation they may face. Therefore, in such cases, the legal consequences for intermediaries seem again to be uncertain. Finally, it should also be mentioned that offences under this provision become time-barred after

[34] ÖFB Regulations Article 9 para. 1.
[35] ÖFB Regulations Article 9 para. 2 and ÖFB Disciplinary Regulations Article 10 para. 6 c).

five years, while all claims resulting from the application of the ÖFB Regulations shall become time-barred after 3 years according to Article 47 para. 5 of the ÖFB Disciplinary Regulations.[36]

The ÖFB must publish and inform FIFA of any disciplinary sanctions taken against any intermediary. The FIFA Disciplinary Committee has then the possibility to decide on the extension of these sanctions to have worldwide effect.[37]

13. Conclusion

In summary, it can be concluded that with the implementations of the FIFA Regulations, the ÖFB adopted consequently the minimal framework provided by the FIFA Regulations into their national regulations. Doing so, most of the provisions and principals of the FIFA Regulations were implemented literally, adding only minor modifications or clarifications.

The ÖFB Regulations derogate from the framework of the FIFA Regulations with regard to some points by choosing a different approach in regulating marginal cases. For instance, the ÖFB Regulations decided not to adopt the possibility where with the players' written consent, the club may pay the intermediary, acting only for the player on the player's behalf as stipulated in Article 7 para. 6 of the FIFA Regulations. However, this option may be still possible according to Austrian laws. Furthermore, and different from the FIFA Regulations, the ÖFB Regulations state an obligation for a player engaging the services of an intermediary to make sure that the club with which he signed, submits the required documentation for the registration process of the intermediary. On the other hand, the ÖFB decided to adopt all key principles, definitions and recommendations from the FIFA Regulations, not further using the possibility to adopt provisions going beyond these minimum standards/requirements.

In that context, it is also worth mentioning that while containing almost the same wording as the provisions in the FIFA Regulations, the ÖFB Regulations do not provide any additional materials (i.e. the ÖFB Regulations, Intermediary Declaration) in English. In doing so, the ÖFB leaves the involved parties with some legal uncertainties when operating with intermediaries who do not speak/understand German.

With the new regulations imposed by the ÖFB and FIFA, the former existing licensing system was abolished while creating a new system of transparency and opening the profession of intermediary to a wide range of individual, focusing more on the transparency of payments instead of regulating qualification requirements.

Finally, it must be pointed out that the ÖFB Regulations leave the involved parties with some legal uncertainties in various areas. However, the near future will show, whether the ÖFB Regulations and the new transparent framework

[36] ÖFB Disciplinary Regulations Article 132 para. 1 to 5.
[37] ÖFB Regulations Article 9 para. 3.

analysed in this contribution will guarantee an efficient and transparent system regarding the intermediary profession in the football industry.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN AZERBAIJAN

by *Naila R. Rustamzade*[*]

1. Introduction

The Association of Football Federations in Azerbaijan (AFFA) drew up its Regulations on Working with Intermediaries (RWI), incorporating the principles established in the new FIFA RWI on 11 March 2016. The AFFA Regulations on Working with the Intermediaries (AFFA RWI) are based, to a large extent, on the FIFA's, albeit with some changes in line with national legislation and interests. In case of contradiction between Azerbaijani RWI and FIFA RWI, the latter prevails.

Azerbaijani Regulations on Working with Intermediaries, as well as other necessary documents for intermediary activities are available online in Azerbaijani language.[1]

2. Definitions

The Azerbaijani Regulations define the majority of terms as the FIFA RWI does. However, the definition of "intermediary" differs from the one used by FIFA RWI and limits itself to exclusively natural persons. Thus, in AFFA RWI an "intermediary" is any natural person who is registered in AFFA and acting as an intermediary. Further, the definition of "intermediary activity" brings it closer to the FIFA's one stating that the mentioned activity means "representing players or clubs in negotiations with a view to concluding a contract or a transfer agreement".

The AFFA RWI defines among others, the following important terms as well:

"Representation contract" – the agreement between an intermediary (on one side) and a player or a club (on the other), with the purpose of intermediary activity. The Representation Contract should comply with the mandatory conditions of the Standard Representation Contract.

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[1] The AFFA RWI are available on www.affa.az/uploads/files/dir17415/dir870/dir43/dir2/8_0.php.

"Intermediary Declaration" – standard declaration form determined by AFFA and required for registration of the intermediary.
"Standard Representation Contract" – an agreement determined by AFFA with the purpose of implementation of intermediary activities.
"Gross income" – basic salary excluding bonuses and other remuneration and privileges by the club which are based on the player's performance.

3. Relevant national legislation

The sports legal framework of Azerbaijan is not very broad and sports activities are regulated by many different areas of law, such as civil, labour, administrative, criminal law and etc.

There is a general law in the sports field titled Law on "Physical Culture and Sports"[2] adopted in 2009. Article 1 of this Law provides us with the definition of "professional sports", as a sporting activity aimed at organizing and carrying out sport competitions for which players are remunerated or receive a regular salary provided this is their main labour-related professional activity. According to Article 32 (Legal regulation of relations in professional sports) of the same law, the relations in the sphere of professional sports are regulated by this law and other relevant legal acts.

In Azerbaijan, civil law and labour law are of a great importance while analysing relationships between intermediaries, clubs and players.

In particular, the main legal instrument regulating employment relationships in Azerbaijan is the Labour Code (LC) of the Republic of Azerbaijan of February 1999, with its last amendments of 2016. According to the Article 1 of the LC, the legal labour system of Azerbaijan shall consist of the LC, the relevant laws, the legal acts adopted by relevant executive authorities within the scope of their authority, international treaties signed or supported by Azerbaijan with respect to labour and socioeconomic issues.[3]

It is worth mentioning that there is no particular labour legislation for professional sportsmen/women in general, or for football players in particular.

Moreover, there is no precise distinction between sportsmen/women and the other workers, but at the same time no official recognition of sportsmen/women as workers either. One may consider football players as standard employees in a labour relationship. The LC in Azerbaijan governs labour relations between employees and employers, as well as other legal relations derived from interactions between them and relevant national authorities and entities.

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[2] Full text of the Law on Physical Culture and Sports is available on the web site of the Ministry of Youth and Sport of the Republic of Azerbaijan www.mys.gov.az/docs/ganun/20141208052220450.html.

[3] Full text of the Labour Code is available on the web site of the Ministry of Justice of the Republic of Azerbaijan www.justice.gov.az.

The civil legislation in Azerbaijan is mainly reflected in the Civil Code (CC) of the Republic of Azerbaijan of December 1999, with its last amendments of 2016.[4] The legislation is not precise about intermediary activities. Nevertheless, since an intermediary is providing a service, one may put this process under umbrella of "service contracts". The civil legislation has the definition of "charge agreements", which could be convenient to apply to regulate relations with intermediaries. Hence, Article 777 of the CC provides for the following provision "according to the charge agreement, the person who undertakes to execute the charge (the authorized) undertakes to fulfill deals, work and other services ordered by the other person (the authorizer), without guaranteeing achievement of concrete result".

While we observe ambiguity in "sports law" of Azerbaijani legislation, it is crucial to emphasize that, a representation contract that the intermediary submits to AFFA for his registration, in its Article 7.4 of Concluding Provisions states that the "Relations between Parties that cannot be regulated by this contract shall be regulated by civil legislation of the Republic of Azerbaijan".

4. Registration

The registration procedure of an intermediary is provided in Article 4 of the Azerbaijani RWI. A natural person wishing to register as a football intermediary must be not only a resident as it is in many countries, but also a citizen of the Republic of Azerbaijan. An intermediary must also be 18 or above, he needs to submit an Intermediary Declaration to AFFA along with national identification document and Representation Contract. As a part of registration process all intermediaries have to enclose taxpayer's identification number as well.

An applicant wishing to register for the first time shall pay 1000 (one thousand) Azerbaijani Manats (AZN)[1] and shall be granted a license, which is valid for one year. The cost for the extention of the license is 500 AZN. AFFA itself decides whether to register the intermediary or not.

5. Impeccable reputation

No "impeccable reputation" test or criminal record certificate is needed in order to register. The Azerbaijani Regulations on Working with Intermediaries do not define directly the concept of "impeccable reputation". However, there is a relevant provision on it in the Intermediary Declaration provided during registration process. In its part 3 it is stipulated as following: "I declare that I was never convicted or brought to criminal responsibility for financial offence or violent crime".

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[4] Full text of the Civil Code is available on the web site of the Ministry of Justice of the Republic of Azerbaijan www.justice.gov.az.

[5] 1000 Azerbaijani Manats are approximately 545 euros (currency rate for 25/11/2016).

6. *Disclosure and Publication*

Players and clubs are required to inform AFFA about remunerations or payments they have made or that are to be made to the intermediary.

It is of an interest that according to Azerbaijani RWI, AFFA *has a right to* make publicly available data, such as the names of all intermediaries they have registered and their registration numbers, a list of transactions an intermediary acted in, publish the total amount of remunerations or sanctions against intermediaries, and publish decisions on temporary suspension or withdrawal of registration of intermediaries. At the same time, Azerbaijani RWI stipulates that AFFA will publish at the end of each March the intermediaries who have registered, transactions they were involved in and a list of agreements with them. This might lead to confusion, because of the lack of clarity whether the publishing is absolutely obligatory. The FIFA RWI, meanwhhile, *obliges* associations to publish some of this information.

7. *Representation Contract*

Before starting intermediary activity, the player or a club must sign a written Representation Contract. Any component of a representation contract which contradicts requirements of AFFA and FIFA RWIs is unacceptable. In case such contradictions take place AFFA may give a notification, and if parties fail to solve it this is to be considered as the breach of regulations and a contract forcemight become invalid.

The Representation Contract, according to AFFA RWI, shall have the following content:

a) Names of the contracting parties;
b) The framework of services to be provided;
c) Remuneration to be paid;
d) General conditions of payment;
e) Date of the conclusion of the Representation Contract;
f) Conditions to terminate the Representation Contract;
h) Signatures of the contracting parties.

Finally, the maximum duration of a Representation Contract shall be two years and no extension possibility for another period is stipulated in the AFFA RWI.

8. *Intermediary's obligations*

The AFFA RWI does not contain any specific section with the list of an intermediary's obligations. The intermediary assumes responsibility and needs to comply with obligations deriving from various parts of the regulations and statutes – in particular AFFA RWI and FIFA RWI, – to be eligible to carry out the activities as an intermediary.

By signing and submitting an Intermediary Declaration he indirectly obliges himself to comply with particular requirements and pledges to respect national and international laws necessary to provide intermediary services.

According to above-mentioned Declaration an intermediary also pledges with the following:

1. He does not hold a position of official as defined in point 11 of the Definitions section of the FIFA Statutes, nor will he hold such a position in the foreseeable future.
2. As already mentioned above, he confirms that no criminal sentence has ever been imposed upon him for a financial or violent crime, consequently he has impeccable reputation.
3. He has no contractual relationship with leagues, associations, confederations or FIFA that could lead to a potential conflict of interest and he acknowledges that he is not allowed to imply directly or indirectly, the existence of any such relationships.
4. He will not accept any payments to be made by one club to another club in connection with transfer compensation, training compensation or solidarity contributions.
5. He shall never accept payment, from any party of an agreement, if the player is a minor.
6. He shall never participate in betting, lotteries or any other similar events related to football matches and he acknowledges that any kind of participation in the activities related to legal entities associated with such events is prohibited.
7. He also consents to the AFFA obtaining full details of any payment made to him by a club or a player for his services as an intermediary.
8. He gives consent to submit to the leagues, associations, confederations and FIFA all documentation that is of relevance to his activities as an intermediary if necessary for the purpose of investigations. He also accepts for such documentation to be obtained by abovementioned bodies from any other party participating in the negotiations.
9. He also consents to the AFFA having all relevant information in its registration system.
10. He consents to the AFFA publishing and informing FIFA of details of any sanctions or decisions issued against him.

Finally, the Declaration concludes with the intermediary declaring he is aware that that mentioned document will be available to the members of the competent bodies of the AFFA. The intermediary also states that this document he signs is made in good faith and based on data available to him and he agrees the AFFA to verify the accuracy of the information provided. He acknowledges that he is obliged to inform immediately AFFA in case that any of the above-mentioned information changes.

9. Remuneration

The AFFA Regulations also follow basic principles set out by FIFA when dealing with remuneration of intermediaries. According to AFFA RWI, the intermediary shall be directly remunerated by the player. However, it is also possible that the player gives his written consent for the club to pay the intermediary on his behalf.

As to FIFA's recommendation regarding percentage of payments to intermediaries, the AFFA RWI states that if an intermediary provides services for a player his or her remuneration shall not exceed three per cent (3%) of the player's gross income for entire durantion of a relevant contract. Remuneration by a contract of an intermediary, who provides services for a club to conclude an agreement with a player, shall not exceed three per cent (3%) of that player's gross income for entire duration of a contract. If intermediary acts on behalf of a club in order to conclude a transfer agreement, the total amount of remuneration shall not exceed either three per cent of the transfer fee paid in connection with the relevant contract.

10. Disciplinary sanctions

The Procedural Regulations for Disciplinary Committee of AFFA, which regulate disciplinary disputes, was approved by the Executive Committee of AFFA on March 2016. These Regulations set out in detail the procedure for dealing with a charge of disciplinary misconduct in the field.

Article 10 of the Regulations on Working with Intermediaries of AFFA stipulates that "the breach of current Regulations is to be considered as no-fulfillment of obligations". Additionally, explaining that if one party is not respecting the Azerbaijani RWI, the Disciplinary Committee of AFFA shall apply relevant sanctions.

Appeal against the decisions of the Disciplinary Committee can be brought before the Disciplinary Chamber of the Arbitration Tribunal of Appeals within 15 days following the notification of the Committee's relevant decision.

11. Conclusions

It can be concluded that AFFA decided not to pursue a very strict approach to its regulatory framework but instead followed a simplified version with regard to the requirements for intermediaries. Taking into account the fact that Azerbaijan is a young country, its sport law system still needs further improvement and elaboration. And this creates some legal challenges as the new FIFA RWI delegates more responsibilities to national associations themselves.

It is rather early to assess whether the new FIFA Regulations on Working with Intermediaries system is efficient, especially in case of Azerbaijan, as AFFA only adopted its RWI in 2016. Nevertheless, the AFFA already took an important

step by implementing the FIFA regulations and only the application in practice will determine to what extent improvements are needed.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN BELGIUM

by *Frank Hendrickx* and *Miet Vanhegen*[*]

1. Introduction

Sport intermediaries, including players' agents, play an increasingly important role in the sports world, in particular in the representation of interests of players or clubs in concluding contracts, in transfer negotiations or merely in taking care of administrative and practical matters. In Belgium, legal comments on these activities are not widespread. The purpose of this contribution is to provide an overview under Belgian law with regard to player's agents' activities.

It should be noted that sport intermediaries are not explicitly and *qualitate qua* regulated under Belgian law. However, they do not fall outside the scope of the law. Intermediaries will come under various laws depending on the situation in which they develop their activities.

In this regard, it should be noted that Belgium is a federal state. This implies that the various rules applicable to sport intermediaries, including players' agents, are both set at national (Belgium) as well as regional (Flanders and Wallonia) level. For example, the rules and obligations arising from civil law and employment law will result from federal Belgian law. However, due to the fact that agency is often, sometimes partly, considered as an employment intermediary activity, the laws of the regions governing this activity may become relevant. The present contribution will pay attention to both the federal state laws of Belgium and the laws from the regions (Flemish, Walloon, Brussels).

In order to discuss the issue of sport intermediaries under Belgian law properly, an attempt is made first to distinguish various types of 'agency'. A brief overview is given of various legal provisions that may be applicable from a civil and employment law angle, depending on the situation in which the agency is being performed. In what then follows, an analysis is made of employment intermediation laws that may become applicable to players agency in Belgium.

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2. *Sports intermediaries, agents and managers*

Terminology and meaning in the context of sport mediation services may be problematic. The concept of 'sport intermediary' mostly concerns a 'players agent' in football, but it can also be used to indicated a 'sports agent' or a 'sports manager'. Most legal systems, including Belgium, do not know the notion of 'sport intermediator' or 'sports agent' as a legally pre-defined concept. The use of this term commonly refers to a (natural or legal) person, who acts as an intermediary between a sporter and other parties, for example between a football player (employee or potential employee) and a club (employer or potential employer). In the latter sense, use is often made of the more restricted term 'player's agent'. It is no surprise that the term 'players agent' instead of 'sport intermediary', or 'sport agent', is often used in professional team sports, such as football, as is demonstrated in the FIFA-rules on player's agents.

In legal terms, the notion of 'sports agency' is often linked with the activities of private employment agencies, i.e. agencies involved in employment intermediation services (for example, finding a club for a football player). But the activities of sports agents are not solely confined with matching labour supply and demand, matching job seekers with job offers. Usually, sports agents develop a broad range of activities and services for the benefit of their clients, mostly sports people and sports organisations. In this respect, it may be more appropriate to use the term 'sports manager'.

In its broadest understanding, a 'sports manager' can be seen to develop one or more of the following activities:

- Contract negotiation and mediation (employment contracts, sponsoring agreements, television rights, …);
- Management and services, most typically for sporters, in matters such as housing, taxes, social security, permits and licences, financial planning, legal advice, career development, health, …;
- Organisation of sports activities and events, press conferences, publicity and sports promotion;
- Acting in case of conflicts, mediation and arbitration.

From the aforementioned categories of activities, a sports manager might be a person involved in management and consultancy, in addition to representation and mediation. Nevertheless, from a legal point of view, it is relevant to distinguish the various kinds of activities that sports managers or agents perform as it may influence the applicable legal regime for certain relationships.

Sports management activities could be legally qualified in different ways. Many contracts concluded within the framework of sports management or agency would follow the normal civil law concepts. However, to the extent sports managers or agents involve in employment mediation, i.e. acting as intermediary between potential employees and potential employers, specific employment law rules may come into play.

Another important distinction may concern the question whether a sportsman or woman takes part in an individual sport (think about the individual athletic disciplines, tennis, …) or a team sport (football, basketball, …). Individual athletes are usually expected to take care of their own professional situation, although they often find assistance with their supervising sports federation. But a person who is involved in a sport in the context of a club or a team may find an employer (the club) taking care of all sports related and organisational interests. This may, self-evidently, influence the relationship between the athlete and his manager.

3. Civil and employment law

In order to legally qualify the relationship between an athlete or a player and his or her manager or agent, it is necessary to give an overview of some legal concepts known in Belgian law, which show a certain degree of similarity.

3.1 Legal constructs

a. Contracting

Contracting is a legal notion regulated in article 1787 and following of the Civil Code. It is an agreement whereby an assignment is given by one person to another to perform a certain work excluding representation.[1] Contracting is used in many branches, but typically in the construction industry. It does not, however, need to concern the performance of a material work, but it may also concern services like administrative assistance, intellectual work, psychological guidance, legal services and so on. It is clear that these types of services may be closely connected with the work that sport managers perform.

b. Mandate

The concept of mandate is also regulated in the Civil Code. Article 1984 of the Civil Code provides that a mandate is an act through which another person is assigned by a principal to represent him and to act in his name and for his account. The construction of a mandate is typical for the representation of a person in legal acts, like in the case of an attorney or legal counsel for his client.

c. Broker or intermediary

An intermediary is generally considered as someone who intermediates in the conclusion of agreements.[2] It implies that the intermediary is to be found in-between

[1] J. Herbots, '*De aannemingsovereenkomst*', in *Bijzondere overeenkomsten. Actuele problemen*, Antwerpen, Kluwer, 1980, 215.

[2] J. Stuyck, '*Handelstussenpersonen*', in W. Van Gerven, H. Cousy and J. Stuyck (eds.),

two parties willing to contract. The task of the intermediary is to bring the parties together and his task normally ends when an agreement or pre-agreement is reached.[3]

In this context, also the term broker is used. However, there is no generally and legally defined notion in Belgian law of this legal concept. A broker is sometimes defined as an intermediary person who is temporarily assigned to bring together two parties with a view to concluded an agreement.[4] This resembles very much the definition of an intermediary. In another view, a broker is someone who has no permanent relationship with the principal, but intermediates between the latter and another contractor, and can even conclude a contract in the name and for the account of the principal.[5] This is slightly different from pure intermediation, as the broker then also legally represents the principal in the formation of the contract.

Although a broker is often found in the insurance business and the real estate sector, everyone could act as a broker under Belgian law, no matter what the economic sector might be. It is not required that brokering would concern a main activity of the person concerned.[6]

Article 2, section 7 of the Commercial Code is nevertheless relevant. According to a legal presumption, a broker is considered to be a tradesperson, implying that certain provisions of the Commercial Code have to be taken into account.

Since brokering services are not legally well defined in Belgian law, the activities are often qualified as a from of contracting when they are limited to intermediary services (excluding representation).[7]

d. Commercial agent

Commercial agency is explicitly regulated in the law. The law of 13 April 1995[8] defines this as an agreement whereby the commercial agent is assigned by a principal to negotiate on his behalf and possibly conclude contracts for his account, in the framework a permanent relationship but without any form of subordination.[9] A commercial agent is, therefore, an intermediary or a negotiator, acting in the name and for the account of the principal.

Beginselen van Belgisch Privaatrecht, XIII, Handels- en economisch recht, I, Ondernemingsrecht, Vol. B, Brussel, Story-Scientia, 1989, 437.

[3] E. Dursin and K. Van Den Broeck (eds.), *Handelsagentuur*, deel I, Gent, Mys & Breesch, 1997, 5.

[4] J. Stuyck a.o., *De handelsagentuurovereenkomst*, Brugge, die Keure, 1995, 23.

[5] E. Dursin and K. Van Den Broeck (eds.), *Handelsagentuur*, deel I, Gent, Mys & Breesch, 1997, 12.

[6] E. Dursin and K. Van Den Broeck (eds.), *Handelsagentuur*, deel I, Gent, Mys & Breesch, 1997, 13.

[7] E. Dursin and K. Van Den Broeck (eds.), *Handelsagentuur*, deel I, Gent, Mys & Breesch, 1997, 13; J. Stuyck, 'Handelstussenpersonen', in W. Van Gerven, H. Cousy and J. Stuyck (eds.), *Beginselen van Belgisch Privaatrecht, XIII, Handels- en economisch recht, I, Ondernemingsrecht*, Vol. B, Brussel, Story-Scientia, 1989, 446.

[8] *B.S.*, 2 June 1995.

[9] Article 1 Law 13 April 1995.

It should be noted that in this definition, the distinction between a commercial agent and a broker becomes quite vague. A distinction that is often used is that a broker is an independent person, who does not work exclusively for one party. However, contrary to the classical doctrine, the impartiality of the broker is, in essence, not anymore considered to be a purely neutral character.[10]

Following article 28 of the Law of 13 April 1995, the commercial agent is considered as a tradesmen in the sense of the law, implying specific provision from the Commercial Code.

e. Employment contract

This agreement is regulated by the Law of 3 July 1978. It concerns a contract whereby one party, the employee, agrees to perform work for another party, the employer, for a salary and under the authority of the latter.[11] The exercise of authority and the concept of subordination is an essential characteristic of the employment relationship. Exclusivity is not a determining element in order to establish an employment contract.[12]

3.2 Applied to the sports manager or the sports agent

The activities of an agent assisting athletes or players will normally be considered as an example of contracting. Indeed, it may imply the provision of material and intellectual services, such as professional and legal advice, or merely practical assistance. Even if the manager would act as a broker (intermediary between person in the process of concluding a contract, for example between a player and a club), the legal concept will remain contracting. It is, however, still possible that a person is considered to be partly a broker, since it is not required that brokerage is undertaken in the framework of a principal activity. This may have an influence on the status of the players' agent or sports agent as the Commercial Code considers activities in the area of brokerage as commercial activities.[13] A sports agent who does not performs activities of brokerage, but merely limits himself to advice and services to athletes and clubs, is not a broker in the sense of the law.

Besides contracting, sports management activities may be considered as a legal construction implying a mandate. This will be the case if the manager or agent also legally represents the athlete (or the club). A mandate requires legal powers of representation. In practice, it would be possible that a players' agent does not only intermediate between two parties but also represents a party in the conclusion of a contract.[14]

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[10] J. Stuyck a.o., *De handelsagentuurovereenkomst*, Brugge, die Keure, 1995, 23.
[11] Article 2 and 3 Law 3 July 1978.
[12] F. Hendrickx, *Het ondergeschikt verband* – Overzicht van rechtspraak 1990-1998, *T.S.R*. 1999, 58-62.
[13] Article 2 Commercial Code.
[14] K. De Bock, '*Makelaar en kredietmakelaar en –agent*', in *Recht voor de Onderneming*, 2de

It is also important to take into account the rules regarding commercial agency. The law of 13 April 1995 could be applicable in the case real agency is being considered, i.e. an activity composed of permanent and continuous services of intermediation and representation provided in the name and for the account of the principal. The legal distinction between commercial agency and mere brokerage can be quite vague in practice. Nevertheless, establishing sports agency as commercial agency would require a rather heavy burden of proof.

It may also be the case that an individual athlete hires a personal manager. This person could be regarded as a sports manager, dealing with sporting issues, but it may also concern someone who deals with all kinds of practical and administrative issues. If the athlete is exercising a certain degree of authority over the manager (e.g. by providing clear and precise instructions or by exercising rather strict forms of control), then the implication may be that an employment contract exists between athlete (employer) and manger (employee). In case no such employment relationship is inferred, the relationship will be qualified as contracting.

4. The law governing employment intermediation

Above it has been indicated that one of the activities that sport intermediaries may develop concern contract negotiation and intermediation with regard to employment. In other words, intermediaries, agents or managers deal with the assistance of players in finding a club, or a club in finding players. They may also play a role in the transfer of a player from one club to another. In other words, in some respect sports agents may be considered as labour market intermediaries in the sense that they provide services in the process of bringing demand and supply of labour together. This is called 'employment intermediation' (in Dutch: *arbeidsbemiddeling*), an activity which is strictly regulated by the law.

Until the late nineties, International labour conventions of the International Labour Organisation (ILO) provided for a prohibition of private employment intermediation. This prohibition was laid down in Convention n° 96 of 1 July 1949, that revised the former Convention n° 34 of 1933 in this matter. Fee-charging employment agencies were defined as agencies conducted with a view to profit, that is to say, any person, company, institution, agency or other organisation which acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker.

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editie, Antwerpen, Kluwer, 1998, VII.30.10; E. Dursin and K. Van Den Broeck (eds.), *Handelsagentuur*, deel I, Gent, Mys & Breesch, 1997, 14; K. De Bock, *l.c.*, VII, 30.10; W. Goossens, '*De kwalificatie van een makelaarsovereenkomst en van de vergoeding die verschuldigd is als gevolg van de verkoop door de opdrachtgever* – Vragen van overgangsrecht m.b.t. de nieuwe Wet op de schadebedingen', *T.B.B.R.* 2000, 429 e.v.

Employment mediation was considered to be primarily a governmental task (through a public employment service). It was provided that fee-charging employment agencies conducted with a view to profit were to be abolished within a limited period of time. The reason behind this was the fear of abuses and the principle that 'labour is not a commodity'. Because of the existence of this international labour convention, Belgium provided for a governmental monopoly in the sphere of employment intermediation services, although some exceptions existed. Private employment intermediation services were not impossible, but were subject to a very strict system of licensing. Article 5, paragraph 2 of Convention 96 provided that every fee-charging employment agency for which an exception (to the prohibition) was allowed under had to be in possession of a yearly licence renewable at the discretion of the competent authority.

On 19 June 1997, the ILO adopted Convention nr. 181 concerning Private Employment Agencies, which revised Conventions n° 34 and 96. The new convention starts from a new philosophy. Instead of a prohibition, the new Convention sets a framework for the legal operation of private employment agencies. The new Convention uses the term 'private employment agency' which is defined as any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services: (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom; (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person which assigns their tasks and supervises the execution of these tasks; (c) other services relating to job seeking, determined by the competent authority, such as the provision of information, that do not set out to match specific offers of and applications for employment.

One of the central concepts of the Convention is laid down in article 7, where it is provided that private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers, although exceptions are formulated. Another basic provision is laid down in article 3 of this Convention, in which Member States are obliged to determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice.

In shifting the international trend regarding private employment mediation, Convention 181 obviously influenced national laws and legislation. In Belgium, the issue of employment mediation is regulated by the regions.

5. Belgian (Regional) regulation of intermediation (in sport)

The three Belgian Regions (Flemish, Walloon and Brussels Region) with competence over this area have regulated various forms of employment intermediation in the past, such as temporary work, recruitment and outplacement. These regulations

had to be reshaped in the shadow of the conditions following the principle of free movement of services as provided by the EU Services Directive 2006/123/EC of 12 December 2006. As only temporary work was excluded from the scope of the EU Services Directive, the provisions regarding labour market intermediaries, such as sports agents/player's agents, were adapted, especially with regard to admission, reduction of administrative burdens and sanctions.

In Flanders, the matter is governed by a Decree of 10 December 2010 concerning private employment mediation.[15] This Decree regulates temporary work, as well as various forms of private employment intermediation services or employment finding services, i.e. private employment agencies understood in the broad sense. The Flemish regulation is only applicable in the Flemish Region, which excludes the Walloon and Brussels Region, with some nuances which are made below. The Decree of 10 December 2010 has further been implemented in a Decision of 10 December 2010.[16] This legislation also takes into account the ILO-convention n° 181 of 19 June 1997 on private employment agencies (ratified in Belgium on 8 June 2004 and approved by the Flemish parliament on 17 July 2000).[17]

Against a similar background, for the Walloon Region, the rules are laid down in a Decree of 3 April 2009[18] and a Decision of the Walloon Executive of 10 December 2009.[19] The scope and requirements are similar as to those in the Flemish Region, except for the provisions on the registration of a bureau for private employment mediation services.

For the Brussels Region, the rules are laid down in the Brussels Ordinance of 14 July 2011[20] on the administration of the labour market and a Ministerial Decision of 12 July 2012,[21] which executes the Ordinance of 14 July 2011. The conditions are similar to those is the other regions, but contrary to the Flemish and Walloon Decrees, the Brussels Ordinance does not make a distinction between public and private employment mediation services.[22]

5.1 Definition and scope

5.1.1 Definition

According to the Flemish Decree of 2010, private employment mediation are "*all services conducted by an intermediary, which are aimed at: a) assisting employees*

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[15] *Off. Gaz*. 29 December 2010.
[16] *Off. Gaz.* 29 December 2010.
[17] R. Blanpain, *Arbeidsmarktrech*t, in *I.C.A.-reeks*, Brugge, die Keure, 2001, 18-28.
[18] *Off. Gaz.* 5 may 2009
[19] *Off. Gaz*. 21 December 2009.
[20] *Off. Gaz*. 10 August 2011.
[21] *Off. Gaz*. 1 October 2012.
[22] P. Pecinovsky, "*Werving, selectie en arbeidsbemiddeling*", in F. Hendrickx en C. Engels (eds.), Arbeidsrecht Deel 1, Brugge, die Keure, 2015, 265-266.

in their search for new employment; b) Assisting employers in their search for competent employees; c) recruiting employees to post them with the objective to provide temporary work and the outplacement of employees".

This last form of private employment mediation will be left outside the scope of this contribution, since, in practice, it is not applicable in the world of sports, at least not in Belgium.

The legislative definition does not state precisely what these activities actually are. The most important element is, however, the aim of assisting employees in their search for new employment or employers in their search for employees. From this we may conclude that other forms of services provided by an intermediary do not fall within the scope of the Decree, despite the fact that 'assisting with the search for employment/employees' leaves a lot of room for interpretation.

In practice, *player's agents* are often *sports managers* who also provide other activities than acting as an intermediary in the search for new employment or employees. In this sense, when acting in the interests of the sportsman in relation to their club after an employment contract has been concluded, the player's agent does not provide a service that falls within the scope of the Decree.

The Decree primarily envisages activities such as posting of employees with an employer, recruitment of employees, selection, headhunting, outplacement, talent banks, etc.

When a sports agent does act as an intermediary in the process of supply and demand, his activities fall within the scope of private employment mediation. Although in practice, the term *player's agent* is often used, preference must be given to the term *sports agent,* like in the view of the Decree itself, since in theory it is about assisting players (employees), as well as clubs (employers).

According to the article 1 of the Walloon Decree of 3 April 2009, the Decree is applicable to all services of private employment mediation provided by an employment agency of by a bureau for private employment mediation. Those services of private employment mediation consist of:

- Temporary employment agency service, which is the recruitment of employees by an employment agency to post the workers with certain users/employers with the aim of providing temporary work;[23]
- Employment service: the service provided on behalf of an employees to assist them in their search for new employment. The bureau for private employment mediation however, cannot be involved in the employment relations;[24]
- Recruitment and selection service: the services provided on behalf of an employers, aiming to assist them in their search for competent employees;[25]
- Outplacement service: a service that offers individual or collective counselling and careers advice to redundant employees, which is paid for by their previous employer.[26]

[23] Article 1, 7° Walloon Decree of 3 April 2009.
[24] Art. 1, 8° Walloon Decree of 3 April 2009.
[25] Art. 1, 9° Walloon Decree of 3 April 2009.
[26] Art. 1, 11° Walloon Decree of 3 April 2009.

The Brussels Ordinance of 14 July 2011 is applicable to similar services, as stated by article 3. According to this article the Ordinance and its executive document is applicable to every employment service with the aim of coordinating supply and demand on the labour market (e.g. employment mediation, activities of recruitment and selection, etc.). The mediator, however, cannot be part of the employment relations which can be established. Next to this employment services, the Ordinance is also applicable to the service of posting of workers and every other service regarding the search for employment (e.g. outplacement and the active search for employment).

5.1.2 Territorial scope

The Flemish legislation regarding private employment mediation is only applicable to the activities of employment mediation in the Flemish Region and, in principle, not in the Brussels Region or the Walloon Region. However, the scope may be somewhat broader. Every bureau/firm that pursues mediation activities falls within the scope of the Flemish Decree, even if the registered office is not established in the Flemish Region. Mediation activities are considered as from the moment they concern the approaching of employers/employees in the (Flemish) Region or advertise this in the concerned Region.[27]

The same goes for the Walloon Region. Article 2 of the Walloon Decree of 3 April 2009 regarding the registration and recognition of bureaus for employment mediation states that the Walloon Decree is applicable to all activities of employment mediation which are provided for in the French speaking region of Belgium (with some particular exceptions).[28]

It can thus be assumed that Regional legislations apply when the intermediation service makes a connection with the labour market in the concerned region.

5.1.3 Personal scope

The Flemish Decree is applicable to private employment mediation with the aim to assist "employees in their search for new employment or employers in their search for competent employees".[29] However, for the application of the Decree, the term 'employee' also refers to the job-seeker or self-employed persons, which means that even an amateur in search for his first professional contract falls within the scope of the Decree.[30]

The Decree actually makes an implicit distinction between a sportsman who is employed through an employment contract and other sportsmen. In the

[27] Article 4, §1 Flemish Decree of 10 December 2010.
[28] Article 2 Walloon Decree of 3 April 2009*, Off. Gaz*. 25 May 2009.
[29] Article 3, 1° Flemish Decree of 10 December 2010.
[30] Article 3, 2° Flemish Decree of 10 December 2010.

wording of the Decree, *paid sportsmen* are described as 'persons who take on the commitment to prepare themselves for or take part in a sports competition or exhibition upon remuneration and under the authority/control of another person, including persons who lead the exercises during the preparations'.[31] Other sportsmen also fall within the scope of the Decree and its Executive Decision, but not within the scope of the provisions applicable to 'paid sportsmen'. This has repercussions for the provisions regarding the remuneration of the sports agents.

According to article 1 of the Walloon Decree of 3 April 2009, the Decree is applicable to all services of private employment mediation provided by an employment agency of by a bureau for private employment mediation. Similar to the Flemish regulation, for the application of the Walloon Decree, the term 'employee' also refers to the job-seeker or a self-employed person. The personal scope of the Walloon Decree also concerns the particular case of *paid sportsmen*. According to Article 1, 12°, the Decree is applicable to "the employment mediation service for paid sportsmen, which exists in searching for a job or the recruitment and selection on behalf of the paid sportsmen or equivalent persons or on behalf of employers and which aims the employment of paid sportsmen or equivalent persons. The Decree does not, however, specify who is a paid sportsmen and who is not.

The Brussels Ordinance of 14 July 2011 specifically uses the term 'job-seeker', next to *employer* and *employee*, when defining its scope. The Decree is e.g. applicable to 'activities of recruitment and selection in behalf of the employer, with the aim of recruiting or mediating the employment of *job-seekers*, without the bureau of private employment mediation becoming a party to the subsequent employment relation.[32] The term *job-seeker* is further specified as "every person equivalent to an unemployed person who, at the moment when he calls upon the services of a bureau for private employment mediation of another employment service, is looking for a job, regardless of the fact that he might have an occupation, as an employee or as a self-employed person.[33] The Ordinance also makes an implicit distinction between *paid sportsmen* and others. The scope of the Ordinance also encompasses "the employment service of employment mediation for paid sportsmen, which entails the service regarding the recruitment and selection on behalf the paid sportsmen or equivalent persons or on behalf of the employer, aiming at recruiting that paid sportsmen or an equivalent person, without the bureau of private employment mediation becoming a party to the subsequent employment relation".[34] Other sportsmen also fall within the scope of the Decree and its Executive Decision, but not within the scope of the provisions applicable to 'paid sportsmen'.

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[31] Article 3, 10° Flemish Decree of 10 December 2010.
[32] Article 3, 1°, a) Brussels Ordinance of 14 July 2011.
[33] Article 3, 3° Brussels Ordinance of 14 July 2011.
[34] Article 3, 1°, a) Brussels Ordinance of 14 July 2011.

5.2 Conditional access to employment service in sports

The exploitation of a bureau for private employment mediation, including the advertising in the light of the exploitation of the bureau, is permitted under certain conditions in Belgium.[35] Which conditions are applicable, depends on the Region. It can however be held that the requirements to pursue an activity of employment mediation in Flanders are more flexible than those in the other regions, especially as far as the obligation of registration is concerned. In the various regional legislations, the wording "exploitation of a *bureau* for private employment mediation" is used, but it may concern an office under the form of a legal person as well as a private person.

5.2.1 Recognition

In view of the EU Services Directive of 2006, the (former) conditions regarding obtaining a license or recognition for private employment mediation services have been adapted. In light of the free movement of services in the European Union, the (former) system of license or permits for private employment mediation has been abolished in all three Regions. It only remains a requirement for temporary agency firms. However, this does not take away that the operation of a bureau for private employment mediation, also in sport, requires that various conditions should be met.

5.2.2 Registration

Contrary to the Walloon and Brussels Region, bureaus of private employment mediation in the Flemish Region do not have to formally register.[36] The absence of a registration obligation in Flanders is due to considerations concerning the free movement of services, as stipulated in the Services Directive. An obligation of registration, with additional administrative burdens, has been considered to form an unjustified restriction of the free movement of services.[37]

Bureaus of employment mediation in the Walloon Region (*services de placement*), however, are obliged to register. Article 3 of the Walloon Decree of 3 April 2009 stipulates the required information that has to be included in the registration.[38]

In Brussels, the same registration requirement is stipulated in the Brussels Ordinance of 14 July 2011.[39]

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[35] Articles 4 and 5 Flemish Decree of 10 December 2010.

[36] Walloon Decree of 3 April 2009 on the registration and recognition of bureaus for private employment mediation.

[37] Explanatory Memorandum of the Flemish Decree of 10 December 2010, 4.

[38] Article 3, Walloon Decree of 3 April 2009; P. Pecinovsky, "Werving, selectie en arbeidsbemiddeling", in F. Hendrickx en C. Engels (eds.), Arbeidsrecht Deel 1, Brugge, die Keure, 2015, 265-266.

[39] Art. 15 of the Brussels Ordinance of 14 July 2011.

5.2.3 Legal conditions

To pursue the activities of private employment mediation, various legal requirements have to be met, such as:[40]

- Not being in a state of bankruptcy or being subject of bankruptcy proceedings;[41]
- As managers having the authority to commit or to represent the company, fulfilling all duties with regard to taxes and social security;[42]
- Not organising employment contrary to public order or contrary to social or tax legislation;[43]
- Considering all employees in an objective, respectful and non-discriminatory manner;[44]
- The bureau has to respect the privacy of the employee and the employer and shall process the personal data according to the legislation on the protection of privacy;[45]
- The bureau does not ask or receives under any circumstances any kind of remuneration from the employee. But the Flemish government has the competence to grant an exception for some categories of employees and for some particular services, after advice of the Social and Economic Council of Flanders ('*SERV*') and under the condition that this happens in the interest of the employee.[46]

Bureaus for private employment mediation in the Walloon Region are also subject to certain conditions. Contrary to the Flemish decree, the list is limited to five main obligations:[47]

- The activities of employment mediation are not provided for without prior registration;
- The bureau does not ask or receive any kind of remuneration from the employee and does not require the employee to make any expenses to extend the employment mediation services;
- The bureau does not collaborate with another bureau for private employment mediation that does not have a liable registration at its disposal;
- The bureau has to annul its registration within 30 day after the shutting-down of its activities;
- The bureau has to deliver a yearly activities report to the Services of the Walloon Region.

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[40] Article 5 Flemish Decree of 10 December 2010; P. Pecinovsky, "Werving, selectie en arbeidsbemiddeling", in F. Hendrickx en C. Engels (eds.), *Arbeidsrecht Deel 1*, Brugge, die Keure, 2015, 259-263.

[41] Article 5, 2° Flemish Decree of 10 December 2010.

[42] Article 5, 4° Flemish Decree of 10 December 2010.

[43] Article 5, 5° Flemish Decree of 10 December 2010.

[44] Article 5, 7° Flemish Decree of 10 December 2010.

[45] Article 5, 8° Flemish Decree of 10 December 2010.

[46] Article 5, 9° Flemish Decree of 10 December 2010.

[47] Art. 10, §1 Walloon Decree of 3 April 2009; P. Pecinovsky, "*W*erving, selectie en arbeidsbemiddeling", in F. Hendrickx en C. Engels (eds.), Arbeidsrecht Deel 1, Brugge, die Keure, 2015, 265-266.

The legal conditions that bureaus of (private) employment mediation in Brussels have to comply to, are basically a mix between the conditions stipulated in the Flemish and the Walloon Decree.[48]

5.2.4 Professional expertise

Not everyone can pursue activities of employment mediation in sports. According to the Executive Decision of the Flemish Decree, certain professional expertise is required if a person wants to pursue activities of private employment mediation with paid sportsmen. The person who carries the professional responsibility, or one of his employees or delegates, must fulfill at least one of the following conditions:[49]

- He must have professional experience in the field of human resources or in the specific sector of at least 5 years;
- He must be holder of a master's diploma or a similar diploma and he must have professional experience of at least 3 years in the field of human resources or corporate policy or in the specific sector.

In the Brussels Region, similar professional expertise is required to pursue activities of employment mediation. The person who carries the professional responsibility, or one of his employees or delegates, must fulfill at least one of the following conditions:[50]

- He must have professional experience in a responsible function in the field of human resources or corporate policy of at least 10 years;
- He must have professional experience in a responsible function in the specific sector for at least 5 years
- He must be holder of a master's diploma or a similar diploma and he must have professional experience of at least 5 years in a responsible function in the field of human resources in the specific employment activity.

5.3 Remuneration of the sports agent

The general idea of employment intermediation in Belgium is that, in principle, any bureau or agent providing intermediary services to employees should not receive any payment or remuneration from the employee himself. The idea is that payment should come from the searching or recruiting employer.

However, with regard to sport, some deviations and specific provisions have come into place. Contrary to the general prohibition for a bureau or intermediator to ask or receive any kind of payment from the employee, the Flemish legislation suggests the possibility of a remuneration or commission for services of private employment mediation in the case of paid sportsmen. A sports agent is, however, only able to receive a remuneration or a commission within the confines

[48] Art. 6 and 17 Brussels Ordinance of 14 July 2011.
[49] Art. 4, §1 Executive Decision of 10 December 2010.
[50] Art. 21 Ministerial Decision of 12 July 2012.

of the limits and conditions set out in the legislation. Remuneration is understood to consist of all fees, commissions, contributions, admission fees and enrolment fees.[51] The opinion of the legislator(s) was that the imposition of a maximum charge for fees or commissions (for intermediation services) is to be regarded as problematic in light of the EU Services Directive of 2006.

There are a series of legislative conditions for the protection of paid sportsmen. Due to their specific employment and social security status, it is not always clear whether a sportsman acts in his capacity as employee or in his capacity as principal.[52] Therefore, to protect the employee (meaning the sportsman which has to be considered as employee), the bureau of private employment mediation (a sport intermediary) can only accept or demand a commission when (as follows from the Flemish Decree):

i. The commission is stipulated on beforehand in a written agreement between the bureau and the principal. In case the private employment mediation is a service that is provided together with other services, the commission has to be stipulated for each service separately;
ii. The employee has to agree explicitly and in advance with the commission;
iii. Every party has to have an original copy of the agreement at his disposal.

The commission for the mediation of a paid sportsman should be calculated on the basis of the estimated yearly total gross salary of the paid sports man, for the total duration of the contract.[53]

The same is stipulated in the Walloon Decree. A registered bureau for private employment mediation can ask a remuneration or commission for services of private employment mediation in the case of paid sportsmen under certain conditions. First of all, the professional athlete has to give his prior consent. Furthermore, the commission has to be stipulated on beforehand in a written agreement between the bureau and the employee and the agreement has to contain a termination clause. The employee has to receive a duplicate form this agreement. The remuneration is calculated on the basis of either a percentage of the total gross salary of the sportsman or either as a lump sum.[54]

In the Brussels Region, a registered bureau for private employment mediation can ask a remuneration or commission for services of private employment mediation in the case of paid sportsmen under the conditions that:[55]

- The commission is stipulated on beforehand in a written agreement between the bureau and the job-seeker and the agreement has to contain a termination clause;
- Every party has to possess an original copy of the agreement at his disposal;

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[51] Cf. Article 8, first paragraph of the Flemish Decree of 10 December 2010; Appendix 5, point 14.1, Executive Decision of 10 December 2010.
[52] Explanatory Memorandum of the Flemish Decree of 10 December 2010, 19.
[53] Article 8, second paragraph of the Flemish Decree of 10 December 2010.
[54] Art. 10, §2 Wallon Decree of 3 april 2009.
[55] Art. 22 Ministerial Decision of 12 July 2012.

- The remuneration is calculated on the basis of either a percentage of the total gross salary of the sportsman or either a lump sum.

6. Belgian football regulations on intermediaries

In Belgium, it is in principle the Belgian football federation (Koninklijke Belgische Voetbalbond / Union Royale Belge des Sociétés de Football-Association) which is responsible to regulate the situation of the intermediaries. However, the responsibility over the management of the regulations is delegated to the Belgian professional league, the Pro League.[56] The Belgian Football Association has passed the "Regulations regarding the cooperation with intermediaries". This is largely based on the FIFA regulations.[57] However, some specific aspects are provided.

Under the Football Association's rules, there is a duty to register as an intermediary. In principle, this registration needs to take place before any activity as an intermediary (but an exception may be granted for registration within 10 days after the first transaction). Registration is for an indefinite period of time, but it is subject to the payment of an annual administrative fee of 500 Euro, the signing of a declaration and the provision of evidence that there is insurance coverage for professional liability. Attorneys-at-law are excluded from the regulations.[58]

With regard to the representation contract, the Belgian Football Association's rules provides for a maximum length of 3 years, with possibility of renewal. Furthermore, also the Football Association's rules 'recommend' that the fee for intermediary services should not exceed 3%, taking the total salary as a reference and not only the basic salary. It is provided that not respecting the latter requirement will not lead to any sanction whatsoever.[59]

The Belgian Football Association's rules provide that payments made by parents to intermediaries of minors are not allowed.

Disputes regarding the Belgian Football Association's regulations on intermediaries are subject to the competence of a dispute resolution committee of professional football, with a possibility to file an appeal with the Belgian Court of Arbitration for Sport.

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[56] www.proleague.be/nl/persberichten/ProPers147_NL.pdf.
[57] www.belgianfootball.be/sites/default/files/pdf/reglement_tussenpersonen_01.07.2016.pdf.
[58] Art. 2 al.2 RST.
[59] Art. 8.3 RST.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN BRAZIL

by *Leonardo Andreotti Paulo de Oliveira*[*]

1. Introduction

This study considers an important and common question related to the representation of players in the Brazilian context, particularly in light of the relatively recent decision[1] of the Executive Committee of the International Football Federation which did away with the traditional structure of how agents provide their services, as well as the economic relevance of the activity in a national and international context, especially as it relates to football, which, it is argued, requires regulation on both a private sporting and federal level.

Based on FIFA Regulations on Working with Intermediaries, the Brazilian Football Confederation has adopted the National Regulations on the Work of Intermediaries, which came into force on April 24th 2015, according to article 41 of the Regulations.

It is important to note that the new regulations will inevitably be criticized and will come to be amended over time. Thus, it is useful here to analyze the first remarks and to scrutinize the national regimen of the representation of players and football clubs, encouraging debate and further critical study by Sports Lawyers in Brazil and abroad.

2. Brazilian Legislation concerning the activity of Intermediaries

Far from being a fragmented activity only regulated in the private scope of a Sports Federation, the activity of the agent, now referred to as an "intermediary", is

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[1] In March 2014, The Executive Committee of the governing body of world football approved the new Player's Agents' Regulations, to replace the previous Regulations.

regulated, in a somewhat general manner, particularly as concerns financial dealings, by several public laws contained within national legislation. In this context we can cite the General Law on Brazilian sports, Law 9.615/98, commonly known as "Pelé Law"[2] and recently amended by Law 12.395/11, which upholds in its article 27-C,[3] a requirement directly related to representation, curbing the prevalence of abusive clauses in contracts, enhancing the respect of principles such as Objective Good-Faith and the Social Function of the Contract, as well as, among other things, surprisingly prohibiting the representation of an athlete in training, under 18 years old.

Besides the General Law on Sports, we consider the Brazilian Civil Code itself, Law 10.406, January, 10th 2002, has relevant application in this area, allowing for desirable exceptions for the specificity of sport, especially as it concerns Legal Business in general and, more specifically, the "mandate" itself or even agent services.

But it is in the internal domain that is the private and administrative rules of the National Entity of Sports Administration, in Brazil, the CBF, that the activity is comprehensively regulated by the previously mentioned National Regulations on Working of Intermediaries[4] which will be studied below.

3. CBF National Regulations on the Activities of Intermediaries

3.1 Principles and Definitions

In accordance with FIFA Regulation on working with Intermediaries, the Brazilian Football Confederation has implemented national regulations on the subject, considering, for these purposes, that the "Intermediary", formerly "FIFA Agent", is "*Every private natural or legal person acting as player and/or club representative, for a fee or free of charge, aiming to negotiate, or renegotiate, the handling,*

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[2] The Law nomenclature is due to the fact that when the Law referred to, came into force, the Athlete of the Century, Pelé, held the position of Extraordinary Minister of Sports, and so he was afforded this legislative honor.

[3] Art 27-C: They are considered null, the contracts signed by the athlete or his legal representative with a sports agent, private natural or legal person, as well as the contractual terms which:
I – result in a sporting bond;
II – imply the binding of total or partial income demands of the sports entity, due to a national or international athlete transfer, in the light of the exclusivity provided in paragraph I of article 28;
III – restrict the freedom to work in sport;
IV – establish obligations considered abusive or disproportionate;
V – infringe the principles of objective good-faith and the Social Function of the Contract or
VI – concern the career management of an athlete under 18 (eighteen), in training.
(Included by Law 12.395, 2011).

[4] http://cdn.cbf.com.br/content/201603/20160314131514_0.pdf.

[5] The term "special" is taken from of Article 28 of Pelé Law, which was innovative in designating the Employment Contract as the "Special Sports Employment Contract", perhaps reinforcing the need to allow for the specificity or sport.

amendment or renewal of a special[5] *sports employment contract and/or as a club representative intending to negotiate the temporary or definitive transfer of players, between clubs*" (Emphasis added).

It is clear, in analyzing the National Regulations, that the underlying principles of the CBF Regulations reflect the standards laid out by the International Federation, which also provides in its Article 28, for the necessity to respect the Principles of Loyalty, Transparency, Honesty, Probity and Good-Faith and professional commitment. Such an inclusion is particularly noteworthy at what is a critical moment for International Football considering the frayed political atmosphere faced by several sports entities, including the governing body of world football.

The aim of these entities in approving and publishing the regulations referred to, has always been related to the protection of "sporting integrity", a principle also relevant to the recent prohibition of the sale of "Economic Rights", or Third Party Ownership – TPO in football, driven by UEFA and embraced by the International Federation.

In relation to the activity of the Intermediaries, and considering the concerns previously referred to, it is important to recognize that the National Regulations, through Article 3, impose some mandatory requirements, such as the right of the parties to rely on the services of the Intermediary and the requirement for the Agent to be registered with CBF before acting, since Article 38, prohibits both clubs and players from making use of the services of unregistered Intermediaries. Furthermore, Annexes 1 and 2 of the Regulations require the signing of declarations, by the intermediary and prohibit players and clubs from using a director or "official", as referred to in the FIFA Statutes, as an Intermediary, as well as many other requirements and prohibitions of both national and international scope.

3.2 Requisites and Conditions

The National Regulations on the Activities of Intermediaries establishes in its fifth article, (single paragraph), that the Brazilian Football Confederation will demand from the Intermediary, when requiring a registration or the renewal of a registration, the presentation of documentation such as: an ID card, CPF (Individual Taxpayer Registration Number) and proof of address; a signed declaration stating the Intermediary does not have any contractual relationship with Leagues, Confederations or even FIFA, which could, depending on the situation, generate a potential conflict of interest; confirmation that he or she is not the subject of any adverse criminal or civil law decision, is not an undischarged bankrupt or the subject of any prohibition on his or her running a business, in order to demonstrate impeccable reputation in both social and business domains, as well as other documentation as may be required for the establishment or maintenance of registration as an Agent with the CBF.

Interestingly, besides the previously listed documents, the Regulations require the Intermediary to provide, a copy of their indemnity insurance policy,

which must be suitable for the nature of the activity in question and provide cover for damages up to the value of R$ 200.000,00 (two hundred thousand Reais).[7] This requirement is obviously intended to protect his or her potential and future clients, whether they be clubs or football players, and is not so different from the old requirements for registered FIFA agents, which also demanded the provision of similar insurance.

The final requirement is the payment of a fee, at an amount to be specified by Brazilian Football Confederation, in order to become registered or to renew the same.

3.3 Impeccable Reputation and other conditions for Registration

The provisions in the previously mentioned fifth Article require verification of the most important requirements for the registration of the Intermediary at CBF, that is, evidence of his or her suitable moral character. It is the Intermediary himself, when signing the declarations mentioned in Annexes 1 or 2 of the Regulations, who must self-certify that he is of impeccable reputation – perhaps not the most appropriate manner in which to verify this assertion. However, it is understood that following further analysis or inspection by the CBF, the aforesaid declaration may be disputed with information about the Intermediary's previous life history and conduct, which may hamper the registration or its renewal. Nonetheless, it is arguable that the wording of the declaration is subjective and therefore capable of generating doubt, when analyzed on a case by case basis, since the final decision will be taken by the CBF from a unilateral perspective.

The content of the Intermediary Declaration[7] itself elucidates that it is subject to certain general norms, concerning the Agent's professional practice while performing his duties. The Intermediary must state that "He will respect and observe the mandatory provisions of National Law, International Law, and above all, the private national and international legislation, as set out in FIFA Statutes and Regulations, those of the South American Football Confederation (Conmebol) and the Brazilian Football Confederation (CBF)".

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[6] Around US$ 60.000,00 (Sixty thousand Dollars).

[7] 1. I declare that I am currently not holding a position of official, as defined in point 11 of the Definitions section of the FIFA Statutes, nor will I hold such a position in the foreseeable future. This is perhaps excessive considering the doubtful legality of a requirement which prevents or limits the freedom to work, in certain situations, or imposing limits on future situations, especially if we consider the dynamics of the market and professional opportunities which may appear, when least expected, hence the reason for this criticism of such an impractical prohibition, which can lead to awkward situations and hinder the legitimate registration of the Intermediary.

2. I declare not to keep any contractual relationship with Leagues, Federations, Associations, or FIFA, which may result in potential conflict of interests.

3. I declare I will not accept payment from other clubs in relation to compensation for transfers, compensation for training or compassionate payments.

4. Record of Operations

As established in the sixth article of the Regulations, the CBF will keep a public record of the activities of a registered Intermediary.

Furthermore, those who are to hire the services of an Intermediary should demand from him, the signature and registration of the Intermediary's Declaration with the CBF.

5. Representation Contract

In an effort to ensure transparency and legal certainty of the relationships between parties, especially in the current environment, the Regulations demand a written Representation Contract, which states clearly and objectively the rights and duties of the parties involved, specifying the legal nature of the services performed by each party, as well as the following elements, as a minimum:

Names and qualifications of the parties, including the player's date of birth;

2. Duration of the legal relationship, which cannot exceed (2) two years and cannot be automatically renewed;
3. Any extension of the service, the amount of the adjusted commission and the date of accomplishment;
4. The remuneration due to the Intermediary and the general terms of payment;
5. Contract Termination Clause;
6. Recognition of the CBF Dispute Resolution Committee as the single and exclusive competent body to settle possible questions or disputes about the Representation Contract;
7. Registration of the Representation Contract at the Brazilian Football Confederation.

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4. I declare I will not receive payment from third parties if the player is not professional and under eighteen years old.

5. I declare I will not participate in betting, lotteries or any business related to football matches.

6. I authorize CBF to collect information on every payment of any type received for the services rendered as an Intermediary.

7. I allow the Leagues, Associations, Confederations or FIFA to obtain agreements and registrations related to the Intermediary activity, even permitting the entities to obtain documents from any other parties which advise, assist or take part in negotiations engaged by the Intermediary.

Here, we also make a critical observation, above all, about the role of the lawyer in the above mentioned negotiations. Under Federal Law 8.906/1994 (Advocacy Statutes) the principle of the inviolability of the lawyer's office is established, including his working instruments and everything else which is related to his practice of the Law. So any limitation of this right may be considered a violation of legal professional privilege and ,thus, of a legal guarantee.

8. I allow CBF to make known possible disciplinary sanctions which may be imposed.

In the absence of any violation of the terms listed above or as a result of any circumstances, as ascertained by CBF, which could possibly encumber the aforementioned registration, the registration will be approved or renewed as appropriate.

6. *Information, Disclosure and Publication details*

Article 13 of the National Regulations makes clear to the clubs and football players the obligation to disclose to the CBF, in every transaction, all information corresponding to the remuneration or payments of any nature which have been made or will be made to the Intermediary, the timescale for any such payments, the sums involved and the payment conditions. In addition, the parties are obliged to provide, when requested by the CBF of FIFA, all the contracts, agreements and registrations related to the activity of representation carried out by Intermediaries, even if the agreements contain confidentiality clauses. The relevant governing body will then have open access to the documents for investigative purposes.

Since the aim is to encourage transparency and disclosure of the finalized deals completed by agents, it is interesting to note that Article 15 of the Regulations authorizes the CBF to publish, annually, the names of all registered Intermediaries, as well as the total amount of remuneration or payments which the clubs and players have made, covering the total value of the consolidated amount.

Finally, the national governing body will send to FIFA all information related to the transactions in which the Intermediaries were involved, and, where relevant, details of any sanctions which were imposed in the case of infringements.

7. *Remuneration*

As regards the issue of the Intermediary's remuneration, he may, in certain circumstances, provide his services free of charge. However, the National Regulations adopt the FIFA guidelines, in recommending that the hired Intermediary's remuneration, paid either by the club or the player, will not exceed 3% (three percent) of the gross salary of the player corresponding to the duration of the contract, and allows for Intermediaries to be remunerated by payment of a fixed value in cash where previously agreed before the conclusion of the contract, or in installments, according to Article 18.

It is also important to highlight the express prohibition, in Article 20, of payments either, by an Intermediary or on behalf of an Intermediary, of any amounts arising from a player transfer agreement, which includes economic rights, training compensation and/or solidarity mechanism payments, of FIFA on an international level, or of CBF nationally.

In the same way, it is also forbidden for directors or Officials of clubs to receive any payments derived in whole or in part from fees due to the Intermediary. This is clearly to protect sport's, and in particular, football's integrity. It is argued that, this expectation provides for them an express prohibition of a well known practice behind the scenes in the world of Agents, which may, depending on its effectiveness, mean a major advance in the moralization and professionalization of practices within the sport.

Finally, it is also forbidden under any circumstances, for the players and/or clubs that engage the services of an Intermediary to negotiate a Special Sports Employment Contract or a Transfer Agreement, to provide payment to the Agents, when the negotiations concern a non-professional player under eighteen years old, as stated in item 11 of the Definitions Section of the FIFA Regulations on the Status and Transfer of Players,[8] and as provided in Article 24 of the National Regulations. For the avoidance of doubt the Regulations expressly prohibit such payments when the deal involves a player who is not a professional "*and*" is under eighteen years of age. By analyzing Law 9.615/11, it is possible to conclude that, the athlete can become a professional from the age of 16 years and over, after signing a Special Sports Employment Contract, and from that point would no longer hold "non-professional" status, regardless of whether he is under 18 years old.

In such situations, it is suggested that the prohibition provided for by Article 24 of the National Regulations would not apply if the underage child is already a professional, since the requirements for the payment prohibition to the Intermediary seem to be "cumulative" and not merely "alternative", so that the work of an Intermediary in the contract negotiations of professional players shall be remunerative in accordance with the particular terms of the relevant representation contract signed.

8. Conflict of Interest

In harmony with FIFA Regulations, the Brazilian Football Confederation has set out to avoid a situation whereby damages may arise due to a club or player entering into a representation contract with an Agent, who is later compromised due to a conflict of interests. In other words, there is a pre-emptive attempt to stop the Intermediary from potentially compromising the position of his clients due to other business interests he may have.

Article 25 states that before engaging the services of an Intermediary, the players and clubs shall make sure there are no, and there will not be, any conflicts of interests arising between the parties involved in the contractual relationship. However, in practice, verification of this rarely occurs, and hardly ever are the parties able to have a truly clear picture of the reality they are operating in. Therefore, it is for the Intermediary, based on good faith and supported by principles of loyalty, transparency, honesty, probity and professional diligence, to observe his client's exclusive interests. Any perception of actions to the contrary, or the concealment of an effective conflict of interest not previously informed, may, it is argued, give rise to a disciplinary infraction, liable for punishment by the competent body.

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[8] Underage players: players who are under 18 years old.

However, any potential conflict of interest identified and disclosed in advance, will not necessary prevent the Agent from acting for a particular party.

If the parties agree, by means of a written and express prior consent, the double representation may be allowed and shall be disclosed to the CBF.

9. Disciplinary Powers and Sanctions

As prescribed in Article 31 of the Regulations, the CBF is responsible, through its competent body, the *CBF Dispute Resolutions Committee*[9] for sanctioning any breach of the provisions of the National Regulations on the Activities of Intermediaries, its Annexes, Statutes and Regulations of the CBF, as committed by Intermediaries, players and/or clubs, in relation to contract negotiations and agreements of national effect.

Firstly, it is necessary to be sure that the eventual sanctions have only national extension, in the certainty that once the sanctions are publicized and informed to FIFA, the International Governing Body, by means of its Disciplinary Committee, has the authority to expand the effect of the sanction internationally.

Parties that infringe the Regulations will be liable according to the following rules:

Art. 33 – *The Intermediary* who infringes this Regulation is liable to the following sanctions, which may be applied either in a separate or cumulative manner: I) warning; II) fine; III) temporary suspension of registration at CBF for up to 12 (twelve) months; IV) prohibition of carrying out the activities of an Intermediary within CBF jurisdiction.

Art. 34 – *The club* infringing these Regulation requirements is liable to the following sanctions, which may be applied either in a separate or cumulative manner: I) warning; II) fine; III) suspension of new players' registration for up to 1(one) or 2(two) annual periods or transfer windows; IV) deduction of points; relegation to the immediate division below the one it is competing in at the moment. The decision is *res judicata.*

Art 35 – *The player* infringing these Regulations is liable to the following sanctions, which may be applied either in a separate or cumulative manner: I) warning; II) fine; III) suspension from playing matches; IV) prohibition from being engaged in any activities related to football.

Finally, it is worth emphasizing that the sanctions on offenders may be applied cumulatively, particularly in cases of multiple or repeat breaches, leading to more severe sanctions being imposed.

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[9] Available at http://cdn.cbf.com.br/content/201609/20160920140924_0.pdf.

10. Conclusion

As with every change or transition period, the new sports law scenario concerning the world of player and football club representation will have a big impact, not only as it affects economic matters, which will certainly demand not only new, but significant changes to the National Regulations on Working with Intermediaries, but also on the activities of new Intermediaries, and experienced Lawyers within Sport.

Many questions will remain open and will be answered in the fullness of time and in the practical experience of the parties within this representative relationship, and above all, with the resolution of conflicts, where general norms may be applied in each concrete case, giving rise to precedents.

Whether positive or negative, critical analysis of the new Regulations is necessary for the sake of the development of practice within this area, and as the requirements begin to be applied in context, this will rightly give rise to further discussion, in both an academic and professional context, as to the true effectiveness of the new representation system.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN BULGARIA

by *Mila Hristova*[*]

1. Introduction

The Bulgarian Regulations on Working with Football Agents (the "Bulgarian RWFA") came into force in July 2015. This was as a result of FIFA's recently introduced Intermediaries Regulations (the "FIFA IRs").

2. Relevant National Law

The existing general Act regulating intermediary activities in Bulgaria is defined by the Decree on the intermediary activities in relation to employment.[1] It is a common act that defines the general principles of intermediary activities in the sphere of employment, but it does not cover other areas of law. In the past, the professional relationship between agents, players and clubs, was not covered by sports regulations. In this regard it was decided that the Bulgarian Regulations on working with football agents (the "Bulgarian RWFA") would be adopted to govern intermediary activity in football.

3. Principles

The general principles of FIFA Regulations on Working with Intermediaries are included in the Bulgarian RWFA. The main characteristic of the regulations is represented in the General Provisions with a definition of what the main purpose of the Regulations is:

"The Regulations govern the activities of the football agents in the system of the Bulgarian Football Union, the terms and conditions of their registration or suspension of their activities and the rules for keeping the register of football agents".[2]

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[1] Decree No. 107/17.05.2003.

[2] According to the *Bulgarian Regulations on Working with Football Agents.*

It should be made clear that the Bulgarian Football Union uses the term "football agent" in the sense of "intermediary", providing it with the same meaning:

"Football agent" – a natural or legal person, who, for a fee, represents a player or a coach before a club with a view to negotiating and concluding an employment agreement within the Bulgarian Football Union (BFU) or from the Bulgarian Football Union to another football association and vice versa and in accordance with the requirements of the present Regulations".

"The football agent has the contractual rights to perform the following tasks: to represent the interests of the player, club or coach; to negotiate on their behalf with another player, club or coach; to discuss the terms of a potential contract with them and to mediate in the negotiation for the acquisition or transfer of sports rights".

The main body related to the intermediary activities in football is the Commission of football agents, which was established in accordance with the BFU rules. The Commission regulates, coordinates, controls and manages the process of registration of football agents in the system of the Bulgarian Football Union, as well as monitoring the performance of their profession.

Besides the general information concerning the requirements when submitting the contract to the Commission, the RWFA enforces the principle that the representation contract shall include the entire agreement between the parties relating to intermediary activity and contain all the mandatory requisites of the standard representation contract. The parties are entitled to agree on other conditions, if they are in accordance with the mandatory conditions of the standard representation contract, as well as with the requirements of the Regulations.

The Bulgarian RWFA stipulates an explicit prohibition for football agents to conclude representation contracts with a player before the age of 16. If this is the case, the representation contract has to be signed both by the player and his parent/guardian. This contract has to include the notarial authentication of the signatures of the parties and comes to term when the player becomes 18 years of age.

The Bulgarian RWFA provides that the representation contract with a player or a coach has a term of up to three years, and it can be extended only by the written agreement of the football agent and the player or coach.

4. Definitions

Besides the definitions of a football agent, player, coach and club, the Bulgarian RWFA defines the following other terms:

"A transfer" is a legally regulated act for change in the club affiliations and sports rights of athletes.

"An intermediary activity" is any negotiation or other related activities, including any communication or preparation, intention or effect –

the purpose of which is to establish, terminate or amend the terms of the employment contract of a player or coach with a club, to facilitate or carry out registration of a player in a club, or to transfer the registration of a player from a club to another club (by assignment or the permanent transfer of the sports rights).

"An agreement" is the creation, modification or termination of the conditions of the employment contract of a player or a coach with a club, the registration of a player at a club or the transfer of registration from club to club.

"Main gross income" is the basic gross salary and remuneration of a player or a coach, excluding any bonus that depends on the performance of the player and / or his club.

"Representation contract" is the agreement between a football agent (on one side) and a player, coach and / or club (on the other), the purpose or effect of which is to be covered as a provided intermediary activity. The representation contract should comply with the mandatory conditions of the Standard representation contract.

"Standard representation contract" is a representation contract, of which the minimum necessary and mandatory content is: place and date of signature, names of the parties, duration, remuneration of players' agent, deadline for payment, term for execution, liability, termination and signatures of the parties.

"Register of football agents" is a single register of players' agents, led by the Commission of players' agents at the Bulgarian Football Union.

5. Registration

The registration of a football agent is explained in detail in Section II of the Bulgarian RWFA. The registration is valid for one year. A natural person wishing to register as a football agent must submit an application to the Commission of football agents, at the Bulgarian Football Union (BFU). They must enclose a receipt for a paid fee of 250 BGN due for the examination of the documents as well as the decision of the Commission of football agents. The Commission's decision is subject to appeal before the Court of Arbitration at the BFU within 14 days from the date of the receipt of the written notice.

It is explicitly stated that there is a restriction for players, coaches or club officials - who cannot become registered as a football agents.

For each applicant, the Bulgarian RWFA requires a secondary education and at least 3 years of professional experience. Applicants having completed a Master degree shall be entered in the Register without the requirement of length of service.

The football agent, entered in the Register of football agents at the Bulgarian Football Union has the right to use in his business dealings the following definition after his name: "A registered football agent at the BFU".

6. Requirements and conditions

The requirements and conditions for the registration of a football agent are listed in Appendix 2 of the Bulgarian RWFA. The first section contains the requirements for a natural person and is divided into 3 subsections – for Bulgarian and EU citizens, for non-EU citizens and lawyers.

The requirements are:

1) an application for registration to the Commission of football agents at the BFU;
2) a declaration that the applicant is not an "official" as defined in point 11 of the FIFA RSTP;
3) a certificate proving no criminal record;
4) a copy of the secondary education diploma for and a certificate for the three years of professional service;
5) a copy of the Master degree;
6) a receipt for the paid fee of 250 BGN.

Lawyers are not obliged to present the documents specified under 3), 4) and 5 but they must submit a certified true copy of their lawyer's card or a certificate of membership to the Bar Association. Foreign lawyers have to be registered according to the procedure for the Bulgarian lawyers, observing the mandatory requirements for foreign nationals concerning the preparation and presentation of their application and declarations.

The second section of Appendix 2 focuses on the requirements for legal entities. They must produce:

1) an application for registration to the Commission of football agents at the BFU;
2) a certificate showing the presence or absence of bankruptcy proceedings and liquidation; proof of the paid fee of 250 BGN for the examination of the documents and the decision taken by the Commission of football agents on the application.

7. Impeccable reputation

The Commission of football agents is entitled to consider the reputation of the football agents. It has to monitor and verify all data which may lower the candidate's prestige and standing, i.e. existence of criminal jurisdiction, criminal record, etc.

8. Conflicts of interest

Following the Regulations on Working with Football Agents and in order to avoid conflicts of interest, it is presumed that one football agent is entitled to represent only one of the parties – player/coach or club.

Any disputes about conflicts of interest are considered and decided by the Commission of football agents.

9. Agent's obligations

The football agent's obligations include protecting his client's interests and performing the intermediary activity which they are contracted to do, in the best way possible, always being consistent and with no conflicts of interest.

10. Remuneration

Section III of the Bulgarian RWFA deals with the remuneration.

The Football agent is entitled to remuneration from the player, coach or club for whom he has provided specific intermediary or consultancy activities.

A player who is a minor, and the club to which he is registered to, are not obliged to pay the football agent.

The remuneration which is stipulated in the representation contract of the football agent is paid by the player or the coach as a lump sum or through periodic instalments within the agreed deadlines.

The remuneration of the football agent is calculated on the basis of the gross fixed income of the player or the coach, and as it is defined in his employment contract signed by the player or the coach. Where the remuneration is due as periodic instalments and the employment contract of a player or coach has a longer duration than the Contract for representation, the football agent is entitled to the agreed instalments. This continues after the expiration of the Contract for representation and until the expiration of the employment contract of the player or the coach.

It is authorised that the remuneration of the football agent can be paid by the club. In this case, the club performs a deduction of the due remuneration from the gross salary of a player or coach.

Payment by the club to the football agent is made on the basis of the annual gross salary of the player or coach, a payment for each year of the validity of the contract of the player or coach with the club.

Any fees or payments in connection with the intermediary activities, for or on behalf of the club, must be carried out only by the club.

When a football agent is involved with the intermediary activity on behalf of the club, and has used the services of a third party (another football agent or a lawyer) for the transaction, the club cannot pay remuneration related to the intermediary activity concerning the specific transaction to the third party. The exception is if there is no written agreement between the three parties.

The contractual remuneration to a football agent, employed by a player or coach, cannot exceed 7 percent of the gross yearly salary of a player or a coach and / or the transfer fee of the transaction. When the agreed remuneration

is higher than this amount, any disputes between the parties about the contract concerning this higher fee, shall be decided by the general order.

The remuneration to a football agent, employed by a club, is freely negotiated between the parties.

11. Disciplinary powers and sanctions

The Bulgarian RWFA states that disputes between registered football agents and football players, coaches or clubs, as well as between agents, are considered and decided by the Commission of football agents.[3]

The procedures for disputes are instigated by completing a written complaint within no more than two years from the occurrence, and completing the payment of the relevant fee.

The Commission shall examine the complaint within one month of its filing.

The other party of the dispute must then file a reply to the complaint within a period specified by the Commission. When the reply is presented, the Commission is entitled to require from the complainant a statement on the reply of the defendant. At the discretion of the Commission, the parties can be invited to attend a session of the Commission, in which to present their arguments and consider the arguments of the other party.

The Commission has to come to a decision within two months after the closure of the correspondence between the parties.

The Commission's decision is subject to appeal before the Court of Arbitration at the BFU within 14 days from the date of the receipt of the written notice.

Upon failure of a final decision by the Commission, the concerned party may apply to the Court of Arbitration to confirm the Commission's decision, the Disciplinary Committee and to the Commission itself in order to impose additional sanctions.

Disputes between football agents, players or coaches in foreign clubs registered at the Bulgarian Football Union are resolved in accordance with the adopted rules in the representation contract as well as the rules and regulations of the associations where the player, the coach or the club is registered. Disputes are subject to the law applicable in the country of registration of the players, the coaches and the clubs.

Penalties are imposed on football agents, players, coaches or clubs, who violate these regulations or other provisions of the Bulgarian Football Union.

The Commission of football agents at the Bulgarian Football Union is the competent body to impose these established sanctions.

For any admitted or performed violations of the Regulations of football agents, the following sanctions will be imposed:

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[3] Section IV, art. 32 of the *Regulations on Working with Football Agents.*

1. a fine of up to 10 000 BGN;
2. a suspension for a period of one year of the football agent from the Register of football agents at the Bulgarian Football Union;
3. a suspension of the football agent for a longer period from the Register of football agents at the Bulgarian Football Union;
4. a ban on the participation in any activity related to football.

These sanctions are to be imposed separately or cumulatively.

The registration of a football agent will be deleted when he systematically or seriously infringes the statutes and regulations of FIFA, UEFA and the Bulgarian Football Union.

For violations of the Regulations by the football club, the following penalties shall be imposed:

1. a property sanction of up to 20 000 BGN;
2. a ban on transfers;
3. a deduction of points;
4. a relegation to a lower football league.

These sanctions are to be imposed separately or cumulatively.

For violations of these Regulations by a player or a coach, the following sanctions shall be imposed:

1. a fine of up to 10,000 BGN;
2. a disqualification for a period of 6 to 12 months;
3. a ban on participation in any activity related to football.

The sanctions shall be imposed separately or cumulatively.

12. Conclusion

Undoubtedly, a positive point of the new Regulations is the registration of all contracts and their publication in a public register. A step forward is the legally defined requirement to determine the manner and form of payments between player - agent and club - agent. However, there is a risk that people without the sufficient competencies and responsibility will become football agents and hence, lower the quality of the intermediary activity. It is probable that many of the existing agents will lose some customers due to the reduced requirements and possibly lower prices offered by the newly liberated market. It significantly increases the risk of fraud in international transfers because the exchange of information will not be under the control of associations, but will be left to the conscience of the participating parties.

A comparison with the old regulations shows that the unified system of rules and practices on applying the legislation made it possible to follow a uniform set of working conditions by football agents from different countries and continents. When resolving the most complex cases, the specialized bodies of FIFA were able to compare the specific low-instance decisions in the context of the same legal base and this ensured more legal certainty for all parties involved.

The new regulations may lead to numerous complications which may be reflected with difficulties for the profession of the football agent. Before, in the presence of a single licence, each agent could perform the job anywhere with no obstacles. From now on, differences will appear in the rules of each association and in the agent's respective obligation to register within each of them. Certainly, time is needed to make a relevant in-depth analysis of the practices of the new regulations.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN CHINA

by *Shaun Dong*[*]

1. Introduction

The FIFA Regulations transfers to the national associations the task of governing the intermediaries' activities. While the football associations have to implement and enforce the FIFA's requirements, they are expressly entitled "to go beyond these minimum standards/requirements"[1] in view of building a better legal framework in this field.

According to FIFA approach, the new rules do not aim to regulate access to the activity of intermediaries but to provide a framework for tighter control and supervision of the transactions on transfers of football players in order to enhance transparency.

The Chinese Football Association (hereinafter "the CFA") published its own set of regulations "the CFA Interim Regulations on Working with Intermediaries" (hereafter "the CFA Interim Regulations") on 26 May 2016 and they enter into force on 1 December 2016.[2] However, The CFA underwent a long process to review the CFA Interim Regulations after the publication of the FIFA Regulations. This article analyses the new regulatory regime in China and raise the potential issues under the CFA Interim Regulations.

2. Relevant national laws

The intermediaries' activities in China have been regulated by Provisions Governing the Management of Brokers, and Regulations and other relevant rules issued by the CFA.

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[1] Article 1 (3), FIFA Regulations on Working with Intermediaries, 2015.

[2] The CFA Interim Regulations on Working with Intermediaries. Available on http://119.90.25.46/images.sport.org.cn/File/2016/06/17/0930462471.pdf.

2.1 The provision governing the management of brokers

The State Administration for Industry & Commerce of PRC (SAIC) issued the Provisions Governing the Management of Brokers ("the Provisions") on 22 August 2008 and they were repealed in November 2016. They provided a new definition for "broker" as "a natural or legal person or other economic organization, acting as an intermediary between a buyer and a seller, in return for a commission". It should be mentioned that the SAIC manages and supervises the activities of brokers in agriculture, real estate, culture, sports and other areas. Accordingly, football brokers (sports brokers) were formally subject to the jurisdiction of these Provisions and the control of the SAIC. As a matter of fact, in reality, the CFA eventually got the responsibility of on the football agents/intermediaries.

2.2 The Regulations and other relevant rules issued by the CFA

Pursuant to CFA Regulations on the Status and Transfer of Players published on 30 December 2015, an employment agreement is valid only if duly signed by players, clubs and the players' representatives, if the latter are part in the negotiations.

CFA Regulations on the Registration and Administration[3] states that, intermediaries shall register in both the member associations (the local associations of CFA) and the CFA. The applicants are obliged to submit the Registration Form for CFA Player's Intermediary and their certificate will be registered and confirmed after the CFA's review.[4]

An intermediary is required to pay 500RMB (around 73 US Dollars) to the CFA as initial registration fee.

3. Definitions

Under Article 2 of the CFA Interim Regulations, the definition of intermediary is identical to the one stated in FIFA Regulations, namely "a natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement".[5] Therefore, contrary to the old FIFA players' agents' regulations, under the new FIFA Regulations and CFA Interim Regulations, a legal person can now also be entitled to act as an intermediary.

Since only very few lawyers work in the Chinese football transfer market, there is no provision directly regulating their activities. It may be literally interpreted to mean that a lawyer who is not a registered intermediary is not allowed to exercise an intermediary's job under the CFA Interim Regulations. Nonetheless, under

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[3] CFA Regulations on the Registration and Administration, 2016. Available on http://images.sport.org.cn/File/2016/08/15/1435469565.pdf.

[4] Article 9, CFA Regulations on the Registration and Administration, 2016.

[5] Article 2, the CFA Interim Regulations.

Chinese law, a lawyer is entitled to provide legal advice concerning a football transaction.

The intermediaries should be aware of Article 4,which excludes the services of representing managers or coaches from the jurisdiction of the CFA Interim Regulations. That is to say, the CFA Interim Regulations just applies to intermediaries, players, football clubs and member associations when they are engaged in player transfer activities.[6] However, it should be an essential role for intermediaries to negotiate employment contracts for coaches. Therefore, in my opinion, that may be detrimental to the development of the Chinese football industry.

4. Registration and examination

Unlike the FIFA Regulations, the CFA Interim Regulations underlines the high quality standards imposed upon intermediaries.The CFA is responsible for organizing, training and examining the eligible applicants, after they have passed through the review process. After the process, those applicants who qualify to sit the exam and pass it are able to register at the CFA. We note that the CFA held the first training session and exam on 19 August 2016. According to the results announced by the CFA, there were 115 applicants who successfully passed the written examination.

Furthermore, there is a bank guarantee system prescribed in the CFA Interim Regulations. An intermediary will be required to deposit a bank guarantee when he registers at the CFA. Regarding the amount, a domestic intermediary is required to pay ¥ 200,000 RMB (around 30,000 US Dollars), and a foreign intermediary shall pay $ 30,000 US Dollars.[7]

It is evident that examination and bank guarantee system are two of the most controversial clauses in the CFA Interim Regulations. In view of the current situation of the Chinese football industry, it is likely that the CFA aims to prevent that the transfer market may be adversely affected by too many and under-qualified intermediaries. As a result, the CFA still maintains strict management and supervision on intermediaries. Furthermore, those who are selected are the skilled negotiators and are able to facilitate the best deal for players and clubs. This does not go against the FIFA Regulations, because in its preamble FIFA stipulates that "these regulations shall serve as minimum standards/requirements that must be implemented by each association at national level".

It should be noted that the certificate remains valid for four years. The CFA regulation does not clearly state whether the intermediaries may renew their registration at he end of the four years. However, an intermediary is required to attend the training every two years. If he fails to do as required, his certificate will be invalidated.[8] In this case, even though this statement currently is not challenged

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[6] Article 4, the CFA Interim Regulations.

[7] Article 14, the CFA Interim Regulations.

[8] Article 16, the CFA Interim Regulations.

by the public, arguably, the certificate is void due to failure to attend the training session.

5. *Requirements, conditions and impeccable reputation*

A Chinese national applicant should satisfy the following requirements:[9]

(1) Be at least 18 years old and has a full capacity of civil conduct.
(2) Have no criminal record.
(3) Not in a period of football or personal career penalties.
(4) Passed the first review of the CFA member association
(5) Not having any full-time or part-time job in FIFA, AFC, CFA, CFA member associations, football clubs or relevant organizations (the intermediary who has acquired the qualification shall comply with this clause during the whole term of his intermediary profession).
(6) Comply with Chinese laws and regulations, FIFA, AFC and CFA statutes, as well as relevant regulations;
(7) Sign the CFA Players' Intermediary Letter of Commitment.

From the above requirements, it is not hard to see that the CFA puts special emphasis on the bank guarantee to manage and supervise intermediaries.

In England, an applicant registering as an intermediary will need to satisfy the FA of their 'impeccable reputation' as stipulated in the 'Test of Good Character and reputation for intermediaries' document which has been published by the FA.[10] Generally, with regard to impeccable reputation in China, the requirements are not as strict as those in England since the CFA just requires that an intermediary is not in a penalty period and has no criminal record.

However, there is a quite strange commitment in the Annex I that an intermediary has to take: "During my term as the Intermediary, I will never make any inappropriate remarks publicly against the players I provide services to, the club or the CFA".[11] It is arguable how this commitment can be enforced in practice.

6. *Conflicts of Interests*

Unfortunately the CFA neither introduces the clause nor gives further details about the conflict of interest in particular. According to the CFA Interim Regulations, an intermediary shall only be entrusted by one party in one agent activity.[12] We notice that it is similar to the FIFA Players' Agents Regulations, which stipulate that "Players' agents shall avoid all conflicts of interest in the course of their

[9] Article 9, the CFA Interim Regulations.
[10] C. Clouse,T. Gunawardena, 'National Implementations- England, Football Legal', #3, June 2015, 55.
[11] Annex 1, the CFA Interim Regulations.
[12] Article 36 (6), the CFA Interim Regulations.

activity. A players' agent may only represent the interests of one party per transaction".[13]

7. Intermediaries' obligations

It is unsurprising that the CFA lists a number of obligations imposed upon intermediaries, as indicated in Article 36.[14] An intermediary shall:

(1) Comply with national laws, the regulations and statutes of FIFA, AFC and CFA.
(2) Introduce relevant information truthfully to clubs or players and keep trade secrets.
(3) Deal with relevant issues in relation to representation activities.
(4) Provide the invoice or receipts to clubs or players paying the commission; pay tax.
(5) Accept the supervision and inspection of the CFA and other relevant authorities; provide documents and other related materials required for the inspection faithfully in a timely manner.
(6) Only represent the interests of one party per transaction.
(7) Ensure names, signatures and fingerprints by both parties on each document during representation, the transfer agreement shall include an intermediary obligation protocol.

The CFA further lists 9 banned activities of intermediaries in Article 37.[15]

Under Article 37(6), an intermediary shall not represent the players to claim signing fee, houses, cars or other property from the club. This prohibition may be arduous to implement because it contains loopholes and therefore could be inapplicable in practice.

8. Remuneration

The clubs or players pay intermediaries for each transaction. As regards remunerations, considering the relevant FIFA regulations, provisions of national laws and Chinese football industry status, the CFA stipulates that players and clubs shall adopt the following standards:

(1) Under Article 29, the total amount of remuneration per transaction due to the intermediary who has been engaged to act on a player's behalf shall not exceed three per cent (3%) of the player's basic gross income for the entire duration of the relevant employment contract.
(2) Furthermore, the intermediary and the club should also adopt 3% commission

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[13] Article 19 (8), FIFA Players' Agents Regulations (2008).
[14] Article 36, the CFA Interim Regulations.
[15] Article 37, the CFA Interim Regulations.

benchmark of the player's basic gross income for the entire duration of the relevant employment contract or 3% of the overall transfer fee.[16]

Although the 3% cap is non-binding by FIFA as it allows parties to freely negotiate, the CFA defines expressly this percentage as a mandatory commission cap.

There are no intermediaries currently challenging the 3% commission cap, nevertheless its legality has become one of the most controversial issues in the CFA Interim Regulations.

However, those intermediaries, who work for the smaller football clubs and facilitate cheaper deals, shall not obtain high commission Therefore, they would suffer the most from the mandatory 3% cap.

9. Minors

If the player is a minor (under 18), the representation contract has to be concluded and signed by his legal guardians. Under the CFA Regulations on the Status and Transfer of Players, commissions to intermediaries for services related to minors (between 16 and 18) are permitted if the player makes a living mainly from his football activities.[17]

In England, intermediaries must acquire special authorization from the FA if he/she wants to sign a representation contract with minors. However, there is no such procedure to protect minors according to the provisions of the CFA.

10. Contract term

Pursuant to the FIFA Regulations, a representation contract must contain the duration of the legal relationship (contract), but there is no limit to that duration. In order to protect the interests of a player or a club, under the CFA Interim Regulations, the maximum term of a representation contract between an intermediary and a player or club is two years. Furthermore, the term of a renewed contract shall also not exceed two years.

11. Disciplinary powers and sanctions

With regard to sanctions, the CFA Disciplinary Committee has jurisdiction over disciplinary matters involving intermediaries. Errant intermediaries are disciplined according to the gravity of the facts with five types of sanctions varying in severity and that could be imposed cumulatively. The sanctions include:[18]

(1) Warning

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[16] Article 29, CFA Regulations on the Status and Transfer of Players 2015. Available on http://119.90.25.48/images.sport.org.cn/File/2015/12/30/1734058854.pdf.

[17] Article 50, CFA Regulations on the Status and Transfer of Players 2015.

[18] Article 44, the CFA Interim Regulations.

(2) Fine
(3) Suspension for one year
(4) Revocation of the certificate; disqualifying from registration
(5) Prohibition from football-related activities

In practice, the CFA imposes the sanctions not only on intermediaries but also on players, clubs, and member associations. Thus any parties who act against the CFA Interim Regulations will be punished by the CFA.

12. Foreign intermediaries

Under the CFA Interim Regulations, a foreign applicant for intermediary' registration is also required to attend the training and written examination organized by the CFA. However, if the foreign intermediaries are already registered in their national associations, they must submit the relevant materials to the CFA and pay $30,000 as a bank guarantee. In such a way, they are exempted from the training and the written examination, after which they can register at the CFA and engage in representation activities in China.

Intermediaries should consider Article 38 (1), which states that a club in need of representation service is only permitted to contact players themselves or intermediaries who have registered at the CFA. In other words, a foreign intermediary has to work with a Chinese intermediary if he plans to develop his intermediary services in China, without complying with the above mentioned procedure.

Despite the fact that there are some foreigners who are interested in being intermediaries in China, no foreign applicant is known to have attended the first written examination organized by the CFA. One could only imagine how difficult it is for the foreign applicants to pass the Chinese intermediary written test. There are some potential issues that may arise, for instance:

- CFA has not clarified which language will be used in the written examination for foreign applicants. In practice, top Chinese football clubs often contact a foreign intermediary directly when they are seeking high-level foreign players. It remains questionable if these foreign intermediaries have to register at the CFA.
- It is interesting to see how the CFA will deal with this issue after the first transfer window in which the CFA Interim Regulations will come into force.

13. Dispute resolution

In relation to disputes which involve agent activities, a player, intermediary or club shall report to the member association first to find a solution. If those disputes cannot be resolved by the member association, they will be submitted to the CFA Arbitration Committee. However, only agreements or contracts registered in the CFA will be accepted and heard by CFA Arbitration Committee. It cannot be

ignored that the CFA Arbitration Committee will reject the cases involving the disputes between intermediaries and managers because the service for representing them is not under the jurisdiction of the CFA Interim Regulations.

According to Article 8 of the Working Rules on CFA Arbitration Committee, the arbitration fee should be paid in accordance with the notice provided by the CFA.[19] However, an applicant is not charged for the case in practice. It is suggested that the CFA Arbitration Committee should be designated as the disputes resolution organ in the agreements.

14. Disclosure and publication

Under disclosure and publication of information in relation to intermediary activities, players and clubs are required to disclose the full details of all agreed remunerations to the CFA and their member associations. The CFA will publish a list of registered intermediaries and the total payments made by all players and by each club to the intermediaries on a special information platform.

It should be noted that a letter of consent on information disclosure and a player transfer registration form are enclosed to the CFA Interim Regulations.

Lastly, Article 8 states that if neither a player nor a club uses the services of an intermediary in a transaction, this must be written in the transfer agreements, work contracts and relevant documents.[20] It remains to be seen whether this provision could be enforced eventually.

15. Conclusion

The licensing system for agents came into force on 1 April 2015 and replaced by the concept of intermediaries in accordance with the FIFA Regulations on Working with Intermediaries. However, the CFA Interim Regulations still largely reflect the old FIFA players Agents Regulations. Indeed, it retains a number of rules and principles enshrined in the old FIFA players Agents Regulations. Particularly the written examination and bank guarantee system are retained fully in the CFA Interim Regulations. This is due to Chinese objective to impose on the football intermediaries for a strict regulation.

The Chinese government released a Football Reform Plan to promote the football industry in particular.[21] With China's economic transformation, unprecedented opportunities for the Chinese sports industry will arise, especially the football industry. Statistics show that Chinese super league footballers' average salaries are ranked 15th highest in the world. The increase of the economic value of football requires a more transparent and mature structure in China in view of upgrading the rules and better regulate football as an industry.

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[19] Available on http://www.fa.org.cn/bulletin/zcfg/2013-08-08/416607.html.

[20] Article 8, the CFA Interim Regulations.

[21] Available on http://www.fa.org.cn/2015zqggfzhfa/dt/2015-03-16/466478.html.

A number of international footballers have also joined Chinese local football clubs with their personal sports lawyers, which has greatly helped to increase the legal awareness of individual players, football clubs and the football governing body in China.

However, there is still a long way ahead for China to create a mature legal structure in football. The laws and regulations in the Chinese football market are still not up to the task.[22] In any case, it will be interesting to see how the CFA Interim Regulations can be implemented in practice.

[22] P. Liu, 'Game On', *ALB*, September, 2016, 34-37.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN COLOMBIA

by *César Giraldo*[*]

1. Introduction

It is no secret that one of the most important FIFA goals is to improve the game of football and to safeguard its worldwide integrity.

In this context, during the 59th FIFA Congress celebrated in 2009, FIFA decided to reform the players' agents system by establishing an "Intermediaries" concept, with the intention of implementing a more transparent and simpler system. As a result, on the 20 and 21 May 2014, the New Regulations on Working with Intermediaries (hereinafter, the "*New Regulations*") were approved and began to operate.

According to the New Regulations, FIFA requires each Federation to enact its own regulations related to intermediaries. Such regulations should establish minimum standards to rule and bind the players, clubs, intermediaries and all the parties involved in footballs transaction.

The Colombian Football Federation (hereinafter, the "*CFF*") issued, within the period granted by FIFA, Resolution 3330 of March 31, 2015.[1] This resolution established the CFF Regulation on Working with Intermediaries (hereinafter, the "*Regulation*") in line with FIFA's Circular Number 1417 and articles 1.2, 1.3 and 10.1 of the New Regulations.

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I wish to thank our sports legal team (Carlos Buitrago, Elizabeth Gonzalez and Luis Fernández) for all the support given to write this article. I would also like to thank the editor, Michele Colucci, for the invitation to write about the Colombian regulation on working with intermediaries. For the first time, Colombia is participating in these types of global studies in sports law and for my team and I, it is an honor to be the first representatives to write on this topic.

[1] Reglamento sobre Relaciones con Intermediarios de la Federacio´n Colombiana de Fu´tbol. Available at http://fcf.com.co/index.php/la-federacion-inferior/intermediarios/187-reglamento-relaciones-con-intermediarios-2 (14 October 2016).

2. Relevant national law

The Regulation supersedes the CFF Players' Agents Regulations and entered into force on 1 April 2015.

The legal framework governing the activity of Intermediaries is supplemented by the following national laws:

A. Colombian sports law (Law 181/1995), which does not, however, contain any specific provision concerning player or club representatives.

B. The Colombian Civil Code, which regulates the representation activities through the "mandate contract" established in article 2142. This article provides that: *The mandate is a contract by means of which a person trusts the management of one or more businesses to another that will be in charge of them but by account and risk of the first one".*

Article 2144 extends the mandate rules to other professions and careers as stated below:

The services provided by professionals that include the power to act on behalf of others, are held to the rules of the mandate".[2]

The application of the mandate is related to the possibility of representing and acting on behalf of another person. Therefore, with regard to the negotiations and transfers of players by intermediaries, and applying the definition of mandate from Colombian Civil Code, it is possible to conclude that, according to Colombian law, this contract should be legally accepted for the negotiations and transfers of players by third parties.

3. Principles

The principles of the Regulation[3] are established in Article 2 of the above, which is divided into four main points.

The first principle established in Article 2.1, refers to the right of players and clubs to engage the services of intermediaries for negotiations, re-negotiations, and transfers.

Article 2.2 then states that "*players and clubs shall use reasonable endeavours to ensure that the intermediaries sign the Intermediary Declaration and the representation contract concluded between the parties*".

As a third principle, Article 2.3 requires that the intermediary be registered before the CFF if he is involved in the transfer of a player.

Finally, Article 2.4 prohibits "officials" from acting as intermediaries of players and clubs.[4]

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[2] Free translation.

[3] For purposes of clarity, the Regulation is a free translation into English.

[4] For the sake of clarity, an official is defined according point 11 of the definitions given in the FIFA statutes as "*every board member, committee member, referee and assistant referee, coach, trainer and any other person responsible for technical, medical and administrative matters in FIFA, a Confederation, Association, League or Club as well as all other persons obliged to comply with the*

4. Definitions

The Regulation defines an intermediary as "*A natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations and renegotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement".*

Both Colombians and foreigners may register as intermediaries because the Regulation makes no distinction regarding the nationality of the intermediaries.

From my point of view, one of the biggest changes brought by FIFA is the authorisation of legal persons to now act as intermediaries. In that regard, it is worth noting that the last players' agents regulations only allowed natural persons to be agents. Today, if a legal person (i.e. a company) fulfils the requirements foreseen by FIFA and the CFF, he is entitled to represent the interests of both clubs and players.

5. Registration

According to Articles 3 and 4 of the Regulation, there are two types of registration. The first is strictly related to the registration of intermediaries, while the second refers to registration of the agreements signed between intermediaries and players and/or clubs, which must fulfil the requirements and conditions mentioned under the following title.

6. Requirements and conditions

According to Article 3, six important requirements must be met in order to be registered as an intermediary before the CFF.[5] These are:

1. Judicial Certification (Background Certification) issued by an authorized entity within the last 90 days: The relevant authority issuing this document is the Colombian Police and the certificate can be requested by internet via the following link: https://antecedentes.policia.gov.co:7005/WebJudicial.
2. Documents issued by two renowned persons from the football world, certifying the respectability of the candidate to be an intermediary (Impeccable Reputation).
3. Written certifications issued by: (a) The CFF, DIMAYOR and DIFUTBOL,[6]

FIFA Statutes (except Players and intermediaries). In addition, according to article 20.14 of the Disciplinary code of CFF, an official is defined as all persons linked to CFF, performing activities in its divisions, clubs, or leagues, managers, coaches etc. (except players). This two definitions are taken into account according the Regulation.

[5] These requirements were recently ratified by the CFF through the Circular Letter issued on September 26th, 2016. Available at http://fcf.com.co/images/content/pdfs/20160926-AvisofechasrequisitosIntermediarios.pdf (14 October 2016).

[6] For the sake of clarity, Dimayor (according to its statutes) is the entity that manages, organizes and rules the different professional football championships in Colombia, including the organization of first and second national division. Difutbol is the football division in charge of amateur football.

establishing that the candidate for intermediary does not hold any position within a professional or amateur club, league or organization related thereto and; (b) an affidavit in which the intermediary states that he does not hold any relationship with FIFA or COMEBOL. From my point of view, these requirements are strictly related to Article 2.4. of the Regulation, which establishes the prohibition for an official to act as an intermediary.

4. An Intermediary declaration duly signed pursuant to Annex 1 or 2 of the Regulation.
5. Certification of payment of the registration fee, depending on whether the application comes from a natural person or a legal entity. For this requirement, there are two conditions:

   a. For natural persons: five minimum wage salaries for the 2015 period. (Approx U$D 1,193).[7]

   b. For legal entities: seven minimum wage salaries for the 2015 period. (Approx U$D 1.670).

The Regulation allows the registration of legal entities as intermediaries; nevertheless there are some specific requirements that must be fulfilled:

a) The person with authority to legally represent the entity must previously have been registered as an intermediary.
b) The legal representation certificate issued by the respective Chamber of Commerce within the last 90 days must be presented.

The fact that a legal entity is registered as intermediaries does not exclude the possibility that its legal representative may also be registered as intermediaries, provided that both, the legal entity and its representative comply with the requirements already explained.

For the registration procedure, the Regulation establishes that applications can only be submitted during two periods of the year, which are posted on the CFF web page. Consequently, late or otherwise untimely applications shall be rejected.

Finally, according to Article 6.3 of the New Regulations, at the time of registration the intermediary must sign Annex 3 (which is related to the treatment of personal data), in order to authorize the CFF to collect and manage his, her or its information.

With respect to the requirements and conditions of the representation contracts, as mentioned in the FIFA regulations, clubs and players shall specify in the relevant representation contract the nature of the legal relationship they have with their intermediaries (i.e. a service, a job placement or any other legal relationship).

In addition, the key elements of the legal relationship between a player and/or a club and an intermediary shall be recorded in writing prior to the commencement of the activities by the intermediary. The representation contract must contain, as a minimum, the following elements:

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[7] According to article 3.6.1. of the Regulation, all agents previously registered in the CFF that met the past regulations (i.e. payment of insurance, no sanctions) are exempt from this payment.

- The names of the parties.
- The scope of services.
- The duration of the legal relationship.
- The remuneration due to the intermediary.
- The general terms of payment.
- The date of conclusion.
- The termination provisions, and
- The signatures of the parties.

It is important to highlight that if the player is a minor, the player's legal guardian(s) must also sign the representation contract according to Article 302 of Colombian Civil Code.[8]

7. Impeccable reputation

As mentioned before, Article 3.1.2 of the Regulation establishes that in order to prove the candidate's impeccable reputation, he must present documents issued by two renowned persons related to the football family, certifying his respectability.

In my opinion, this requirement is ambiguous due to:

1. The phrase "People that are related to football" allows a very open interpretation as to exactly who is related to football. Nowadays, there are many companies and people from different branches giving advice (i.e. legal, merchandising, finances). In that respect and according to the Regulation, any of these companies or their legal representatives is entitled to recommend people as intermediaries, and from my point of view the national federations are obliged to accept such recommendation.
2. The concept of "Impeccable reputation" should be defined in the Regulation in order to avoid subjective views.

8. Conflicts of interest

Regarding conflicts of interest, the four main pouts of the Regulations are:

1. Article 8.1 establishes that both players and clubs should use reasonable endeavours to ensure that there are no conflicts of interest.[9]
2. Article 8.2 provides that there is no conflict of interest if the intermediary, by written letter, informs of any possible conflict of interest he might have with the parties involved in the negotiations, transactions, etc. and, as a result of that, receives written consent from all the parties.[10]

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[8] The requirements mentioned above are established in article 5 of the Regulation.

[9] According to the article "Prior to engaging the services of an intermediary, players and/or clubs shall use reasonable endeavors to ensure that no conflicts of interest exist or are likely to exist either for the players and/or clubs or for the intermediaries".

[10] Specifically, "No conflict of interest would be deemed to exist if the intermediary discloses in writing any actual or potential conflict of interest he might have with one of the other parties

3. Article 8.3 provides for the possibility for the club and the player to use the same intermediary. For this purpose, the player and the club concerned shall give their express written consent prior to the start of the relevant negotiations and shall confirm in writing which party (player and/or club) will remunerate the intermediary.
4. Finally, Article 8.4 states that "*the parties shall inform the CFF of such agreement and submit all the aforementioned written documents within the registration process*".

9. Intermediaries' obligations

According to the Regulation, intermediaries are obliged to:

1. Be registered before the CFF if the intermediary is involved in a transaction (Article 2.3).
2. Fulfil the requirements of Annex 3 of the Regulation, which is related to the treatment of personal data (Article 3.8).[11] This document authorizes the CFF to publish the following info:
   - Full name.
   - Any transaction that the intermediary has made.
   - The total remuneration that the player and/or the clubs has paid to the intermediary.
   - Any decision related to the intermediary (disciplinary or any other subject).

From my point of view, the CFF by including this authorization in the Regulation is fulfilling the requirements of Colombian Habeas Data law. Furthermore, this information is considered as sensitive data because it is related to the transactions and remunerations of the intermediary.

3. Not to induce any player to break their employment contract in order to be free for a transfer.[12]
4. To make sure that his/her personal information is included in any sports contract where he participated or where one of the players that he/she represents participates.[13]

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involved in the matter, in relation to a transaction, representation contract or shared interests, and if he obtains the express written consent of all the other parties involved prior to the start of the relevant negotiations".

[11] This article is linked to the fundamental right of Habeas Data, which is contained in article 15 of the Colombian Constitution. For the sake of clarity, Habeas Data establishes the right of any person to require an update of his/her personal information, and to require a rectification of such information. Under Law 1581 of 2012, Habeas Data has been classified as sensitive data, because it affects the privacy of the holder of the information. To use this category of data, the potential user must be expressly authorized by writing by the owner or titleholder of the information. This document must precede the publication or use of the information.

[12] Article 21 of the Status of Player of the CFF. Last amended on August 20, 2015. Available at http://fcf.com.co//images/fcf/normatividad-reglamento/estjugador/Estatuto-Jugador-FCF1.pdf (14 October 2016).

[13] Article 30 of the Status of Player of the CFF. Last amended on August 20, 2015. Available at

Notwithstanding the above, the CFF has decided not to publish some information related to the remuneration of the intermediaries.

10. Remuneration

Article 7 of the Regulation regulates payments to intermediaries. The only difference between the Regulation and the New Regulations is the addition of sub-article 7.2., which permits an exemption for the payment for the services of an intermediary.

As a general rule and according to Article 7.6 and Article 8 of New Regulations, any payment for the services of an intermediary shall be made exclusively by the client of the intermediary. However, under the Regulation, the player can sign a letter authorizing the new club to deduct the payment of the intermediary from his salary.

The following are the main points to take into account regarding the remuneration of the intermediaries.

1. Article 7.1. of the Regulation states that the amount of remuneration due to an intermediary who has been engaged to act on a player's behalf shall be calculated on the basis of the player's basic gross income for the entire duration of the contract with the new club.
2. Article 7.3 states that "*Clubs that engage the services of an intermediary shall remunerate him by payment of a lump sum agreed prior to the conclusion of the relevant transaction. If agreed, such a payment shall be made in instalments*".
3. Article 7.4. recommends to not exceed 3% of the player's basic gross income for the entire duration of the relevant employment contract, and also the eventual transfer fee which will be paid in connection with the transfer of the relevant player.[14]
4. Article 7.5 states that clubs must ensure that payments related to transfer compensation, training compensation or solidarity contributions are not paid to intermediaries. From my point of view, the FIFA and CFF Regulations included this article in order to guarantee this money remain in clubs and avoid the involvement of third parties in these types of operations.

The final sub-article of Article 7 highlights the following aspects:

- Any payment for the services of an intermediary shall be made exclusively by the client of the intermediary to the intermediary except if the exception mentioned above is applicable.
- Article 7.8 mentions again that officials cannot receive any payment from an intermediary. Any official who receives any kind of payment will be subject to disciplinary sanctions.

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http://fcf.com.co//images/fcf/normatividad-reglamento/estjugador/Estatuto-Jugador-FCF1.pdf (14 October 2016).

[14] For the sake of clarity, the percentage used in this type of transaction in Colombia is approximately 10%.

Finally Article 7.9 contains the prohibition of players and clubs to pay an intermediary that negotiates an employment contract and/or a transfer agreement of a player who is a minor.[15]

11. Intermediaries are subjected to the sports jurisdiction

In October of 2015 the CFF incorporated the name of 'Intermediaries' in the Status of Players. Before October of 2015 the CFF still was calling them a 'agents'. This did not mean that the intermediaries were not subjected to the sports jurisdiction just because they were called agents. What it meant is that it was not until 2015 that the CFF consolidated the term 'intermediaries' in all their documents.

Now, according to article 36 of the Status of Players of the CFF the intermediaries shall be subjected to the sports jurisdiction in all their matters related to labour and sports law. This, however, does not exclude the possibility that intermediaries take their labour conflicts to the ordinary labour jurisdiction.

Moreover, the Status of Player's Committee is in charge of deciding the conflicts arising from clubs, players, and intermediaries. Just as it was when the intermediaries were named agents.

12. Disciplinary powers and sanctions

According to article 9 of the Disciplinary Code (UDC) of the CFF,[16] intermediaries are subjected to the disciplinary measures that the Disciplinary Committee of the CFF may take against them. This means that, if the intermediaries do not comply with the obligations imposed by the CFF their license may be cancelled either temporarily or permanently depending on the fault.[17]

13. Conclusion

At the outset it is interesting to note that CFF was one of the first football associations across the world to implement the relevant New Regulations. I want to congratulate the CFF Legal team for its success in this matter. Moreover, I want to congratulate them to reform all their regulations to consolidate the terms provided in the New Regulation.

I/We also believe that this new regulation is a wake-up call for FIFA and for the people involved in the sports world. The previous player's agent system failed, and, in my opinion, was due to the reasons mentioned below:

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[15] According to point 11 of the Definitions section of the FIFA Regulations on the Status and Transfer of Players, a minor is a player who has not yet reached the age of 18.

[16] Unique Disciplinary Code of the CFF. Last amended on August 11, 2016. Available at http://fcf.com.co/images/content/pdfs/20160809_MODIFICACIN_CDU_FCF.pdf (14 October 2016).

[17] Article 27 of the UDC.

- Lack of control: in the previous regulations, there was no control over the agents. During those years, many agents did not follow the rules and FIFA permitted too many violations without imposing any sanctions.
- FIFA jurisdiction: in the previous regulations, there were exemptions from the legal requirements applicable to agents (i.e. lawyers, family of the player, among others). Those exemptions brought many difficulties to FIFA because such persons were not under FIFA's jurisdiction and were thus able to act under different conditions from those applicable to the duly registered agents.
- Unfortunately, there are many examples that show that the past rules were broken, including a lack of transparency in some transactions. Therefore, all people involved in the world of football must follow the rules given by FIFA and by the relevant Federation. We hope that with the new Regulations clubs, intermediaries and players in Colombia will respect the new rules in order to obtain better results.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN CROATIA

by *Vanja Smokvina* and *Vladimir Iveta*[*]

1. Introduction

Croatia, together with other FIFA countries faces the implementation of *FIFA Regulations on Working with Intermediaries* (the "FIFA Regulations") which came into force on 1 April 2015, with its new Croatian Football Federation (hereinafter: CFF) *Regulation on Working with Intermediaries* (the "CFF Regulation").[1] The CFF Regulation came into force on the 17 September 2015, after the CFF Executive Board adopted it and changed significantly the previous system. With the new Regulations the old *CFF Regulation on working with Intermediaries in Transfers*[2] is not in force anymore. The *CFF Regulation* faced only one amendment in 2016, by the decision of the Executive Committee of the CFF. The amendment consisted in cancelling the Art. 17 of the *CFF Regulation* which determined the remuneration fee for the Intermediaries determining that the fee should not exceed ten per cent (10%). Now, Croatia is among the group of countries which do not have a suggested or determined remuneration fee.

This chapter examines briefly the national laws relevant to intermediaries' activities, provides an overview of the *CFF Regulations*, its key principles and requirements, assesses certain practical effects of the new regulatory regime and gives a short overview of the case-law before the CFF Court of Arbitration about

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[1] The Croatian Regulations on Working with Intermediaries (*Pravilnik HNS-a o radu s posrednicima*), Gazette of the CFF, No. 42/15, 9 September 2015 and 12 April 2016 is available on http://hns-cff.hr/files/documents/8872/Pravilnik%20o%20radu%20s%20posrednicima%20HNS.pdf (30 September 2016).

[2] CFF Regulations on Working with Intermediaries in Transfers (*Pravilnik HNS-a o radu s posrednicima u transferima*), Gazette of the CFF, No. 42/01.

intermediary-player's disputes. It is important to note that we are facing a sort of more flexibility approach in the new Intermediaries regulations, but maybe what is needed is more security and supervision especially from the national FA's point of view, which is lacking from the FIFA regulations.

2. Relevant national law

Sport in Croatia is governed by the Sports Act, which since 1990 has been subject to four revisions.[3] The latest 2006 Sports Act, currently in force, has been amended seven times. Croatian Sports Act defines sports activities as activities of special interest to the Republic of Croatia.[4]

The Sports Act does not use the term "Intermediary", but instead it uses the term "manager". A sport manager is defined as a person who, according to the rules of the national federation, is authorized to perform the task of mediating the transfer of athletes from one sports club to another.[5] All provisions of this Act which regulate the sport manager, include all natural or legal persons who have concluded a contract of investments in athletes or coaches, according to which they have a part of income from their sports performance, and which contents are equal to those of a sports manager.[6]

When to labour relationship, never mind Croatia has not ratified the ILO Convention No. 181 on Private Employment Agencies,[7] it is important to note that its Art. 7 defined that: "*Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers. In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies.* It is important to note that professional football players in Croatia are almost all self-employed persons with a civil law contract signed with a club.[8] According to the new *CFF Regulations on Status of Players*

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[3] Sports Act (*Zakon o športu*), Official Gazette *(Narodne novine)* No. 59/90. Sports Act (*Zakon o športu*), Official Gazette *(Narodne novine)* No. 60/92, 25/93, 11/94, 77/95. Sports Act (*Zakon o športu*), Official Gazette *(Narodne novine)* No. 111/97, 13/98, 24/01. Sports Act (*Zakon o sportu*), Official Gazette *(Narodne novine)* No. 71/06, 150/08, 124/10, 124/11, 86/12, 94/13, 85/15 and 19/16 (hereinafter: Sports Act).

[4] Sports Act, *o.c.*, Art. 1(2).

[5] Sports Act, *o.c.*, Art. 12(1).

[6] Sports Act, *o.c.*, Art. 12(2).

[7] ILO Convention No. 181 on Private Employment Agencies, available at: www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312326 (26 September 2016).

[8] See more V. Smokvina, Employment Relationships at National Level: Croatia in *Regulating Employment Relationships in Professional Football – A Comparative Analysis:* (M. Colucci, F. Hendrickx, Eds.), European Sports Law and Policy Bulletin, 1/2014, 73-99; and V. Smokvina, Is There a Need for a Change in the Legal (Labour) Status of Professional Sportspeople in Croatia?, pp. 209-230, in *Social Dialogue in Professional Sports:* (R.C.R. Siekmann, R. Parrish, V. Smokvina, N. Bodiroga-Vukobrat, G. G. Sander, Eds.), Shaker Verlag, Aachen, 2013.

and Registrations (in force 15 June 2015), there is now an option to choose between a contract of professional play (a civil law contract) or an employment contract.[9]

Here we must note that in Croatia, there are attempts to change the legal status of professional players into a labour law one, with the exclusivity of an employment contract for professional players and the Croatian Ministry of Science, Education and Sport has drown a new Sports Act draft, actually in a legislative process.[10] Furthermore, the Agency for temporary employment which could provide the intermediary process between the employer and club, since it is a legal person, is regulated by the *Labour Act* in its Art. 44.[11]

Finally, the intermediary-client relationship, as a civil law one, and their contract, is regulated by the *Act on Obligation*.[12] The contract between the intermediary and the client is defined as a contract in which the intermediary takes the obligation to get in the relationship to the client a person to whom he could negotiate a conclusion of a contract, while the client has the obligation to pay the remuneration in case the contract is being concluded.[13] When it is stipulated that the intermediary will have the right to remuneration eventhough the contract is not concluded, the provisions on the contract for services, will be applied.[14]

3. Principles

Regarding General Principles, the *CFF Regulations* are exactly the same as the *FIFA Regulations*.

Players and clubs are entitled to engage the services of intermediaries when concluding an employment contract and/or a transfer agreement. In the selection and engaging process of intermediaries, players and clubs shall act with due diligence. In this context, due diligence means that players and clubs shall use reasonable endeavours to ensure that the intermediaries sign the relevant Intermediary Declaration and the representation contract is concluded between the parties. The engagement of officials, as defined in point 11 of the Definitions section of the FIFA Statutes, as intermediaries by players and clubs is prohibited. Such officials are: every board member, committee member, referee and assistant referee, coach, trainer and any other person responsible for technical, medical and administrative matters in FIFA, a Confederation, Association, League or club

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[9] CFF Regulations on Status of Players and Registrations (*Pravilnik HNS-a o statusu igraèa i registracijama*), Gazette of the CFF, Art. 39.

[10] New Croatian Sports Act Draft, in the process of public hearing (30 April 2015-30 May 2015), but which was never officially closed, available at: http://public.mzos.hr/Default.aspx?art=13775&sec=1933.

[11] Labour Act (*Zakon o radu*), Official Gazette *(Narodne novine)* No. 93/14.

[12] Act on Obligations *(Zakon o obveznim odnosima),* Official Gazette *(Narodne novine)* No. 35/05, 41/08, 78/15, Art. 835-843.

[13] Act on Obligations *(Zakon o obveznim odnosima), o.c.,* Art. 835.

[14] Act on Obligations *(Zakon o obveznim odnosima), o.c.,* Art. 836.

as well as all other persons obliged to comply with the FIFA Statutes (except players and intermediaries).[15]

4. Definitions

The *CFF Regulation* in its Art. 2 gives the basic definitions. An "Intermediary" is "*a natural or legal person who, for a fee or free of charge, represents players and/ or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement*", while a "Client" is "*a player or a club who has a written representation contract with an Intermediary*".

Since the definition of an intermediary is the same as in *FIFA Regulations*, the scope of application of regulations is the same, i.e. *the negotiation of an employment contract of a player with a club or the negotiation to conclude a transfer contract between two clubs*, and *it does not apply in cases where the intermediary provides services to coaches*.[16]

5. Registration and Representation contract

As prescribed by the *FIFA Regulation*[17] for the sake of transparency, the CFF implemented a Registration system for intermediaries which is to be publicised in accordance with *FIFA Regulations* Article 6(3) and *CFF Regulations*. Intermediaries must be registered in the relevant CFF registration system every time they are individually involved in a specific transaction: conclusion of the contract of employment between a player and a club member of the CFF and/or conclusion of a transfer agreement between two clubs, out of which at least one is a club member of the CFF.[18] To conclude, anyone who wishes to represent players or clubs on transfers or contract negotiations (whether they are a relative of the player, based overseas or a lawyer) will have to register as an intermediary and will be subject to the same rules.

Following conclusion of the relevant transaction (conclusion of a contract of employment / renegotiation of an employment contract or conclusion of a transfer agreement), a player engaging the services of an intermediary must submit to the CFF as the association of the club with which he signed his employment contract the following documents: the Intermediary Declaration set in Annex 2 (in case the intermediary is a natural person) or Annex 3 (in case the intermediary is a legal person), the representation contract signed between the player and the intermediary, the relevant transfer agreement or the relevant contract of employment and the relevant certificate, not older than 3 months, issued by the competent State court

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[15] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 3.
[16] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 1.
[17] FIFA Regulations, *o.c.,* Art. 4-6.
[18] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 4(1).

(municipal courts) which states that against the intermediary has not been initiated any criminal proceeding.[19] The last document, the court certificate, is a part of the process of determining the impeccable reputation, and it is a way in which the CFF went beyond the minimum requirements set by the FIFA Regulation.[20] In case it is a club, which is a CFF member, that engaged the intermediary, the same documentation is one required for the players.[21] The aforementioned notification by players and clubs must be made each time any activity, i.e. relevant transaction (conclusion of a contract of employment / renegotiation of an employment contract or conclusion of a transfer agreement), takes place.[22]

The intermediary may perform its services in representing players or clubs only with a duly signed written representation contract. The relevant Croatia law[23] is applied for the conclusion and contract termination.[24] The representation contract must contain the following minimum details: the names of the parties, the scope of the legal relationship (services, consultancy, players employment and other legal forms), the contents of the services provided, the duration of the legal relationship, the remuneration due to the intermediary, the general terms of payment, the date of conclusion, the termination provisions and the signatures of the parties.[25] Unlike the position under the *FIFA Regulations*, the maximum duration of a representation contract with a player is two years and may not be tacitly or automatically extended. For any further relationship of a maximum of two years, a new contract of representation should be concluded.[26] If the player is a minor, the player's legal guardian(s) shall also sign the representation contract in compliance with Croatian law[27] and the contract should be validated before a notary.[28] The new Family Act in force in its Article 101 define that the representing of a child/minors where an agreement or contract is concluded between a minor child and natural or legal persons that will dispose over child's future ownership rights regarding the child's sports, art or similar activities is valid if the parent who represent the child/minor has the written approval of the other parent and the state court approval in an extra-judicial proceedings. So instead of the previously determined obligation for a Centre for Social Welfare approval now the Family Act determines the need of an approval by the ordinary court in an extra-judicial contentious proceedings, although it is not completely clear if such an approval is needed.[29] The player/club and the intermediary each must receive one copy of the

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[19] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 4(2,3).
[20] FIFA Regulations, *o.c*., Art. 1(3).
[21] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 4(5).
[22] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 4(5).
[23] I.e. Act on obligations, *o.c.*
[24] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 6(1).
[25] CFF Regulations on Working with Intermediaries, *o.c*., Art. 6(2).
[26] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 6(3).
[27] Family Act (*Obiteljski zakon*), Official Gazette, No. 103/15.
[28] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 6(4).
[29] V. Smokvina, *Sports Law in Croatia*, Kluwer Law International, Alphen Aan den Rijn, 2016, in press.

contract while one copy has to be forwarded and deposited with the CFF as the association when the registration of the intermediary takes place.[30] The *CFF Regulations* does not deprive the right of the client to conclude the employment contract or transfer agreement without the help of an intermediary.[31]

Regarding the disclosure and publication,[32] players and/or clubs are required to disclose to the CFF the full details of any and all agreed remunerations or payments of whatsoever nature that they have made or that are to be made to an intermediary. In addition, players and/or clubs shall, upon request of the CFF, with the exception of the representation contract, the disclosure of which is mandatory as previously stated, disclose to the competent bodies of the CFF, confederations and FIFA, all contracts, agreements and records with intermediaries in connection with activities in relation to these provisions, for the purpose of their investigations. Players and/or clubs shall in particular reach agreements with the intermediaries to ensure that there are no obstacles to the disclosure of the above-mentioned information and documents.[33] In case of registration of the employment contract or the transfer agreement, the relevant representation contracts should be attached. Clubs or players shall ensure that any transfer agreement or employment contract concluded with the services of an intermediary bears the name and signature of such intermediary. In the event that a player and/or a club have not used the services of an intermediary in their negotiations, the pertinent documentation lodged within the scope of the respective transaction shall contain a specific disclosure of this fact.[34]

The CFF shall make publicly available at the end of March of every calendar year, on their official website, the names of all intermediaries they have registered as well as the single transactions in which they were involved. In April 2016 the CFF Commission on Working with Intermediaries has published a Decision on the making public the data on transfers in which intermediaries were engaged from the entry into force of the CFF Regulation.[35] It is interesting to note that, according to the official data, there were just three transfers in which the services of intermediaries were used (two for Rijeka's players and one Hajduk Split player) while there were 14,469 registered domestic and international players' transfers from summer 2015 till winter 2016.

Furthermore, the CFF shall also publish the total amount of all remunerations or payments actually made to intermediaries by their registered players and by each of their affiliated clubs, as the consolidated total figure for all players and the individual clubs' consolidated total figure. The CFF has not included

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[30] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 6(5).
[31] CFF Regulations on Working with Intermediaries, *o.c*., Art. 6(6).
[32] FIFA Regulations, *o.c*., Art. 6.
[33] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 14(1-3).
[34] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 14(4,5).
[35] CFF Commission on Working with Intermediaries Decision, available at: http://hns-cff.hr/files/documents/9763/Odluka%20Komisije%20za%20rad%20s%20posrednicima.pdf (20 September 2016).

in their Regulations a provision stating that "*Associations may also make available to their registered players and affiliated clubs any information relating to transactions that have been found to be in breach of these provisions that is of relevance for the pertinent irregularities*".[36] The reason is that the CFF does not have supervision upon all transactions and with the new intermediary system it was more appropriate to not implement such provision.

6. Impeccable reputation

The intermediary, as noted before, should be a person with impeccable reputation.

The first document important for proving the impeccable reputation is the Intermediary declaration which should be signed by the intermediary (see, supra ad 5). Among other documents relevant for registration, to check if someone has an impeccable reputation relevant is a certificate, not older than 3 months, issued by the competent State court (municipal courts) that against the intermediary has not been initiated any criminal proceeding. If the intermediary is a legal person, than the certificate is needed for the legal person and for the legal representatives of that legal entity. The intermediary contracted by a club and/or a player shall not have a contractual relationship with leagues, associations, confederations or FIFA that could lead to a potential conflict of interest. Intermediaries are precluded from implying, directly or indirectly, that such a contractual relationship with leagues, associations, confederations or FIFA exists in connection with their activities.[37]

7. Conflicts of interests

Prior to engaging the services of an intermediary, players and/or clubs shall use reasonable endeavours to ensure that no conflicts of interest exist or are likely to exist either for the players and/or clubs or for the intermediaries. No conflict of interest would be deemed to exist if the intermediary discloses in writing any actual or potential conflict of interest he might have with one of the other parties involved in the matter, in relation to a transaction, representation contract or shared interests, and if he obtains the express written consent of all the other parties involved prior to the start of the relevant negotiations.[38]

If a player and a club wish to engage the services of the same intermediary within the scope of the same transaction under the conditions established the Art. 19 of the *CFF Regulations*, the player and the club concerned shall give their express written consent prior to the start of the relevant negotiations, and shall confirm in writing which party (player and/or club) will remunerate the intermediary. The parties are free to agree that every party will pay a part of the remuneration to the intermediary. The parties shall inform the CFF of any such

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[36] FIFA Regulations, *o.c.,* Art. 6(4).
[37] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 5.
[38] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 19.

agreement and accordingly submit it with all the aforementioned written documents within the registration process.[39]

8. Intermediary's and player's/club's obligations

The *CFF Regulations* do not contain a section with a consolidated list of an intermediary's obligations. Instead, an intermediary will need to comply with various obligations as are contained throughout the *CFF Regulations* as well as the wider rules and regulations of the CFF (e.g. CFF Statutes).

To avoid repetition, this chapter does not seek to extract and list in this section all of the obligations to which an intermediary is subject. Rather, a selection of some of the key obligations is set out in various sections throughout this paper, in the context of the specific rules in which such obligations arise, whether in relation to (for example) the registration process, the lodgment of documentation, the disclosure of conflicts of interest/relationships that may exist or the arrangement of matters in relation to a transaction (employment contract negotiation or renegotiation or transfer agreement).

On the other hand, the *CFF Regulations* do have provisions on player's/club's obligations for working with intermediaries. Players may use the services of an intermediary for representing them in negotiations or renegotiations of an employment contract, and may not conclude the representation contract in case the intermediary has not signed a Declaration stating that the intermediary is not an official, as defined in point 11 of the Definitions section of the FIFA Statutes.[40] The player's obligation is to assure that any contract concluded with the services of an intermediary should contain intermediary's name and surname and the signature. In case the player does not use the services of an intermediary, that fact should be included in the relevant employment contract.[41] The club's rights and obligations are the same as the player's are, with the only exception that the intermediary's services may be used for a transfer agreement between two clubs.[42] Furthermore, clubs that concluded a transfer agreement with the services of an intermediary should send all the relevant documents together with the transfer agreement to the *Committee for Working with Intermediaries* (see *infra*, ad 11).

9. Remuneration

The amount of remuneration due to an intermediary who has been engaged to act on a player's behalf shall be calculated on the basis of the player's basic gross income for the entire duration of the contract.[43] Clubs that engage the services of

[39] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 20.
[40] CFF Regulations on Working with Intermediaries, *o.c*., Art. 9.
[41] CFF Regulations on Working with Intermediaries, *o.c*., Art. 10.
[42] CFF Regulations on Working with Intermediaries, *o.c*., Art. 11 and 12.
[43] CFF Regulations on Working with Intermediaries, *o.c*., Art. 16(1).

an intermediary shall remunerate him by payment of a lump sum agreed prior to the conclusion of the relevant transaction, and if agreed, such a payment may be made in instalments.[44] Any payment for the services of an intermediary shall be made exclusively by the client of the intermediary to the intermediary, and the only exception is in case it is prescribed by the contract with the club and with a written consent of the player who wishes the club to make the payment on player's behalf, and such a payment shall be in accordance with the terms of payment agreed between the player and the intermediary.[45]

Before the *CFF Regulation* amendments in 2016, it was determined that the total amount of remuneration per transaction due to intermediaries who have been engaged to act on a player's behalf should not exceed ten per cent (10%) of the player's basic gross income for the entire duration of the relevant employment contract. Furthermore, it was determined that the total amount of remuneration per transaction due to intermediaries who have been engaged to act on a club's behalf in order to conclude an employment contract with a player should not exceed ten per cent (10%) of the player's eventual basic gross income for the entire duration of the relevant employment contract. Also, it was determined that the total amount of remuneration per transaction due to intermediaries who have been engaged to act on a club's behalf in order to conclude a transfer agreement should not exceed ten per cent (10%) of the eventual transfer fee paid in connection with the relevant transfer of the player.[46] It is interesting to note that, at the time, the CFF opted to set the intermediary remuneration at 10% in comparison to the FIFA proposal of 3%.[47] Now, after the amendments of the CFF Regulation and the abrogation of the Art. 17 there is no suggested remuneration fee.

Clubs shall ensure that payments to be made by one club to another club in connection with a transfer, such as transfer compensation, training compensation or solidarity contributions, are not paid to intermediaries and that the payment is not made by intermediaries. This includes, but is not limited to, owning any interest in any transfer compensation or future transfer value of a player. The assignment of claims is also prohibited.[48]

Officials, as defined in Art. 3(4) of the *CFF Regulations*, i.e. official defined in the point 11 of the Definitions section of the *FIFA Statutes*, are prohibited from receiving any payment from an intermediary of all or part of the fees paid to that intermediary in a transaction. Any official who contravenes the above shall be subject to disciplinary sanctions. In case the player in question is a minor, players and/or clubs that engage the services of an intermediary when negotiating an employment contract and/or a transfer agreement are prohibited from making

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[44] CFF Regulations on Working with Intermediaries, *o.c.*, Art. 16(2).
[45] CFF Regulations on Working with Intermediaries, *o.c.*, Art. 16(3,4).
[46] CFF Regulations on Working with Intermediaries*, o.c.,* Art. 17.
[47] FIFA Regulations, *o.c.,* Art. 7(3).
[48] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 13.

any payments to such intermediary.[49]

10. Disciplinary powers and sanctions

In light of the fact that intermediaries registration fall under the jurisdiction of the CFF, any breach of the regulations will amount to misconduct under the *CFF Disciplinary regulations*.[50,51] The aforementioned regulations set out in detail the procedure for dealing with a charge of misconduct.

11. CFF Committee for Working with Intermediaries

A supervision body was founded by the CFF, the *CFF Committee for Working with Intermediaries*. The Committee has the competence to run a registry for intermediary and contracts registration. It is a body composed by a president and two other members, all nominated by the CFF Executive Board for a period of four years. The Committee gives their decisions in sessions, but the president may decide to give decisions in writing (post, fax or e-mail). The decisions are held by majority of votes.[52]

In case the intermediary was involved in a negotiation for a contract of employment, in conformity with the *CFF Regulations on the status of players and registration*, the competent bodies for registration in the County football associations are obliged to collect the contract of employment and all other relevant documents listed in the Annex 1 of the *CFF Regulations*. Then the competent County football associations send to the *CFF Committee for Verification of Clubs and Players Registration,* which after validating the contract of employment and the collected document send all materials to the *CFF Committee for Working with Intermediaries*. If any relevant document is lacking, the contract of employment will not be validated and the player will not be registered before the CFF.[53]

Any dispute rising out in the process of working with intermediaries that is not regulated by the *CFF Regulations*, may be in competence of the *CFF Committee for Working with Intermediaries*.[54]

12. Case-law before the CFF Court of Arbitration

According to the autonomous acts of the CFF, *the CFF Court of Arbitration* has been established.[55] As an autonomous and permanent tribunal of original jurisdiction,

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[49] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 18.
[50] CFF Disciplinary Regulations, *CFF Gazette No. 16/14*, available at: http://hns-cff.hr/files/documents/8316/Disciplinski%20pravilnik%202015_.pdf (28 September 2016).
[51] CFF Regulations on Working with Intermediaries, *o.c.,* Art. 25.
[52] CFF Regulations on Working with Intermediaries, o.c., Art. 22.
[53] CFF Regulations on Working with Intermediaries, o.c., Art. 24.
[54] CFF Regulations on Working with Intermediaries, o.c., Art. 25.
[55] "Old" CFF Statute, Gazette of the CFF, No., Art. 60-63.; CFF Statute, o.c., Art. 63-65.

it is competent to rule on status questions of coaches and players and, connected to that, the material questions originating between two single subjects of the CFF (club-club, player-club, coach-club, club-single county football federation) in conformity with the provisions of the acts of CFF; FIFA and UEFA regulations; and Croatian laws. The "Old Statute" gave competence to the Court to rule in cases between player/club's agents and player/club. From 2002 when it was founded till 2010, the *CFF Court of Arbitration* adjudicated in more than 750 cases mainly concerning non-payment of contract obligations and contract resolution.[56] In the period from 2006 till 2014 there were only 16 cases dealing with players/clubs vs agents (intermediaries) disputes, out of which in 14 cases intermediaries were plaintiffs in which they were demanding the payment of agent fee's by the players. In two cases in which they were defendants the players were demanding the Court to determine that the representation contract has been cancelled.

The CFF Court of Arbitration has eleven members[57] and delivers its decisions in boards of three members. Members of the CFF Court of Arbitration are elected by the Executive Committee of the CFF upon the proposals of the Croatian Union "Football Trade Union", the professional clubs of the First Croatian Football League and the Executive Committee.[58] In the work of the Court, it uses as sources of law: the Statute and the regulations of the CFF and FIFA; along with the *Act on Obligations*, the *Arbitration Act*[59] and the *Civil procedure Act*,[60] as well as other legislation. There are no ordinary legal remedies against the CFF Court of Arbitration decisions, since its decision is final. On the other hand, the CFF *Standard Contract of professional play* and *CFF Standard Contract of employment* both have an arbitration clause stating that they may appeal before CAS.[61] There is the possibility for a reopening of a case in two months from the date of the CFF Court of Arbitration's decision if there is new evidence and new facts which were unknown at the date of the decision.[62] On the other hand, according to the *Arbitration Act*, it is possible to take action against an arbitration decision and call for its annulment before ordinary state courts, but just because of *numerus clausus* reasons provided by the Act.[63]

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[56] S. Hautz, "*Arbitražni sud Hrvatskog nogometnog saveza*", *Pravo u gospodarstvu*, vol. 50, 2011, no. 4, 914-918.

[57] One of the authors – Vanja Smokvina is an arbitrator of the CFF Court of Arbitration, nominated for the period 2014-2018.

[58] Regulations on the Work of the CFF Court of Arbitration, Gazette of the CFF No. 32/12., Art. 5.

[59] Arbitration Act (Zakon o arbitraži), Official Gazette (Narodne novine) No. 88/01.

[60] Civil procedure Act, (Zakon o parničnom postupku), Official Gazette (Narodne novine) No. 53/1991, 91/1992, 112/1999, 129/2000, 88/2001, 117/2003, 88/2005, 2/2007, 96/2008, 84/2008, 123/2008, 57/2011, 25/2013, 89/2014.

[61] CFF Standard contract of professional play, Art. 16(7) and CFF Standard contract of employment, Art. 20(7), available at: http://hns-cff.hr/hns/propisi-i-dokumenti/ (30 September 2016).

[62] Regulations on the Work of the CFF Court of Arbitration, o.c., Art. 48.

[63] Arbitration Act (Zakon o arbitraži), o.c., Art. 36.

Here we give a short overview of four different cases before the CFF Court of Arbitration, which are interesting from different points of view.

12.1 Case No. A-21/09

The first case was a case between an agent and a player, both Croatian nationality, who had a contract of representation signed for a period of 24 months, which determined a fee of 20% on a basic player's annual salary in a club where the intermediary represented the player. During the 24 months period the player has signed a contract with a foreign club "X" and cease every contact with the intermediary which filled the lawsuit before the CFF Court of Arbitration demanding his 20% fee. The Court asked the player and his new national association's affiliation a copy of his contract with new club "X", but they sad that the contract content was secret and could not be send to a third party without players consent. During the process, the player made a transfer to a second club "Y" of another national association's affiliation and then to a third club "Z" in Croatia. The player never gave his answer to the Court's demands nor answers on intermediary's demands.

The Court determined that the player did not challenge the claim and did not give any proof that the intermediary's demand was unfounded. In the end, the Court accepted intermediary's demands and obliged the player to pay the 20% fee for the whole period during his stay at the first club "X".

12.2 Case No. A-139/12

In the second case the player's agent and a player have signed a mandate with a three months duration and with an exclusivity clause determining that the intermediary has the exclusive right to represent the player and negotiate with a club a transfer and a contract of employment. Fifty days after the player gave his mandate to the agent the player signed a contract with a club "X" and was represented by the agent. Three and a half months after the player signed for the club "X" the agent and the player signed a representation contract valid for a period of two years. The amount of remuneration due to player's agent was set to 10% of player's annual basic gross income from the employment contract negotiated or renegotiated by the players' agent on his behalf, and which should be a lump sum payment at the start of the employment contract.

Since the player rejected to pay the remuneration, the agent filled a lawsuit before the CFF Court of Arbitration. The player rejected his responsibility for remuneration payment saying that the mandate did not determine the remuneration while the remuneration was determined in the representation contract which was concluded six months after the mandate stipulation and four months after he signed for the club "X". During the evidence procedure, the Court has determined that the agent has represented the player and has negotiated the player's transfer and contract with a club "X". That was confirmed by club "X"'s director

statement given before the Court. The representation contract was stipulated in conformity with FIFA and CFF regulations. The Court ruled that the agent had the power to represent and negotiate the player's transfer and contract, what he actually did with the club "X", while the remuneration for such representation was later on precisely determined by the representation contract which just more precisely regulated the relationship between the player and the agent established by the mandate.

12.3 Case No. A-46/11

In the third case an agent with a CFF agent's license filled a lawsuit against a player with a basic registration before the Bosnia-Herzegovina FA who in the period of signing the representation contract was a member of a Croatian club. During the validity of the representation contract the player signed for a German club.

The CFF Court of Arbitration decided to reject the claim because in conformity with the Croatian Arbitration Act it is determined that the arbitration is not an ordinary State judicial procedure, but its derives its power by the contractual arbitration clause. In this particular case the contracting party of the representation contract (agent and player) have not stipulated any arbitration clause, nor of the CFF Court of Arbitration. Furthermore, the Court has determined that the player had residence in one other county different from Croatia (Bosnia-Herzegovina), that is not registered for any Croatian club and that the contract of employment is signed between the player and a German club. The fact that the CFF issued an Agent's license is not important for the CFF jurisdiction. The Court consulted the *Act on Resolving Conflict-of-Laws Issues in Legal Transactions with Foreign Element*[64] which states that in cases where the relevant law is not determined, the relevant law is the law of the state where in the period of contract stipulation the intermediary has his residence, but this provision is important just for the application of material law, which is not the case here. That is the reason why the Court decided to reject the claim.

12.4 Case No. A-145/12

The last case is a case between an agent and a player, where the player has negotiated a transfer on its own and the Court deliberated that such behavior is in conformity with Art. 19(7) of the FIFA Regulation ("*The provisions set out in this article are without prejudice to the client's right to conclude an employment contract or a transfer agreement without the assistance of a representative*") and Art. 25 of the "Old" CFF Regulation ("*The player is obliged,*

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[64] Act on Resolving Conflict-of-Laws Issues in Legal Transactions with Foreign Element (*Zakon o rješavanju sukoba zakona s propisima drugih zemalja u određenim odnosima*), Official Gazette *(Narodne novine)* No. 53/91, 88/01.

unless he negotiate on its own where he could be represented by his parents, siblings or spouse, to use the services of a licensed agent"). This means that in cases where the player have not used the services of a licensed agent for a transfer or a conclusion of a contract of employment, the player is not obliged to pay the remuneration determined by the representation contract. The Court finally declared that if it would be players obligation to pay the remuneration in case of every transfer or contract negotiation or renegotiation during the validity of the representation contract with the exclusivity clause, in the standard player's contract would not be written that the agent has the right to remuneration just for those contract in which he represented the player.

13. CFF Court of Arbitration and the New Regulation

In the *CFF Regulation on Working with Intermediaries*, actually in force, there is no clause about the CFF Court of Arbitration competence in disputes between intermediaries and players/clubs, or to be more precise it is explicitly excluded.[65] This means that such disputes should be brought before ordinary courts or some other arbitration tribunal determined by the arbitration clause, but not before the CFF.

Since FIFA with its new Regulation significantly deregulated and liberalized the conditions for providing the intermediaries' services, the national regulations are also more flexible. Since the national FA may not determine who will be an intermediary (there are no licenses, a joint professional liability insurance policy nor exams anymore) and that theoretically a wild range of persons may provide an intermediary services with questionable knowledge and intention, the CFF decided that its Court of Arbitration will not be competent in such disputes anymore.

14. Conclusions

In the end we may conclude that the new *CFF Regulations* significantly changed the system of players/clubs – intermediaries relationship. The future will show if such change of direction was a good option taken by FIFA and implemented by national FA's, in this particular case the CFF. We must note that as some critics of the FIFA Regulations (as the AFA's complaint to the European Commission for breach of EU Law), will no doubt point to the fact that the two most controversial provisions introduced by FIFA – the 3% recommended cap (in Croatia it was a 10% cap, but now there is no cap) on commission and the restriction on payments in respect of minors – have been transposed directly into CFF Regulations. If the European Commission or the CJEU decided that such provisions are contrary to EU Law, the CFF will of course change its Regulations. To conclude, we are facing a sort of more flexibility approach in the new Intermediaries regulations,

[65] CFF Regulation on Working with Intermediaries, o.c., Art. 21.

but maybe what is needed is more security and supervision especially from the national FA's point of view. Without intermediaries' exams, insurance policy etc. and with a more liberal system of registration, the national FA's are in a very difficult position speaking of supervision.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN CYPRUS

by *Loizos Hadjidemetriou*[*]

1. Introduction

It had been a well-known secret that both FIFA and FIFPro, i.e. employers and employees, were unhappy with the prosperity enjoyed by players' agents over their football-related business. Some of the sport's stakeholders, especially the ones mentioned above, argued that agents are taking money out of the sport. They also argued that the relevant regulations allowed agents to possess undue and significant leverage over players and clubs, something that was detrimental the game. Some others, notably the players' agents themselves, argued, and continue to do so, that their business constitutes an integrated part of the sport, vital for the sport's best possible progress and development.

FIFA finally decided that, for both the game and the world, it was necessary to proceed to make significant changes to the FIFA authorised businesses of players' agents. In fact it went further than simply effecting changes. It completely struck out all national and international regulations regarding players' agents and basically took this line of work off the map. Or, in other words, the FIFA licenced and regulated line of work. Because it is again not a secret that a great proportion of players' agent businesses were being conducted by people not licenced to act as such and not bound by the relevant national or international regulations.

Over the meeting of its Executive Committee on the 20th and 21st of March 2014, FIFA approved the new set of regulations - the Regulations on Working with Intermediaries (*the FIFA Regulations*), and informed its member associations with Circular no. 1417 that they should all proceed to the preparation of new national regulations based on the minimum requirements set out in the FIFA Regulations.

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Following FIFA's mandate, the Cyprus Football Association (*the CFA*) immediately responded preparing and enforcing the said national regulations on the 1st of April of 2015.

These national regulations on working with Intermediaries (*the CFA Regulations or the Regulations*) superseded the players' agents' regulations which were in force until 31/03/2015. The previous players' agents' licencing system has been abandoned and all existing licences issued by the CFA under the said regulations lost their validity, with immediate effect from 1 April of 2015. The CFA Regulations requested from all agents who had already had representation agreements submitted to the CFA, which agreements were still in force on 1 April 2015, to submit those agreements again, under the new CFA Regulations.

These Regulations are for the most part a word-for-word translation and adoption of the FIFA Regulations, following a few minor amendments and additions.

2. Relevant National Law

There is no national legislation in Cyprus regulating football or sport related agent and/or intermediary services. This kind of services falls under the wider scope of contract law and are covered by the duties and obligations of an agent, set out in articles 142 to 198 of the Cyprus Contract Law, Chapter 149. According to article 142 of the Law,

> *"Agent is the person hired for the execution of an act on behalf of some other person or for the representation of some other person in transactions with third parties".*

It is an accepted legal principle in Cyprus that agency is,

> *"the relationship which exists between two persons, one of whom expressly or implicitly consents that the other should represent him or act on his behalf..."*.[1]

The relationship between an agent and his client is described as,

> *"the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consents by the other so to act"*.[2]

As Professor Dorwick said, the basic element of agency is that,

> *"the agent is invested with a legal power to alter his principal's legal relations with third persons"*.[3]

According to the Cyprus law, where an agency exists, the contract concluded is not between the agent and the third party but between the principal and the third party. As Judge Wright said,

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[1] Bowstead on Agency, 14th ed.,1.

[2] Restatement of the Law of Agency (1958), 2nd ed. par. 1.

[3] The Relationship of Principal and Agent (1954), 17 MLR 24, 36.

> *"the contract is the contract of the principal, not that of the agent, and prima facie at common law the only person who can sue is the principal and the only person who can be sued is the principal".*[4]

The agent has duties, responsibilities and obligations against his client arising out of their contractual relationship for the provision of the agent's services. As said by Judge McCardie,

> *"The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single minded loyalty of the fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or for the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list…They are the defining characteristics of the fiduciary".*[5]

The CFA Regulations do not, of course, constitute national law. In fact, for the law, they are nothing more than a contract between the association and its members. Therefore, the implementation of such regulations, disputes arising out of the regulations between its members or between its members and the association itself, are governed exclusively by the principles and norms of contract law.

Such regulations are of course under the scrutiny of civil courts. Should an EU or Cyprus court reach the conclusion that the regulations or a specific part of them are contrary to the EU law, the civil law, the public interest or any other legislation, it has the right to annul such regulations, rendering them legally inapplicable.

3. Definition and General Principles

According to the CFA Regulations, an Intermediary is a natural or legal person who, for a fee or free of charge, represents players and/or coaches and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement.

According to article 1.1 of the CFA Regulations, the scope of their applicability is limited to:

a) The conclusion of an employment contract between a player or a coach and a club registered with the CFA (*a CFA club*).
b) The conclusion of a transfer agreement between two CFA clubs.

The first thing that can be noticed here is that the CFA decided to widen the scope of the Regulations so as to include coaches as well.

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[4] Montgomerie v United Kingdom Mutual SS Association 91981) 1 QB 370.
[5] Armstrong v Jackson (1971) 2 KB 822.

According to article 2.4 of the CFA Regulations, officials are prohibited from acting as Intermediaries. The definition of an official covers CFA clubs' board members, CFA committee members, referees, coaches, trainers and every other person responsible for technical, medical and directive matters in FIFA, a confederation, an association member of FIFA or a CFA club. What is more, an official is every person so defined in point 11 of the Definitions' section of the FIFA Statutes.

It is worth noting here that although the CFA allows Intermediaries to offer services not only to players but also to coaches, coaches are prohibited from acting as Intermediaries, whereas active players are not forbidden to do so.

Compliance or non-compliance with these Regulations does not affect in any way the validity of an employment or transfer agreement, provided that this is concluded according to the applicable regulations.

4. Registration of Intermediaries

According to the CFA Regulations, for the sake of transparency, a registration system has been implemented wherein all Intermediary services will have to be registered and which will be publicised, as explained below.

Upon the conclusion of every single transaction within the scope of articles 1.1(a) and 1.1(b), every Intermediary involved will have to be registered. This obligation remains even if an Intermediary concludes a number of different transactions with the same client, under the same Representation Agreement.

If a transaction within the scope of article 1.1(a) of the CFA Regulations is concluded, the players, coaches and CFA clubs that engaged Intermediary services, irrespectively of the players' or coaches' nationality and irrespectively of whether or not the latter two were registered with the CFA prior to the conclusion of the employment agreement, these players, coaches and CFA clubs are obliged to register with the CFA the Intermediary services engaged by them, irrespective of whether the Intermediary is a natural or legal person and irrespective of his nationality or country of residence. Exactly the same obligations apply in cases of employment agreement renewals.

If a transaction within the scope of article 1.1(b) of the CFA Regulations is concluded, the implicated CFA club or clubs that engaged Intermediary services are again obliged to register the said services with the CFA. Again, this is irrespective of the player's, coaches' or Intermediaries' nationality or country of residence.

As seen from above, the responsibility for the registration of Intermediaries lies not with the Intermediaries themselves, who might not be members of FIFA and/or the CFA and therefore not under the respective regulations, but on the players, coaches and CFA clubs engaging their services.

5. Registration Requirements and Conditions – Impeccable Reputation

In order for an Intermediary's registration to be accepted, the CFA will need to be satisfied that the applicant Intermediary has an impeccable reputation and that there is no real or potential conflict of interest in the carrying out of his activities. Whenever the Intermediary involved is a legal person, the CFA will have to be satisfied that the natural person or persons representing the Intermediary also have an impeccable reputation and that, again, no real or potential conflict of interest exists as far as the representatives of the legal Intermediary are concerned.

The CFA will prima facie be satisfied as to the impeccable reputation of the Intermediary and the absence of any conflict of interest once it receives a duly signed Intermediary Declaration as per Annexes 1 and 2 of its Regulations. Annex 1 consists of the Intermediary Declaration to be used by a natural person and Annex 2 the one to be used by a legal person.

Where the Intermediary involved is a legal person, apart from the Declaration submitted by the latter, in order for the CFA to accept its registration, the natural person or persons representing it will also have to submit a duly signed Declaration.

The Declaration to be signed by a natural person requires from the latter to give his full name, date of birth, nationality, permanent address, phone number, fax number and email.

Supplementary to the above information, Declarations to be signed by a legal person, will also have to state the name of the natural person representing it. It is that natural person who will be making the Declaration on behalf of the legal person and will be signing it on its behalf. It is worth noting that, in cases of registration of legal persons, the Regulations do not require that the natural persons representing it should be officially connected with the legal person, i.e. to be its director, secretary or shareholder.

6. Representation Agreement

Over and above the submission of an Intermediary Declaration, in order for the registration of an Intermediary to be accepted, he will also have to submit at least a Representation Agreement between him and his client, stipulating the exact nature of their legal relationship. The CFA Regulations set out in Annexe 3 a specimen of such a Representation Agreement. Should the parties so wish, they are allowed to go beyond the terms included in Annex 3.

As stipulated by article 5.2 of the CFA Regulations, the Representation Agreement must be submitted to the CFA before the Intermediary commences his activities or before (or upon) his registration with the CFA. This procedure will have to be repeated for every single transaction.

For the sake of clarity, the CFA requires from players, coaches and CFA clubs that each Representation Agreement specifies the nature of the legal relationship and states, as a minimum, the names of the parties, the kind of services to be provided, the duration of their legal relationship, the agreed remuneration, the terms of payment, the date of conclusion, the termination provisions and contain the parties' signatures. What is more, if the player is a minor, the Representation Agreement will have to be signed by his parents or legal guardians.

As article 5.3 of the CFA Regulations states, an administration fee shall be charged for the submission of each Representation Agreement. The amount of the aforementioned fee will be decided when necessary by the Board of Directors of the CFA. At present, this fee stands at Euro100 plus VAT (currently at 19%), i.e. Euro119.

Despite the fact that neither the FIFA Regulations nor the CFA Regulations' articles impose a limit on the duration of a Representation Agreement, according to Annex 3 of the CFA Regulations, i.e. the specimen of a Representation Agreement, the maximum duration is limited to 24 months.

Having in mind this stipulated maximum duration in conjunction with articles 3.2, 3.3 and 3.4 of the CFA Regulations,[6] an interesting issue seems to arise. In cases where a Representation Agreement is for a fixed period of time and provided that this Agreement has already been submitted to the CFA for the needs of a previous transaction, will it have to be submitted over and over again in cases of future transactions based on it before its expiry?

Should the answer to the above question be negative, a different issue arises. From the wording of the CFA Regulations, it seems that the abovementioned submission fee shall be charged only upon submission of a Representation Agreement. No provision is made on Intermediary Declarations. Does this mean that concerning transactions executed upon already submitted Representation Agreements, where only the Intermediary Declaration will have to submitted, there will not be any submission and/or transaction registration fees?

The CFA reserves the right to request further documentation and/or information before accepting the registration of an Intermediary.

If an Intermediary's request for registration is rejected by the CFA, the Intermediary has the right to challenge the validity of the CFA's decision before the CFA body competent to hear disputes arising out of the Regulations (mentioned below). The Regulations do not specify if there is a time limit within which such a challenge can be raised. Should such a challenge be accepted by the CFA competent body, the Regulations explicitly stipulate that the CFA cannot be held liable for its decision to initially reject the Intermediary's registration.

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[6] Where it is stated that a Representation Agreement must be submitted upon every new transaction registration.

7. Conflict of Interest

Article 8 of the CFA Regulations deals with the issue of conflicts of interest. It imposes a duty of care on players, coaches and CFA clubs to make sure that no such conflicts of interest exist or are likely to exist, either for them or for their chosen Intermediary.

As an exception to the above prohibition, the CFA Regulations allow players, coaches and CFA clubs to engage an Intermediary even if he has a conflict of interest in a transaction, provided that (i) the Intermediary discloses in writing the said conflict, prior to the commencement of the relevant negotiations and (ii) all parties give their written consent for the provision of his services. In such a case the parties will have to agree in writing who will pay for the Intermediary's services.

In such cases, the CFA (or FIFA) Regulations do not seem to prohibit the two parties from sharing amongst them the Intermediary's payment, therefore it could be argued that it would not be against the Regulations if the two parties do agree to jointly cover the Intermediary's payment.

All agreements made between players, coaches, CFA clubs and Intermediaries relating to conflicts of interest will have to be submitted to the CFA upon the Intermediary's registration for every single transaction.

8. CFA Members' Obligations

Articles 6.1 and 6.2 of the CFA Regulations impose a number of obligations on players, coaches and CFA clubs regarding their duty to disclose to the CFA the full details of their transactions with Intermediaries.

One obligation is that they (players, coaches and CFA clubs) have a duty to inform the CFA about every single payment of whatsoever nature that has been made or are to be made to Intermediaries.

What is more, following a potential request from the CFA, for investigation purposes, players, coaches and CFA clubs are obliged to disclose, further than the Representation Agreement, all other contracts, agreements and records connecting them with Intermediaries.

Moreover, they have to reach to arrangements with their Intermediaries securing that they have the right to disclose to the CFA, without needing the prior consent of the Intermediary, the full details of their cooperation.

All the documentation mentioned above must be attached to the employment or transfer agreement, as the case may be, for the purposes of the player's or coach's registration.

What is more, they have to ascertain that any employment or transfer agreement where an Intermediary was involved bears the name and signature of the Intermediary. In cases where Intermediary services were not engaged, the relevant employment or transfer agreement has to explicitly refer to this.

9. Publication and Disclosure by the CFA

By virtue of articles 6.3 and 6.4 of the CFA Regulations, the CFA retains the right to publicise and disclose details regarding Intermediary transactions. In particular, at the end of March of each calendar year, the CFA shall be making public, on its official webpage or through an official statement, the names of every single Intermediary registered with the CFA within the previous calendar year as well as the transactions in which those Intermediaries were involved.

The CFA will not be publicising the remuneration figures of each Intermediary transaction individually. As far as players and coaches are concerned, it will only be publicising the total sum of payments made to Intermediaries collectively by all players and coaches registered with the CFA. Regarding clubs, the CFA shall be disclosing the total sums of payments made to Intermediaries by each CFA club individually.

The CFA may also, after the filing of a request from a CFA registered player, coach or club, make available to them information relating to transactions that were found to be in breach of the regulations.

The above provision is likely to raise interpretation issues since it does not explicitly state whether the right to receive such information exists regarding transactions in which the CFA member requesting the information was actually involved in or whether it will be available to all the CFA members, irrespectively if they were involved in the relevant transaction, simply for information purposes. Unfortunately, neither do the FIFA Regulations provide any clarification on the matter (art. 6.2 FIFA).

10. Intermediaries' Obligations

As described above, in order for an Intermediary's registration to be accepted, the player, coach or CFA club engaging the Intermediary will have to submit as a minimum, an Intermediary Declaration and a Representation Agreement.

By signing and accepting the submission of the said Declaration, an Intermediary pledges to respect and comply with all relevant national and international laws as well as the statutes and regulations of both, the CFA and FIFA. This way Intermediaries, although not members of the CFA or FIFA, upon their registration are contractually engaging themselves to comply with the Regulations.

Furthermore, the Intermediary assumes responsibility and pledges with the Declaration that:

1. He does not fall, nor will he foreseeable fall in the coming future, within the category of people described in article 2.4 of the CFA Regulations (mentioned above) and point 11 of the Definitions' section of the FIFA Statutes.
2. He has an impeccable reputation and that he has never been criminally convicted for any financial offence or a violent crime.

3. He has no contractual relationships with any leagues, associations, confederations or FIFA that could lead to a conflict of interest and that he is not allowed to imply, either directly or indirectly, the existence of any such relationships.
4. He will not accept any payments whatsoever in connection with a transfer, such as transfer compensation, training compensation or solidarity contributions.
5. He shall never accept payment, from any party, if the transaction, involves a minor.
6. He shall never take part in betting or any other similar events concerning football matches and he will abstain from having stakes or other interest in any kind of legal entities associated with such events or transactions.
7. He consents to the CFA obtaining full details of all payments made to him for activities falling within the ambit of the Regulations.
8. He consents to the CFA, other football associations, confederations and FIFA obtaining, if necessary, all documentation that is of relevance to his services as an Intermediary. He also accepts for such documentation to be obtained by the abovementioned bodies from any other party advising, facilitating, or taking any active part in the negotiations for which he is responsible.
9. He consents to the CFA holding and processing, for publication purposes, all data relevant with his services.
10. He consents to the CFA publishing and informing FIFA of details of any sanctions and/or decisions issued against him.
11. He is aware that the Declaration will be available to the members of the competent bodies of the CFA.

Finally, the Declaration concludes with the Intermediary declaring that this is made in good faith, based on the information currently available to him and that he agrees for the CFA to undertake, if needed, checks so as to verify the accuracy of the information contained in the Declaration. Furthermore, he is bound to immediately inform the CFA of any changes to the information contained in his Declaration.

11. Remuneration of Intermediaries

Payments made to Intermediaries are regulated by article 7 of the Regulations. The Regulations stipulate that, concerning Intermediary payments by players and coaches, the total Intermediary payments must not exceed the 3% of the players' or coaches' basic gross income for the entire duration of their employment. Benefits, bonuses and other allowances like provision of a car or accommodation are not considered as part of the player's or coach's income.

The Regulations do not specify whether Intermediaries payments by players and coaches should be made in a one - off payment or whether it can be made over a number of instalments, as the parties will agree. Since there is no

explicit prohibition, it would be safe to consider that the payment method is up to the parties' arrangement.

Regarding payments to Intermediaries by CFA clubs, these must again not exceed the 3% of the players' or coaches' basic gross income for the entire duration of their employment or the 3% of the transfer fee, whatever the case might be. Benefits, bonuses and other allowances like provision of a car or accommodation are again not considered as part of the player's or coach's income.

Regarding the method of payment of the Intermediary's services where the client is a CFA club, the Regulations state that this must be made with a lump sum payment prior to the conclusion of the transaction. If the parties so agree, the lump sum payment can be arranged over instalments.

As provided for in the FIFA Regulations, the CFA Regulations mandate the CFA clubs to ensure that payments made by one club to another in connection with a transfer, e.g. transfer compensation, training compensation, solidarity contributions etc., are neither paid to Intermediaries nor paid by Intermediaries.

This includes owning any interest in any transfer compensation or future transfer value of the player. What is more, the assignment of any claims is strictly prohibited.

Players, coaches and CFA clubs must ensure that every payment made to Intermediaries shall only be made by the latter's client. However, if the parties (Intermediary and client) so agree, in cases falling within the scope of article 1.1(a) only, and provided the CFA club consents, the player or coach can instruct the CFA club, in writing, to pay the Intermediary on his behalf. The said payment must always be made according to the terms of payment agreed between the Intermediary and the player or coach.

Persons falling within the definition of article 2.4 of the CFA Regulations and point 11 of the Definitions' section of the FIFA Statutes are prohibited from receiving any payments whatsoever from transactions related to Intermediary businesses.

Players and CFA clubs engaging an Intermediary's services, are explicitly prohibited from making any payments to the Intermediary if the player concerned is a minor.

12. Remuneration Cap

The CFA decided to cap the Intermediaries' payment to a maximum of 3% of the client's total gross income or transfer fee, as the case might be, despite the fact that FIFA mentions the amount of 3% only as a recommendation.

The imposition of this cap has already raised considerable reactions from ex CFA licenced players' agents operating in Cyprus who are planning to continue their operations as Intermediaries. Before the implementation of the current Regulations, the general practice was that an agent's commission would be around 10% of the player's gross income or transfer fee.

It is very interesting to see how the CFA and its competent bodies will deal with cases where the client might be challenging his obligation to pay a fee to the Intermediary if that fee, although mutually agreed upon, exceeds the cap imposed by the CFA Regulations.

What is more, it will be very interesting to see how the CFA will deal with and whether it will sanction any Intermediaries and/or players, coaches and CFA clubs in cases where the agreed Intermediary remuneration exceeds the said cap.

What is more, there is major discussion as to the legality, in regards of EU Competition Law, of imposing such a cap and it will certainly be a hot topic for the time to come.

On one hand it can be alleged that the CFA Regulations are explicitly clear that an Intermediary payment higher than the Regulations' cap is contrary to the Regulations and thus not acceptable. Therefore the CFA may refuse to entertain any claims from Intermediaries with which they will be requesting payments exceeding the cap.

On the other hand, it can be alleged that even though the Regulations explicitly stipulate the 3% as a remuneration cap, should this not be complied with, this does not necessarily mean that the Intermediary will lose his right to payment. The reason is that although the CFA Regulations are imposing this cap, they are not explicitly rendering a Representation Agreement as null and void in case of non-compliance with the said cap. The Intermediary and the player, coach or CFA club might be liable for disciplinary prosecution for breach of the CFA Regulations but still, this should not legally affect neither the right of the Intermediary to his agreed remuneration nor the obligation of the player, coach or CFA club to comply with their contractual obligations (pacta sunt servanda).

Guidance could be drawn from previous FIFA and CAS jurisprudence on the regulations regarding players' agents where it was decided that a breach of the regulations was not necessarily fatal for the validity of a representation agreement, if such a consequence was not explicitly stipulated by the regulations. For example, the said jurisprudence reached the conclusion that failure to submit the Representation Agreement to the competent association or when an agent was representing both parties, although contrary to the regulations, did not per se render the representation agreement as null and void. It merely gave the right to the FIFA DRC, after deciding on the merits of the case, to send the file to the FIFA Disciplinary Committee to initiate disciplinary proceedings against the wrongdoers.

13. Intermediary Transactions only between CFA clubs?

Another issue that might arise is what will the case be when an Intermediary offers his services for the conclusion of a transfer agreement when his client is a CFA club but the other club is foreign one, i.e. not a CFA member. In such a case

the transaction will not fall within the scope of the CFA Regulations and will therefore not be regulated by the CFA.

According to article 1.1(b) of the CFA Regulations, these Regulations are only applicable on services offered by an Intermediary for the conclusion of a transfer agreement between two CFA clubs. This is also confirmed by article 2.1 of the CFA Regulations which reiterates that the right of players, coaches and CFA clubs for Intermediary services concerning transfer agreements, is limited to transfers between CFA clubs.

However, the FIFA Regulations, article 3.4, stipulate that in cases of international transfers, the club engaging Intermediary services will have to submit the described documentation to the association with which the player will be registered. Furthermore, over and above the latter obligation, should the club engaging Intermediary services be the releasing club then this club will have to submit the said documentation not only to the new association but also to its own association.

Therefore it will be interesting to see how the CFA will deal with cases of international transfers where the CFA clubs are engaging the services of an Intermediary.

14. Disciplinary Powers and Sanctions – Dispute Resolution

Article 9 of the CFA Regulations regulates the legal side of working with Intermediaries within the scope of article 1.1 of the Regulations. In particular, it defines the CFA body competent to examine possible disciplinary breaches of the Regulations and decide on the imposition of sanctions, it sets out the pertinent sanctions and also deals with the procedural side for the resolution of disputes arising out of the Regulations.

Although not included in FIFA's minimum requirements, the CFA decided to assume jurisdiction and offer a means for the resolution of Intermediary related disputes. The body appointed as competent to hear these disputes is the National Dispute Resolution Chamber (NDRC), composed in compliance with article 22(b) of the FIFA RSTP and Circulars 1010 and 1129.

The procedure applicable to the resolution of such disputes is the one followed for all cases before the NDRC. The hearing is conducted in writing, except if there are extenuating circumstances necessitating oral evidence, and the award is issued in approximately 2-3 months after the filing of the claim. An appeal is available before the NDRC Appeals Body, which is also in compliance with art. 22(b) of the FIFA RSTP, within 15 days from the notification of the award to the parties. The decision of the NDRC Appeals Body can then be further challenged before the CAS, as per the CAS Code.

For the filing of a dispute before the NDRC an advance on costs needs to be paid by the Claimant upon the filing of the claim. The advance on costs is calculated as follows:

Value of Dispute	*Advance on costs fee*
Euro 1 - Euro 2,000	Euro 170 + VAT
Euro 2,000 - Euro 8,000	Euro 260 + VAT
Euro 8,000 - Euro 40,000	Euro 340 + VAT
Euro 40,000 - Euro 85,000	Euro 515 + VAT
Euro 85,000 - Euro 170,000	Euro 686 + VAT
Euro 170,000 and above	Euro 1.025 + VAT

As mentioned above, the VAT rate in Cyprus at present is 19%.

Over and above this advance of costs, procedural compensation may also be awarded to the succeeding party.

For the filing of an appeal before the NDRC, there is a standard fee of Euro1.000 plus VAT. Should an appeal to the CAS be filed, the procedure followed and the costs levied are the ones fixed in the CAS Code.

The NDRC is also competent to hear disciplinary charges against players, coaches, CFA clubs and Intermediaries and impose sanctions for breach of the CFA Regulations.

The sanctions that the NDRC has the authority to impose are, warning – reprimand, fine, suspension or annulment of the Intermediary's registration and revocation of the CFA's decision to reject an Intermediary's registration. What is more, in cases of dispute resolution, the NDRC has the authority to award compensation to the injured party.

The CFA is obliged to publish and inform FIFA of any sanctions and/or decisions issued against an Intermediary. FIFA then has the right to decide on the extension of the sanction to have worldwide effect in accordance with the FIFA Disciplinary Code.

Note that, as article 9.1 of the CFA Regulations correctly stipulates, the NDRC is competent to resolve disputes and impose sanctions only on parties under its jurisdiction. FIFA, through its minimum requirements on working with Intermediaries, requires from national associations to inform it only on the disciplinary sanctions imposed on Intermediaries. So as for FIFA to decide whether or not these sanctions will have a worldwide effect.

Concerning awards on contractual disputes between Intermediaries and their clients, FIFA does not seem to be interested. This is because no provision at all is made by FIFA on the international, if any, handling of such awards issued by national associations against Intermediaries, clubs and players. If for example the CFA NDRC issues an award in favour of an Intermediary and against a player, how will the Intermediary be able to execute that award if the player is no longer registered with the CFA when the award is issued?

15. FIFA's right to intervene

The CFA's Regulations and in particular article 10.1 grant the right to FIFA to monitor the correct implementation of FIFA's minimum requirements and take all necessary measures if these minimum requirements are not complied with.

16. Conclusions

It is undisputed that the only reason for which the CFA proceeded to the implementation of these Regulations was FIFA's mandate to do so. Cyprus is not home to a sizeable football market where players' agent businesses are blooming, nor did the CFA have any urgent reasons for making any amendments to the players' agent regime. This is proven beyond doubt by the fact that the players' agents' regulations in force until 30 March 2015 were implemented in 2003 and were based on the 2001 FIFA Players' Agents Regulations. The 2008 FIFA Regulations on Players' Agents had never been adopted or implemented in Cyprus.

Notwithstanding the above, it will be very interesting to see whether FIFA's key objectives, as these are stated in the preamble of FIFA's Regulations, will be accomplished in Cyprus. These objectives are the following:

1. To promote and safeguard high ethical standards in relations between clubs, footballers and third parties.
2. To live up to the requirements of good governance and financial responsibility.
3. To protect clubs and players from unethical and illegal practices concerning the conclusion of employment and transfer agreements.
4. To enable proper control and transparency of player transfers.

Will the CFA Regulations achieve these objectives? This remains to be seen in the coming future as it is still early to have a safe sample of their impact on the reality of Cypriot football.

There are however, a few things that can be taken for granted.

First, it is a fact that the FIFA associations' licenced players' agent business has now been struck out. This line of work has opened up to all interested parties without obliging them to undergo any exams, issue an insurance, renew their licences every few years etc.

It seems reasonable that all those people who were acting as licenced players' agents in the past will continue to do so through the Intermediaries' system. Or at least there is no reason, other than ones described below, for not doing so.

Without doubt, individuals who were in the past involved with players' agent businesses without being duly licenced by the CFA to do so, will, most probably, also continue their operations as Intermediaries, though now no longer being on the wrong side of the CFA Regulations.

The most interesting thing to see, perhaps, is whether these Intermediary Regulations will attract any new individuals, other than the abovementioned two categories of usual suspects.

Making a prima facie evaluation of the CFA Regulations, these are definitely a lot more "friendly" for people interested to follow this line of work. There seem to be only two drawbacks for the Regulations' acceptance by would-be Intermediaries. First, it will not be easy for an ex players' agent to accept working as an Intermediary if the Regulations cap his commission to a maximum of 3%. Reactions on this provision of the CFA Regulations have already begun to arise and the Intermediaries have already begun seeking legal advice on how to legally circumvent this cap. Should there be no legal way to circumvent this cap, an Intermediary will simply never wish to register his services. Always provided that his client agrees to do so.

Second, there are not many Intermediaries and CFA clubs eager enough to have their transactions and/or payments being disclosed to the public and, eventually, to the national tax authorities.

The two points mentioned above are the main reasons, if not the only ones, why many Intermediaries and CFA clubs will not be craving for their businesses to follow the CFA Regulations. Many transactions will be concluded behind closed doors, without registering to the CFA and without disclosing the relevant payments to the CFA. Even if any disputes arise out of such transactions, the parties will always have the right to seek protection before a national court. As mentioned above, the CFA Regulations are nothing more than an agreement between the CFA, its members and the Intermediaries who will accept to sign an Intermediary Declaration. A transaction concluded in breach of the Regulations might bar the parties from seeking protection before the NDRC but it will in no case affect their rights to claim relief based on breach of contract before a national court.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN CZECH REPUBLIC

by *Martin Procházka*[*]

1. Introduction

In the Executive Committee held on March 2014, FIFA approved the new regulations that modified the activity of the Player's Agents. With the intention to *promote and safeguard considerably high ethical standards in the relations between clubs, players and third parties, and thus to live up to the requirements of good governance and financial responsibility principles*[1] FIFA decided to eliminate the Agents.

FIFA developed a new legal framework that shall serve as the minimum standards/requirements that must be implemented by each association at national level, giving them the scope to develop those minimum standards which implies that each and every association has had to create their own regulations before the entering into force of the new Regulations, that is, before this last 1st of April 2015 and the Football Association of the Czech Republic (hereinafter the "FAČR") published their regulations on the 1st of April 2015.

2. Relevant National Law

There is no special legal framework regarding sports law in the Czech Republic. Some lawyers may argue that sports law in the Czech Republic does exist, bearing in mind the broad definition of the term including for example the regulations of the particular national sports associations (for example the Football Association of the Czech Republic and the Czech Ice Hockey Association have very thorough regulations governing their scope of authority) and similar regulations;[2] however, most legal authors would state that when compared to the more traditional legal disciplines (for example civil law, business law, labour law), there is no sports law in the Czech Republic.[3]

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[1] Preamble of the Regulations on Working with Intermediaries.

[2] See Kubíček, Jiří: Sport a právo (Sport and law), Masarykova univerzita, Brno, 2012.

[3] The definition of sports law is divided. For the content definition of the concept see Králík, Michal: Právo ve sportu (Law in sport), C.H. Beck, Praha, 2001. Also see Hamerník, Pavel:

As opposed to, for example, Slovakia, where the legal framework regarding sport is much more thorough, in the Czech Republic only Act No. 115/2001 Coll., on support of sports, as amended, which contains only eight paragraphs exists. These eight paragraphs mainly govern the tasks for the Ministry of Education, Youth and Sports and the regional self-governing units (districts and municipalities), basic duties of the operator of sports facility and offences related to operating sports facilities.

Regarding the activity of the Intermediaries, the most important law is Act No. 89/2012 Coll., the Civil Code, as amended, which regulates the private law in Czech Republic as a whole, including, for the purposes of the Intermediaries, the essential contractual law.

Football in general is governed by the rules issued by the Football Association of the Czech Republic.

3. The Fačr Regulations

3.1 Principles and Definitions

The first paragraphs of the Intermediary Regulations issued by the Football Association of the Czech Republic (hereinafter referred to as the "Czech Intermediary Regulations" or the "CIR") contain the basic provisions (Article 1), the definitions (Article 2), the scope of the legislation (Article 3) and the basic principles (Article 4). The definition of the Intermediary used in the Czech Intermediary Regulations slightly differs from the definition included in the FIFA regulations,[4] as the Intermediary according to the Czech Intermediary Regulations is defined by his activity. The definition of the Intermediary itself according to the Czech Intermediary Regulations is therefore quite short:

A natural or legal person who, for a fee or free of charge, performs the Intermediary activity.

Obviously the important definition of the Intermediary activity follows:

The activity of the Intermediary, direct or indirect, in favour or on behalf of a Player or a Club in connection with a Transaction; providing of legal services by attorney-in-law without negotiating the financial terms of the particular contract in connection with a Transaction is not considered the Intermediary activity according to these Regulations.

The third important definition is the definition of the Transaction:

The arrangement of the stipulation, change or termination of the Player's contract or agreement on transfer or loan of the Player, as well as carrying out of the registration of the Player or any change of the registration of the Player.

Sportovní právo s mezinárodním prvkem (Sports law: in search of balance between specific sports regulation and general law), Auditorium, Praha, 2007.

[4] Preamble of the Regulations on Working with Intermediaries.

It is obvious that the Intermediaries according to the FAČR are defined slightly differently than in the FIFA regulations as in the Czech version the emphasis is put on the definition of the activity of Intermediaries as opposed to the FIFA definition:

A natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement.

In Article 3 of the Czech Intermediary Regulations issued by FAČR the scope of the legislation is defined and again strong emphasis is put on the Intermediaries activity:

These Regulations govern the conduct and activity of the Football Association of Czech Republic, the Players, the Clubs and the Registered Intermediaries in connection with the performance of the Intermediaries activity.

The general principles are laid out in Article 4 of the Czech Intermediary Regulations with the main definition straightforwardly preventing the Clubs and Players from using anything other than Registered Intermediaries, with whom they have concluded a valid and duly registered representation contract:

Within the Transaction the Players and Clubs are only allowed to use the services of the Registered Intermediary, with whom they have concluded a valid and duly registered Representation Contract according to Article 10 of these Regulations.

Article 4 in its paragraphs 2 and 3 directly establishes the conditions to become the Registered Intermediary separately for the natural and legal person. The natural person may only become the Registered Intermediary if this person:

a) *has an impeccable reputation and is fully legally competent;*
b) *is older than 18 years;*
c) *is a citizen of a member state of the European Union, or a citizen of a signatory state of the EEA Agreement,*[5] *or a citizen of the Swiss Confederation.*

The legal person may only become the Registered Intermediary if this person:

a) *has an impeccable reputation;*
b) *has its registered seat in a member state of the European Union, or in a signatory state of the EEA Agreement, or in the area of Swiss Confederation.*

The natural or legal person applying to be registered as the Intermediary may not be in any contractual relationship with FAČR, UEFA or FIFA, as this may lead to a potential conflict of interest.

[5] The Agreement on the European Economic Area, which entered into force on 1 January 1994, brings together the EU Member States and the three EEA EFTA States — Iceland, Liechtenstein and Norway — in a single market, referred to as the "Internal Market".

4. *Requirements and Conditions*

As mentioned above, the most important condition added by FAČR is that the natural person applying to be registered as an Intermediary according to the CIR must be a citizen of a member state of the European Union, a citizen of a signatory state of the EEA Agreement, or a citizen of the Swiss Confederation (in case of the legal person the same conditions apply to its registered seat). In practice this prevents non-European intermediaries from operating in the Czech Republic at all. In the current system this means that Czech clubs are not legally allowed to sign non-European players, who usually cooperate with their non-European former FIFA licensed agents and insist that these former agents become part of the Transaction (defined in Article 2 of the CIR), as Article 16(1) of the CIR explicitly states the following:

In connection with the Transaction the Clubs are not allowed, either directly or indirectly, to use the services of any other person than the Registered Intermediary.

The same obligation is stated in Article 16(1) of the CIR for the Players. This is of course logical, however in combination with the obligatory citizenship of the Intermediaries within EU, EEA or Switzerland, the practical consequence is that in the case of a club from the Czech Republic who are interested in a particular player, for example from Africa, who cooperates with the intermediary also from Africa, there is no legal way for the club to sign this player, apart from persuading the player not to use the services of this particular Intermediary. This strengthens the positions of the already Registered Intermediaries, mostly former agents licensed by FAČR who represent almost exclusively Czech players. The reason being that in the practical sense it is significantly easier to sign a Czech player than any foreign player working with an Intermediary who is not registered in the Czech Republic, this results in partial closing of the market for football players in the Czech Republic.

The main practical condition the applicant needs to fulfil to become the Registered Intermediary is to pass the Intermediary exam, which is described in Article 6 of the CIR. The exam has a written form and is organized by FAČR twice every year. The fee for participating in the exam is 100,000 CZK (approximately 3,700 EUR).

The written test includes questions from the following areas:

a) FAČR, UEFA and FIFA regulations;
b) Basics of contractual law and basics of law governing personality rights.

If the participant fails the exam the first time, he is allowed to have one more attempt at passing the test without having to pay the fee for participating in the exam.

5. *Registration*

Both natural and legal persons may act as the Intermediary; however, as stated in

Article 5 of the Czech Intermediary Regulations, the legal person may only be registered as the Intermediary through the application submitted by a natural person who is allowed to act on behalf of this legal person and who is also already a Registered Intermediary, meaning that only companies of Registered Intermediaries may act as Intermediaries.

The Czech Intermediary Regulations establish the Intermediary registration procedure in its Article 5, which firstly enumerates the documents needed for the successful registration of the Intermediary:

a) Signed application for registration;
b) Signed Intermediary Declaration;
c) Extract from the Criminal Register no older than three months (or similar documents according to the national legislation of the relevant state);
d) The copy of the insurance contract proving that the Intermediary has affected professional liability insurance covering the possible damages at least in the amount of CZK 2,000,000 (approximately 74,000 EUR). According to Article 7 of the Czech Intermediary Regulations this professional liability insurance shall be valid for the whole time of the registration of the person.

Secondly and more importantly, Article 5 of the CIR states that, to be registered as an Intermediary, the applicant has to pass the Intermediary exam according to Article 6 of the CIR, as described in the previous article.

A foreign Intermediary who is registered within a national organization that is a part of the European Football Agents Association (EFAA)[6] may register in the Czech Republic as a Registered Intermediary by providing FAČR with signed application for registration and signed Intermediary Declaration (Registered Foreign Intermediary EFAA). No other documents or passing the Intermediary exam according to Article 6 of the CIR is needed. However, many national intermediary associations are not a part of the EFAA so for these the strict rules of the CIR apply, even though they operate within the EU and are members of their national intermediary associations.

6. Impeccable Reputation

The impeccable reputation requisite mentioned in Article 4 of the FIFA Regulations on Working with Intermediaries is incorporated into the CIR as the obligation to provide FAČR with an extract from the Criminal Register no older than three months (or similar documents according to the national legislation of the relevant state) while applying for registration as an Intermediary (this is the same for both natural and legal persons) – Article 5(2)(c) and Article 5(3)(d) of the CIR.

This obligation is considered as being fulfilled in the case of the application for the registration sent by the Foreign Intermediary of EFAA.

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[6] European Football Agents Association (EFAA) – European association uniting the national intermediary associations (www.eufootballagents.com).

7. *Conflict of Interests*

Article 11 of the CIR regarding the Conflict of Interests is a direct implementation of the rules in Article 8 of the FIFA Regulations on Working with Intermediaries stating that prior to engaging the services of the Registered Intermediary, Players and/or Clubs shall use reasonable endeavours to ensure that no conflicts of interests exist or are likely to exist either for the Players and/or Clubs or for the Registered Intermediaries. However, no conflict of interest would be deemed to exist if the Registered Intermediary discloses in writing any actual or potential conflict of interest he might have with one of the parties involved in the matter, in relation to a Transaction, Representation Contract or shared interest, and if he obtains the express written consent of all the other parties involved prior to the start of the relevant negotiations.

If a Player and a Club wish to engage the services of the same Registered Intermediary within the scope of the same Transaction under the conditions established in Article 11(2), the Player and the Club concerned shall give their express written consent prior to the start of the relevant negotiations, and shall confirm in writing which party (the Player and/or the Club) will remunerate the Registered Intermediary.

8. *Obligations of Intermediaries*

The obligations of the Intermediaries are mentioned in Article 14 of the CIR. Apart from the general and obvious obligations mentioned in this Article – to comply with FAČR, FIFA and UEFA regulations, an Intermediary must abstain from entering into contractual relationships with FAČR, FIFA and UEFA that may lead to a potential conflict of interest, to conduct their Intermediary activity on behalf of the Club or Player only after concluding the Representation Contract and registering it at FAČR (thus the written form of the Representation Contract is obligatory). This paragraph also contains certain rules governing the relations between the Intermediaries themselves. Article 14(8) of the CIR states:

The Registered Intermediaries may not in any way, directly or indirectly:

a) *conclude a Representation Contract with any Player, who has already concluded and properly registered exclusive Representation Contract with another Registered Intermediary,*
b) *offer their services to any Player, who has already concluded and properly registered exclusive Representation Contract with another Registered Intermediary,*
c) *to instigate any Player, who has already concluded and properly registered exclusive Representation Contract with another Registered Intermediary, to breach this Representation Contract.*

During April of every year the Registered Intermediaries are obliged to submit to FAČR a signed Intermediary Declaration, an extract from the

Criminal Register no older than three months (or similar documents according to the national legislation of the relevant state of their nationality) and in the case of the Registered Intermediary who is a legal person also an extract from the business register no older than three months (or similar documents according to the national legislation of the relevant state of its registered seat). These obligations do not apply to Registered Foreign Intermediaries EFAA.

9. Obligations of Players and Clubs

Following Article 14 which incorporates the obligations of the Intermediaries, Articles 15 and 16 of the CIR contain the corresponding obligations of Players (Article 15) and Clubs (Article 16) which are basically the same. As mentioned before, the most important obligation is stated in the first sections of both paragraphs:

In connection with the Transaction the Players (the Clubs) are not allowed, either directly or indirectly, to use the services of any other person than the Registered Intermediary.

Within 10 days after completing the transaction, the Player (the Club) using the services of the Registered Intermediary during this transaction is obliged to provide FAČR with Declaration of the Registered Intermediary and the extract from the Criminal Register of the Registered Intermediary that is no older than three months. Within the same time limit the Player is also obliged to provide FAČR with a copy of the Representation Contract concluded with the Registered Intermediary, as opposed to the Club, which has no such obligation. The Players and the Clubs are obliged to provide FAČR with the mentioned documents after each and every completed Transaction.

The Player is obliged to ensure that his professional contract concluded with the Club in cooperation with any Registered Intermediary includes the name, registration number and signature of the Registered Intermediary. The same obligation is imposed on Clubs regarding all transfer and loan agreements stipulated in cooperation with any Registered Intermediary.

Should the Player or the Club choose not to use the services of the Registered Intermediary within the Transaction, this fact has to be stated on any stipulated professional contract and/or transfer/loan agreement.

A Player who has concluded an exclusive Representation Contract with any Registered Intermediary is obliged to honour the exclusivity. The Clubs are not allowed to instigate any Player who has concluded an exclusive Representation Contract with any Registered Intermediary, to breach this Representation Contract.

10. Remuneration Paid to Registered Intermediaries

Article 12 of the CIR for the most part adopts the stipulations of Article 7 of the FIFA Regulations on Working with Intermediaries as it states that the amount of remuneration due to an Intermediary who has been engaged to act on a player's behalf shall be calculated on the basis of the player's basic gross income for the

entire duration of the contract and that clubs that engage the services of an Intermediary shall remunerate him by payment of a lump sum agreed prior to the conclusion of the relevant transaction (if agreed, such payment may be made in instalments).

However, the CIR completely omits Paragraph 3 of Article 7 of the FIFA Regulations on Working with Intermediaries which recommends the benchmarks regarding the maximum amounts of the remuneration to be paid to Intermediaries by Players and Clubs:

- 3% of the player's basic gross income for the entire duration of the relevant employment contract;
- 3% of the eventual transfer fee paid in connection with the relevant transfer of the player.

As these recommended maximum amounts of remuneration are not even mentioned in the CIR, this leaves the amount of remuneration to be paid to the Intermediaries completely dependent on the agreement of the contracting parties.

The CIR also adopts Paragraph 4 of Article 7 of the FIFA Regulations on Working with Intermediaries stating that clubs shall ensure that payments to be made by one club to another club in connection with a transfer, such as transfer compensation, training compensation or solidarity contribution, are not paid to Intermediaries and that the payment is not made by Intermediaries. However the CIR omits the last two sentences of this section, which prohibit the owning of any interest in any transfer compensation or future transfer value of the player and also prohibit the assignment of the claims, enabling the Intermediaries to own part of the future value of the player (this has been often done by agents in the Czech Republic in the past), while not being in breach of any regulations of FAČR.

The main contradiction between the CIR and the FIFA Regulations on Working with Intermediaries is stated in section 12(7) of the CIR stating:

Players and/or Clubs that engage the services of an Intermediary when negotiating an employment contract and/or a transfer agreement are prohibited from making any payments to such Intermediary if the player concerned is younger than 16 years.

As the FIFA Regulations on Working with Intermediaries clearly state that no payments are to be made where the player concerned is younger than 18 years old, this enables the Czech Intermediaries to receive payments for players between 16 and 18 years old, giving them an advantage over Intermediaries in other European states, who adhere to the stipulations of the FIFA Regulations on Working with Intermediaries.

11. Representation Contract

According to Article 10 of the CIR the Registered Intermediary and the Club are obliged to sign a written Representation Contract before the Intermediary

commences the Intermediary activity.

The Representation Contract is supposed to have the following content (§ 10 sec. 2 of the CIR):

a) Names of the contracting parties;
b) The specification of the contractual relationship;
c) The duration of the Contract;
d) The remuneration to be paid to the Registered Intermediary and the payment conditions;
e) Date of the conclusion of the Representation Contract;
f) Ways to terminate the Representation Contract;
g) It should be explicitly stated whether the Representation Contract is exclusive or non-exclusive;
h) Signatures of the contracting parties.

The maximum duration of the Representation Contract is three years.

The Registered Intermediary is allowed to conclude the Representation Contract only with a Player who is 15 years old or older. If the Player is younger than 18 years old (minor), the Representation Contract has to be signed by his legal representative or tutor.

The Registered Intermediary is obliged to register the Representation Contract at FAČR within 10 days after its conclusion. The Representation Contract may be registered only in Czech or Slovak language - contracts in other languages have to include an officially verified translation into Czech language. The Registered Intermediary is obliged to inform FAČR about any termination, prolongation or change of the Representation Contract within 10 days of its occurrence.

The Intermediaries Committee may refuse to register the Representation Contract if it does not fulfil any of the conditions mentioned above, if the Registered Intermediary fails to register it within the time limit of 10 days, or where there is any contradiction with laws of the Czech Republic.

12. Obligation of Disclosure

According to Article 13 of the CIR, the Players and/or the Clubs are obliged to provide the Intermediaries Committee with the information about stipulated remunerations to be paid to the Registered Intermediaries. This obligation is considered as being fulfilled by registering the Representation Contract at FAČR and on the side of the Clubs by informing FAČR about the total amount of remunerations paid to the Registered Intermediaries during the past calendar year. This should be completed annually by every Club before the end of February.

In case the state authorities decide to investigate the activity of any Registered Intermediary, the Players and/or the Clubs are obliged to provide FAČR, UEFA and FIFA with all requested contracts, documents and records for the purposes of the investigation.

FAČR is obliged to publish on its website an updated list of all Registered Intermediaries, including their registration number and possible suspension of the registration. Before the end of March of every year, FAČR is obliged to publish on its website the list of all Registered Intermediaries and of all individual Transactions which took place with the participation of the Registered Intermediaries during the previous calendar year. FAČR shall also publish the total amount of remunerations stipulated or actually paid to every Registered Intermediary by Players and by each and every one of the Clubs. FAČR is obliged to ensure the anonymity of all subjects. The disclosed information is the total amount paid by all the Players and total amount paid by individual Clubs per calendar year.

In case the Player and/or the Club proves its justified legal interest, FAČR is entitled to provide the Player and/or the Club with all the information regarding any Transaction in connection with which a breach of the CIR has been established.

13. Disputes, Disciplinary Powers and Sanctions

Disputes between the members of FAČR arising from contracts concluded and registered according to the CIR are to be decided by the Body of Arbitrators of FAČR.

A breach of the CIR by a Registered Intermediary has disciplinary consequences according to the Disciplinary Code of FAČR and the Intermediary Committee, which has been established by Article 19 of the CIR and is composed of the chairman and two members appointed by the Executive Board of FAČR, is entitled to take the following measures:

a) a warning to the Registered Intermediary;
b) a suspension of the registration of the Registered Intermediary or
c) a termination of the registration of the Registered Intermediary.

Article 9 of the CIR enumerates the conditions for the termination of the registration of the Registered Intermediary. Aside from the obvious – for example death of the Intermediary, failing to fulfil the condition of the Impeccable Reputation, failing to submit the relevant documents to FAČR before the end of April of every calendar year (the signed Intermediary Declaration, the extract from the Criminal Register no older than three months etc.), Section 9(1)(c) states that the Intermediary Committee may terminate the registration of the Registered Intermediary in case of serious and/or repeated breach of the CIR. This stipulation, while being very vague, contains a serious repercussion on the sanctioned Intermediary.

According to the CIR, FAČR is entitled (as opposed to the FIFA Regulations on Working with Intermediaries which state that the national association is "obliged") to inform FIFA about every measure taken against any Registered Intermediary. The FIFA Disciplinary Committee will then decide on the extension of the sanction to have worldwide effect in accordance with the FIFA Disciplinary Code.

14. Conclusion

By replacing the FIFA Players' Agents Regulations with FIFA Regulations on Working with Intermediaries, FIFA intended to constitute a new, more transparent system for negotiating the transfers/loans of players and professional contracts between players and clubs. This new system was supposed to provide a framework for tighter control and supervision of the transactions of the football players in order to enhance transparency.

However, the FIFA Regulations on Working with Intermediaries serve as the minimum requirements to be implemented at the national level, giving the national associations room to create their own rules and therefore creating various subsystems with different rules and conditions to conduct Intermediary activity.

The Czech Intermediary Regulations are one of the examples of this fragmentation as the rules created by the Football Association of the Czech Republic favour some (especially former agents of Czech nationality licensed by FAČR and the EFAA Intermediaries), while others have to pass the expensive written exam, which is organised only twice a year. Should other European states follow this example, this could effectively make the international transfers of players more difficult and discourage European clubs from signing foreign players – a consequence definitely not intended by the new system. Apart from this unfortunate consequence one of the rules created by FAČR is even in direct contradiction with the FIFA Regulations on Working with Intermediaries, allowing the Czech Registered Intermediaries to receive payments for transfer of minors older than 16 years.

This shows that only thorough and rigorous control of the implementation of the FIFA Regulations on Working with Intermediaries by national associations secured by FIFA may enable FIFA to succeed in its original goal – creating a more transparent system that would help to promote and safeguard considerably high ethical standards in the relations between clubs, players and third parties and live up to the principles of good governance and financial responsibility principles.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN DENMARK

by *Ole Knudsen*[*]

1. Introduction

The Danish Football Federation (hereinafter DBU) implemented the FIFA Regulations on Working with Intermediaries (hereinafter the "FIFA RWWI") on the 23rd of March, with effect from the 1st of April according to the deadline set forth by FIFA. The implementation resulted in DBU Circular No. 93.[1]

The DBU held an information meeting for the former agents and other interested parties on the 7th of April. During the winter 2014/2015 DBU's Law committee held hearings with representatives from small, medium and large agents. The purpose was to include the relevant stakeholders in the process regarding implementation and adjustments of the FIFA RWWI to a Danish context. In Danish intermediary translates to "mellemmand", a wording that was used when the circular RWWI was implemented. After much confusion the DBU changed the Danish translation of intermediary to "fodboldagent" on the 4th of September 2016.

This chapter focuses on the differences between the implementations made by the DBU and the FIFA RWWIs focus on the implementations differences compared to the FIFA RWWIs.

2. Relevant National Law

The services provided by intermediaries in Denmark are governed by Danish Law. The most relevant acts of legislation are the Contract Act, The Sale of Goods Act[2] and The Liability and Compensation Act.

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[*] Ole Knudsen, Legal Advisor of Danish League. The Author wishes to thank Jes Cristian Fisker, Assistant Attorney, from the DBU and Claus Christensen, CFO of Silkeborg IF and member of the DBU Law Committee for providing information from the implementation process. E-mail: olek@dbu.dk.

[1] A full English translation of the Danish circular is available online at DBU.dk www.dbu.dk/~/media/files/dbu_broendby/turneringer/cirkulaerer/cirkulaere%20nr%20105_eng.pdf.

[2] The act regulate both goods and services.

Regarding liability and compensation, the intermediary would be regarded as a professional service provider that must live up to the standard that could be expected within the profession, not a standard of a normal *bonus pater familias*.

As a member of the Sports system the intermediaries are required to abide by the laws of the DBU, as well as the laws and regulations of the Sport Confederation of Denmark (hereinafter DIF). As such, agents were mentioned as support personnel in the DIF regulation regarding match fixing of the 4th of May 2013.[3]

3. Principles and definitions

The DBU used the same definition of an intermediary as the Preamble of the FIFA RWWIs[4] apart from a few adjustments in the text. The adjustments does not seem to give the definition of an intermediary a different meaning. The definition is:

An intermediary is a person who, for money or free of charge, represents a player and/or a club in the negotiation and conclusion of a player contract, including a loan agreement, or represents a club in the negotiation and conclusion of a transfer agreement. A person can engage in intermediary activity either as a sole trader or a company.[5]

There are 5 general principles in clause 3 of circular 93.

The first principle is an obligation for clubs and players. They can only enter into representation contracts with intermediaries that have registered with the DBU, or intermediaries that have applied for registration before signing the contract.

The second and third principles are related to transparency. Intermediaries must not have employment, elected office or financial interest in FIFA, a confederation, a national association, a league, a club or any organization or company affiliated with the above. The same is the case for officials, defined as board members, committee members, referees, assistant referees, coaches and others in charge of matters of any kind in FIFA, a confederation, a national association, a league, a club or any entity subject to FIFA's rules and regulations. In contrast to FIFA Statutes[6] the definition of an official in the DBU Circular does not exclude players from it.

The fourth principle refers to protection of minors.

Failure to comply with the CircularNo 93 will have no effect on the validity of a transfer agreement or a player contract. A consequence of this fifth principle is that no player contract or transfer agreement can be conditioned by signing the signing of a representation contract.

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[3] www.dif.dk/da/foreningsliv/stop_matchfixing/om-s-matchfixingreglerne.

[4] FIFA Regulations on Working with Intermediaries, 4.

[5] www.dbu.dk/turneringer_og_resultater/love_og_regler/landsdaekkende_turneringer/cirkulaerer/93_reglement_for_mellemmaend_eng.aspx#GRFkSwbQgXRBZZfX.99.

[6] FIFA Statutes, April 2015 edition, 5.

4. Registration: Fees, documents and requirements

The DBU has setup the following fee structure for intermediaries:
- First registration fee of the intermediary: 670 Euro (5.000 DKK)
- Renewal fee each year by January 1st: 402 Euro (3.000 DKK)
- Submission of representation contract: 201 Euro (1.500 DKK)

The submission fee is for each representation contract submitted, regardless of content.

If the intermediary does not pay the fee the DBU will send a written notice.

If the intermediary does not pay the fee within 8 days after receiving a written notice the DBU is entitled to deregister the intermediary and inform the clubs and players with whom the intermediary have registered representation contracts, that the intermediary is no longer entitled to act as an intermediary.

The required documents to register, as an intermediary with the DBU, are the intermediary declaration for a company or a sole trader[7] as well as written proof that the applicant has no criminal record.

In order to be eligible for registration as intermediary the applicant must have a solid legal background, no criminal record and an impeccable reputation. Companies owners, board member and commissioners must also have an impeccable reputation in the DBU's opinion, regardless of whether these persons will conduct activities as intermediaries.

What an impeccable reputation is, in the DBU's opinion, has never been tested in Danish Football's legal system.

If an applicant is rejected by the DBU a compliant can be filed with the Football Disciplinary Committee. Such complaints must be filed within 14 days after receiving the rejection.

5. Optional certification

The DBU Circular No 93 has a Section 2 with two special clauses which try to preserve some values from the old system, such as an exam that certifies knowledge about relevant legislation and insurance for the agent's activities. These elements founded reasonable expectations for a high professional standard and gave the former agents credibility.

An intermediary can now be a registered intermediary or a certified intermediary. Section 2 of Circular 93 details the requirements for certification. The certification is optional.

If the intermediary passes a written exam and purchases liability insurance, the intermediary is allowed to use the title: Intermediary Certified by Dansk Boldspils-Union.

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[7] www.dbu.dk/turneringer_og_resultater/Love_og_regler/Landsdaekkende_turneringer/Cirkulaerer.

The exam is a multiple choice test of 20 questions on civil law, commercial law and rules and regulations from FIFA, UEFA and the DBU with focus on the rules regarding player contracts and player transfers.

The liability insurance must be taken out at a reputable insurance company and cover a minimum period of 24 months. The insurance must cover claims established on any basis, including claims based on Circular No 93. Minimum coverage is 3.000.000 DKK (400.000 Euro).

Certification must be renewed within five years of the previous certification. Participating in the exam is subject to a 630 Euro fee.

In October2016, the DBU had 14 intermediaries that where certified or in process of certification. 132 were registered as intermediaries. The registered intermediaries do not need to comply with any of the obligations set forth for certified intermediaries.

6. Conflicts of Interests

In general the DBU implemented the FIFA RWWI without major adjustments on the topic of conflicts of interest, in substance. However the format can be of interest.

Clause 8.2.4., states that an intermediary must inform involved parties of a potential or actual conflict of interest, similar to the FIFA RWWI Article 8.1 and 8.2. Clause 8.2.5., obliges the intermediary to:

Only represent one of the parties in the negotiation of a player contract or a transfer agreement, and he must not have a representation agreement or shared interests with any of the other parties involved in the player contract or the transfer agreement or with an intermediary representing such party.[8]

Further obligations of the intermediaries are listed in clauses 8.2.6.-8.2.9. Clause 8.3. in Circular No 93, then opens the option for dual representation if both parties request it, similar to the FIFA RWWI clause 8.3. Clause 8.3., from DBU Circular No 93 states:

The prohibition in clause 8.2.5 does not apply if a player and a club wish to be represented by the same intermediary in the same transaction, and if the conditions in clause 8.2.4 are satisfied. For such dual representation to be allowed, the player and the club must agree in writing whether the intermediary's fee will be paid by the player or the club or any combination of the two, and the parties must immediately submit their written consent and such written agreement to DBU as part of the registration process.[9]

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[8] DBU's Circular 93.

[9] DBU's Circular 93.

7. Obligations of the club, player and intermediary

Due to clause 8 in the Circular No 93 the intermediary is obliged to comply with all rules and regulations issued by DBU, UEFA and FIFA in all transactions.

The intermediary is also obliged to respect contractual stability, not to take on a workload that the intermediary he or she cannot handle, submit all relevant documents to the DBU if requested, make sure administrative employees of the intermediary do not carry out intermediary work and keep records of any transactions and invoices in the intermediaries activities. These are in addition to the obligations regarding conflicts of interest from chapter 6.

For players the list of obligations is shorter in clause 10. The most important obligation on the players is to ensure a representation contract is concluded and submitted to the DBU, as well as other and new agreements with the intermediary.

The obligations for a club in clause 12, is in general similar to the players obligations with the addition clause 12.7., obliging the club to pay any transfer fee and FIFA Compensation directly to the entitled club. Those amounts cannot be paid to intermediaries.

8. Remuneration, length and minors

The DBU has not made any specific or relevant changes in Circular No 93, clause 14, to the minimum demands of the FIFA RWWI.[10]

As such the 3% recommendation for caps on remuneration from FIFA RWWI is also the recommended cap in Circular No 93. As it is not a binding cap, the intermediary is in theory free to get 100% of the gross salary, if the player agrees.

The DBU published a guide to the circular in Danish, with questions and answers. The guide and the DBU's administrative handling offers flexibility regarding the fixed % or fixed fee. A fee can be agreed to be up to x % of the gross salary or between x and y %.

The maximum length of a representation contract is 24 months according to Circular No 93, clause 6.2. However, representation contracts for a minor can always be terminated with a 3 months' notice to the last day of a month according to clause 6.7.

Minors, defined as players between the age of 15 to 17, are also under special clauses in regards to

- a general right to be represented by a parent or legal guardian in clause 3.4., without the parent or legal guardian having to register as intermediary and
- a prohibition of any remuneration to an intermediary for contracts or transfers in clause 14.8.

[10] FIFA Regulations on Working with Intermediaries, 11-12.

9. Disciplinary powers and sanctions

The DBU administration has the authority, according to clause 4, to make decisions regarding registration (see pkt. 3, for handling of administrative complaints), and clause 15 and 16 regarding the optional certification.

Danish football's own disciplinary body handles complaints with regards to clauses 8 to 14, about duties, remuneration and sanctions of intermediaries, players and clubs.

Danish football's own disciplinary body may commence investigations at its own initiative. Any sanction imposed by Danish football's own disciplinary body can be appealed to the Appeal Body of Football. Those decisions can be appealed to the DIF appeal body, in daily speech referred to as the supreme court of sports.

The catalogue of sanctions for intermediaries, player and clubs are according to Circular No. 93, clause 9 for intermediaries, clause 11 for players and clause 13 for clubs: disapproval or reprimand and fines.

For intermediaries, sanctions according to clause 9 can also involve full or partial forfeiture of fees already earned and suspension or termination of intermediary status.

The DBU must publish sanctions to intermediaries on their website and inform FIFA plus the players and clubs concerned.

For players, sanctions according to clause 11 can also involve a ban from matches.

For clubs, sanctions according to clause 13 can also be a temporary ban on concluding and extending player contracts, a temporary ban on national and international transfers and, finally, transfers and exclusion from national and international tournaments.

Civil disputes between intermediaries and disputes between players or clubs and intermediaries must be handled in the civil courts unless the parties choose arbitration. Here the parties can choose the Arbitration Court of Football if they so agree.

10. Conclusion

The implementation can in this author's opinion be regarded as a minimum implementation of the FIFA RWWI, for everything that has binding legal substance. The access for DBU to go further than FIFA RWWI is primarily used in the distinction between registered and certified intermediaries.

The DBU's implementation of this voluntary option of certification seeks to keep some parts of the old system that the agents liked, such as the credibility the system offered due to the fact that agents had to take an exam and buy insurance.

Registered and certified intermediaries will carry out the same work, but with different labels. Time will show if the certified intermediaries will achieve a competitive edge on those who only chose to register.

So far the primary obstacle for the DBU in getting the intermediaries that do a majority of their business in the Danish territory to certify have been the fact that they were previously examined and certified as football agents, thus they don't have a practical need for proving it again. The DBU is currently in dialogue with the intermediaries on how to optimize the certification to the intermediaries' business needs.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN ENGLAND

by *Daniel Lowen*[*]

1. Introduction

The implementation of FIFA's Regulations on Working with Intermediaries (the "FIFA Regulations") on 1 April 2015 signaled the biggest transformation of player and club representation in the history of professional football.

Whilst Article 1 of the FIFA Regulations requires national associations to implement and enforce its provisions, it expressly reserves associations' rights "to go beyond these minimum standards/requirements".[1]

On 5 February 2015, the English Football Association ("The FA") became one of the first national associations worldwide to publish its own supplemental regulations, the FA Regulations on Working with Intermediaries (the "Regulations"). This chapter examines briefly the national laws relevant to intermediaries' activities, provides an overview of the Regulations, its key principles and requirements, and assesses certain practical effects of the new regulatory regime in England.

2. Relevant national law

In England, intermediaries' activities are regulated in three ways: (i) by the common law, (ii) by UK legislation and (iii) by the Regulations and other relevant rules and regulations laid down by football's governing bodies. Whilst this chapter focuses on the third item (and in particular the Regulations), it is important to note the other regulatory strands, which together form the regulatory landscape that an intermediary is required to navigate.

2.1 The common law

The common law definition of agency is:

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[1] The FIFA Regulations on Working with Intermediaries, Articles 1.2 and 1.3.

> "the fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf so as to affect his relations with third parties, and the other of whom similarly manifests assent so to act or so acts pursuant to the manifestation".[2]

The common law duties to which an intermediary is subject when carrying out activities on a player's behalf are extremely broad and include (non-exhaustively) the duty to use due skill and care,[3] to act in accordance with the terms of appointment and not to exceed his or her express or implied authority, to obey the lawful instructions of the principal, not to put himself into a situation where his interests will conflict with those of his principal[4] and, as was highlighted in *Imageview Management Ltd v Jack,*[5] a high profile case between a player and his agent, not to make a secret profit.[6] The 2009 case underlined the high standards imposed upon agents (i.e. intermediaries) by the common law (in addition to the requirements of any regulations laid down by football's governing bodies). As stated by Lord Justice Jacob in the Court of Appeal in that case, "The law imposes on agents high standards. Footballers' agents are not exempt from these. An agent's own personal interests come entirely second to the interests of his client… An undisclosed but realistic possibility of a conflict of interest is a breach of [an agent's] duty of good faith…".

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[2] B. Bowstead and FMB Reynolds, '*Bowstead & Reynolds On Agency*' 19th ed, United Kingdom, Sweet and Maxwell, 2010.

[3] *Beal v South Devon Ry Co* (1864) 3 H&C 337.

[4] *Aberdeen Railway v Blaikie Bros [1854] 1 Macq 461.*

[5] *Imageview Management Ltd v Jack [2009] EWCA Civ 63.*

[6] The agent of Kelvin Jack, a Trinidad and Tobago international goalkeeper, negotiated his client's contract of employment with Dundee United FC. A commission of 10% was agreed, calculated with reference to the player's gross salary. Unbeknown to the player, the agent negotiated a side agreement with the club under which the club would pay £3,000 for the agent's efforts in obtaining the player's work permit. When the player subsequently found out about the side agreement, he ceased paying the commission to the agent. The agent sued the player for unpaid commission and the player counterclaimed not only for the secret profit paid under the agent's side deal with the club, but also for all of the commission already paid to the agent. The Court of Appeal found in favour of the player and the agent's commission was forfeit – the player did not have to pay any further commission and was entitled to repayment of all of the fees paid by him to the agent. Furthermore, the £3,000 fee paid by the club to the agent under the side deal was a secret profit made by the agent acting as a fiduciary and, as such, it was recoverable by the player. The Court reasoned that in the circumstances, the agent had clearly used his connection with the player to obtain a benefit for himself. There had been a clear conflict of interest (it was preferable for the agent to move the player to Dundee United FC as opposed to any other club, in view of his side agreement with Dundee United FC, and the more that was paid to the agent, the less there might be available to be paid to the player), and the agent had acted in breach of his fiduciary duties to the player. The case was a salutary lesson for agents and highlighted the need under common law for agents or intermediaries to disclose to his or her principal any and all commission he or she may earn – if they allow themselves to be in a position where there is a real possibility of their interests conflicting with those of their principal, they risk losing not only any secret profit but also their legitimately received commission.

2.2 UK legislation

There is no UK legislation that directly regulates the activities of players' representatives. There are, however, various statutes which impact upon and constrain the conduct of intermediaries in certain ways.

The Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 set minimum standards of conduct for employment agencies and employment businesses which provide services for the purposes of finding employment for workers and supplying potential employees to employers. The legislation imposes various obligations on employment agents, many of which overlap with the common law duties imposed upon intermediaries. For example, offering workers financial benefits or benefits in kind to use the intermediary's services is prohibited[7] and there is an obligation to disclose to the principal at the outset of the relationship details of fees payable, who will pay the fees and the services for which fees will be payable.[8] However, to the author's knowledge, an intermediary (or, previously, licensed agent) has yet to be charged with a breach of the Act or the Regulations.

The Bribery Act 2010 (the 'Bribery Act') is a piece of legislation of which all intermediaries should be aware, as it established two criminal offences:

a) Bribing another person – an intermediary will be guilty of an offence if they offer or give a financial or other advantage with the intention of inducing another person to perform a public or commercial function or activity improperly or reward that person for doing so;[9] and
b) Being bribed – an intermediary will be guilty of an offence if they receive a financial or other advantage intending that a public or commercial function or activity should be performed improperly as a result.

Under s. 4 of the Bribery Act, improper performance is performance or non-performance which breaches expectations of good faith or impartiality or breaches a position of trust. The penalties under s. 11 of the Bribery Act are potentially serious – an unlimited fine or imprisonment for up to 10 years.

If an intermediary pays or accepts payment from a third party in relation to the duties he carries out for his principal (the player), including payments to or from individuals at a club in connection with a player transfer,[10] that will in theory constitute an offence under the Bribery Act.[11]

The more sizeable player agencies, some of which employ or engage a considerable number of intermediaries, should be aware of the provisions of s. 7 of the Bribery Act under which a commercial organisation will itself be guilty of an

[7] Employment Agencies Act 1973, s. 6.
[8] Conduct of Employment Agencies and Employment Businesses Regulations 2003, Regulation 13.
[9] Bribery Act 2010, s. 1.
[10] Excluding, of course, remuneration payable to the intermediary in accordance with a representation contract and/or Transaction documentation.
[11] Such payments (or gifts) are traditionally known in the football industry as 'bungs' (a much-discussed topic in football).

offence if an 'associated person' (which would include an intermediary employed or engaged by the organisation) bribes another person, intending to obtain or retain business or a business advantage for the organisation.

Intermediaries should also bear in mind the provisions of the Fraud Act 2006, under which a person can commit the offence of fraud by dishonestly making a false representation,[12] by dishonestly failing to disclose information which he is under a legal duty to disclose[13] or by dishonestly abusing a position in which he is expected to safeguard the financial interests of another person[14] (which includes the abuse of an intermediary's position vis-à-vis his principal[15]). In each case, there must be an intention to make a gain or to cause loss (or the risk of loss) to another. As with the Bribery Act, the maximum sentence is 10 years' imprisonment.

Intermediaries would be well advised to bear in mind the above non-exhaustive overview of certain aspects of national law that relate to the conduct of intermediaries' activities. However, this chapter is concerned primarily with the regulations governing intermediaries' activities laid down by the national governing body of the sport and it is to those new Regulations that this chapter now turns.

3. Background to the Regulations

Part of FIFA's rationale for bringing an end to the agents' licensing system was its assertion that "only 25 to 30 per cent of all international transfers [were] conducted via licensed agents".[16] However, that was not the case in England. Prior to 1 April 2015, whilst some national associations referred simply to the FIFA Players Agents Regulations for the purposes of regulating the activities of player and club representatives, The FA had developed over a number of years a considerably more detailed and sophisticated body of rules governing the activities of players' agents operating in (or in respect of a player moving to) England. Indeed, the general consensus was that The FA regulated agents' activities fairly effectively.

It is therefore unsurprising that many of the principles in The FA's new Regulations, and indeed much of the detail, derive from the FA Football Agents Regulations[17] (the "Agents Regulations") that they supersede.[18] In addition to retaining many of the rules and principles enshrined in the Agents Regulations, certain of those rules and principles have been either streamlined or expanded to reflect what The FA perceives to be the reality of football transactions and, of course, transposed into the Regulations are a number of key concepts and mandatory

[12] Fraud Act 2006, s. 2.
[13] See supra s. 3.
[14] See supra s. 4.
[15] Fraud, Law Commission Report No 275 Cm 5560 (2002).
[16] FIFA Director of Legal Affairs Marco Villiger, 'FIFA acts to protect core values', fifa.com, 15 July 2009, www.fifa.com/aboutfifa/organisation/administration/news/newsid=1081337/.
[17] The FA Football Agents Regulations, which came into effect on 4 July 2009.
[18] For an in-depth analysis of the differences between the Regulations and the Agents Regulations, see http://footballintermediary.co.uk/regulations/commentary-on-the-regulations/#25differences.

rules from the FIFA Regulations.[19]

It is important to note that the Regulations expressly state that in the event of a conflict between the Regulations and the FIFA Regulations, The FA's Regulations take precedence. This primacy of the national rules makes it even more important that intermediaries based outside England who are seeking to operate within this jurisdiction understand and abide by the Regulations.

4. Definitions

Various defined terms appear in Appendix I to the Regulations and it may be useful to set out a few of the key definitions here:

An "Intermediary" is "any natural or legal person who carries out or seeks to carry out Intermediary Activity and has registered with The FA…". As per the FIFA Regulations, companies can be Intermediaries. In this chapter, the term "intermediary" has not been capitalised, but references to intermediaries should be taken to be references to Intermediaries as defined, where the context so admits.

The definition of "Intermediary Activity" is extremely broad: "acting in any way and at any time, either directly or indirectly, for or on behalf of a Player or a Club in relation to any matter relating to a Transaction. This includes, but is not limited to, entering into a Representation Contract with a Player or a Club."

"Transaction" means "any negotiation or other related activity, including any communication relating or preparatory to the same, the intention or effect of which is to create, terminate or vary the terms of a player's contract of employment with a Club, to facilitate or effect the registration of a player with a Club, or the transfer of the registration of a player from a club to a Club (whether on a temporary or permanent basis). A completed Transaction is one that has so achieved the creation, termination or variation of the terms of the player's contract of employment with a Club, the registration of the Player with a Club or the transfer of the registration from a club to a Club."

5. General Principles

The introduction to the Regulations states that they are "…binding on all Participants". The FA elected to bring intermediaries within its jurisdiction and the definition of "Participant" within Part A of The FA's Rules of the Association now includes "Intermediaries".[20]

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[19] For example, the recommended 3% maximum commission and the prohibition on payments to intermediaries in respect of the representation of minors.

[20] Prior to the publication of the Regulations, it was not known whether The FA would choose to bring intermediaries within its jurisdiction.

It would have been open to The FA not to make intermediaries "Participants", with the consequence that disputes between intermediaries and players or clubs concerning fees would have fallen to be resolved in the normal courts instead of by way of confidential arbitration administered by The FA. A

Intermediaries are, accordingly, subject to The FA's Rules (including, for example, the prohibitions on betting). Intermediaries who breach the Regulations can be sanctioned by The FA and disputes involving intermediaries (for example between two or more intermediaries, or between an intermediary and a player or club) can be resolved before an FA arbitral tribunal under Rule K of The FA's Rules of the Association.

Regulation A sets out a number of general principles: Players and clubs may only use or pay intermediaries who are registered with The FA and with whom they have signed a representation contract in relation to Intermediary Activity.

Matters must not be arranged by an intermediary, a club, a player or any other person or entity under The FA's control so as to conceal or misrepresent the reality or substance of any aspect of a Transaction. This provision is extremely broad and it is open to The FA to rely on it in any instance where there is not total transparency in relation to a Transaction (for example, it could be used to prevent an intermediary being classified as the club's representative when they are in reality the player's representative).

A key feature of the Regulations is that players are free to engage whoever they want to represent them – no party can make a Transaction subject to or dependent upon a player's agreement to use a particular intermediary.

Intermediaries, clubs and players are all required to ensure that all relevant contracts and documents contain the name, signature and registration number of every intermediary who carries out Intermediary Activity in relation to a Transaction. If either a player or a club does not use the services of an intermediary in a Transaction, this must be stated in all relevant documentation.

Finally, in terms of disclosure and publication of information relating to Intermediary Activity, The FA has fairly wide-ranging powers of publication, including the entitlement to publish a list of every Transaction in which an intermediary has been involved and the total consolidated amount of all payments made by all players and by each club to intermediaries.

6. Registration requirements and conditions

The Regulations require an intermediary to be registered in order to be able to sign a representation contract with a player or club, as signing a representation contract itself falls within the definition of Intermediary Activity. Anyone who wishes to represent players or clubs on transfers or contract negotiations (whether they are a relative of the player, based overseas or a lawyer) will have to register as an intermediary and will be subject to the same rules (except that the Regulations permit a lawyer to provide Permitted Legal Advice in relation to a Transaction

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further consequence of not bringing intermediaries within The FA's jurisdiction would have been that the governing body would lack any real power to sanction intermediaries for breaching relevant rules. The FA would have been left with no choice but to look to players or clubs with whom an intermediary conducted business when seeking to administer sanctions for regulatory breaches.

without registering).[21] However, the Regulations expressly prevent a player or Official (as defined in the FIFA Statutes) from registering as an intermediary.

In keeping with the FIFA Regulations, a legal person can be registered and conduct Intermediary Activity. Only a natural person already registered as an intermediary can register a legal person as an intermediary and, importantly, Intermediary Activity on behalf of a legal person can only be carried out by natural persons registered as intermediaries.

Natural and legal persons are able to register with The FA via an online system, which also provides a portal for the submission of all relevant documentation, including the declaration that an applicant is required to make during the registration process. The declaration is more detailed than the declarations contained within FIFA's Intermediary Declaration, requiring the applicant to make a number of additional 'Declarations, Acknowledgements and Consents'. For example, applicants are required to expressly confirm that they do not have, and will not have throughout the period of their registration, any interest in a club; to disclose within 10 days of registration any pre-existing contract or arrangement between the applicant and any club official or manager (or a club in respect of any club official or manager) whereby he or she represents their interests; and to acknowledge that he or she has been advised by The FA of the importance of obtaining adequate professional indemnity or liability insurance in respect of the risks arising out of the intermediary's professional activities.[22]

Registration lasts for one year, after which the intermediary will need to renew their registration on an annual basis if they wish to continue conducting Intermediary Activity. The fee payable upon registration (whether for a natural or legal person) is £500 (+ VAT) and each time the registration is renewed annually a renewal fee of £250 (+ VAT) will be payable. The fee upon first registration is waived for individuals who were formerly agents licensed by The FA, but those individuals will have to pay the renewal fee annually each time they renew their registration. The fee upon first registration will not be waived for those who were registered lawyers, registered overseas agents or registered close relations under the Agents Regulations.

Once an intermediary is registered, they will be entitled to use the designation, "FA Registered Intermediary".

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[21] Permitted Legal Advice means advice provided by a lawyer to a player or club in relation to a Transaction where the lawyer is engaged by the player or club on the terms required by the lawyer's professional regulator and provides advice as part of a regulated practice. The advice must relate to (i) the legal form and implications of the documents that arise out of the Transaction (as opposed to negotiation of the substantive terms of the Transaction), or (ii) a dispute arising out of a Transaction. The lawyer's remuneration must be consistent with the manner in which lawyers are ordinarily remunerated for carrying out such advice or assistance.

[22] It is worth noting however that professional indemnity insurance is no longer mandatory.

7. *Impeccable reputation*

An applicant will be required to satisfy The FA that they have an impeccable reputation, by confirming in the online application process that they meet the requirements of The FA's Test of Good Character and Reputation for Intermediaries (the "Test"). The Test is significantly more detailed than the requirements in FIFA's Intermediary Declaration,[23] with the applicant having to declare during the registration process that he or she is not subject to a Disqualifying Condition.[24] If they are unable to make such declaration, they will not be permitted to proceed with their registration.

The requirements of the Test are on-going, so intermediaries will be required to notify The FA (within 10 working days) of any change in circumstances relating to the requirements of the Test.

8. *Minors*

In order to enter into a representation contract with a Minor,[25] or with a club in respect of a minor, an intermediary must obtain additional authorisation from The FA to deal with minors.[26] The FA requires that an applicant provides an Enhanced Certificate from the Disclosure and Barring Service (formally a CRB check) and The FA will undertake an "Assessment", considering whether the individual should be permitted to conduct Intermediary Activity in relation to minors based on the content of that criminal record check.[27] Applicants based overseas who wish to

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[23] Paragraph 3 of FIFA's Intermediary Declaration states, "*I declare that I have an impeccable reputation and in particular confirm that no criminal sentence has ever been imposed upon me for a financial or violent crime*."

[24] Disqualifying Conditions are (with reference to the time at which the intermediary goes through the registration process): (a) currently having an unspent conviction for any offence anywhere in the world that The FA considers falls within the category of a violent and/or financial and/or dishonest crime; (b) currently being prohibited by law from being a company director; (c) currently being subject to a suspension or ban from involvement in the administration of a sport or participation in a sport for a duration of at least 6 months, or being subject to a prohibition from working as a sports agent/intermediary, in each case where such suspension or prohibition has been handed down by any ruling body of a sport that is registered with UK Sport and/or Sport England, or any equivalent national or international association; (d) currently being subject to various bankruptcy orders or arrangements; (e) currently being subject to any form of suspension, disqualification or striking-off by a professional body (such as the Law Society or equivalent professional regulatory bodies in other jurisdictions); or (f) currently being required by law to notify personal information to the police as a result of previous sexual offences.

[25] As is the case under the FIFA Regulations, a "minor" is a player who has not yet reached the age of 18.

[26] A further Disqualifying Condition, albeit only in relation to the additional authorisation required to conduct Intermediary Activity in relation to minors, is failing the 'Assessment', namely the process whereby The FA considers whether the individual should be permitted to conduct Intermediary Activity in relation to minors based on the content of a criminal record check.

[27] It is open to The FA to require the applicant to provide additional information, including written explanations and character references. The FA has an exemption under the Rehabilitation of Offenders

obtain additional authorisation from The FA to deal with minors are required to provide an equivalent criminal record check from their country of domicile.[28]

If The FA grants such additional authorisation, it will remain valid for 3 years (subject to the intermediary remaining registered with The FA). Notably, only natural persons (not legal persons) can seek and be granted additional authorisation to conduct Intermediary Activity in relation to minors.

Once such additional authorisation is obtained, an intermediary cannot approach or contract with a minor before 1 January of the year of the player's 16th birthday.

9. Conflicts of Interests

Unlike FIFA's Agents Regulations, The FA's Agents Regulations permitted dual representation by agents (whereby an agent represented more than one party to a Transaction), subject to the agent meeting the requirements of the relevant 'player consent' provisions (which were deemed to ensure that the player gave his informed consent to such arrangement). In view of FIFA's relaxation of its stance on this issue,[29] it is therefore unsurprising that The FA continues to permit dual representation and, indeed, has gone further by expressly allowing "multiple representation" (whereby an intermediary undertakes Intermediary Activity for multiple parties in relation to a Transaction, for example the selling club, the buying club and the player).

The FA has transposed the player consent provisions from its Agents Regulations into its new Regulations, with one notable difference: under the Agents Regulations, a pre-existing representation contract with a player was required before an agent could also act for the club. Under the new Regulations, a pre-existing representation contract with (or sub-contract in relation to) *any* party will allow the intermediary to represent another party or parties in a Transaction. The intermediary will still have to obtain the prior written consent of all parties involved (the procedure for gaining informed consent also applies where Connected Intermediaries[30] wish

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Act which enables it to consider all aspects of a person's criminal record, not merely unspent convictions. In assessing the criminal records check and reaching its decision, The FA is required under Appendix I to the Test to act fairly and proportionately in reaching its decision based on all matters of significance and relevance, holding the welfare of minors as the paramount consideration.

[28] The author understands that The FA intends to introduce a further form to be signed by overseas applicants, in which they will be required to self-certify that they are not / have not been subject to any restriction, ban or prohibition on working with minors in addition to submitting the equivalent criminal record check from their country of domicile.

[29] Regulation 8(3) of the FIFA Regulations permits a player and club to engage the services of the same intermediary, subject to the player and club giving their express written consent prior to the start of the negotiations and confirming in writing which party will remunerate the intermediary.

[30] "Connected Intermediary" means intermediaries who are (i) employed, retained by or owners of / shareholders in the same organisation, (ii) representative of a legal person registered as an intermediary, (iii) married, siblings or parent and child, or (iv) subject to any contractual or other arrangement (whether formal or informal) to cooperate in the provision of Intermediary Activity or to share any revenue or profits thereof.

to act for more than one party to a Transaction), to inform all parties of the full details of the proposed arrangements, to give all parties a reasonable opportunity to take independent legal advice and all parties must consent to the intermediary entering into a representation contract with the other party(ies).[31]

As with the Agents Regulations, an intermediary cannot have an interest in a club (which under Regulation E4 means owning more than 5% or being in a position to exercise significant influence over the affairs of a club); likewise a player, club, club official or manager cannot have an interest in the business or affairs of an intermediary or his/her organisation (owning more than 5% or being in a position to exercise significant influence over the affairs of an intermediary). In view of FIFA's prohibition of third party ownership of players' economic rights ("TPO")[32] and the fact that, prior to FIFA's adoption of its current stance on TPO, The FA was one of only three national associations to have prohibited TPO, it comes as no surprise that an intermediary cannot have any interest in the registration right, transfer compensation or future transfer value of a player.

Intermediaries, players, clubs, club officials and managers are subject to similar duties of disclosure regarding conflicts of interest as existed under the Agents Regulations. In essence, any actual or potential conflict of interest in relation to a Transaction must be disclosed to The FA and the express written consent of all parties involved in a matter must be obtained.[33]

10. Representation contracts and Intermediary Declaration Form

An intermediary cannot carry out Intermediary Activity without first signing a representation contract with a player or club. A representation contract, any variation to a representation contract and any subcontract of Intermediary Activity to another intermediary must be lodged with The FA via the online portal within 10 days of signature (and by no later than the registration of a relevant Transaction by The FA).

A representation contract must contain the entire agreement between the parties in relation to the Intermediary Activity and incorporate at least various 'Obligatory Terms' (which reflect the minimum details that must be contained in a representation contract as per Regulation 5(2) of the FIFA Regulations). Whilst those Obligatory Terms form the content of The FA's own standard representation contract template, The FA expressly acknowledges that intermediaries may be keen to amend or supplement the Obligatory Terms. Indeed, The FA's website even expressly advises parties to take their own legal advice in relation to The FA's templates and intermediaries would be well advised to seek to enhance The FA's standard form representation contract template in most circumstances.[34]

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[31] In each case, in the form prescribed by The FA from time to time.

[32] See FIFA Circular No. 1464, 22 December 2014.

[33] The form on which such disclosure is made is required to be submitted to The FA within 10 days of being completed and in any event by the time of the registration of a Transaction by The FA.

[34] The FA's website states, "The parties are welcome to add their own clauses to these FA standard

If any term of a representation contract breaches the Regulations or the FIFA Regulations, The FA can notify the parties, who will be required to make the necessary amendments.

Unlike the position under the FIFA Regulations, the maximum duration of a representation contract with a player is two years. However, if an intermediary has a representation contract with a player outside England, which may extend beyond two years if the relevant national association's rules do not limit the duration of representation contracts to two years, The FA will recognise that representation contract when the player moves from an overseas club to an English club. In the event that a new representation contract is then signed whilst the player is registered with an English club, the maximum duration of that new representation contract will be two years.

In a notable departure from the Agents Regulations they have replaced, the Regulations do not expressly prohibit an intermediary approaching a player who is under contract with another intermediary. Rather, if conflicting representation contracts in respect of a player are lodged with The FA, the regulator will simply inform the parties and leave it to them to resolve the issue. Despite the absence of a specific regulatory restriction on intermediaries approaching or seeking to sign contracts with players who are already represented by another party, a player who signs a representation contract with a second intermediary whilst already party to an existing exclusive representation contract with another may be in breach of contract and the second intermediary may be deemed to have induced that breach of contract.

At the time of a Transaction, any intermediaries (as well as the player and clubs) involved are required to sign The FA's IM1 form, which discloses not only the intermediary's involvement in the Transaction and the details of payment to him or her, but also requires the intermediary to tick a box to confirm "that he complies with the terms of the Test of Good Character and Reputation for Intermediaries and the Declarations, Acknowledgements and Consents for Intermediaries". As can be seen therefore, satisfaction of The FA's requirements for registration as an intermediary has to be re-confirmed by the intermediary at the time of each Transaction in which the intermediary is involved.

11. Intermediaries' Obligations

The Regulations do not contain a section with a consolidated list of an intermediary's obligations. Instead, an intermediary will need to comply with various obligations as are contained throughout the Regulations as well as the wider rules and regulations of The FA.

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documents or use their own templates, so long as they are compliant with those two sets of regulations. The FA recognises that the parties may want to contract on a more comprehensive legal basis, and in any event we advise the parties to take their own legal advice in relation to the use of any of the above standard documents".

To avoid repetition, this chapter does not seek to extract and list in this section all of the obligations to which an intermediary is subject. Rather, a selection of some of the key obligations is set out in various sections throughout this chapter, in the context of the specific rules in which such obligations arise, whether in relation to (for example) the registration process, the lodgment of documentation, the disclosure of conflicts of interest / relationships that may exist or the arrangement of matters in relation to a Transaction.

12. Remuneration

The remuneration provisions in the Regulations resemble closely the position under the Agents Regulations that preceded them. Regulation C1 provides that an intermediary can be remunerated by the club or player for whom he or she acts either in accordance with the representation contract or, alternatively and as is often the case, the relevant paperwork submitted to The FA at the time of the Transaction.

The ways in which a player can discharge his liability to his intermediary are set out in Regulation C2 and are driven in part by UK tax law.[35] The options are: (i) a player can pay his intermediary directly, (ii) the club can make deduction(s) in periodic instalments (i.e. monthly, shown on the player's payslip) from the player's net salary and pay those deductions directly to the intermediary, or (iii) the club can pay the intermediary on the player's behalf as a taxable benefit to the player. As has been the position in England for a number of years, all payments by clubs to intermediaries (other than deductions from a player's net salary which are paid directly to an intermediary, i.e. option (ii) above) must be made through The FA's designated account.

Commission when acting for a player remains calculable on a player's basic gross salary (but not any bonuses that are conditional on the player's or club's performances) and an intermediary's entitlement after expiry of the representation contract will continue for as long as the relevant employment contract (signed during the term of the representation contract) remains in force. Where the intermediary is acting for a club, the representation contract should set out what the commission will be and whether payment is to be made by way of a lump sum payment or in periodic instalments. Intermediaries are prohibited from passing any remuneration directly relating to Intermediary Activity to any other person (other than intermediaries subcontracted in accordance with the Regulations).

There are two provisions regarding remuneration (without question two of the most controversial aspects of the new Regulations) that stem directly from the FIFA Regulations and which The FA has elected to include within its Regulations despite vociferous criticism. First, players or clubs are prohibited from making payments to an intermediary if the player concerned is a minor. On the face of it,

[35] Income Tax (Earnings and Pensions) Act (ITEPA) 2003, Part 3, Chapter 10. The specific charging provisions around employment related benefits commence at s. 201.

the practical effect of this restriction is that, notwithstanding the fact that a 17 year old player could sign a 3 year employment contract with a club earning £5,000 per week (over £750,000 during the course of the employment contract), the intermediary cannot be remunerated regardless of the part he or she played in securing the contract. However, if a clause in respect of the intermediary's remuneration in such circumstances is drafted carefully, it is in fact possible for the intermediary to receive remuneration in respect of such 3 year contract, albeit the remuneration can only actually be paid once the player turns 18.

Secondly, the Regulations implement FIFA's *recommendation* that players, clubs and intermediaries *may* adopt a commission rate of 3% of the player's basic gross income for the entire duration of the relevant employment contract (or 3% of the eventual transfer compensation paid if the intermediary is engaged to act on a club's behalf in order to conclude a transfer agreement) – described in the Regulations as "benchmarks".

The legality of the recommended commission cap is the primary focus of the Association of Football Agents' ("AFA") outstanding complaint to the European Commission. It remains to be seen whether the European Commission will find that the recommended cap amounts to price-fixing and is therefore an infringement of Art. 101(1) of the Treaty on the Functioning of the European Union 2008 ("TFEU"), or an abuse of a dominant position for the purposes of Art. 102 TFEU. If the AFA's complaint is successful, it is quite possible that The FA would elect to remove entirely the offending provisions from its own Regulations.

Critics assert that whilst the 3% recommendation is not mandatory, the likely practical effect is that *some* players and clubs will refuse to pay more than that level of commission, which is significantly below the 5-10% commission rates licensed agents traditionally received. In certain Transactions, 3% would make the intermediary a handsome sum. But paradoxically, it may be that those lucrative Transactions are in fact the ones where intermediaries receive higher percentages (sometimes borne out of a club's desire to secure the services of a sought-after player and willingness to therefore outbid rival clubs).

On the other hand, the less high-profile Transactions may see the parties refusing to pay the intermediary more than the 3% recommendation, because they are able to do so (for example where a lower league club may know that the player has few, if any, other options and can therefore dictate the terms of the intermediary's remuneration). This could leave the intermediary with an even smaller portion of what, in the lower profile deals, may be an already modest sum, which may disincentivise some intermediaries from wishing to act on deals of that nature. This, in turn, could result in a drop in the quality of representation services provided.[36]

[36] For further analysis of concerns raised with regard to the regulation of intermediaries, see http://footballintermediary.co.uk/regulations/commentary-on-the-regulations/#concerns.

13. Disciplinary powers and sanctions

In light of the fact that intermediaries fall under the jurisdiction of The FA, any breach of the Regulations will amount to Misconduct under The FA's Rules[37] and will be dealt with by The FA Regulatory Commission under The FA's Regulations for Football Association Disciplinary Action. The aforementioned regulations set out in detail the procedure for dealing with a charge of Misconduct.

As noted above, by way of the declaration made upon registering as an intermediary, the intermediary consents to The FA's powers of inquiry and the publication of any aspect of an inquiry and any decision it makes under the Regulations, including in relation to the suspension or withdrawal of an intermediary's registration.

14. Transitional provisions

Under the transitional provisions of the Regulations, existing representation contracts (signed before 1 April 2015) will remain valid and an intermediary may conduct Intermediary Activity thereunder provided that the intermediary re-lodges / re-lodged the existing representation contract with The FA (via the online portal) within 10 days of the intermediary registering with The FA.

15. Conclusion

Critics of the FIFA Regulations, of which there are many, will no doubt point to the fact that the two most controversial provisions introduced by FIFA – the 3% recommended cap on commission and the restriction on payments in respect of minors – have been transposed directly into The FA's Regulations. The outcome of the AFA's complaint to the European Commission, and the effect that has on The FA's stance on those most controversial provisions, is keenly awaited by all interested parties.

However, when one acknowledges that to a certain extent The FA's hand was forced by the changes driven through by FIFA, The FA's Regulations do appear to go some way towards allaying fears expressed about the new regulatory system (not least by imposing restrictions on those who can contract with minors and limiting the duration of such contracts). However, the self-certification of an intermediary's own impeccable reputation and the lack of any functioning barrier to entry or quality control as was provided by the old licensed agents' exam,

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[37] Rule E1(b) of The FA's Rules states: "*The Association may act against a Participant in respect of any 'Misconduct', which is defined as being a breach of the following: … (b) the Rules and regulations of The Association*…". Those Rules, to which all Participants must adhere and are subject, are broad and detailed and include rules on general behaviour ("*A Participant…shall not act in any manner which is improper or brings the game into disrepute*"), compliance with The FA's decisions and reporting misconduct.

understandably lead to fears that the market will be flooded by new intermediaries, some of whom may lack the requisite skills, knowledge and experience to properly represent players' interests.

It is interesting to note just how closely the Regulations resemble The FA's Agents Regulations they replace. In the author's opinion, that was to be expected, not only because the Regulations are partly a result of the legal framework within which the Regulations sit. If a system akin to that administered by The FA under the Agents Regulations had been replicated and enforced throughout FIFA's other 208 member associations, football's world governing body may have been less determined to make sweeping changes to the regulatory landscape.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN FRANCE

by *Jean-Michel Marmayou*[*]

1. Introduction

Let it be said from the outset: there are at least four reasons why the new FIFA regulations will not apply in France.[1]

Firstly, because France has long had very strict regulations governing the profession of sports intermediaries. These regulations cover all sports and the decision has been taken not to waiver them just for football. The second reason is because the FIFA regulations cannot have a direct applicable in French law as they emanate from a private association governed by Swiss law.[2] Furthermore, the FIFA regulations themselves state in their Article 1.2 that "*associations are required to implement and enforce at least these minimum standards/ requirements in accordance with the duties assigned in these regulations, subject to the mandatory laws and any other mandatory national legislative norms applicable to the associations.* […]. And in their Article 1.3 *"The right of associations to go beyond these minimum standards/requirements is preserved."* Lastly, French law, that the French football association (Fédération Française de Football – FFF) is required to apply, is broadly in line with the "*minimum standards/requirements*" set out in the new FIFA regulations.

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[1] The French Regulations on Working with Intermediaries (Règlement des agents sportifs FFF) is available on https://www.fff.fr/common/bib_res/ressources/450000/5000/160719135241_reglement_des_agents_sportifs,_saison_2016-2017.pdf (2 September 2016). The FFF has written to the FIFA informing it that the new regulations would not be applicable on French territory.

[2] CA Metz, 30 June 2011, Cah. dr. sport nº 25, 2011, 120, note J.-M. Marmayou. – CE, 8 nov. 2006, nº 289702. – CE, 2 February 2006, nº 289701. – TGI Saint-Étienne, 26 January 2005, Cah. dr. sport n° 3, 2006, 100, note J.-M. Marmayou. – CA Aix, 17 April 2002, Bull. Aix 2002/2, 88, note F. Rizzo – CA Metz, 20 March 2002, Rev. jur. éco. sport 2003, n° 66, 50.

And finally, there are only three real difficulties: the requirement for the domestic football associations to publish the details of each transaction and the cumulated amount of the sums paid to the agents by the clubs, the equivalence of qualifications and the cap on commissions.

[Although the English version of the FIFA regulations uses the term "intermediary", this paper will use the more familiar term of "sports agent"].

2. Relevant national law

In France, the job placement business is regulated and in principle reserved to authorised public or semi-public bodies.[3] For private individuals to become involved in the placement of sports persons, the authorities had to[4] regulate the profession of the sports agent by adopting a special text that derogates from public law. They did so in 1984.[5]

Current French law relating to sports agents is set out in Articles L.222-5 to L.222-22, R.222-1 to R.222-42 and A.222-1 to A.222-6 of the *Code du Sport* [codified Sport Laws].[6] These Articles result from several modifications and reforms over the years, the last of which was law 2010-626 dated 9 June 2010.

Sports associations have been awarded considerable powers by the *Code du Sport*. This has resulted in the FFF issuing specific regulations applicable to sports agents. These regulations reiterated the main principles of the law while adding certain technical details. They are published on the FFF website.[7]

3. Principles et definitions

The principles of French law governing sports agents are fairly simple. The law fixes the criteria that limit its application. And in those cases where it has to apply, it requires that the agent (i) hold an official licence to operate a business as a sports agent (the conditions for obtaining which are very strictly detailed); (ii) comply with certain good practice rules; (iii) submit to the disciplinary procedures of the sports association.

4. The sports agent's role

Scope - Under Article L.222-7 of the *Code du Sport*, *"the profession that consists in bringing together, for payment of a remuneration, the parties interested in signing a contract under which a person will be paid to practice a [professional] sport or training activity, or concerning the signature of an*

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[3] Art. L. 5311-1 et s., C. trav.

[4] CA Montpellier, 28 Feb. 1996, *Juris-Data* nº 1996-034119 having qualified the sports agent's business as "operator of a job placement business".

[5] Art. 15-2, loi n°84-610, 16 July1984.

[6] www.legifrance.gouv.fr.

[7] www.fff.fr.

employment contract for a paid sport or training activity can only be exercised by an individual holding a sports agent's license." Therefore, within the meaning of the *Code du Sport*, the agent acts as an intermediary whose role is to bring together two future contracting partners. The person may be either acting only as a broker, or as an agent for one of the parties under an agency agreement that mentions this "bringing together" aspect. A simple advice given to the parties interested in signing a sports contract is not covered by the sports laws and therefore does not require that the person hold a licence to act as an agent.

However, the law does not define its field of application based solely on the criteria of the agreement under which the agent is appointed. It also takes account of the nature of the operation in which the agent is participating. In fact, this operation consists in the placement of a person in employment: the agent's role is to "place" the sportsperson or trainer so that he may practice his sport or exercise his profession. This notion of placement is envisaged very pragmatically if a direct placement is being sought, it will covers all the associated contractual transactions, both the contract and any pre-contract agreements (such as promise of employment, preference pact, etc.), transfer agreements (transfers, loans, transfer promises)[8] and contracts of collaboration between sports agents.[9]

On the other hand, Article L.222-7 of the *Code du Sport* does not apply to the actions by an intermediary leading to the signature of image contracts, endorsements or even wealth management. In such cases, the intermediary is not subject to the *Code du Sport* and does not require a licence to exercise his profession.

International scope - The agent's business often includes an international aspect due to the nationality of the agent, the sportsperson or the club for whom he is acting (currently or in the future). This international dimension raises the question of the territoriality of the French system relating to sports agents. Moreover, France is one of the few countries[10] to have adopted rigorous legislation in this field and questions have to be asked as to its possible classification as a public order law. In other words, should French law routinely take priority over foreign law?

In domestic matters, the law on agents is obviously a public order law. However, silence reigns when the issue concerns a cross-border matter. Therefore, the lawyer has to choose between alternatives. On the one hand the issue can be resolved by applying "conflict-of-laws" principles that consist in designating the applicable law, with priority given to the choice expressed by the parties;

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[8] Cass. 1re civ., 18 July. 2000, Dr. et patr. 2001, n°91, 40, note F. Rizzo ; JDI 2001, 97, note E. Loquin et G. Simon.

[9] CA Aix, 21 sept. 2006, JCP G 2006, II, 10202, note F. Rizzo, reforming T. com Grasse, 7 June 2004, Cah. dr. sport n°1, 2005, 105, note F. Rizzo. Therefore, an unlicensed operator whose role is to simply introduce contracting partners (and receive a "finder's fee") should be considered someone who is illegally exercising the business of sport's agent.

[10] C.R. Siekman et alii, Player's agent worlwide legal aspects, T.M.C Asser Press, 2007. – Kea Kea & *alii*, Sports agents in the European Union, Study conducted in 2009 for the European Commission. (http://ec.europa.eu).

alternatively, the choice is made by the application of a specific international agreement; as a further alternative, a territoriality criterion may apply, such as the domicile of a debtor. On the other hand, the "conflict-of-laws" principles may be excluded by considering that French law is, within the meaning of private international law, a "public order law",[11] that is to say *"a law which requires compliance in order to protect the political, social or economic organisation of the country"*.[12]

A majority view considers the system to have the characteristics of a public order law that will apply when the agents' intervention involves a sportsperson crossing a French border in one direction or the other, no matter what the nationality and the domicile of the agent and the sportsperson.[13]

However, this view is not altogether shared by the rare but contradictory court rulings on this issue.[14]

In our opinion, the successive reforms of the French domestic law are indicative of the will of the French legislature to ensure that this legislation is of a public order nature. At a pinch, the French law could be compartmentalised: that is to say, only certain of these stipulations would be of a public order nature. In any event, it is to be hoped that the next reform will provide definitive clarification on this difficulty by incorporating clear stipulations in the *Code du Sport*.

In practical terms, the view which favours its qualification as a public order law is in favour of extensive international application of French law.[15] Therefore, its vocation would be for it to apply not only to agents domiciled in France but also those domiciled abroad but whose business involves some connection with the French legal system.

The lawyer acting as a "mandataire sportif" – Since law 2011-331 dated 28 March 2011 modernising the legal profession "a *lawyer may, in the context of*

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[11] About this issue, see : M.-L. Niboyet et G. de Geouffre de la Pradelle, Droit international privé, Manuel LGDJ, 2011, n° 189 et s.

[12] P. Francescakis, Rép. Dalloz Internat., 1re éd., V° Conflit de lois. – Adde ECJ, 23 nov. 1999, Case C-369/96 et C-6376/96, *Arblade*.

[13] E. Loquin et G. Simon, note under Cass. 1re civ., 18 July 2000, JDI 2001, 97. – E. Loquin, «L'internationalisation des contrats sportifs», *in Les contrats des sportifs. L'exemple du football professionnel* (dir. G. Simon), PUF, 2003, 33. – A. Pinna, « La prestation internationale de service d'agent sportif », *RD aff. int.* 2005-3, 333. – F. Rizzo, Agents des sportifs et groupements sportifs, Encyclopédie droitdusport.com, étude n° 272.

[14] The Paris court (TGI Paris, 4e ch., 1re sect., 11 September 2007, RG n° 04/12068) considered that "enacted with a view to regulating the social protection of a sports agent, French legislation has the characteristics of a protective and social law". According to a first ruling, the Aix en Provence Court considered that the French system was a public order law (CA Aix, 28 May 1998) before changing its opinion in a second ruling (CA Aix, September 2006, JCP G 2006, II, 10202, note F. Rizzo). The Court of Cassation (Cass. 1e civ., 18 July 2000, Dr. et patr. 2001, n° 91, 40, note F. Rizzo ; JDI 2001, 97, note E. Loquin et G. Simon) did not consider that the French system was a "public order law" within the meaning of private international law and even accepted implicitly that the parties were able to choose the law applicable to their contract.

[15] E. Loquin et G. Simon, note under Cass. 1re civ., 18 July 2000, préc. – A. Pinna, « La prestation internationale de service d'agent sportif », RD aff. int. 2005, n° 3, 333.

his/her own specific regulations, act as an [mandataire] representing one of the parties with an interest in signing one of the contracts stipulated in the first sub-paragraph of Article L. 222-7 of the Code du Sport".[16]

Lawyers are not authorised to be sports agents *per se*. Indeed, the term "mandataire" has been used intentionally by the legislator in order to exclude any relationship that would not involve "legal representation" in the strictest sense. Although lawyers may act as "mandataire" (without a license), it is precisely because they can intervene only as "mandataire" but not as broker ("agent" in French language) or as a "family office", two fundamentally commercial activities. Hence, the lawyer is unable to carry out the usual tasks of a sports agent whose role is not so much to represent the interests of his principal but to find a contracting partner. Unlike a sports agent, the lawyer's involvement cannot be limited to proposing the name of a client to a club. He will be required to obtain signature of a proper "agency agreement" (contrat de mandat) to be able to execute purely legal acts on behalf of his client.

When registered with his Bar Council as a "mandataire sportif", the lawyer may seek the payment of a proportional fee up to a maximum cap of 10%, like the licensed sports agent.[17] However, he will be required to observe the same obligations of transparency. He will have to communicate the employment or transfer contracts for which he was appointed. Should he not comply with the *Code du Sport*'s stipulations regarding his remuneration, the lawyer will be exposed to the same legal penalties as those applicable to licensed sports agents. On the other hand, it has to be clearly understood that the lawyer is unable to submit fully to FFF discipline, the only recourse available to the latter in case of difficulty being to seize the Chairman of the Bar Association.

5. Access to the profession of sports agent

Obligation to obtain a licence to practice - According to Article L.222-7 of the *Code du Sport*, the sports agent has to obtain a licence to operate issued by the FFF Sports Agents Commission. This licence is delivered after a written examination held once a year, including a general paper (legal) and a specific test on the rules of football.

The procedures for awarding, suspending or withdrawing the licence are defined by decree (Art. R.222-10 and s., C. du Sport). The licence is for an unlimited period. Provision is made for automatic suspension of the licence for incompatibility or ineligibility (Art. R.222-12, C. du Sport). The Code allows the agent to seek the interruption of his licence, for instance to carry out incompatible

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[16] J.-M. Marmayou, « L'avocat peut-il être agent sportif ? », D. 2007, chron., 746. – J. Bérenger, « La conception de l'avocat mandataire de sportif ou agent sportif en Méditerranée », Cah. dr. sport n°38, 2014, 11.

[17] Although in France, a lawyer is subject to the rule of ethics that prohibits full *quota litis* (art. 10, L. 71-1130, 31 December 1971).

functions. By temporarily interrupting his activities he will not lose the right to practice. However he will continue to be subject to the disciplinary authority of the Sports Agents Commission.

Until 2011, the agent had to be "able to prove at any time the existence of an insurance contract covering his professional civil liability" (former Art R.222-20). The *Code du Sport* no longer includes this requirement. Is this an oversight? Difficult to say. What is certain is that the FFF does not hold the legislative competence needed to include the signature of an insurance contract in its regulations without the backing of a specific law. This is why it limits itself to recommending that such an insurance be taken out.

European nationals - Concerning nationals from a European Union member state or a state signatory of the EEA agreement, the *Code du Sport* distinguishes between the freedom of establishment and the freedom to exercise a profession.[18] In both cases, (i) adequate knowledge of the French language must be justified in order to ensure the legal protection of sports persons and trainers; (ii) a declaration must be made to the competent delegated association;[19] (iii) a special licence is required notwithstanding any different qualifying conditions.

In order to set up his business in France, the foreign agent has to demonstrate that either he holds a foreign sports agent's license obtained in a State that regulates the profession or, when the country in question does not regulate the profession, proof of at least two years' activity as a sports agent during the previous 10 years, associated with proof of an equivalent qualification. Should there be a substantial difference between the level of qualification required in the country of origin and that required in France, the federal commission will take into account the candidate's experience and, if appropriate, impose on him a compensatory measure that may be either a test of aptitude or a training course.

In order to exercise his business in France without a business establishment, the foreign agent will also have to obtain a special licence by highlighting either a foreign authorisation to exercise his business or at least two years' activity during the previous 10 years. The *Code du Sport* requires that the applicant provide proof of his professional qualifications but contains no provision for an exam by the sports association's commission. The latter does not therefore have the means for observing a substantial difference of level such as may be the case of when the candidate applies to set up a business.

On this point, the new FIFA regulations have complicated the FFF's task. Indeed, European nationals holding a FIFA license have no difficulty obtaining recognition of an equivalence. If this licence were to disappear, the FFF would have to address the problem of the former holders of the FIFA licence (it has already stated that in this case it would easily grant an equivalence) and any newcomers on the market who, unable to present a licence, would be subjected to

[18] Art. L. 222-15 et R. 222-21 à R. 222-30, C. sport.
[19] 1 month before starting the professional activity.

tighter checks on their skills and experience. The FFF has already stated that the simple fact of being registered as an agent with a foreign association would be insufficient to justify an equivalent qualification.

A contract for a sharing of commissions between a French agent duly authorised by his federation and a non-French national unauthorised clearly intended to bypass the French legislation which is of public order.[20]

Non-EU nationals ("ressortissants extracommunautaires") - Non-EU nationals[21] are not allowed to exercise directly whether occasionally or permanently, the profession of sports agent in France, except by obtaining the French licence. This system is extremely restrictive for non-EU workers who are reluctant to take the legally required examinations in order to place just one sportsperson. However, since 2010 a system called "*presentation*" has existed. Non-EU nationals who do not hold a French licence have to sign a "*convention de presentation*" [presentation agreement] with an agent holding the French licence so that the latter may place the sports person in employment. This agreement, which forms the legal grounds for the payment of a foreign intermediary, has to be communicated by the sports agent to the FFF.

Practising as a company - The sports agent is able to form a company in order to exercise his profession. In this case, he may not be associated either with a club, the FFF or the LFP [French professional football league], nor with currently exercising football coaches or players. In addition, the officers, partners or shareholders in the company will be subject to the incapacities and ineligibilities that apply to sports agents.

In order to exercise his profession, the agent may also choose to be the simple servant (employee) of a company. In any event, the sports agent will only be able to exercise his profession through or on behalf of a single company.

Company employees and servants - Although the *Code du Sport* refers to the agent's servants by imposing on them the same conditions of integrity, it is silent regarding their status. At the most one may consider that the employee or servant cannot alone perform the same tasks as a duly licensed sports agent. Indeed, as Article L.222-7 of the Code reserves the "bringing together..." to licenced agents, the employees' tasks are confined to administrative work, to the supervision of players or clubs and the cocooning of sports persons, which may represent the bulk of the sport agency's work and therefore the largest remuneration.

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[20] CA Grenoble, ch. com., 12 November 2015, n° 12/02894, SA JPA Worldwide LTD c/ SARL Oval Promotion, LPA 5 July 2016, n° 133, 15, obs. J.-M. MARMAYOU.

[21] The Code du Sport does not define precisely the notion of "ressortissant extracommunautaire" (a person from a non-EU State). In fact, this notion is ambiguous and may be interpreted as a synonym of "national" or designate all those who, without any consideration for their nationality but by virtue of the domicile of their main business interests, result from the application of a country's law in particular.

Moreover, an employee is inhibited from being the servant of more than one sports agent and article R.222-31 of the *Code du Sport* requires licensed agents to communicate the "documents relative" to their servants to the FFF.

List of licensed agent - The FFF is required to keep a list of licensed sports agents reporting those whose licence is suspended. It has to publish this list (Internet) and communicate it annually to the sports ministry.

Incapacities and ineligibilities - To avoid any adverse or ambiguous effect, the agent is not allowed to exercise, directly or indirectly or on a paid or voluntary basis, the management or coaching of a sportsperson[22] in an FFF or LFP club. Neither is he allowed to be a partner or a shareholder in a club. These restrictions apply when the agent has taken on these functions in the past year.[23] This "waiting period" is reversible insofar as the agent is prohibited from retraining immediately in the aforesaid activities and functions.[24]

Even without a waiting period, nobody working as an employee of an FFF or LFP club will be allowed to act as a sports agent.

The law also, and perfectly logically, sets out certain conditions of integrity that prohibit, for instance, persons responsible for "*acts giving rise to a criminal conviction that are contrary to the honour, probity or rules of morality*" access to this profession.[25] This wording that led to the abandonment of the blacklist system has the added benefit of strengthening the system of ineligibilities. Persons affected by personal bankruptcy or a ban on management are similarly prevented from exercising the profession. In this respect, the FFF may obtain communication of the person's criminal record.

The disabilities and incapacities stipulated by the *Code du Sport* cover individual agents, their employees, partners, directors and servants of a company formed by the agent in order to exercise his profession.

Civil sanctions - The *Code du Sport* does not stipulate civil penalties for breaches of Articles L.222-9 to L.222-15. Therefore, no provision is made for a contract signed by a non-licensed agent being considered void. Nor is there any provision for a contract (for employment, a transfer or recruitment) signed by the intervention of an agent without a French sports association's licence being void.[26] Even so, it is tempting to consider as void any breach of the provisions regarding the obligation

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[22] The question arises as to whether this expression also covers "general managers" or "sports manager".

[23] Art. L.222-9, Code du Sport. The expression "in the past year" covers a period of 12 months preceeding the date on which the application for a licence is filed and during which the agent shall not have exercised any sporting functions (TGI Nanterre, 11 September 2009, LPA 30 march 2010, n°63, 4, obs. J.-M. Marmayou).

[24] Art. L.222-10, C. sport.

[25] Art. L.222-11, C. sport.

[26] CA Toulouse, 21 march 2014, RG n° 12/03034, *Melle B. c/. asso. TMB*.

to hold a French sports' association licence or related to the incapacities and ineligibilities[27] because it could exist nullities without text. This is the ruling adopted by the Toulouse court.[28] Even if one agrees with this interpretation, a ruling by the Court of Cassation should be awaited since we already know that in a more sensitive field it has refused to declare the nullity of a loan agreement due to the lender illegally practicing the profession of banker.[29]

This much is certain: without a license, the intermediary has no right to any remuneration for an operation conclued on French territory.[30]

Criminal sanctions - Exercising the profession of a sports agent without holding the sport agent's license or in breach of a decision to suspend or withdraw this licence,[31] or the second subparagraph of Article L.222-5 (that prohibits payment of a commission when acting on behalf of a minor), or Articles L.222-9 to L.222-17, is punishable by a two-year prison term and Euro 30,000 fine; a fine that can be increased up to twice the sums unduly received. Article L.222-21 enables the judge to accompany the main penalties with a temporary or definitive ban on exercising the profession of sports agent.

6. Procedures for exercising the profession of sports' agent

Types of sports agency contracts - When we analyse the sports agency contracts more closely (counterpart finder, bringing together the contracting parties, negotiations), the question arises as to the classification of the sports agency contract since the agent intervenes either as a job broker, his normal profession, or as an agent under an agency agreement, which is rare.

Brokerage - When acting as a job broker, the agent seeks a contracting party for his client (this may be a club, a player or a coach). He does not have the authority to make a commitment on behalf of his client who is free not to pursue a negotiation through to contract signature. He is required to supply exact and accurate information on the proposed contract (deadlines, procedures, etc.), occasionally advise him on the opportunity,[32] and report on his intervention by sending him a letter of confirmation as soon as he has found a counterpart willing to contract. The job broker is not liable either for the insolvency of the third party that may occur after signature of the contract, nor the unfavourable nature of an agreement

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[27] J.-M. Marmayou, note under CA Aix, 18 February 2005, Cah. dr. sport n° 2, 2005, 105 & CA Colmar, 20 September 2005, Cah. dr. sport n°3, 2006, 91.

[28] CA Toulouse, 13 September 2011, Cah. dr. sport n° 26, 2011, 112, note J.-M. Marmayou. – CA Bordeaux, 26 March 2015, RG n° 14/00138, Cah.dr. sport n° 40, 2015, 83, note J.-M. Marmayou.

[29] Cass. com., 3 dec. 2002, n° 00-16957, Bull. civ. IV, n°182, 209.

[30] CA Pau, 2 October 2015, n° 14/00498, LPA 5 July 2016, n°133, 15, obs. J.-M. MARMAYOU.

[31] E. g. : Cass. crim., 27 February 2013, n° 11-88189.

[32] Cass. 1re civ., 28 October 1980, no 79-12.501, Bull. civ. I, n° 275.

signed by his client. Thus, a sportsperson cannot make a claim against his agent for the non-payment of his salary by his new employer. Similarly, the club cannot claim the liability of a job broker on the grounds that the player recruited through his intervention did not have the skills required by the coach.[33] However, the job broker does incur contractual liability if, when exercising his duties, he commits acts of misconduct that are prejudicial to his client: for instance, when the job broker convinces his client to sign with a notoriously insolvent club. Likewise, the intermediary may engage his tortuous liability with regard to a third party when a contract has been signed with a notably insolvent client.

In accordance with general contract law, early unilateral termination of a brokerage contract signed for a specific term requires that the client has evidence of the agent's serious misconduct.

Agency contract - The intermediary becomes an agent ("mandataire") when his client grants him the authority to perform a legal act in his name and on his behalf. Although rarely encountered in practice, a sportsperson may entrust the agent with the signature of a contract of employment with a club. Under French "public order" law on agency agreements, the agent has to carry out his instructions as long as the contract remains valid and be liable for any damages that may result from its non-execution (article 1991, Civil Code). The contract must be executed diligently and in good faith, which prevents the agent from acting in his own interests. More generally, the agent has to apply initiative and give advice on the best sports and financial interests of his principal ("mandant"). Therefore, he is not required to sign a proposed contract if a more attractive offer has been received. Finally, pursuant to Article 1999 of the Civil Code, the agent has an obligation to report on his management to his principal.

Under Article 2004 of the Civil Code, the principal has the right to revoke the mandate at any time and by any means, even when it is for a fixed term. The mutual confidence that is inherent in this type of contract allows unilateral termination without any formality. Moreover, unilateral revocation alone cannot give rise to any compensation. This can only apply if the appointed agent were to demonstrate the existence of prejudicial wrongful termination or ignorance of a particular clause.[34]

Mutual interest? - Is the sports agency contract a "mutual interest" contract? Certain parties have sought this definition before the French courts[35] due to a belief that a "mutual interest" agency contract cannot be revoked. This belief is incorrect. In actual fact, the principle of immediately effective *ad nutum* revocation

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[33] CA Nancy, 1 June 2011, LPA 15 May 2012, nº 97, 97, obs. J.-M. Marmayou.

[34] Irrevocability clause, exclusivity clause, indemnity clause... : cf. J.-M. Marmayou « Révocation fautive de l'agent par son joueur », note under TGI Saint-Étienne, 26 january 2006, nº 02/02934, Cah. dr. sport n° 3, 2006, 100.

[35] The doctrine has also been sensitive to this qualification: J. Mouly, Sports, Rép. civ. Dalloz, 2006, nº 69. – F. Buy, L'organisation contractuelle du spectacle sportif, PUAM, 2002, nº 174.

(i.e. whenever and without justification) persists even in the case of a "mutual interest" contract.[36] This term simply has the effect of placing an obligation on the revoking party to compensate the other party; but this compensation may be set aside when there are just reasons for the revocation.[37] Above all, this terminology is not appropriate to agency agreements when the agent is negotiating an employment contract on behalf of a sportsperson. Firstly because the contract is almost never an agency contract. And then because the term "mutual interest" assumes that both partners are working together to build up a "common customer base", which cannot be applied to the placement of players in employment.

7. Agent's remuneration

Protection of minors - To protect the interests of minors, Article L.222-5 of the *Code du Sport* prohibits any form of payment or compensation in favour of an intermediary. This ban also applies to licence agents, clubs, all individuals, persons or entities acting in the name of or on behalf of a minor. When acting on behalf of a minor, the agent has to abide by a principle of non-remuneration for his services when the agent deals with not only the contract of employment but also image contracts, product endorsements, etc. Failure to mention the non-remunerated nature of the service in the agreement and non-compliance will run the risk of the entire contract being declared void.

Prohibition on the dual agency contract - According to Article L.222-17 of the *Code du Sport*, "the sports agent can only act on behalf of the parties to the contracts stipulated in article L.222-7. (...) Any agreement contrary to the provisions of this article shall be deemed void and unwritten". This prohibition is more restrictive than the new FIFA regulations that allow dual task agency contracts, provided the contracting parties are in agreement.[38] However, the FFF has decided to retain the more restrictive view adopted by French law.

Even so, the legitimacy of this restriction is questionable.[39] First, the sports agent, in his capacity of broker, is acting necessarily to the benefit of both the parties that he brings together. Then, job placement[40] is subjected to the principle that the costs are borne fully by the employer with no payment due from the employee. Finally, public order law on agency agreements has failed to set up a restriction on dual representation as a general principle.[41]

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[36] Ex multis : Cass. 1re civ. 2 October 2001, n° 99-15938, Bull. civ. I, n°239.

[37] Cass. com., 14 mars 1995, Bull. civ. IV, no 83.

[38] Art. 8.3, FIFA Regulations .

[39] J.-M. Marmayou et F. Rizzo, « L'agent sportif au centre des intérêts », Cah. dr. sport n°32, 2013, 37.

[40] Cf. Art. 7, Conv. OIT no C181 (1997) on Private Employment Agencies. – Code of conduct (27 nov. 2006) from CIETT – International confederation of private employment agencies. – Art. L. 5321-3, French C. trav. – Art. L. 7121-13, C. trav. – Art. 29, Charter of fundamental rights of the EU : « Everyone has the right of access to a free placement service ».

[41] Quite the contrary: the Court of Cassation has ruled in the field of insurance (C. of Cassation,

Some would argue that this restriction on the dual mandate can be explained by the notion that an agent should not agree to represent two persons with opposing interests. The risk of seeing one party prioritised at the expense of the other would be too high with, for instance, preference being given to the party having committed to paying the highest commission. In actual fact, and regardless of the person paying his remuneration, the agent's payment will always be based on the salary paid to the employee and it is hardly imaginable that he would not do his utmost to defend the interests of the player. In addition, and above and beyond the adverse effects of the system that does not encourage the transparency of the placement and transfer of sports persons, one has to be aware that the role of the duly mandated sports agent does not lead him to encounter conflicting interests that should be restricted. He is the referee managing the opposing interests of the two parties that he is bringing together.

Nevertheless, the remuneration of the sports agent may, by agreement between the parties to a job placement transaction, be totally or partly paid by the club. On this point, the FFF regulations are consistent with the FIFA regulations. In this case, which involves the signature of a tripartite agreement for "novative delegation" (délégation novatoire"), the agent has to give a receipt for the payment received from the club. By doing so, club pays a player's debt and it can be said in some way contributes an additional salary. The sum is therefore subject to social charges and taxation on the player's income. This is why in practice clubs and players are "tempted" to conceal the reality of their relationships with agents.

A breach of this restriction on dual mandates[42] exposes the contract that formalises the dual mission to an action for nullity, time-barred after five years.[43] Conversely, the contract signed through to the intermediation of an agent, even with dual mandate, should not be voided.[44] As to the retroactivity of any potential invalidity, it has to satisfy public law principles in involving reciprocal refunds. These may be rearranged or set aside under the legal principles of *nemo auditur propriam turpitudinem allegans* and *in pari causa turpitudinis cessat repetitio*.[45]

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11 April. 1860, DP 1860. 1. 240), and of real estate (C. of Cassation 1st civ., 13 May 1998, nº 96-17374. – C of Cass. 1st civ., 22 October 1996, Bull. civ. I, nº 358. – C of Cass. 1st civ., 16 March 1999, nº 96-17909), of transport, of the stock-market, etc., that an intermediary represents both of the two parties that it brings together. This is considered approved doctrine: O. Padé, «Le mandat double. De la nécessaire transparence dans la double représentation», RJ com. 2002, 339. – P. Pétel, Les obligations du mandataire, Litec, 1988, nº 221. – P. Pétel, Le contrat de mandat, Dalloz, 1994, 55. – Note, however, that the Civil Code was recently amended on this point (art. 1161, C. Civ. – since 1st of October 2016).

[42] The proof of the dual mandate may be reported by press cuttings: CA Rennes, 28 October 2014, RG n° 13/00915, LPA 25-26 May 2015, n° 103-104, 18, obs. J.-M. Marmayou.

[43] Art. L. 222-17, C. sport. – ex. : CA Paris 4 April 2013, RG n° 10/21622. – TGI Saint-Etienne, 10 December 2014, RG n° 11/02811, Cah. dr. sport n° 39, 2015, 69, note J.-M. Marmayou.

[44] CA Toulouse, 21 March 2014, RG n° 12/03034, *Melle B. c/. asso. TMB*.

[45] CA Rennes, 28 October 2014, RG n° 13/00915, LPA 25-26 May 2015, n° 103-104, 18, obs. J.-M. Marmayou.

A breach of the ban on dual mandates also exposes the agent and any eventual accomplices to a two-year prison sentence and Euro 30,000 fine,[46] and stipulates that the amount of the fine may be increased above Euro 30,000 up to double the amounts unduly paid.

Legal cap of 10% - French law sets a cap on the remuneration of sports agents at "*10% of the amount of the contract signed by the parties it has brought together*". When the agent's intervention results in the signature of an employment contract, he can claim up to 10% of the gross earnings received by the sportsperson (or coach) throughout the duration of the contract of employment with his new employer. When it consists in negotiating an increase in the gross earnings of a sportsperson or a coach, the amount of the fee is calculated solely on the difference.[47] Lastly, when the agent brings a transfer contract to fruition, his remuneration is calculated as a percentage of the pre-tax amount of the transfer contract.

In the case of several agents, this amount of 10%[48] is a total amount that the agents will have to share, whether intervening for either of the parties.

Since law 2012-158 dated 1 February 2012, delegated sports associations may set a cap is less than 10%. The FFF therefore has the legal freedom to implement the FIFA recommendations of a maximum rate of 3%.

However, in a legal context that is dominated by the principles of free enterprise, open and competitive markets and freedom to set prices, the validity of such a system that gives a private organisation the right to determine by itself the conditions of access to a market is doubtful. What would be said if the cap set by the FFF did not allow new entrants the right to exercise their profession of sports agent in a cost-effective manner? Questions are already being asked as to the legitimacy of the state's regulation of the price for this service and not too much need to be added to the unnecessary and disproportionate nature of the means already taken for this to be seen as the state acting in a moralising role. And this is without mentioning that the FFF has clubs and players (the principals of agents) among its members, which could be easily seen as difficult-to-justify price fixing (cartel).[49] Moreover, it should be noted that the FFF used this opportunity in May 2012 to reduce the cap to 6%. Seized by several sports agents' unions, the French Council of State had initially excluded ruling the annulment on this measure in interim proceedings on the grounds of a lack of urgency.[50] It then refused to communicate a priority question of constitutionality concerning the compliance of this new rule with the principles of free enterprise, open and competitive markets

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[46] Art. L. 222-20, C. sport.

[47] Art. A. 222-6, C. sport.

[48] Art. L. 222-17, C. sport.

[49] J.-M. Marmayou, «Le plafonnement de la rémunération des agents sportifs», Cah. dr. sport nº 27, 2012, 58.

[50] CE, ord. réf., 27 July 2012, nº 3661328, Union des agents sportifs du football et autres, Cah. dr. sport n° 29, 2012, 77, note F. Colin; LPA 10 june 2013, n° 115, 18, obs. J-M. Marmayou.

and the freedom of trade and industry.[51] Finally, the Council of State ruled in favour of the agents, but on the form and not on the substance, on the grounds of two purely external legal grounds.[52] Since then, the FFF has not repeated the experience and the legal cap remains at 10%.

Terms of payment - French law requires that the payment of the commission only take place after communication to the FFF of the sports agency contract and the contract signed through the intervention of the agent. Payment of the commission to an agent is also based on the intermediary having effectively provided a service. The onus for demonstrating that the success of his intervention was due to his efforts lies with the agent,[53] even when holding an exclusive agency agreement.

The fact remains that the principal who prevents his agent, to whom he granted exclusivity of representation, from successfully executing his functions, is at fault and must repair the prejudice caused, if necessary by the application of penal clause.[54]

8. Disciplinary powers and sanctions

The federal commission on sports agents - As required by the *Code du Sport*, the FFF has set up a sports agents' commission to work with the CNOSF's (French national Olympic and sports committee) sports agents inter-sports commission. This commission includes qualified persons, a representative from LFP [French professional football league], a representative from the clubs, a coach and a player. The commission has a five-fold role. It participates in reviewing the sports agent's licences. It is able to organise prior and/or on-the-job training leading to the delivery of the sports agent's license. It has the powers to deliver, suspend and withdraw the licence. It contributes to the preparation of the sports associations' regulations on sports agents. And finally, it rules on any disciplinary matters.

The sports agents' delegate - The FFF has also appointed a sports agents' delegate whose role is to monitor the activities of sports agents and when necessary initiate disciplinary proceeding. He is required to comply with strict rules of confidentiality, and contributes to the work of the sports agents' commission in an advisory capacity.

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[51] CE 29 oct. 2012, n°361327, Cah. dr. sport n°30, 2013, 65, note F. Colin; LPA 10 june 2013, n°115, 18, obs. J-M. Marmayou.

[52] CE, 10 june 2013, n° 361327, Cah. dr. sport n° 32, 2013, 170, note J-M. Marmayou; LPA 24 June 2014, n°125, 5, obs. J-M. Marmayou.

[53] Cass. 1re civ., 8 February 2005, n° 02-12859, Cah. dr. sport n° 3, 2006, 108, note N. Bône. – CA Paris, 27 June 2008, RG n°06/05754. – CA Nancy, 20 January 2011, n° 09/01288. – CA Aix, 1 October 2013, RG n° 12/19834.

[54] CA Aix, 7 march 2013, RG n° 12/03571, LPA 24 june 2014, n° 125, 5, obs. J-M. Marmayou. – CA Douai, 21 January 2013, RG n° 12/03411, Cah. dr. sport n° 32, 150, note J.-M. Marmayou; LPA 10 june 2013, n° 115, 19, obs. J-M. Marmayou. – CA Orléans, 3 june 2013, RG n° 12/02461, Cah. dr. sport n° 32, 157, note J.-M. Marmayou. – TGI Strasbourg, 30 May 2016, n°14/05501. – CA Lyon 8 December 2015, RG n°13/05171, Cah. dr. sport n° 42, 102, note J.-M. Marmayou.

He does not however attend the commission's jury meetings when it is considering a licence or concerning disciplinary matters.

Federal supervision - The FFF sports agents' commission has to ensure that the sports agency contracts, employment and transfer contracts protect the interests of sports persons, coaches and the sport, and comply with the provisions of the *Code du Sport*.

To this end, the FFF has established specific regulations containing rules governing the communication of contracts, the prohibition on unlicensed agents, the payment of the agents' fees and any disciplinary procedures.

Agents' transparency obligations - The sports agent has to comply with various reporting obligations. Within a period of one month from signature, he has to communicate to the sport's delegate a copy of the sports agency contracts and the employment, promise of employment, transfer contracts, in the negotiations in which he took part. He must also give information on the contract of "*postulation*" and all the contracts signed with a minor. Riders for extensions, modifications and all documents concerning the termination of all these agreements shall also be communicated.[55]

Moreover, the agent has to communicate annually the accounting information concerning his business to the sports agents' delegates. When requested, the agent shall communicate all necessary information required to check his professional activity, and in particular documents concerning his company structure and his employees.

In order to ensure that these transparency obligations are effective, the *Code du Sport* stipulates that "the sports agent's fees, ... may only be paid after communication of the contract referred to in the second subparagraph of Article L.222-17 to the appropriate sport's federation delegate". Furthermore, although the sports agents' commission has no authority to declare void a contract that would be in breach of the law, it may impose disciplinary fines of up to Euro 1500 in addition to the temporary suspension or permanent withdrawal of the licence to practice.

These transparency measures are cumbersome but considered sufficient by the French public authorities which do not consider it necessary to publish the details of each transaction (which is considered a trade secret) or inform the public on the cumulative total amount due to all the players and the cumulated total for each club. Therefore, without special authority under French law, the FFF is unable to impose the publication obligation stipulated by clause 6 of the new FIFA regulations, which therefore will continue to be ignored in France.

Nor does the *Code du Sport* grant the sports associations the powers to impose mandatory clauses in contracts between the agent and his principle. Although they are required to check the contents of the contracts and denounce any stipulations that are contrary to the law, this is a legal obligation and they

[55] The information is then compared with the information communicated by the clubs.

cannot prohibit certain clauses, and even less so limit the duration of the contracts or prohibit their tacit renewal. Even so, the new FFF agents' regulations, like the former FIFA regulations, still ban sports agency contracts with a term exceeding two years or with a clause for tacit renewal.

Disciplinary penalties – It is for the sports agents' federal commission to decide on the disciplinary action applicable to an agent who has acted in breach of the stipulations of articles L.222-5, L.222-7 to L.222-18, R.222-20, R.222-31 and R.222-32 or the stipulations of the regulations issued by the sports' federations.[56]

Article R.222-38 of the *Code du Sport* lays down the sanctions. These may be a fixed term suspension or a suspended sentence, the decision being taken by the Federation in question when it observes an omission or fault by an agent. It may take the form of a simple warning, a financial penalty that may not exceed the amount of the fines stipulated for "class 5 offences" (intentionally violent acts leading to an incapacity to work of up to eight days), temporary suspension, withdrawal of the licence, and include a prohibition on obtaining a new licence for a period of up to 5 years.

In any event, the disputes between an agent and his principal do not come within the scope of the sports federation's disciplinary powers[57] unless specifically stipulated in a special clause designating the competence of the sports federation (but in practice this is never the case).

Disciplinary procedure - The disciplinary procedures are initiated by the sports agents' delegate who examines the case by hearing the arguments of both parties in compliance with adversarial principles. He has to communicate his grievances to the accused person who then has to be convoked to the hearing. This person then has to answer by a specific deadline and may consult the entire file before the hearing. He may be represented by a lawyer or assisted by one or more persons of his choice. He may request that persons of this choice be heard.

The representatives of agents, clubs, coaches or sports persons may not sit on the sports agents' commission when deciding on disciplinary matters. The disciplinary panel is a restricted panel, more consistent with the principle of impartiality and independence in force for such bodies. Although the hearings may be public or *in camera*, the commission's deliberations take place *in camera* without the presence of the accused, his defendants, any persons present at the hearing, or the sports agents' delegate. Its ruling takes the form of a motivated decision that is notified to the person concerned.

Appeals against rulings by the sports agents' commission must first undergo a conciliation procedure before the CNOSF. Only afterwards will appeals before the Administrative Court with territorial jurisdiction review the full dispute ("plein contentieux").

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[56] It can also punish clubs and players.

[57] TGI Saint-Étienne, 26 january 2005, Cah. dr. sport nº 3, 2006, 100, note J.-M. Marmayou.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN GERMANY

by *André Soldner*[*]

1. Introduction

In December 2014 FIFA passed the new "Regulations on Working with Intermediaries" ("FIFA Regulations") which came into force on 1 April 2015 and replaced the FIFA Players' Agents Regulations (2008) with immediate effect.[1] According to FIFA, the approach of the reform process was not to regulate access to the activity of intermediaries but to provide a framework for tighter control and supervision of the transactions relating to transfer of football players in order to enhance transparency.[2]

According to its Article 1.2, the FIFA Regulations should serve as minimum standards/requirements to be implemented at national level by the national associations with the possibility of further adding thereto and even of going beyond these minimum standards.[3] However due to Article 1.2 of the FIFA Regulations, FIFA accepts and acknowledges the priority of applicable mandatory laws and other mandatory national legislative norms.

Before this background, the German Football Association (Deutscher Fußball Bund "DFB") has decided to implement the DFB Regulations for Players Intermediation ("DFB Regulations") which became effective on 1 April 2015. As they have only been announced in March 2015 the German clubs and other involved parties had only little time to familiarize with the new regime.

The new DFB Regulations shall apply primarily to all clubs and players in Germany that are members of the DFB as well as to all intermediaries that are registered with the DFB and have accepted this new regime via signing and submitting the intermediary declaration form. The Players' Agents licences in accordance with the old regime have become null and void and should be returned to the DFB.[4]

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[1] FIFA Regulations, Article 11.

[2] www.fifa.com/governance/intermediaries/index.html.

[3] FIFA Regulations, Preamble, Article 1.2.

[4] DFB Regulations, Article 10.2.

However, the new regime, as also the old regime, only applies to intermediary services in relation to contracts and transfers of players. Although more and more coaches also cooperate with intermediaries and intermediaries render basically the same services in relation to contracts concerning coaches (both employment contracts between clubs and coaches and contracts between clubs on a "transfer" of a coach), FIFA obviously has not regarded such services as necessary regulating.

This contribution describes the scope of the implementation of the FIFA requirements into the DFB Regulations on the basis of applicable German law. The differences between the FIFA and the DFB Regulations and further issues of the DFB Regulations shall be discussed and first experiences in Germany with the new regime will be described.

2. Relevant National Law

Various laws and statutes have impact on the activities of intermediaries in Germany, e.g.

- the German Civil Law Code (Bürgerliches Gesetzbuch; "BGB"),
- the social security statute book III (Sozialgesetzbuch III; "SGB III"),
- Laws and regulations of the DFB
- the statutory order on intermediary fees (Vermittler-Vergütungsverordnung),
- the Trade, Commerce and Industry Regulation Act (Gewerbeordnung),
- Competition law,
- Tax laws,
- the Legal Service Act (Rechtsdienstleistungsgesetz), of which only the first three shall be discussed in this chapter.

2.1 The German Civil Code

The legal basis for intermediary activities are the rules regarding brokerage in the BGB. According to Section 652.1 BGB, a person who promises a brokerage fee for evidence of the opportunity to enter into a contract or for negotiating a contract is obliged to pay the fee only if the contract comes into existence as a result of the evidence or as a result of the negotiation of the broker; further expenses are only payable if explicitly agreed. In other words, a claim for brokerage fee only arises in case the main contract has been entered into and the broker (a) has provided one or more parties with the opportunity to enter into the main agreement (evidence broker) or (b) has negotiated for one or more parties the main contract (negotiation broker). A written form is not required by law[5] but entering into such a brokerage agreement is advisable for the parties.

[5] Unless explicitly required by law, e.g. for credit intermediation contracts in accordance with Section 655 b BGB or for a contract between job seeker and intermediary in accordance with Section 296 SGB III.

Regarding conflicts of interest, Section 654 BGB rules that the claim for a brokerage fee is excluded if the broker, contrary to the contents of the contract, also works for the other party. Damages to a party are not required, the pure existence of a loyal adverse conflict of interest is sufficient – but also necessary – for such forfeiture of the brokerage claim. The related contracts (main contract, brokerage contract) generally remain valid. However, a dual activity of the broker does not automatically constitute a prohibited conflict of interest. The jurisprudence further requires that the broker must also act in bad faith, in particular if the broker violates the trust and legitimate interests of a party that mandated him.[6] Only in cases where the broker acts for both parties as negotiation broker, such illegitimate conflict of interest is generally presumed. In all other constellations, the bad faith of the broker needs to be proved separately.

In accordance with the constitutional principle of freedom of contract, the parties are basically free to agree on a brokerage fee, unless specific laws provide for mandatory limits (e.g. in relation to estate agents). As set out in Section 655 BGB, only if a disproportionately high brokerage fee has been agreed between the parties, then it may (depending on the circumstances of each individual case) be reduced to an appropriate amount by court decision whereby the party claiming for such reduction carries the burden of proof.

2.2 The Social Security Statute Book III

As brokerage activities in relation to transfer agreements and employment agreements of players are to be characterized as job placement activities under German law,[7] brokerage fee limits apply in cases where the intermediary acts for and will be paid by the job seeker. With regards to professional sportsmen, including football players, Section 301 SGB III and Section 2.1 of the statutory order on intermediary fees limit the brokerage fee to 14 % of one annual salary of the brokered sportsmen, independent from the factual contract term. However, this mandatory limit does not apply in case the broker is mandated and paid by the potential employer, namely the club. Therefore, so far the above limit is of only little practical relevance in the football business.

A further important and mandatory principle under German law is the prohibition of exclusivity agreements in relation to job placement. According to Section 297.4 SGB III, an exclusivity agreement between an intermediary and a job seeker or a potential employer is prohibited and according to Section 134 BGB null and void.[8] One reason behind the prohibition of exclusivity agreements is the protection of the clients who should not suffer from an inactive broker; especially job seekers should be protected against such circumstances.

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[6] Decision of the Federal Supreme Court (BGH), NJW 2004, 154, 157.
[7] Decision of the Higher Regional Court (OLG) Hamm, SpuRt, 2010, 207, 207.
[8] Decision of the Higher Regional Court (OLG) Hamm, SpuRt, 2010, 207, 207.

2.3 Laws and Regulations of the DFB

The statute "Provisions of the DFL Player's Licence" (Lizenzordnung Spieler, "LOS")[9] of the German League Association as member of the DFB also has an impact on intermediary activities, even though the intermediaries are not addressees of and there not directly bound to these regulations. Whereas most of the provisions of the LOS regulate the relationship between clubs and players, in particular regarding players' contracts and players' registration, some provisions directly relate to intermediaries. Section 5.7 of the LOS rules that copies of agreements between clubs and intermediaries with regards to a transfer of a player or a conclusion or extension of a players' contract shall be submitted to the German League Association.

As a further transparency obligation, Section 5.7 of the LOS also rules that the clubs have to ensure that players shall receive knowledge of such contracts between the club and the intermediary regarding the conclusion or extension of their player contract in case the intermediary is in a factual legal relationship with the respective player. In practice, most clubs fulfil this obligation by requesting the player to also sign the relevant intermediary agreement between intermediaries and clubs. In this context, it is noteworthy that under the wording of this provision the information obligation does not apply in case the intermediary is engaged by the selling club in the negotiation of a transfer agreement regarding the player and/or the mutual termination of the relevant player contract.

Furthermore, the German League Association has also implemented rules on the prohibition of Third Party Ownerships (TPO) as set out under Article 18ter of the FIFA Regulations on the Status and Transfer of Players in Section 5a of the LOS. Prior to the implementation of these TPO ban rules, the rules and regulations of the German League Association did not prohibit TPO structures. Such structures were obviously known and accepted by the German League Association. Clubs had and still have to fulfill certain transparency obligations, e.g. to maintain a register stating details of such participation of third parties in accordance with Article 5.1.3.7 of Annex VII and VIIa of the Licence regulation regarding clubs (Lizensierungsordnung), and compliance with other relevant rules and regulations.

As under FIFA law, Laws and Regulations of DFB generally also do not apply to intermediary services in connection with contracts of coaches. Thus, also the DFB has obviously seen to need to regulate this area although intermediaries render the same respective services in connection with coaches as they do in connection with players.

3. Principles

The DFB Regulations name the same principles as the FIFA Regulations by using almost the same wording and adding only few further aspects:

[9] http://s.bundesliga.de/assets/doc/1090000/1088380_original.pdf.

Firstly, players and clubs shall be allowed to use the services of intermediaries when concluding an employment contract or a transfer agreement. In addition to this principle, corresponding to the related FIFA principle, the DFB Regulations require the intermediary to be of legal age.

As second principle, the DFB Regulations – as the FIFA Regulations – require that in the process of selecting and engaging an intermediary, players and clubs shall use reasonable efforts to ensure that the intermediary signs the intermediary declaration form and the relevant representation agreement. In addition to this FIFA principle, under the DFB Regulations players and clubs shall also use reasonable efforts that the intermediary submits a proof of good conduct[10] having been issued by the competent state authority within the last three months unless such document has already been provided to the DFB within the current or the previous season. For foreign intermediaries such proof of good conduct is also required, either the German form or a similar document of the country in which he is registered.

As third principle, the DFB Regulations – as the FIFA Regulations – require that whenever an intermediary is involved in a transaction, he shall be registered. Further, the DFB Regulations state in this principle the amount payable (EUR 500) for the registration of an intermediary and requires players and clubs to use reasonable efforts to ensure that the intermediary fulfils his payment obligations.

As fourth principle, the DFB Regulations – as the FIFA Regulations – prohibit the engagement of officials as intermediaries whereby neither the FIFA Regulations nor the DFB Regulations explicitly exclude players from being engaged as intermediary.

As further principle of major importance – contained in both the DFB and the FIFA Regulations under Article 1, the scope – the compliance with the intermediary regulations shall in no case have an impact on the validity of the relevant employment or transfer agreement. The DFB Regulations go even beyond the FIFA Regulations and set out that also the non-registration of an intermediary shall have no impact on the registration of players.[11]

4. Definitions

In accordance with the FIFA Regulations, an intermediary is defined as "*a legal or natural person who for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or representing a club in negotiations with regard to concluding a transfer agreement*".[12]

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[10] See further on this this requirement and its development under Registration.
[11] DFB Regulations, Section 1.4 Sentence 2.
[12] DFB Regulations, Section 1.2.

In contrast to the old regime which set the "introduction of parties" in the centre of the definition of Players' Agent,[13] the new FIFA and DFB Regulations seem to focus on the concept of "representation". This new concept could raise the question whether lawyers and other advisers who regularly act for a club would also have to be regarded as intermediaries. As they may represent clubs in such transactions, e.g. by drafting transfer agreements and/or employment agreements and sending them directly to and/or discussing it with the other party or even joining physically relevant negotiations, they could be subsumed under this broad definition of intermediaries. Consequently, and in line with the wording of the definition, such persons would also need to be registered as intermediaries with the relevant associations each time they are involved in a relevant transaction. However, there does not seem to be an official commentary or explanation whether this was intended by the DFB or whether this definition has to be interpreted in a way that such advisers should fall outside the scope of the definition of intermediaries.

5. Registration

Section 2.3 of the DFB Regulations provides that all intermediaries involved in a transaction in accordance with Section 1.1 shall be registered with the DFB. German and foreign intermediaries can obtain registration with the DFB whereas registrations of intermediaries with other national associations do not seem to be acknowledged by the DFB so far.

The DFB Regulations foresee two different ways of registration. Firstly, in accordance with Section 3 of the DFB Regulations an intermediary – as natural or legal person – can be registered by the club or the player who engaged the intermediary in connection with a specific transaction. Secondly, an intermediary has the opportunity for pre-registration with the DFB in accordance with Section 4 of the DFB Regulations. The DFB maintains a register and lists the registered intermediaries on the DFB website under which 233 intermediaries have been listed as of 20 October 2016.[14] Whereas, the list in October 2015 did not include some of the leading intermediaries in Germany, although they have been involved in various transactions during the summer transfer window of the season 2015/2016, in October 2016 most of them are now registered with the DFB.

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[13] FIFA Players' Agents Regulations (2008) define the Players' Agent as "a natural person who, for a fee, introduces players to clubs with a view to negotiating or renegotiating an employment contract, or introduces two clubs to one another with a view to concluding a transfer agreement, in compliance with the provisions set forth in these regulations".

[14] www.dfb.de/verbandsservice/pinnwand/spielervermittlung/uebersicht-vermittler/.

6. Requirements and Conditions

6.1 Registration under Section 3 of the DFB Regulations

Section 3 of the DFB Regulations rules that an intermediary shall be registered every time he is involved in a transaction. Responsible for his registration is the party that mandated the intermediary, thus either the club or the player. It is noteworthy that during the process of selecting and engaging an intermediary, players and clubs are only obliged to use reasonable endeavours regarding signature of the relevant intermediary declaration (Section 2.2 of the DFB Regulations), after conclusion of relevant transaction this duty turns into a strict ("must submit") obligation (Section 3.2 and 3.3 of the DFB Regulations). Immediately after the conclusion of the relevant main agreement (i.e. transfer agreement, player contract) the responsible party shall submit the following documents to the DFB for the purpose of registration:

- the intermediary declaration for natural or legal persons signed by the intermediary;
- the representation contract signed by the parties, and as far as provided by the intermediary to club or player;
- the proof of good conduct;
- the proof of payment of the registration fee by the intermediary.

Section 3.1 of the DFB Regulations obliges the intermediary to co-operate with regards to the submission of the intermediary declaration. The wording of this clause seems to assume that the intermediary must already be registered at this stage or at least has accepted the regulations as binding for him as otherwise the intermediary cannot be subject to these obligations.

It is noteworthy that a registration of an intermediary does not need to be finalized before conclusion of the main contract. This seems to be in line with the principle as set out under Section 1.4 of the DFB Regulations providing that (non) registration has no impact on the validity of the main contract.

6.2 Intermediary Declaration

With regards to the intermediary declaration the DFB has decided to completely adopt most of the wording of the intermediary declaration of FIFA. A German version[15] and an English version[16] of the intermediary declaration of the DFB are provided on the DFB website. The first official German and English versions on the website differed from each other. Whereas the English version was almost identical to the FIFA version, the German version contained some additional clauses. The latest official versions on the DFB website correspond with each other.

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[15] www.dfb.de/fileadmin/_dfbdam/60839-Anhang_1_Vermittlererklaerung_natuerliche_Personen_Hinweis.pdf.

[16] www.dfb.de/fileadmin/_dfbdam/60524-Annex_1_Intermediary_Declaration_for_natural_persons.pdf.

The DFB has modified the intermediary declaration since the implementation of the new regime. In the first official version on the DFB website, Article 1 contained an additional sub-clause under which the intermediary declared that he submits himself to the jurisdiction of FIFA, UEFA, DFB and its members in connection with all violations of the regulations and statutes of FIFA, the confederations, the DFB and its members; he further declares that he recognizes the relevant decisions as binding.

To this aspect, the Regional Court of Frankfurt has issued a preliminary injunction dated 29 April 2015 in the dispute between an intermediary company and the DFB, in which it, *inter alia*, ruled that the DFB was not entitled to oblige intermediaries to declare the content of Article 1 of the intermediary declaration in such a way that the intermediary must submit himself to the jurisdiction of FIFA, UEFA, DFB and its member in connection with all violations of the regulations and statutes of FIFA, the confederations, the DFB and its members. Consequently, the DFB declared in a related notice on its website that intermediaries would be registered even if they have not declared this above submission in accordance with Article 1 of the intermediary declaration. This decision has been confirmed in this aspect by the Higher Regional Court in the appeal proceeding. [17]

The DFB has now provided new wording in Article 1 of the intermediary declaration. Under this new declaration, the intermediary is bound by the FIFA provisions related to his activity as an intermediary, specifically the FIFA Regulations on Working with Intermediaries, the FIFA Disciplinary Code, the FIFA Code of Ethics, the FIFA Regulations on the Status and Transfer of Players, the DFB Statutes, the DFB Regulations on Players' Agents, the DFB Legal and Procedural Regulations, the DFB Competition Regulations, as well as the DFL Statutes, the provisions of the DFL Player's Licence, and the DFL Competition Rules. The intermediary further agrees to be subject to FIFA and/or DFB jurisdiction and acknowledges as final and binding any decisions adopted by these bodies within the framework of their respective competence. It has not been decided yet whether this new wording complies with the said decisions and with German law.

Further, the first official version on the website contained in a further additional sub-clause under Article 3 of the intermediary declaration a specification of the evidence for impeccable reputation. This sub-clause stated that German intermediaries should submit an official extended proof of good conduct having been issued within the last three months unless such document has already been provided to the DFB within the current or the previous season. The DFB also provided on its website an application form necessary to apply for an official extended proof of good conduct with the competent state authority.[18] The Higher Regional Court of Frankfurt ruled in its decision dated 2 February 2016 that such

[17] Decision of the Higher Regional Court dated 2 February 2016.

[18] Such extended proof of good conduct additionally contains information with regards to possible issues of the relevant person in connection with minors. Such extended proof of good conduct is generally only required for activities and professions dealing mainly with minors (Section 30 Federal Register of Criminal and Court Records, Bundeszentregistergesetz).

request for an extended proof of good conduct is invalid as intermediary activities do not fall under such activities where an extended proof of good conduct could be requested. As consequence, the DFB amended the DFB Regulations and the intermediary declaration accordingly so that intermediaries only need to provide a basic proof of good conduct. Under the new regime, this requirement has also been implemented in the English version of the intermediary declaration.

Another additional sub-clause contained in the German version of the intermediary declaration is the declaration of the intermediary to fulfil his payment obligation of EUR 500 as registration fee.

An interesting aspect with regards to the registration of legal persons as intermediaries is that the DFB requires in such cases the registration of the natural person(s) representing the legal person. It seems questionable whether such requirement is in accordance with the new regime as neither the FIFA Regulations nor the DFB Regulations contain such wording that also the representatives of legal persons must be registered as natural persons in the intermediary register. As Section 1.2 of the DFB Regulations (corresponding to the Definition in the FIFA Regulations) define an intermediary also as legal person such legal person should be entitled to register solely as legal person, without the necessity to register its representative as natural person first.

6.3 Representation Contract

The requirements for the minimum standards of the representation contract are set out in Section 5 of the DFB Regulations which adopts the requirement as set out in Article 5 of the FIFA Regulations. A representation contract shall contain at least a description of the activity of the intermediary, the names of the parties concerned, the scope of the intermediary's services, the duration of the legal relationship, the remuneration due to the intermediary, the general terms of payment, the date of conclusion, the termination provisions and the signatures of the parties. The German Football Association has provided its clubs with a standard model contract even prior to the new regime, which has not been changed or amended following the reform of the intermediary regulations. However, this standard model contract is generally used only in parts by the clubs. Most clubs have developed their own standards as basis for negotiations with intermediaries.

6.4 Pre-registration under Section 4

In addition to the registration of an intermediary in accordance with Section 3 of the DFB Regulations, Section 4 of the DFB Regulations provides the opportunity for pre-registration in case the intermediary aims at rendering his intermediary services in a certain season. This pre-registration can be obtained as from the end of the winter transfer window of the previous season and will be valid for one season. For such pre-registration, the intermediary shall submit:

- a signed intermediary declaration,

- the proof of good conduct, as well as
- a proof of payment of the registration fee.

In accordance with Section 4.3 of the DFB Regulations, in case the intermediary provides said documents to the DFB his pre-registration is still dependent on the non-existence of "other reasons" that could hinder his pre-registration. The provision remains silent on a clarification of such "other reasons", neither examples nor a general explanation are provided in the DFB Regulations. It is therefore not clear whether a pre-registration finally shall remain in the free and sole discretion of the DFB or whether such "other reasons" must be compelling or substantial and can be contested. The first practical experience has not clarified this issue.

According to Section 4.4 of the DFB Regulations, a pre-registration does not entirely replace the registration requirements in relation to a factual transaction the intermediary is involved in. Pre-registered intermediaries must also be registered in relation to each involvement in factual transactions in accordance with Section 3 of the DFB Regulations. Thus, a separate intermediary declaration signed by the intermediary as well the intermediary agreement must be submitted for each transaction an intermediary is involved, even if the intermediary has obtained a pre-registration. A pre-registration might only spead up the registration process under Section 3 of the DFB Regulations as the already submitted proof of good conduct and the proof of payment of the registration fee do not need to be submitted again

7. Impeccable Reputation

In contrast to Article 4 of the FIFA Regulations, the DFB Regulations do not contain the term "*impeccable reputation*". Only the annexed intermediary declaration forms, both for individuals and for legal persons, state under Article 3 the following:

"I declare that I have an immaculate reputation, and I specifically confirm not to have been convicted of a financial, property or any other criminal offence".

As evidence for this said immaculate reputation the DFB requests intermediaries to submit the said proof of good conduct.

8. Conflicts of Interest

Section 8 of the DFB Regulations contains the same wording on conflicts of interest as Article 8 of the FIFA Regulations. With regards to the prior FIFA Players' Agents Regulations this new provision seems to be more liberal as dual activities are no longer *per se* prohibited. The wording of this new approach, provides that by disclosing the dual activity to other involved parties and by receiving their explicit written consent prior to the transaction, such dual activities are regarded as legitimate.

Section 8.1 of the DFB Regulations obliges players and clubs to ensure that no conflict of interest exists in connection with the envisaged transaction. Section 8.2 addresses the intermediary to rebut a potential conflict of interest by ways of disclosing and seeking prior written consent by the other involved parties. In this context, potential consequences of a conflict of interest remain unclear. The wording of Section 8 of the DFB Regulations suggests that only the player or the club could be in breach of this provision as they are obliged to ensure that no conflict of interest exists. Thus, in case of a conflict of interests, the player and/or the club would therefore face a sanction in accordance with Section 9 of the DFB Regulations, but not the intermediary. In contrast to this and as already discussed, under German law the party exercising the dual activity – the intermediary – would be the addressee of sanctions (forfeiture of brokerage claim as set out under Section 654 BGB). As the intermediary declaration also does not contain a declaration or obligation in relation to a conflict of interest the question arises whether it was the intent of the DFB that the intermediary should not face any sanctions and that it should be the sole responsibility of clubs and players to avoid a conflict of interest. It generally remains unclear whether the DFB could sanction an intermediary on the basis of the DFB Regulations in case of a conflict of interest.

Furthermore, the wording of Section 8 of the DFB Regulations suggests that the pure existence of a dual activity already constitutes a conflict of interest (unless Section 8.2 and 8.3 are fulfilled). Following such an interpretation, it might also constitute a conflict of interest in case the intermediary discloses his dual activity and acts in good faith but at least one of the contracting parties does not confirm its acceptance in writing (for whatever reason). Section 8 of the DFB Regulations does not contain an explicit obligation of consent in case of good faith of the intermediary. Again, in such case the legal consequence seems to be open. It could be argued that even in case of full disclosure and good faith of the intermediary, a consent remains to the full discretion of clubs and players. However, as counterargument to this and on the basis of the previous aspect (addressee of sanctions), Section 8 of the DFB Regulations could suggest on the other side that Clubs and/or players are forced to give their consent to such disclosure of the intermediary since otherwise they could face a sanction due to their breach of Section 8.1 of the DFB Regulations.

9. Remuneration

The remuneration of an intermediary is ruled under Section 7 of the DFB Regulations. The DFB has decided to adopt Article 7 of the FIFA Regulations almost completely. Only with regards to Article 7.3 of the FIFA Regulations the DFB has not implemented a 3% limit or another limit of percentages, neither as binding limit nor as recommendation. Therefore, the relationship between Article 7.3 of the FIFA Regulations, confirming the legitimacy of an interest of the

intermediary in a transfer compensation, and Article 7.4 of the FIFA Regulations, containing the prohibition of interests in future transfers, does not need to be clarified in Germany. As additional provision, Section 7.8 of the DFB Regulations provides that payments shall be made against due invoices that shall also contain a description of services rendered and of an explicit reference to the related representation agreement. This provision further prohibits any payments made or accepted in cash.

9.1 Relation Between Section 7.1 and 7.2 of the DFB Regulations

The relation between Sections 7.1 and 7.2 of the DFB Regulations (corresponding to Article 7.1 and 7.2 of the FIFA Regulations) remains unclear. The relevant wording suggests that both provisions seem to differentiate not only between the persons who engaged the intermediary (under Section 7.1 the player and under Section 7.2 the club) but also between the determination of the payment and the timing of the determination. Whereas the payment under Section 7.1 shall be calculated on the player's basic gross income for the entire duration of the contract, Section 7.2 foresees a lump sum to be paid by clubs, with the possibility of payment in instalments which shall be agreed prior to the conclusion of the relevant transaction. Examples of the current practice in Germany show that clubs and intermediaries also agree on payments based on the player's (basic) gross salary payable per season the player is under contract and registered with the relevant club. This current practice could raise the question whether such payment terms can still be regarded as a "lump sum" as set out under Section 7.2 of the DFB Regulations and whether there factually exists any differentiation between the determination of payment under Section 7.1 and 7.2 of the DFB Regulations under consideration that the limit of 14% of a yearly gross salary of the player (as set out under Section 2.1 of the statutory order on intermediary fees) should also apply to the relationship described under Section 7.1.

9.2 Prohibition of Interest in Transfer Compensation

Section 7.3 of the DFB Regulations (corresponding to Article 7.4 of the FIFA Regulations) contains the prohibition of the intermediary's interests in transfer compensation. This prohibition is a specific regulation of the general TPO ban as stipulated under Article 18ter of the FIFA Regulations on the Status and Transfer of Players. According to the German Football League, Article 29.1 of the Players' Agents Regulation (2008) was the basis for Section 7.3 of the DFB Regulations, which should be clarified under the new regime with the intention that any participation or other interest of an intermediary in connection with a future transfer of a player shall be prohibited.[19] Even though there are currently various debates and pending international cases about the validity of the TPO ban in general, this

[19] Circular of the German Football League No. 31, dated 19.12.2014.

contribution should focus only on the impact on intermediaries and its relation to German law. The prohibition of interests in transfer compensation for intermediaries constitutes, *inter alia*, a restriction on the freedom of contract under German law. A situation – not limited to football – under which an intermediary receives for his services rendered (1) a basic remuneration and (2) a bonus dependent on the occurrence of potential future events would generally be regarded as legitimate. In football, under the previous players' agent regime, participations of players' agents in future transfer fees were accepted in German football. Clubs only had to fulfil certain (transparency) obligations.[20] Agreements between an intermediary and a club ruling that the shall receive for his services rendered (e.g. acting for the club in relation to the signing of a player) (1) a basic remuneration and (2) a bonus in case the club transfers the player to another club (e.g. 10% of the transfer fee effectually received by the club) were not unusual in German football. The new prohibition under Section 7.3 of the DFB Regulations has been legally contested by an intermediary. In the already mentioned preliminary and therefore not final decision of the Regional Court in Frankfurt am Main dated 29 April 2015, the court upheld the validity of the prohibition. The Higher Regional Court in Frankfurt am Main confirmed this decision. Yet, it seems open whether this will be contested in a main proceeding.

However, even in case further jurisdiction will decide that the prohibition of interests in transfer compensation for intermediaries should be in compliance with applicable law in Germany, the relevant rules contain further various uncertainties. The relationship between the prohibition under the intermediary regulations and the general TPO ban under Article 18ter of the FIFA Regulations on the Status and Transfer of Players seems not entirely clear. Generally, the prohibition under the intermediary regulations should prevail as being the more specific regulations.[21] As the intermediary regulations only prohibit such TPO payments from the Club to an intermediary, such payments by the player (e.g. in case he receives parts of the transfer fee[22]) would therefore not violate Section 7.3 of the DFB Regulations / Article 7.4 of the FIFA Regulations. Nevertheless, in accordance with the wording of Article 18ter of the FIFA Regulations on the Status and Transfer of Players, such payments by the Player would most likely be regarded as a violation of this provision of which the player is also addressee. Although the intermediary regulations are considered as *lex specialis* in relation to the FIFA Regulations on the Status and Transfer of Players, it is not entirely clear whether this also applies to such payments of the player, in other words, whether and to what extent Section 7.3 of the DFB Regulations shall be legally exhaustive.

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[20] E.g. under Section 5.7 LOS, Article 5.1.3.7 of appendixes VII and VIIa of Licensing Regulation Clubs.

[21] Circular of the German Football League No. 34, dated 25.02.2015.

[22] Although the Player is regarded as a "third party" under Article 18ter (as confirmed under the EPFL Paper: Q&A session with FIFA on latest developments of FIFA Regulations, Zurich 5 February 2015), the Player shall be entitled to receive a participation of a future transfer fee.

Another aspect to comment on is the scope of the exception from the TPO ban under Article 18ter of the FIFA Regulations on the Status and Transfer of Players and Article 7.4 of the FIFA Regulations. FIFA explicitly confirmed the principles that a) an intermediary is a third party and b) that percentages as well as lump sum participations of the intermediary in a future transfer of a player are prohibited under Article 7.4 of the FIFA Regulations.[23] German clubs have been informed that this also applies to Article 7.3 of the DFB Regulations.[24]

Nevertheless, FIFA has further clarified that – as exception from the general prohibition – in cases where the intermediary is acting on behalf of the releasing club in relation to a transfer of a player from the releasing club to another club, the intermediary shall be entitled to receive a lump sum in relation to such further transfer compensation.[25] It was further stated that the determination of the lump sum (e.g. and as set out under the EPFL paper commission is EUR 500k, and in case of transfer of the player for a fee of EUR 1 M the intermediary is entitled to another EUR 100k commission, and if the transfer fee is EUR 1,5 M, the intermediary shall receive additional EUR 150k) shall not be structured in a way that the lump sum's graduation being that small that it becomes actually equal to a percentage participation. The application of this interpretation has also been confirmed by the German Football League. It was justified by the basically same interests of intermediary and club in such cases, thus without consideration of the interests and the factual will of the Player.[26] This approach suggests that the player is either regarded as being in no need of protection in such cases and/or that he is sufficiently protected by the right to disagree with such transfer and is not influenced by other parties.

This general exception leaves the involved parties with uncertainties and might raise some possible questions regarding timing and structure of such allowed agreements, e.g.:

- Is the above exception only compatible with the rules in cases where the club finally decides to transfer the player to another club?
- Could it also be compatible to enter into such agreement already at the time of conclusion of the employment agreement with the player and/or intermediary agreement for the intermediary services in connection with the club signing the player, e.g. as a general future instruction of the intermediary to screen the market and to find a new club, bearing in mind that the club in most cases needs to transfer the player in order to receive transfer compensation before the player will become a free agent and will transfer without any fee?
- What is the earliest date such agreement would be compatible with the rules?

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[23] EPFL Paper: Q&A session with FIFA on latest developments of FIFA Regulations, Zurich 5 February 2015).

[24] Circular of the German Football League No. 34, dated 25.02.2015.

[25] EPFL Paper: Q&A session with FIFA on latest developments of FIFA Regulations, Zurich 5 February 2015).

[26] Circular of the German Football League No. 34, dated 25.02.2015.

- Could it also be argued that an intermediary and the club are free to agree on such participation (or even lump sum) in direct relation to exit-clauses of the player, under which the parties have therewith already agreed to the extent of the relevant exit-scenario on a limitation of contract stability, so that no party is in need of protection in relation to such exit-clause?
- How many variables can be implemented in such lump sum agreements and how small can the graduation be agreed upon?

The first experiences with the new regime in Germany seem to suggest that the new regulations in relation to remuneration structures are in need of further clarifications in order to provide the involved parties with sufficient legal certainty. This applies primarily to clubs and players who are the addressees of the new intermediary regulations, but also to intermediaries – whether registered or not – who always have to take into account the needs and limitations of the other contracting party when negotiating an intermediary agreement.

9.3 Remuneration in case Minors are concerned

Section 7.7 of the DFB Regulations contains the same wording as Article 7.8 of the FIFA Regulations. However, due to the already mentioned decision of the Regional Court in Frankfurt am Main dated 29 April 2015, the first official version on the DFB website included a note regarding the prohibition of making payments in cases where players concerned are minors.[27] In accordance with this note, the DFB was not allowed to prohibit players and/or clubs that engage the services of an intermediary when negotiating a "Licensed Player Contract" (generally foreseen for adult players of the Bundesliga and 2. Bundesliga) and/or a transfer agreement regarding a "Licensed Player" to make payments to such intermediary if the player concerned is a minor.[28] As under Section 2.3 of the LOS a licence for a player can only be obtained at the age of at least 18, the note and the underlying decision seem to be interpreted in a way that intermediaries who act in connection with an employment agreement and/or a transfer agreement with regards to a licensed player agreement of a minor, can be remunerated for such services. In order words, in case a 17 year old player is up to sign (legally represented by his parents or other legal representative) his first licensed player contract coming into force on his 18th birthday or later, the involved parties are entitled to remunerate an engaged intermediary. In contrast to that, an intermediary shall not be remunerated in case the Player concerned is a minor and the contract concerned is a "contract player contract" (*inter alia* Players who play in the Bundesliga at the age of 17). However, the Higher Regional Court of Frankfurt overruled this decision and held the original version of the DFB Regulations (corresponding to the respective wording of the FIFA Regulations) as valid. Thus, the mentioned note has been taken from the DFB website.

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[27] Corresponding to Article 7.8 of the FIFA Regulations.

[28] www.dfb.de/fileadmin/_dfbdam/60842-Aktueller_Hinweis_zum_Reglement.pdf.

10. Disciplinary Powers and Sanctions

In accordance with Article 9 of the FIFA Regulations, FIFA leaves the disciplinary powers and sanctions to the national associations. The DFB implemented this provision by considering an infringement of the DFB Regulations as an unsporting behaviour in accordance with Section 44 of the DFB Statutes as stipulated in Section 9 of the DFB Regulations. Thus, the DFB Regulations do not contain their own disciplinary and/or sanctioning regime.
Section 44 of the DFB Statutes sanctions various kinds of unsporting behaviour and therefore contains a broad range of sanctions. According to Section 44.2 of the DFB Statutes the following sanctions are possible:

- warning
- fine of up to EUR 100,000 against a player and apart from that up to EUR 250,000
- ban against single persons
- time-limited prohibition on exercising certain functions
- suspension for official matches
- forfeiture of points
- relegation to a lower league

As of yet the DFB has not sanctioned a player, a club or an intermediary due to an infringement of the DFB Regulations. The future will show to what extent the DFB will sanction violations of the DFB Regulations and what sanctions will be applied.

11. Conclusion

It can be concluded that the DFB has decided to pursue a strict approach with regards to the implementation of the FIFA Regulations into a national regulation. The DFB Regulations contain numerous provisions that have almost identical wording as the FIFA Regulations and principles. However, first-hand experiences in Germany seem to suggest the difficulty of fulfilling all principles. One could raise some doubts that the stated principle, that all intermediaries involved in a transaction shall be registered, is compatible with another principle stating that a registration or non-registration of an intermediary shall have no impact on the related transfer agreement and/or player contract he was involved in. Further, no players or clubs have been sanctioned yet for not registering an intermediary who refused his registration. The future will show how strict the DFB enforces the registration obligations for players and clubs. Nevertheless, if not registered, intermediaries always have to take into account the DFB Regulations and its restrictions as the other contracting parties, mostly clubs, are obliged to adhere to these.

In accordance with the new regime, intermediaries will only become addressees of the DFB Regulations after signing the intermediary declaration form

and declaring to be bound to the respective FIFA and DFB Regulations named in the form. As the Higher Regional Court of Frankfurt has upheld the decision of the Regional Court of Frankfurt and decided that the first official version of the intermediary declaration form on the DFB website was invalid, the future will show whether other wordings of the DFB, such as the current version, comply with German law.

Besides debates and legal disputes on their legitimacy, the DFB Regulations leave the involved parties with some legal uncertainties in various aspects, especially with regards to remuneration structures that are of major importance within negotiations on intermediary agreements. A commentary or some other binding guidelines taking into account the requirement and targets of players, clubs and intermediaries could probably provide the market actors with more legal certainty and clarity.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN GREECE

by *Theodore Giannikos*[*]

1. Introduction

The need for a change in the regulatory framework governing the activity of agents was apparent to all involved in the football industry. Everybody, including fans, knew that the former system, which was established under FIFA's Regulations of Agents, edition 2001 (later amended by edition 2008), regarding agents certified by national associations, was unable to restrict or prevent the activity of thousands of non-certified agents from operating transfers and/or representing players, while thousands of other, certified agents, were not always operating in line with those very regulations. At the same time, the dispute resolution system of FIFA was clogged by a mass of disputes between clubs (or players) and agents, causing a lot of dissatisfaction regarding the length of time necessary for disputes to be resolved.

Legal entities of various form, status and size, and individuals from different backgrounds, financial status and nationalities were — and still are — involved in matching players with clubs. A multi-billion Euro market continues to operate in practically every corner of the globe day after day, where fragments of titillating information are fed to the mass media, sending chills through the daily news over skyrocketing agent fees. Meanwhile, the two hundred and nine national associations that supposedly exercise the exclusive right to monitor, control and regulate the industry watch from the sidelines unable to either confirm such figures or perceive the total financial impact of such activities.

2. The Principles

For quite some time, the solution has been clear: deregulation. However some national football associations were far from eager to eliminate the systems they have constructed to control agents' activities in their respective football constituencies.

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Given the situation, a midway solution was found, to allow national football associations regulate internally as long as a minimum set of requirements are observed.

After a long period of deliberation and consultation with stakeholders and within FIFA, minimum standards were set to guarantee the transparency of transfer fees and the integrity of agents. Namely: a) making data on the amounts of money spent by each club on agents and the money received by each agent (or rather, intermediary) clear and publicly accessible. However the latter is not so easily achieved. Whilst clubs cannot easily shift between legal or corporate identities, this is not the case for agents/intermediaries as they have various legal structures at their disposal that can be used to cloud their incomes. Secondly, b) there is a clear obligation on the part of the agent/intermediary to have a clean criminal record (it remains to be seen what burden of proof will be required from agents and whether such a requirement will become a reality, or remain purely wishful thinking).

In this respect it is worth noting that the preamble to the new FIFA Regulations on Intermediaries (FIFA RI) declares: "*FIFA bears the responsibility to constantly improve the game of football and to safeguard its worldwide integrity. In this context, one of FIFA's key objectives is to promote and safeguard considerably high ethical standards in the relations between clubs, players and third parties, and thus to live up to the requirements of good governance and financial responsibility principles."* It concludes that: "*These regulations shall serve as minimum standards/requirements that must be implemented by each association at national level, the latter having the possibility of further adding thereto."*

However, in article 1, par. 2 of the new FIFA RI, the above is modified slightly to read: "*Associations are required to implement and enforce at least these minimum standards/requirements in accordance with the duties assigned in these regulations, subject to the mandatory laws and any other mandatory national legislative norms applicable to the associations. Associations shall draw up regulations that shall incorporate the principles established in these provisions.*"

In other words, associations are prompted to "incorporate" the principles established by the new FIFA RI within their respective "mandatory laws and legislative norms" and not simply to copy them outright.

Given the current model of governance of the majority of national associations, it will come as little surprise if they opt for copying the regulations completely, irrespective of whether additional mandatory national legislation and/or norms exist.

The "good governance" and "financial responsibility" principles were, in the understanding of FIFA Regulators, to be served by a registration process that includes data of the transaction accompanied by a declaration of good ethical standing.

Although it may seem that this procedure is elementary, it is aiming to secure a full monitoring process, which the previous system was completely unable

to provide. Now, linking the transfer and the registration of the player with the registration of the intermediary and of his contract, has been matched by the relevant provisions in the FIFA TMS.

3. Coming into Force

In early 2014 FIFA completed the drafting of the Regulations on Intermediaries following a period of extended consultation with all stakeholders.

In March 2014, the new Regulations on Intermediaries was adopted by the FIFA Executive Committee and came into force as of April 2015. The year-long wait was to allow ample time for the national football associations to incorporate these new regulations, as well as giving the clubs — who will be called upon to supply the respective data for each transaction — time to prepare.

The Hellenic Football Federation (HFF) adopted its own version of the new rules in May 2015, a month after the FIFA RI came into force, by simply copying, pasting and translating the text of the new FIFA regulations. There were only two changes made. The first change, in article 7, par. 3 (the sequence and layout of the HFF regulations are identical with the FIFA RI, keeping intact the number sequence of the articles and paragraphs) implements the "benchmarks" indicated by the FIFA RI regarding the remuneration of the intermediaries that have been changed into a cap – though with somewhat uncertain terms. The second change (or addition to the FIFA RI, which has been perceived more as an obligatory text and less as a set of principles to be incorporated into a more constructive national framework) is the addition of par. 3 to article 11 which reads as follows: "*Decisions, circular letters and instructions issued by the Executive Committee of HFF are incorporated in the present Regulations and are valid as of the date that they have been decided and issued.*"

With the inclusion of this last paragraph, the future model of governance by the HFF has been clearly defined. What it says, in effect, is that the new Regulations are not complete, but will be amended as the needs or circumstances demand in the future. Some may say that this does not really represent adherence to the principle of "good governance", but certainly the response is that the need for changes will become evident with implementation. It is certain that for the Hellenic Football Federation the Regulations are a first step. Thus, the intention is first to satisfy what FIFA – as supreme authority – dictates, and then to further formulate a final text following the reality that both players and clubs alike will face.

Needless to say, the ongoing financial crisis in Greece has significantly diminished transfer fees and consequently agents' activity and, as such, the new Regulations do not present a major issue for the Greek football world. In fact, there was practically no consultation procedure prior to adopting these new regulations, not only because it seemed that there really was not much leeway in forming the new rules, but also because there was no interest to participate in such

consultation from the stakeholders part. Case in point: the new set of rules by the HFF received no real media coverage, and since coming into force, there is no data regarding how many intermediaries were registered and for how many transactions.

In line with a Greek Parliamentary tendency to overlegislate, in the last 15 years, more than three (3) sports laws and another four (4) major amendments to those laws have been adopted, while at the same time many of their provisions remain inactive or have never been fully implemented. Even so, Greece's legislature has never paid much attention to the activities of sports agents, instead leaving such activities to be covered by the general provisions of the Greek Civil Code. As such, the HFF has had few reference points on the subject and no legal framework to elaborate upon. Given the lack of interest by the stakeholders themselves, it is easy to understand why the HFF opted for copying the text of the new FIFA RI rather than drafting new, country specific rules. There was a precedent for this, the previous HFF rules were likewise a copy and paste job of the previous FIFA Regulations on Agents, that have since been scrapped by FIFA itself.

4. The scope

The activity, which is covered by the new FIFA RI, is limited strictly to the registration of a player with a club. This activity includes the involvement of an Intermediary (basically an individual acting either on behalf of a legal entity or on his own account) in the signing of an employment contract and, if so required, in the release of his federative rights in favor of the new club. This is clearly limited in comparison with the much broader description of a player's agent's activity that, until recently, FIFA sought to cover in its previous regulations. What is interesting here, and constitutes the focal point of these regulations, is the participation of a third party (intermediary) in the conclusion of a player's employment contract and/or in the release of his federative registration to the new club. Only at this point are FIFA interested in the participation of a third party and demands the intermediary's registration and declaration of the fee received.

In that respect it could not go unnoticed that the Regulations came into force at the same time that the prohibition of Third Party Ownership (TPO) made its appearance. This third party is now to be monitored, having only one legitimate involvement.

Although it appears that a contract of representation (article 5 of FIFA RI) concluded by a player and an intermediary falls within the scope of this oversight, this is not technically correct since the required registration is to take place only with the national association to which the club, with which the player signs a new contract, is affiliated with (article 3 par. 3 of FIFA RI). As such, it is questionable in the case where a representation contract is signed between an intermediary and a player, while the player either is unemployed or actually registered with the club and no new contract is negotiated, whether the contract is going to be registered with any national association. The fact that the "transfer" is the focal point, made the addition of a provision to article 1, par. 4 of the FIFA RI necessary, this states:

"These regulations and potential additional provisions going beyond these minimum standards/requirements by the associations shall not affect the validity of the relevant employment contract and/or transfer agreement".

This is of paramount importance in order to avoid any misinterpretation of the provisions of the new FIFA regulations and to clarify that national regulations should not impair the validity of either the transfer as such, or the employment contract concluded. The principles of transparency and agents' integrity are important and are implemented by registration of the contracts concluded between players and/or clubs and intermediaries, however this registration is parallel and not a prerequisite for the registration of the player or for the validity of the player's employment contract. When an actual transfer is concluded or an employment contract is signed and accompanying documents that are deemed prerequisites for the registration of the player with the national association are submitted, and the employment contract comes into force, FIFA does not wish to have even the slightest shadow hanging over the contract of the Player. The registration of the intermediary's contract should be perceived, at all times and under all circumstances, as an act that in no way influences the other documents or procedures of the player's registration.

Moreover, the validity of the contract signed between the intermediary and the player – or for that matter between the intermediary and the club – does not depend on the registration of the contract with the national associations.

Why then should anyone bother to register and have to declare business details with a national association? Firstly, the club might suffer disciplinary consequences (although in Greece's case this is not clearly defined as no clear penalties or fines are stipulated) if it is found to have employed an intermediary without declaring such employment and without having supplied the national association with the appropriate documents. Likewise, the same risk could apply to the player, if the intermediary is to be paid by the player directly, without the involvement of the club – but once again, the procedural rules are not clear. Under the new FIFA regulations, failure by a player to declare the intermediary's contract could bring disciplinary actions, but can also be read to mean that they are under no such obligation. The intermediaries themselves have no strong motivation to register their contracts with the national associations since the system does not provide them with a sound (despite the heavy criticism, large numbers of agents preferred it to the time-consuming and probably much more expensive civil courts) and fast dispute resolution procedure (with the additional protection of possible disciplinary sanctions for failing to pay).

On the other hand, there is no reason for a club to avoid such obligation. There is no financial burden (although a fee for each registration of a few hundred euros is foreseen by HFF which certainly will not encourage small clubs, if they use an intermediary, to actually register him) and no immediate or remote legal threat of any sort other than, of course, the discomfort of having everyone know the amount the club spends for agent's fees in a given transfer period.

In that respect, where a national association or national legislation sets up a strict framework of operation for the intermediaries, the adoption of these principles embodied in the new FIFA Regulations on Intermediaries will change little to nothing regarding control of the agents, but will add a lot of transparency on the amount of fees and those receiving them. But for those other national associations, which were relying mostly on the framework established by the previous FIFA Regulations, the vacuum is large.

Thus, the principles of the FIFA RI are observed perfectly well by the simple announcement of the involvement of a third party, disclosing the fee that this party will be receiving, and by supplying a copy of the transfer agreement or the conclusion of an employment contract of a player with the club.

5. The purpose of registration of intermediaries' contracts

It is important to note that what is registered is not the intermediary as such, but the transaction: that is, the assistance rendered by the intermediary to the club or to the player or even to the both of them. In case the same intermediary has two separate contracts – one with the player and one with the club signing the player – both should be registered and fully declared in accordance with the provisions of the FIFA RI.

This is similar to the guiding principles of the FIFA TMS mechanism with its reporting of transactions and mandatory submission of documentation. In fact, the requirements stipulated under the FIFA TMS were in effect long before the new FIFA RI came into force.

Thus, the legal structure used by the intermediary, the place of his establishment and his general activities, are fundamentally irrelevant as long as the transaction is reported and the intermediary has not been convicted of unidentified violations by football authorities.

The standing desire to regulate the agent's activity is now being replaced by a simpler goal of documenting the participation of an intermediary in a transaction, and disclosing the amount that was paid for such participation.

At that point, the obligation of the club – which is the only actor responsible for filing and submitting data and documents to the respective national associations, to which they are affiliated – ends. After that, the national associations come into the picture, they will then be able to enlighten the public by publishing general data on transfer fees and agent's' activities.

In the case of the HFF, by March the federation will publish all the names of the intermediaries involved in transactions and the number of transactions which took place, plus the amounts paid by any club or player for the services of intermediaries. By doing so, the HFF should entirely satisfy the principle of transparency and the minimum requirements laid out in the new FIFA RI.

6. Conclusion

Having no special provisions for intermediaries in any of the numerous laws, ministerial decisions or national regulations that have been issued in recent years in Greece, it is no wonder that the HFF faces a difficult task in defining totally uncharted territory. The new FIFA Regulations on Intermediaries, that scrapped the previous framework of operation, deprived HFF of a basic model. Now the challenge is great, it remains to be seen how this will be resolved. The stakeholders of football in Greece, that is professional clubs, professional players and intermediaries, should seriously consider what is the scope of activities that they want to cover, and then HFF should, in accordance with the general principles of the new FIFA Regulations and of the general legal framework (civil law), implement the intermediaries' regulations to fully cover such activities. Until then, the principles laid down by FIFA are nice to have, but do not really produce any substantial benefits.

THE FIGC REGULATIONS ON INTERMEDIARIES

by *Salvatore Civale*[*] and *Michele Colucci*[**]

1. Introduction

On 26 March 2015, the Italian Football Association (*Federazione Italiana Giuoco Calcio*, hereafter "FIGC") issued the Regulations regarding the services of the intermediary (hereafter "the FIGC Regulations"),[1] implementing the relevant FIFA Regulations.

The FIGC Regulations have deeply reformed the previous legal framework under which the acquisition of a licence was an essential requirement to provide professional services as an "Agent".[2]

Now everybody can act as intermediary provided that he signs a representation contract and a declaration by which he obliges himself to follow the FIGC, UEFA and FIFA rules.

He can act in the interests of a player, a club or both of them but he must avoid conflict of interests especially when he is already a member of the Italian football federation.

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[1] FIGC, C.U. 190/A, "Regolamento per i servizi di procuratore sportivo", available on www.figc.it/it/104/3818/Norme.shtml (17 September 2016).

[2] Under the previous regulations, in order to get a license the applicant had to pass an exam, take out a professional liability insurance and accept a "Code of Conduct", which imposes on the agents duties of transparency, impartiality and respect for the relevant sports laws and regulations.
Moreover, the applicant had to meet some eligibility criteria and comply with strict conflicts of interest's rules. Only a fully licensed agent was legally entitled to provide the intermediation services to players and clubs.
However, the same FIGC Regulations did equate to the agents those lawyers and player's relatives (parent, brother or spouse) who usually act on behalf of the players.
Finally, albeit not a FIGC member, the Agent was subject to its disciplinary rules in order to ensure full compliance with the relevant FIFA and FIGC Regulation.

Contrary to the previous regime, the activity of intermediaries is not limited to natural persons but it is also open to legal entities which are subject to the same rules and requirements applicable to natural persons.

The present article aims to detail the new provisions by underlying the differences with the previous regulations, some legal gaps, and provide some suggestions in order to make the legal framework more effective.

2. Definitions and Principles

A first observation concerns the terminology adopted by the Italian Football Association.

Although, the new regulations aim to implement the new FIFA rules on working with intermediaries in Italy, none of its articles and annexes refers to agents or to intermediaries. The FIGC legislator prefers rather using the term "procuratore sportivo" (hereafter always mentioned as "intermediary") in order to have a clear cut distinction of this category of sport professionals from any other existing type of broker in Italy.[3]

So, the "procuratore sportivo" is defined as "*the person or the legal entity who, on a permanent basis or occasionally, assists or represents a sports club and/or a player*[4] *(...), under a specific contract, with no regard to his/her professional qualification and to his/her relationship with the athletes represented*".

The regulations only apply to clubs and players[5] when receive services of an intermediary in order to deal with the activities linked to an employment agreement and/or a transfer agreement,[6] provided that the following two conditions are fulfilled:

- the parties sign the relevant representation agreement enclosed with the regulations;
- the intermediary is already registered to the "register of intermediaries" established by the FIGC.

With regard to the second condition, the regulations must be interpreted in the way that an intermediary must file an application with FIGC and wait for the acceptance/ratification of his request, before providing his services or signing a representation agreement with a Club or a Player.

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[3] M. Lai "*Dagli Agenti di Calciatori ai Procuratori Sportivi: la nuova disciplina in materia di intermediari nel calcio professionistico*", Rivista di Diritto ed Economia dello Sport 1/2015, SLPC, 79-103.

[4] The word "player" means not only a professional footballer who has already been registered by a club with a professional contract, but also a player who signs/concludes a professional contract for the first time.

[5] The regulations, as indeed required by FIFA, concerns only the representation agreement that an intermediary concludes with a club or a player. It is not applicable for coaches, assistant-coaches or physical trainers.

[6] Although the definition of club in article 1 refers to a club affiliated to the FIGC, the activities of an intermediary may also involve a transfer of a player from or to a club based in foreign countries.

As a consequence, any document signed by the intermediary who is not duly registered is considered as null and void.

3. The registration

3.1 Registration procedure and fees

The Italian registration procedure is stricter and more complicated than the old FIFA one.

In fact, pursuant to article 4 of the FIGC regulations any person, legally resident in Italy, is entitled to apply to the FIGC to register as intermediary.

Nevertheless article 5 the FIGC Regulations require a "double" registration:

- one for the natural person or the company, acting as intermediary; and
- one for each contract of representation.

Moreover intermediaries need to pay yearly registration fee of 500 euros in addition to a fee of 150 euros for each individual representation contract.

The registration is valid for one year only and it can be renewed. There are no specific provisions on renewals of representation contract and, therefore, intermediaries need to file a new application and submit all relevant documentation *ex novo*.

3.2 The Declaration of intermediaries

The registration is accompanied by a declaration that partially mirrors the FIFA one in terms of compliance with the relevant ordinary and sports rules.

Such a declaration must be signed by both natural and legal entities. In the latter case, all the company's representatives and intermediaries must be mentioned and those acting as intermediary within the company must be clearly identified.

By signing such a declaration the intermediary agrees to:

- be bound by the FIFA and FIGC' statutes and regulations;
- submit himself to the disciplinary jurisdictions of both FIGC and FIFA;
- declare that he has no contractual relationship with leagues, associations, confederations or FIFA that could lead to a potential conflict of interest;
- consent for the association to process his/her personal data, and to publish on the website, or in the official communication, the mandates received and even the publication of the payments received for the services as intermediary;
- authorize the national association and the leagues to discover all relevant information and documentation from any source, including the public administration, the intermediary himself or third parties, in order to verify the truth of his/her declarations and the fairness of his/her actions;
- authorize to publish disciplinary sanctions, in his/her regard, given by the relevant sports judicial bodies;

- respect and comply with any mandatory provisions of national and international laws, including in particular those relating to job placements when carrying out his/her activities as an intermediary;
- declare that he has an impeccable reputation and, in particular, confirm that no criminal sentence has ever been imposed upon him/her for a financial or violent crime.

3.3 The registration of foreign intermediaries

The first version of the FIGC Regulations as entered into force on 1 April 2015, provided that those intermediaries, not resident in Italy, were entitled to operate on its territory whenever one of the two following conditions was fulfilled: either, they worked with another intermediary duly registered with FIGC and resident in Italy, or they could temporarily register with FIGC for a single transaction, provided that they were registered with another national association entered into a "reciprocity agreement" with FIGC. In this case, they were also subject to the jurisdiction of FIGC. Reciprocity agreements would have been signed by FIGC with other national associations, provided that their regulations on intermediaries complied with the FIFA minimum standards. The goal of this provision is to harmonize, as much as possible, the regulations of national associations.

Notwithstanding this provision, the "Commissione Procuratori Sportivi" (hereafter "Intermediaries Committee") which has competence on intermediaries' issues, approved on 12 June 2015 a Circular letter[7] detailing the requirements for those intermediaries who are not resident in Italy. Pursuant to such a circular letter, a non-resident intermediary in Italy, duly registered with another national association, who does not intend to act in co-operation with an intermediary registered with FIGC, can work in Italy after submitting the following documents to FIGC:

1. representation contract in Italian or in one of FIFA's official languages;
2. the "declaration" duly signed;
3. evidence of his registration as intermediary with another national association whose regulations fully comply with the FIFA minimum standards;
4. evidence that the administrative costs have been paid.

The indications given by the intermediaries' committee have been fully implemented in the new version of article 4 of the FIGC Regulations as modified by a Circular letter of 1 September 2015 and any references to "reciprocity agreement" have been finally deleted.

3.4 The position of lawyers acting as intermediaries

Among the most controversial issues concerning the new regulations, it is worth mentioning the sensitive overlapping of the intermediaries' activities with those of

[7] Comunicato Ufficiale n. 1/PS available on www.figc.it.

lawyers with regard to the registration and transfer of players. The marking of the mutual limits of those two professional occupations in the sports field remains highly critical, notwithstanding the new FIFA Regulations and the rich case law produced by both sport and civil law jurisdictions.

In that regard, it is worth mentioning that finally with an opinion dated 27 July 2015, the Italian Bar Association has stated that despite the FIGC Regulations, lawyers are exempted from the same procedural formalities imposed by FIGC on ordinary intermediaries.

4. The impeccable reputation

The most meaningful provision of the FIGC Regulations is the notion of "impeccable reputation".

In fact, in order to be registered, the intermediary shall meet the minimum requirements of the following test:

- full legal capacity and no criminal records for match fixing,
- no criminal record for felony crimes,
- no lifetime ban from sport and no unspent disciplinary sanctions.

The FIGC Regulations exemplify as tangible violations of this requirement a final ruling for sporting fraud, the conviction for intentional crimes punishable with the statutory penalty of a five years imprisonment, but also a disciplinary proceeding pending before the FIGC judicial bodies.

5. Representation contract

Article 5 of the FIGC Regulations specifies the requirements of the "*Representation Contract*" which must be signed by all the parties and submitted to FIGC. It must contain:

- the details of all the parties;
- the object of the mandate;
- the duration of the mandate (not longer than two years, as it was in the previous agent regulations);
- an arbitration clause or the indication of the court chosen in case of disputes;
- the statement of absence of conflicts of interest. If the player is a minor, the "Representation Contract" will be signed by his parents or guardians/legal representatives. The exclusivity clause in favor of an intermediary is among the most meaningful provisions of the new regulations. Pursuant to article 5, paragraph 3, in fact, a player can sign a representation contract with an intermediary only at once, and for the length of the representation contract is represented solely by said intermediary. Nevertheless the representation agreement may provide for a joint mandate to more individuals, self- employed or associated with each other in various forms.

It is not specified under which circumstances the player who signs more than one representation agreement will be brought to responsibility: whether in the

general provisions of article 1bis of the FIGC Code of Sports Justice[8] or in other standard violations not specified in the FIGC Regulations. The submission of the "Representation Contract" can also be done electronically, after the payment of the administrative costs and no more than 20 days after the date of signature. A submission done after the aforementioned term is considered as null and void. Every amendment of the "Representation Contract" or its resolution has to be submitted to the deposit by the FIGC, otherwise they are nul and void.

The parties are obliged to agree and observe the provisions of a confidentiality clause. In fact, according to article 5, paragraph 7, the intermediary is due to "keep confidential information he learns in the performance of the mandate and not to spread news whatsoever regarding its representation contracts with clubs or players".

6. Remuneration

Under the previous relevant FIGC provisions, the parties agreed by consensus on the players' agent remuneration. Mostly, it was calculated as a percentage of the player's basic gross annual income. Rarely did the parties agree a fee equivalent to a fixed amount. As a necessity, in case the parties had not agreed the amount of the remuneration, it was fixed by FIGC at three per cent (3%) of the player's basic gross annual income. Following a Club's mandate, the players' agent was entitled to receive a lump sum, agreed prior to the conclusion of the relevant transaction.

According to the new rules, the intermediary can represent either a club or a player or both, provided that he discloses in writing, with the contracting parties' agreement, any actual or potential conflict of interest.

In case of a "dual" representation (for the club and for the player in the context of the same transfer or employment agreement), the representation contract must clearly indicate who is paying for the services of the intermediary. The amount of the compensation can be calculated either on a percentage basis on the value of the transaction concerned or through a lump sum.

In line with the relevant FIFA provisions, the FIGC Regulations "recommends" to pay the 3% of the player's gross total income if the intermediary is engaged by the player and 3% of the transfer fee if the intermediary is engaged by a club in connection with the transfer of a player.[9]

FIFA introduced a more restrictive rule in relation to transfers involving minors. It is prohibited in such cases to provide any type of compensation to intermediaries. Article 7.8 of the FIFA Regulations on Working with Intermediaries

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[8] The reference is to the "Codice di Giustizia Sportiva", approved with "Decreto del Commissario ad Acta" dated 30 July 2014 and approved by the President of the Italian National Olympic Committee on 31 July 2014.

[9] Article 6 of the FIGC Regulations and Commentary to the FIGC Regulations available in Italian at www.figc.it/other/procuratori_sportivi/13052015_commentario_figc.pdf.

is clear on this point. It states that "players and/or clubs that engage the services of an intermediary when negotiating an employment contract and/or a transfer agreement are prohibited from making any payments to such intermediary if the player concerned is a minor…".

This explicit prohibition has not been implemented at the national level. Indeed, the FIGC Regulations do not contain any absolute prohibition of payments for transactions involving transfers of minors. Nevertheless, such a prohibition does exist and still applies to those players who sign contracts at minimum economic conditions and in case of registration of amateur players, who are often minors.

7. Conflict of interest

In order to avoid conflicts of interest, the FIGC Regulations strictly prohibit the access to the intermediary's profession to any member, manager, player or technical staff member, and in any case to all those who hold offices or have business relationships with any other part of the FIGC or its members.

Moreover, pursuant to article 7 of the FIGC Regulations, an intermediary can represent both club and player in the context of the same operation provided that the parties clearly "*indicate in the representation contract whether the intermediary acts in the interest of one party in the contract or more parties. In the latter case the intermediary must obtain the written consent of all parties concerned and he is obliged to sign a representation contract with each party*".

There is a different and more stringent regulation, in the case of conflicts of interest of an intermediary in relation to any further remuneration received from members of companies (such as, for example, managers). Article 7, paragraph 2, prohibits intermediary to have a direct or indirect interest in a transfer of a player or participations of any type in the economic rights relating to the transfer of a player or in a club's income of the same title. This article implements the FIFA ban on third party ownership agreements.[10]

In addition, the same article forbids clubs to pay and distribute sums to intermediaries concerning solidarity contributions or training compensation foreseen by FIFA and to receive money or other benefits from intermediaries in connection with a given transfer or registration of a player.

As already underlined above, a primary aspect of the above provisions is transparency: intermediaries have to be registered for each transaction in which they are involved. In this regard, FIGC, in full compliance with the FIFA Regulations, requires all parties, no later than the 31st of December of each year, to report the amounts of the fees paid to intermediaries on the basis of representation contracts and to disclose the financial aspects of the transactions involving intermediaries.

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[10] New Article 18ter of the FIFA Regulations on the Status and Transfer of Players.

Despite the authoritative nature of this rule, it omits to specify the disciplinary consequences and the responsibility of the parties, which, in case of failure, have to notify the national association.

Finally, by the 31st of March of each year, the national association is expected to publish the names of intermediaries who, in the previous years, have worked for the clubs, and/or players, as well as publish the data relating to their remuneration.

The current list is available on the FIGC website[11] and contains only the names of intermediaries (714 in total), the registration date and its duration, birth date and domicile but there is no reference to their turn over.

8. The internal judicial body for intermediaries and sanctions

The FIFA Regulations transfers to each national association the power to determine and apply disciplinary sanctions. However, article 9 of those Regulations remains general and abstract, providing no details about forms and types of sanctions. Therefore, the national associations are entitled to adopt their own substantial and procedural rules in view of enacting and administering the pertinent sanctions, enjoying a full autonomy.

Article 9 of the FIGC regulations refers only to the infringements committed by the intermediaries and makes no mention of those who interact with them (i.e. clubs and players). In fact, clubs and players violating the regulations are subject to the FIGC Disciplinary Code and disciplinary proceedings provided by the FIGC Statutes. Instead, the same article 9, paragraph1 confers the jurisdiction responsibility for any violations of the Regulations committed by an intermediary to a special three member "Intermediaries Committee".

Upon request of the interested party(ies) or by its own initiative, the Committee's President shall examine the facts and evidence produced. He can decide to archive the case or to go further with the proceedings, summon the parties and invite them to a hearing, according to the Committee's proceedings, as approved by the FIGC Board".[12]

It is important to emphasize the fact that though the intermediary agent is not a member of the football sports system, he is subject to the jurisdiction of such a Committee.

Moreover, article 4, paragraph 9 of the FIGC Regulations widens the scope of the Committee's competence to cover the case of those operators who bring before it the claims against the rejection of intermediaries' application. This implies that the Committee can deal with those operators, who are not yet fully qualified as registered by FIGC and so not yet recognized intermediaries.

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[11] www.figc.it/other/RegistroAgenti//registro_agenti.pdf (21 October 2016).

[12] The Regulations of the procedures before the "Commissione Procuratori Sportivi" has been approved by the FIGC Federal Council with the COMUNICATO UFFICIALE N. 28/A on 19 July 2016 available on www.figc.it/Assets/contentresources_2/ContenutoGenerico/82.$plit/C_2_ContenutoGenerico_3818_Sezioni_lstSezioni_0_lstCapitoli_6_upfFileUpload_it.pdf.

According to the clear provision of the first sentence of article 9, paragraph 1, the intermediary is obliged to correctly apply not only the relevant Regulation's rules but observe also all the pertinent FIGC, FIFA and UEFA rules concerning the exercise of his activities. The logical inference of this provision is that the "Intermediaries Committee" has a very large competence, not constrained by the limited scope of the regulation, in its first grade jurisdiction.

The committee can suspend intermediaries for one year but it can even strike the intermediary off the role of the register in case of reiterated offence and foreclose him from any subsequent registration. The sanctioned intermediary may appeal against those rulings to the FIGC Appeal Tribunal in last instance.[13]

Article 9, paragraph 4, prescribes the obligatory communication by the FIGC to the FIFA of the disciplinary sanctions decided upon the intermediaries. It is up to the FIFA Disciplinary Committee to take the appropriate decision in the light of the provisions of the FIFA Disciplinary Code in order to confer a worldwide effect to the FIGC's sanctions. So, it is clear that the FIFA Disciplinary Committee has expressly reserved to itself the decision to give a worldwide publicity of the national sanctions against the intermediaries. Although, nothing is said in the article 9 of the FIFA regulation about the decision making criteria on enacting this worldwide effect, we are inclined to assume that the FIFA Disciplinary Committee might decide case by case and very probably the world wide effect of the publicity will be enacted according to the gravity of the infringements and sanctions taken against the intermediaries at the level of the national association.

Finally, on this point, the FIGC Regulation have just ignored the first leg of the article 9, paragraph 4 of the FIFA Regulation, which imposes on the national associations the obligation to publish the decided sanctions "accordingly", which means in good and due form to let all the interested stakeholders to have full knowledge of the intermediaries' judicial status.

9. Conclusions

Albeit the license system has been removed, in Italy, intermediaries have to enroll in the register for a yearly registration to be renewed and they have to register the representation contracts, pay a fee per year registration and another one per each transaction, and comply with the remuneration cap FIFA recommends and FIGC duly implements.

Due to the specificity of the national regulatory framework, FIGC adopted the minimum standard requirements imposed by the international federation with minor amendments.

According to the earliest version of the Italian association's rules, the foreign intermediaries, not resident in Italy, could provide their services there only in presence of a running reciprocity agreement between their country's football

[13] The reference is to the "Corte Federale di Appello della FIGC". The decision of such body could be finally appealed to the "Collegio di Garanzia dello Sport", in accordance with the Italian Sports Justice Code issued by the Italian National Olympic Committee (CONI).

association and FIGC. However, since the absence of that type of reciprocity agreements with many foreign associations could undermine the working capacity of many foreign agents, representing lots of professional footballers to the extreme limit to introduce a de facto working ban on those foreign intermediaries, the Italian association has substantially revised this provision by cancelling this reciprocity condition.

Moreover, though the FIGC Regulations are crystal clear in dictating the exclusivity of mandate in favor of an intermediary at once and the possibility for the latter to act on behalf of both the club and the player in the context of the same transaction, they lack the indispensable provisions to plainly design the right sanctions they may face in case of violation of their obligations. Therefore, the FIGC should review and amend accordingly these regulations so to have written and clear sanctions for those who infringe the relevant rules.

Surprisingly, the FIGC Regulations do not have any specific provision on identifying the competent jurisdiction in case of a dispute between intermediaries, clubs and players. In this regard, article 6 of the representation contract template, enclosed with the Regulations, states that the parties are free to submit their disputes to an arbitration panel or to a sole arbitrator (even outside the sports system) or to the ordinary judges.

The FIGC regulations are also silent on the competent jurisdiction where a dispute arises between two parties who signed an agreement before the entry into force of the current FIFA regulations. In that regard, the relevant body of the Italian Olympic Committee, "Collegio di Garanzia" has decided that the ordinary judge, not the sporting judiciary bodies, is the only competent jurisdiction.[14]

Finally, it would be a better and more effective and useful option for FIGC and for the minors' protection to expressly implement the FIFA provisions prohibiting remuneration in favor of intermediaries when they deal with transfer of minors, even imposing precise sanctions in case of rule's infringement. The current, timid formula, which simply states that remuneration for amateurs (who are not necessarily all minors) is prohibited, should be repelled because useless.

The Authors want to believe that the Federation will be able to fill the above-mentioned gaps and clear some of the outlined contradictions in order to maintain the indispensable high level of control and transparency on the transfer market of players and on the essential protection of the minors.

The new rules virtually open the intermediary profession in the transfer market to every capable operator. However, it remains an issue to be verified in the near future, whether the long awaited new rules will be really effective in granting a proper level of transparency and professionalism for the sake of the football ethics. To this regard, we hope that the responsible FIGC services will plan and execute thoroughly a proper exercise of impact and implementation's assessment of these rules in due time.

[14] "Collegio di Garazia del CONI", Opinion No. 3/2015 of 4 February 2015.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN JAPAN

by *Takuya Yamazaki*,[*] *Taisuke Matsumoto*[**] and *Yuki Mabuchi*[***]

1. Introduction

Japan Football Association ("*JFA*") established the "Regulations concerning Intermediaries" ("*JFA Regulations*"), which came into force from 1 April 2015.[1] The JFA Regulations[2] were drafted based on the minimum standards stipulated in FIFA's "Regulations on Working with Intermediaries"[3] ("*FIFA Regulations*"; these minimum standards refer to the preamble and article 1.2 of the FIFA Regulations and article 1.2 of the JFA Regulations), and also incorporate provisions specific to the JFA (preamble and article 1.3 of the FIFA Regulations).

In comparison with the FIFA Regulations, the main characteristics of the JFA Regulations are as follows:

(1) Provisions clarifying legal nature of an Intermediary (see 2.2 below);
(2) Double Registration System (see 3 and 4 below);
(3) Stricter provisions on Conflicts of Interest (see 6 below).

2. Principles and Definitions

2.1 The Definitions of an "Intermediary"

In the JFA Regulations, an intermediary is defined as follows:

"A natural person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or

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[1] The intermediary system came into force on 1 April 2015.

[2] Regulations concerning Intermediaries (www.jfa.jp/documents/pdf/basic/mediator.pdf).

[3] www.fifa.com/mm/document/affederation/footballgovernance/02/36/77/63/regulationsonworkingwithintermediaries_neutral.pdf.

represents clubs in negotiations with a view to concluding a transfer agreement, who has been registered with the JFA as an intermediary".

As opposed to the FIFA Regulations, the parties eligible to become intermediaries have been limited to natural persons by removing the possibility for legal persons to register (see the "Definition of an intermediary" in both the JFA Regulations (sentence 1) and the FIFA Regulations).

2.2 Provisions clarifying legal nature of an Intermediary

As one of the main characteristics of the JFA Regulations, there are two provisions clarifying the legal nature of an intermediary.

Firstly, the intermediary does not have the authority through his/her legal conduct to represent the player or the club, and any such legal conduct shall not be attributable to the player or the club (sentence 2 of the "Definition of an intermediary" in the JFA Regulations). What this means in practice is that legally binding contracts (e.g. player contract, transfer agreement) involving a player or a club as a contracting party have to be concluded or signed directly by the player or the club.

Secondly, the conduct of the intermediary in relation to transactions is limited to regular contract negotiations. If the contract negotiations have or the intermediary foresees that these have any nature of legal disputes, then if the intermediary is not a lawyer he cannot participate in the negotiations, and must immediately cease his/her activity in these (article 2.4 of the JFA Regulations).

It is presumed that these provisions have been introduced in order to avoid possible conflicts with the Article 72 of the Japan Attorney Act (Domestic Law) below:

> "*No person other than an attorney or a Legal Professional Corporation may, for the purpose of obtaining compensation, engage in the business of providing legal advice or representation, handling arbitration matters, aiding in conciliation, or providing other legal services in connection with any lawsuits, non-contentious cases, or objections, requesting for re-examination, appeals and other petitions against administrative agencies, etc., or other general legal services, or acting as an intermediary in such matters; provided, however, that the foregoing shall not apply if otherwise specified in this Act or other laws".*

3. Requirements and Conditions

As one of the main characteristics of the JFA Regulations, JFA requires anyone who wishes to represent players or clubs in transfers or contract negotiations to register with the JFA as an Intermediary ("*Intermediary Registration*") prior to concluding an intermediary representation contract (article 2.3 and 3.1 of the JFA Regulations). This is an additional requirement to the Individual Registration (see

4.2 below) on each specific transaction required by the FIFA Regulations ("*Double Registration System*").

4. Registration - The Double Registration System

4.1 The Requirement for Intermediary Registration

According to article 3.2 of the JFA Regulations the Intermediary Registration shall be effective for a term of one year from the date of registration until the end of the term (stipulated as 31 March); following the expiry of this term, the intermediary has to register for every successive year. The annual fee for the Intermediary Registration is 30,000 JPY (around 230 EUR) except the first year of his/her registration, which shall be 100,000 JPY (around 770 EUR) (excluding consumption tax, article 3.3 of the JFA Regulations). However, the players' agents already certified by the JFA under the former rule are exempt from the said registration fee for the first year.

The issue here is determining which parties are disqualified or ineligible for the Intermediary Registration. Basically, article 3.4 of the JFA Regulations stipulates nine parties that shall not be registered as intermediaries. The said provisions are outlined below.

(1) A party that has obligations or holds a position as an official, an employee, a member on any committee, a referee, a manager, a coach, a member of a team's staff, or has an analogous obligation or a position at FIFA, a confederation, the JFA, the J-League, a club, any football association (FA), any regional / prefectural FA in Japan, or any other association which belongs to the JFA.
(2) A party that has been sentenced to imprisonment without work or a greater punishment.
(3) A party that has been sentenced to imprisonment without work or a greater punishment by a foreign court of law.
(4) A party that has committed conduct that is contrary to penal regulations (excluding negligence or violations of traffic regulations).
(5) A party that conducts transactions with members of organised crime groups, as stipulated in article 2.1.2 of the Act on the Prevention of Unjust Acts by Organised Crime Group Members (Act No. 77 of 1991), or with any other parties that are equivalent thereto.
(6) A party that conducts transactions with members of groups that commit or are likely to commit terroristic subversive activities, as stipulated in article 4 of the Subversive Activities Prevention Act (Act No. 240 of July 21, 1952), or with any other parties that are equivalent thereto.
(7) A party that is the target of the Act on Punishment of Organized Crimes and Control of Crime Proceeds (Act No. 136 of 1999) or is affiliated with any other parties that are equivalent thereto as well as parties conducting transactions with said members of such groups.

(8) A party that has been placed on the United States Office of Foreign Assets Control (OFAC), Special Designated Nationals and Blocked Persons List (SDN), the UN Consolidated List, or any sanctions lists by other political institutions.
(9) Any other party that the JFA recognises as unsuitable to conduct negotiations on behalf of a player or club.

In addition, article 1.8 of the Application Standards regarding Intermediary Registration ("*Application Standards*") stipulates that in making an application for the Intermediary Registration, the applicant should complete and then sign or stamp the JFA-mandated Intermediary Registration application form (entitled JFA CH-1) and send it by registered post with the below stated materials attached to the JFA:

(1) An intermediary declaration (signed by the intermediary),
(2) The bank transfer statement detailing payment of the Intermediary Registration fee,
(3) The intermediary's resume/CV,
(4) A copy of the intermediary's passport photo page,
(5) A residency card in the case of a Japanese national or an official document that proves residency in the case of a foreign national,
(6) A certified copy of the company register to which the party belongs.

The JFA may, without notice to the relevant party, revoke the Intermediary Registration, if it discovers after the registration (i) that the submitted materials have been forged or (ii) that the party becomes disqualified, in line with the aforementioned provisions, from registering as an intermediary (article 3.5 of the JFA Regulations). In the event that the Intermediary Registration is revoked the relevant party shall receive no notification of the reasons for this and shall not be able to appeal against it (article 3.6 of the JFA Regulations and article 1.12 of the Application Standards).

4.2 The Requirement for Individual Registration

In addition to completing the Intermediary Registration (article 4.2 of the JFA Regulations), the intermediary must also be registered by the JFA in relation to every specific transaction ("*Individual Registration*") by a club or a player, they are individually involved in (article 4.1 of the JFA Regulations and article 3.1 of the FIFA Regulations).

For the purpose of the Individual Registration, the following documents must be registered with the JFA: (i) the intermediary declaration; (ii) the intermediary representation agreement; (iii) the concluded employment contract or transfer agreement; and (iv) any other document which the JFA specifies (articles 4.3 and 4.4 of the JFA Regulations).

The FIFA Regulations only requires that the intermediary is registered for each specific transaction that they are individually involved in. However, the JFA Regulations are much stricter, because as a precondition for the Individual

Registration, the JFA require the completion of the Intermediary Registration which mandate intermediaries to submit many documents.

5. Impeccable Reputation

The introduction of the Intermediary Registration or the Double Registration System seems to be aiming to meet the requirement by the FIFA Regulations that "the association concerned will at least have to be satisfied that the intermediary involved has an impeccable reputation" (article 4.1 of the FIFA Regulations).

However, the JFA Regulations also stipulate that the completion of the Intermediary Registration with the JFA does not in itself guarantee the registrant's qualities (including their ability, suitability, insight and knowledge of applicable laws and regulations) and character regarding the trustworthiness, the appropriateness and the legality of the services they provide (article 1.4 or 1.10 of the Application Standards).

6. Conflicts of Interest

6.1 General Rules

In line with the FIFA Regulations, the JFA Regulations also stipulate that prior to engaging the services of an intermediary, players and/or clubs shall use reasonable endeavours to ensure that no conflicts of interest exist or are likely to arise either for the players and/or clubs or for the intermediaries (article 10.1 of the JFA Regulations and 8.1 of the FIFA Regulations).

However, as one of the main characteristics of the JFA Regulations, the JFA has introduced stricter rules on Conflicts of Interest as follows.

6.2 Stricter Rules

Firstly, in the same transaction, even if the intermediary acquires the prior consent of the club or player, he/she cannot represent the other party (article 10.2 of the JFA Regulations).

Secondly, even when an intermediary acquires the prior authorisation of the player or the club, in relation to a transaction which involves another intermediary that belongs to the same entity, the former intermediary cannot act in the transaction (article 10.3 of the JFA Regulations). This is effectively extending the scope of the prohibition on dual representation.

Thirdly, the intermediary and the entity he belongs to ("*Intermediary Parties*") are prohibited from the following: concluding agreements with clubs, the J-League, the JFA, as well as any national FAs, confederations and FIFA; holding interests (including shares) in clubs (clubs are prohibited from holding vice versa); supplying interests to and holding federative rights and economic rights in a club

(on the opposite side of a transaction) or specific parties belonging to the said club (articles 10.4 to 10.8 (inclusive) of the JFA Regulations). For the purpose of the articles 10.4 to 10.8 (inclusive) of the JFA Regulations above, his/her spouse, children, parents, siblings and any legal entity which he/she owns a partial or whole interest or which he/she belongs to are also prohibited from doing those stipulated in the above articles (article 10.9 of the JFA Regulations).

Fourthly, as opposed to article 7.6 of the FIFA Regulations, remuneration payments by whatever means from parties other than the party the intermediary represents are prohibited (article 9.5 of the JFA Regulations).

Fifthly, in the event that a club's manager, coaching staff or officials have somehow or have already concluded a contract with Intermediary Parties, such parties (including the intermediary) are obliged to report these contractual relationships to the JFA (article 12.1 of the JFA Regulations and article 2 of the Application Standards). In that case, the intermediary is prohibited from (i) exercising any undue influence over the employment contract negotiations with the club that the manager, coaching staff or officials belong to, in representing the players, or (ii) taking advantage of the fact, to solicit the players to make a representation contract with the intermediary (article 12.2 of the JFA Regulations).

7. Agent's Obligations

7.1 General Rules

If the name and signature of the intermediary is not included in concluded employment contracts or transfer agreements, the intermediary shall be deemed as not having participated in the said transaction(s) (article 6.3 of the JFA Regulations and sentence 3 of article 6.2 of the FIFA Regulations).

It is recommended that the intermediary enters into an adequate insurance policy to cover cases where damage is caused to another party due to his/her conduct (article 6.4 of the JFA Regulations). Although it is no longer mandatory to take out professional liability insurance - as was required under the previous agent licensing system (article 9.1 of the 2008 Players' Agent Regulations ("*FIFA PAR*")[4]) - with a prescribed Japanese insurance company, a voluntary insurance which will be offered by the same insurance company is encouraged by the JFA.

7.2 Prohibited Conduct

In relation to transactions the intermediary must carry out negotiations in good faith, and the following conduct by him/her or through the use of a third party is prohibited: unfair demands; threatening behaviour or acts; violent behaviour or

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[4] Players' Agents Regulations 2008 ver.
(www.fifa.com/mm/document/affederation/administration/51/55/18/players_agents_regulations_2008.pdf) .

acts; untrustworthy conduct; and conduct that disrupts business (articles 11.1 and 11.6 of the JFA Regulations).

Players, clubs and intermediaries are forbidden from making the conclusion of an employment contract or transfer agreement conditional upon the player entering into a representation agreement with a specific intermediary (article 11.2 of the JFA Regulations).

An intermediary is prohibited from contacting a player with the intention of causing the player to terminate his/her employment contract before it expires or from causing him/her to breach the obligations of his/her employment contract. Also, an intermediary that participates without just cause in the breach of contract by the player shall be presumed to have caused the said breach (article 11.3 of the JFA Regulations). Unlike under the previous agent system, there are no provisions in the JFA Regulations that allow a party who is presumed to have caused a contractual breach to refute this through contrary evidence (art 22.3 FIFA PAR).

Regarding the right of claiming damages in the event the intermediary's representation contract is terminated during the contractual term, the intermediary is prohibited from making unreasonable damages claims (article 11.4 of the JFA Regulations).

It is prohibited for an intermediary to enter into a representation contract with a player under the age of 16, and also to contact such a player with the intention of concluding a representation contract in the future (article 11.5 of the JFA Regulations).

7.3 Representation Contract

The representation contract between the intermediary and the player or club shall be valid for a maximum period of two years, and this contractual period cannot be automatically renewed or extended (article 7.2 of the JFA Regulations). This means that the length of the term of the intermediary representation contract is restricted like the agent representation contract was under the previous system (article 19.3 of the FIFA PAR).

In principle, a player or club concluding a representation contract with an intermediary must use the JFA's standard intermediary contract (article 7.5 of the JFA Regulations), which is similar in content to the JFA's standard representation contract under the previous system (article 21.1 of the FIFA PAR). However, as was the case under the previous system the said parties are also at liberty to supplement the standard contract by concluding additional agreements (article 7.5 of the JFA Regulations and article 21.2 of the FIFA PAR).

Even if a player or club concludes a representation contract with an intermediary, these parties may conclude an employment contract or transfer agreement without the intermediary's assistance (article 7.3 of the JFA Regulations). Even under the previous system it was stated that a player or club who were under contract with an agent had the right to independently conclude their own contractual arrangements (article 19.7 of the FIFA PAR).

In the event that a player or club terminates the representation contract with the intermediary prior to its expiry, the player, club and intermediary are obliged to report the relevant facts to the JFA (article 7.4 of the JFA Regulations).

8. Remuneration

The remuneration payable to the intermediary is restricted to pecuniary/monetary payment (article 9.1 of the JFA Regulations).

The JFA recommends that the total amount of remuneration payable to the intermediary should not exceed 3% of the player's basic gross income for the entire duration of the relevant employment contract or of the eventual transfer fee paid in connection with the relevant transfer (article 9.3 (the main paragraph) of the JFA Regulations and article 7.3 of the FIFA Regulations).

As stated above, remuneration payments by whatever means from parties other than the party the intermediary represents are prohibited (article 9.5 of the JFA Regulations).

9. Disciplinary powers and sanctions

The JFA Disciplinary Committee has jurisdiction over disciplinary matters regarding intermediaries (article 13.1 of the JFA Regulations), and upon either the request or authority of the JFA Secretariat it shall commence disciplinary investigations or hearings (articles 13.4 and 13.5 of the JFA Regulations). The JFA Secretariat may also urge the contractual parties to remedy their situation, as well as being entitled to impose a provisional suspension on the intermediary's activities, on the condition that it is clear that his/her conduct materially either breaches or fails to comply with his/her contractual obligations (article 13.6 of the JFA Regulations).

In terms of disciplining errant intermediaries, there are seven types of sanctions that vary in severity and which may be imposed cumulatively. In ascending order of severity the sanctions consist of: (1) a warning; (2) a reprimand; (3) a fine; (4) a confiscation; (5) a suspension from official activities (this may apply either wholly or partially and for a set or indefinite period or even permanently); (6) a suspension or prohibition from football-related activities (this may apply for a set or indefinite period or even permanently); and (7) an expulsion (articles 4.3 (1 to 7 inclusive) and 4.4 of the JFA Disciplinary Regulations).[5]

In the event that the contents of the intermediary declaration were forged, the player or the club shall be jointly and severally liable for this, and may be subject to sanctions under article 13 of the JFA Regulations (sentence 2 of article 5.3 of the JFA Regulations and article 9.1 of the FIFA Regulations).

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[5] JFA Disciplinary Regulations (www.jfa.jp/documents/pdf/basic/PunishmentRegulations_20150401.pdf).

10. Conclusion

The JFA Regulations are much more specific than the minimum standards stipulated in the FIFA Regulations because they introduced new Provisions clarifying the legal nature of the intermediaries Intermediary (see 2.2 above) but also a Double Registration System (see 3 and 4 above); and Stricter provisions on Conflicts of Interest (see 6 above).

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN MÉXICO

by *Ricardo de Buen Rodríguez*[*]

1. Introduction

After a long time regulating the activity of the so-called agents around the World, FIFA has made an important change and decided to leave the main responsibility for this job to each of the National Football Federations. In order to rule the representation activity and guide each of the Federations to do their duty, FIFA eliminated the agents and created the "Regulations on Working with Intermediaries", which has established the minimum standards to be implemented.

Following this, the Mexican Football Federation (FMF) created the local regulations, which entered into force on the first day of April 2015. These regulations apply only to operations involving players and clubs. Operations involving the hiring of coaches and other persons are excluded.

Below we will summarise the content of our local regulations, which are not very different from the general guidelines established by FIFA.

2. Relevant national law

Even though México was one of the first countries in the world to adopt a legislation that considered professional athletes to be employees,[1] it has stagnated in modernising laws regarding professional sports.

In the Sports Law field, we have the Federal Physical Culture and Sports Law (which is the framework for organizing sports in the country), the Federal

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[1] The Mexican Labour Law with a special chapter regarding professional players entered into force on 1 May 1970.

Labour Law and Regulations of each of the local Sports Federations. One of the difficult issues to resolve, as in some other countries, is the interaction between Federation Regulations and the federal or local laws. This may be an issue for another article.

Regarding the intermediary's activity in general, it is regulated through the mandate and the rendering of services, contained in the Civil Code. Then we have the Federal Labour Law, which limits the activity of the intermediaries when they are working on the employee´s (player's) side.

The Federal Labour Law prohibits any amount of money being paid to an intermediary from the salary of an employee (player).[2] It is clear that, any intermediary working for a player and charging him a fee to be taken from his salary is not allowed under Federal Law. However, in practice these kinds of agreements between players and intermediaries do occur. This is a clear example of the difficult interaction between Federation Regulations and the federal or local laws.

In addition to the aforementioned, we have the Regulations of the Mexican Football Federation regarding Intermediaries, (Regulations) which are the main field of study in this article.

3. Principles

What the Regulations refer to as "General Principles" are contained in Arts. 4 to 6 of the Regulations, and can be summarised as follows:

a) The right for players and clubs to use the services of an intermediary.
b) The obligation of intermediaries to be registered with the FMF and to obtain a registration ID issued by the same Federation.
c) Officials (see definitions below) are not allowed to act as intermediaries.
d) Players and clubs are obliged to act with due diligence when hiring an intermediary. This means that they have to ensure that intermediaries sign the proper official declarations and that the agreement with them fulfils minimum requirements.
e) The intermediary's activities may be national or international. This is to allow the transfer of a player from a club member of the FMF, to a club member of a different National Federation.

4. Definitions

The most important definitions are the following:

Intermediary: A natural or legal person who, either in return for payment or for free, operates as a representative for players or clubs in order to negotiate a labour contract or as a representative for clubs in negotiations for a transfer agreement.

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[2] Art. 14.2 of the Federal Labour Law.

Registration ID: Document issued by the FMF to a person who is registered as an intermediary after complying with all the requirements.

Official: Any person performing any function within a club (administrative, sporting or other). Players and coaches and their managing teams are excluded from this definition.

5. Requirements and conditions

Article 8 of the Regulations contains the requirements for natural persons and Article 9 the requirements for legal persons. It is a very detailed list of requirements and given the importance of this issue for our immediate purposes, we will list each of them below.

Requirements for natural persons

i) Submit to FMF the application for registration, in an official form, agreeing to comply with Statutes, Regulations, Circulars and decisions of the competent bodies of FIFA as well as those from the Confederations and the FMF.
ii) Pay an exam fee.
iii) Present a proof of residence in Mexico for at least two years.
iv) Foreign applicants must present their official permission to work issued by the Mexican Immigration authorities.
v) Present a letter, issued by a judicial authority, certifying the non-existence of criminal records.
vi) The applicants must prove that they are in compliance with tax obligations.
vii) To be eligible, the applicant must not, at the time of the application, be performing any function in FIFA, the CONFEDERATION, the FMF or any club or organization affiliated with any of them. Furthermore the applicant should not exercise any activity within the written press, radio, TV or social media. The applicant cannot be an active player, coach or manager in any club for at least one year prior to the application.
viii) Participate in, and pass the exam, and be subject to an interview. The purpose of both is to determine if the applicant has enough knowledge of the International and National Football Regulations and of General Principles of Law. The Federation will also check that the applicant is competent, has an impeccable reputation, and if he or she is in full mental capacity.
The exam, which consists of a multiple-choice test, is organized by the FMF, taking place once a year in April.
There is no specific regulation regarding the evaluation of previous experience. For us, although we are talking about new Intermediaries' Regulations, there are lots of potential applicants with a lot of experience in the field of representing clubs and players, which should be taken into account.

ix) Submit a performance bond, (USD 100,000) which will serve as a guarantee of obligations of the intermediary, with an expiration date of a minimum of two years. If the intermediary complies with all the other requirements and passes the exam, this bond must be presented, in order to be registered.

Requirements for legal persons

It is also possible for an intermediary to work through a legal person. In this case, its employees are limited to administrative tasks and only the registered intermediary is allowed to represent clubs and players.

Requirements for legal persons are:

i) To be incorporated in a legal entity (Company) of those allowed by Mexican Law. Mexican Law does not allow a Sports Society, unlike some countries.
ii) Submit to FMF the application for registration, in an official form, agreeing to comply with Statutes, Regulations, Circulars and decisions of the competent bodies of FIFA as well as those from the Confederations and FMF.
iii) Present a certified copy of the statutes of incorporation of the Company and of the power of attorney of the person(s) authorised to act on behalf of the Company.
iv) The Company must present a proof that it is domiciled in Mexico.
v) The Company must prove that it works in compliance with tax obligations.
vi) To be eligible, the applicant must present a written declaration signed by its legal representative, in which the applicant declares that the Company does not perform and has not performed services in relation with an Association, League, FIFA, or even a third party, other than the representation of clubs and players. It must also not exercise any activity in written press, radio, TV or social media. These conditions must be kept by the applicant at all times while being an Intermediary.
vii) Those natural persons acting in the name of the Company must comply with requirements established for natural persons in the Regulations.

6. Registration

If after complying with all the other requirements, the applicant obtains the minimum grade required for the exam, he or she will be entitled to be registered, and will be asked to present the bond and fill the Intermediary´s Declaration. If the minimum mark is not achieved the applicant may apply again for the next exam, with a maximum of three attempts. We consider that the limit of three opportunities could be omitted.

FMF will register the intermediary and will issue a registration ID, ("Carnet de registro" in Spanish"), which is personal and non transferable. With this the intermediary is allowed to use the title " Intermediary registered by the Mexican

Football Federation. Football Association of Mexico". The applicant will then be included in the official list of intermediaries.

FMF will send the list of intermediaries to all Mexican clubs and will publish the list on its web page.

The intermediaries must renew their registered ID each year by paying an annual fee and renewing respective documents. If this is not done within one month after the end of the respective registration year, he or she will be removed from the list of intermediaries and will have to apply as a new applicant the following year. It is important to highlight that taking the exam again is not necessary. Our opinion is that a new exam, maybe every three years, should be established for registered intermediaries. This is so, not only because laws and regulations change often and we must ensure that intermediaries are up to date on them, but also because an initial registration does not guarantee that the intermediary will work – there may be registered intermediaries without any material experience from the previous registration period.

7. Impeccable reputation

There is no specific definition of "Impeccable reputation" in the Regulations. However, there are some articles that indirectly refer to this issue. As mentioned before, when listing the requirements for applying to be an intermediary, the applicant must present a letter issued by a judicial authority, certifying the non-existence of criminal records and to prove that they are in compliance with tax obligations. We also expressed that in the interview the FMF must check that the applicant is competent and has moral character. The problems we find here are that even though non-criminal records and compliance of tax obligations are objective elements, in order to find an impeccable reputation, the main issue is moral character, which is addressed in a very subjective and superficial way. We think that previous experience must be taken into account for those applicants that served as agents before, to check if they acted in a good way it their career before and thus have an Impeccable Reputation.

In relation to the intermediary´s declaration, the content of which is established in Appendixes I and II of the Regulations, the intermediary must declare to have an Impeccable Reputation. Our opinion is that you cannot subject part of the definition of "Impeccable Reputation" to a declaration made by the interested party. Even being very subjective, reputation is something external that must be analysed by acts carried out by the specific person. For us, with all due respect, it is almost ridiculous to make somebody declare that he or she has an Impeccable Reputation.

There is also an Appendix III in the Regulations that, although not related to the Impeccable Reputation, is important to mention. It is called the Sports Ethics and Fair Play Declaration ("Declaración de Juego Limpio y Ética Deportiva). This is a declaration of goodwill and respect of rules. It is to be signed by all persons involved in the Mexican League.

8. *Conflict of Interests*

There is a specific article, 15.8 of the Regulations, ruling that the intermediary must avoid any conflict of interest and must represent only one party, unless in the case of representing two parties, both express previous written consent.

There is also an extensive definition of Conflict of Interests in Article 21 of the Regulations.

a) Players and clubs, prior to using the services of an intermediary, must check that there is no potential conflict of interests.
b) There will be no conflict of interest if the intermediary reveals this potential conflict regarding any of the parties involved in a transaction and obtains the written agreement of all parties involved.
c) If the player and the club decide to use the services of the same intermediary in the same transaction, they will have to give their written consent and establish which party will pay the intermediary´s remuneration.

9. *Intermediary´s obligations*

According to Art. 15 of the Regulations, one of the main obligations of the intermediary is to sign an agreement for each client (player or club) and for each transaction. The contract must express the kind of legal relation established with the club or the player, if it is a representation agreement or only an advice agreement, and must include: i) name of the parties, (ii) services to be provided, (iii) duration, (iv) amount of outstanding remuneration to the intermediary, (v) conditions for payment, (vi) date of coming into force, (vii) termination clauses, (viii) arbitration clauses (FMF or CAS), (ix) authorization for FMF to publish the transaction, (x) privacy clauses, (xi) intermediary´s declaration and (xii) the parties' signatures.

There are some further obligations, such as respecting the applicable regulations (FIFA, Confederation, FMF), respecting what the intermediary established in the intermediary´s declaration, and not to deliberately persuade a player to terminate an existing labour agreement or to stop complying with it.

In relation to obligations applying not only to intermediaries but to players and clubs in general, and considering one of the main purposes of the new Regulations is to control all transactions in which intermediaries are involved in, we find the obligations for disclosure and registration of operations. At the time of registration of a player with the FMF, all agreements signed with the participation of the intermediary must be presented. Players and clubs are also obliged to provide the FMF with all the information regarding payments that have been made or will be made to an intermediary. FMF will publish, in March of each year, the global amount paid by the clubs and players to intermediaries, with the authorisation of the parties involved.

10. Remuneration

The remuneration of an intermediary, acting on behalf of a player, must be calculated based on the annual gross income of the player, excluding benefits such as a car, housing and extra bonuses subject to their performance.

As we expressed at the beginning of this article, the Federal Labour Law prohibits taking out any amount of money from the player´s salary to pay an intermediary. In practice, this prohibition has not been respected, but it is important to highlight that it may be cited by a player in asking for the annulment of a representation contract, with a large chance of succeeding.

Clubs that hire an intermediary will pay a global and fixed amount, agreed before carrying out the transaction.

Regarding the amount of the remuneration to be paid to the intermediary, FMF only establishes a recommendation; not a mandatory percentage or sum.

The recommendation, if acting on behalf of a player, is for the intermediary to be paid a sum up to 3% of the annual gross income of the player. In case of an intermediary acting on the club´s side, the recommendation is to be paid a sum up to 3% of the annual gross income of the player, where concluding a contract and 3% of the transfer fee in the case of a transfer of the player.

There will not be any remuneration if the player is a minor.

11. Disciplinary powers and sanctions

Any intermediary who violates the applicable regulations by exceeding the terms of the representation agreement or by going beyond limitations established in law, may be sanctioned by the Disciplinary Commission of the FMF

Possible sanctions to be applied are the following:

i) Warning.
ii) Fine of at least USD 5,000.
iii) Temporary suspension to be registered as an intermediary.
iv) Definitive suspension to be registered as an intermediary.
v) Ban from participating in any football-related activity.

Players and clubs may be sanctioned if they do not comply with respective regulations regarding their relation with intermediaries. They may also get sanctions such as warnings, a fine of at least USD 10,000 and a ban from participating in any football-related activity. Clubs may also be sanctioned, by prohibiting them from performing transfers, with deductions of points or by sending the club to a lower division in the competition.

Any act performed by a club or by a player in violation of the Regulations shall be declared null and void.

In the case of national disputes, involving claims related to the intermediary´s activity, the Conciliation and Resolution Chamber of the FMF is the competent authority for their resolution.

In the case of international disputes involving the intermediary's activity, the international authority chosen by the parties must resolve them.

12. Conclusion

As expressed in the Introduction, one of the main purposes of the new intermediaries system is to gain more control over transactions and over persons involved, at a National Federation level.

The Mexican system has followed those purposes in the text of the new Regulations. It is too early to know what results will be achieved - it shall be seen in the near future. However, and given experiences in the past, our point of view is that strict control over the persons acting as Intermediaries is a key point and that the system is deficient in assuring that the persons being registered as Intermediaries are all capable and with an impeccable reputation. In this regard the Regulations should include the specific obligation for the FMF, in relation with those applicants that worked as agents before this new system entered into force, to check their behaviour in the past, in every operation they were involved.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN THE NETHERLANDS

by *Dennis Koolaard*[*]

1. Introduction

Following the implementation of FIFA's Regulations on Working With Intermediaries (hereinafter: the "FIFA RWWI"), all national football federations affiliated to FIFA were required to implement their own set of regulations for intermediaries[1] in their respective jurisdictions based on the minimum requirements established in the FIFA RWWI. Consequently, instead of monitoring the intermediaries itself, FIFA now monitors its members in implementing these minimum standards.

In the Netherlands, by decree of the board of the Royal Netherlands Football Association (*Koninklijke Nederlandse Voetbal Bond* - hereinafter: the "KNVB"), the Regulations for Intermediaries (hereinafter: the "KNVB RI") were implemented on 30 March 2015.[2]

In comparison with regulations implemented by other national football federations, the KNVB RI contains some interesting distinguishing features, the most notable arguably being that FIFA's recommendation to implement a cap on the remuneration to be received by intermediaries was not followed and the attempt to establish a licensing system for organisations of intermediaries.

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[1] This chapter consistently refers to intermediaries, this term however is intended to comprise the activities of players' agents, as intermediaries were referred to under the FIFA Players' Agents Regulations, *i.e.* the former set of regulations governing the activities of intermediaries that is now replaced by the FIFA RWWI.

[2] The Regulations on Intermediaries (Reglement Intermediairs) is available in Dutch on www.knvb.nl/downloads/bestand/4852/reglement-intermediairs and in English on http://bin617-02.website-voetbal.nl/sites/voetbal.nl/files/98352-Eng-rev-Uitvoeringsbesluit%20Reglement%20Intermediairs%20-%20definitief.pdf, last accessed: 13 October 2016.

2. Relevant national law

First of all, the Dutch Civil Code and more specifically the Dutch Code of Obligations are relevant, particularly since any *lacuna* in the KNVB RI would normally have to be filled by subsidiary application of Dutch law.

As to laws that are specifically relevant for intermediaries subjected to the application of the KNVB RI, the Placement of Personnel by Intermediaries Act (*Wet allocatie arbeidskrachten door intermediairs* – hereinafter: the "WAADI") is relevant. However, throughout the KNVB RI, reference is made to the WAADI only once. Article 8(5) of the KNVB RI determines that if a club has concluded an employment contract with a player following employment mediation within the meaning of the WAADI by the player's intermediary, the club must remunerate the intermediary for such employment mediation and not the player. This feature, which is in line with article 7 of the ILO Treaty on Private Employment Agencies, entails that players are not permitted to pay for the services of an intermediary after successful negotiations, but that the club with which the employment contract was concluded shall bear these costs. Although article 5(1)(g) of the KNVB RI, the section of the KNVB RI dealing with the obligations of intermediaries, does not refer to the WAADI specifically, it is understood that the reference to *"legislation with regard to employment mediation"* is intended to refer to the WAADI. As such, compliance with the WAADI is mandatory for KNVB-registered intermediaries.

In order for interested parties (*i.e.* clubs, players and intermediaries) to know whether the services provided by an intermediary in one specific transaction are governed by the WAADI, one needs to resort to the definition of employment mediation in the WAADI. Article 1(1)(d) of the WAADI defines employment mediation as follows (freely translated into English): *"services in the exercise of profession or business for an employer, a job seeker, or both, meaning the assistance in finding employees or work respectively, whereby the conclusion of a contract of employment in accordance with civil law or the assignment of a civil servant is intended"*.[3] This definition is fairly wide and consequently nearly all successful employment mediations conducted by intermediaries in Dutch football will be subject to this exception. Should the services not fall under the definition in the WAADI, these services will solely be governed by the KNVB RI.

Should an intermediary have concluded a representation agreement with a player and the player subsequently signs an employment contract with a club in the Netherlands with the assistance of this intermediary, one may wonder whether the representation fee agreed upon between the player and the intermediary is binding upon the club, since, pursuant to the general legal principle of *res inter*

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[3] In Dutch: *"dienstverlening in de uitoefening van beroep of be drijf ten behoeve van een werkgever, een werkzoekende, dan wel beiden, inhoudende het behulpzaam zijn bij het zoeken van arbeidskrachten onderscheidenlijk arbeidsgelegenheid, waarbij de totstandkoming van een arbeidsovereenkomst naar burgerlijk recht dan wel een aanstelling tot ambtenaar wordt beoogd"*.

alios acta, a third party (*i.e.* the club) is normally not bound by contractual arrangements entered into by the contractual parties *(i.e.* the player and the intermediary).

In comparison with other countries, the implication of national law on the KNVB RI may be considered fairly limited. For example, in Switzerland the consequence of being qualified as an intermediary in accordance with the Federal Act on Employment Services and the Hiring of Services (AVG) and its ordinances are more far-reaching in the sense that it entails that the commission paid by the job seeker to the agent shall not exceed 5% of the first annual gross wage of the job seeker.[4]

A second aspect where Dutch law may be of relevance in the application of the KNVB RI is in respect of the requirements for issuance of a Certificate of Conduct by the Dutch State Secretary for Security and Justice, which is one of the requirements for being registered as an intermediary with the KNVB. The issuance of the Certificate of Conduct is dealt with in the section concerning the required impeccable reputation of intermediaries below.

3. Principles

The key principles in the KNVB RI are similar to the principles underlying the FIFA RWWI. As will be explored in more detail below, the main principles underlying the FIFA RWWI may be summarised as follows:[5]

1. Clubs and players are now to a certain extent responsible for intermediaries.
2. The licensing system is abandoned and is replaced by a system of registration.
3. Intermediaries do not have a contractual relationship with FIFA, the leagues, associations or federations, but only with clubs and/or players.
4. Dual representation is only permitted subject to explicit written consent.
5. All details regarding the remuneration received by intermediaries need to be disclosed.
6. It is recommended by FIFA that the national federations implement a cap on the remuneration to be received by intermediaries from clubs and players.
7. Intermediaries shall not be remunerated for services provided to or concerning minors.
8. FIFA no longer has direct disciplinary authority over intermediaries; instead this responsibility is shifted to the national federations.

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[4] Stocker, FIFA's new Regulations on Working with Intermediaries, National Implementations – Switzerland, Football Legal # 3, June 2015, 84.

[5] The basis of this summary derives from Lynam / Ellis / Lewis, Players' Agents, in Lewis / Taylor (Eds.), Sport: Law and Practice, 3rd ed., 2014, 1444-1445. The original summary of these scholars was however based on a draft of the FIFA RWWI and not on the final version, therefore certain amendments have been made by the author, most notably regarding the cap on remuneration of intermediaries, which was originally planned to be a mandatory cap but finally turned out to be a recommended cap.

As alluded to above, the only of the above-mentioned principles underlying the FIFA RWWI that is not implemented in the KNVB RI is the recommended cap of 3% on the remuneration to be received by intermediaries.

One of the key principles appears to be the pursuit of a high level of transparency on the market of intermediaries. The main feature to achieve this is that the KNVB will annually disclose information about the remuneration received by KNVB-registered intermediaries,[6] as is required by FIFA.[7] In order to be able to do so, the intermediary agreement must document the arrangements with regard to any fee payable to an intermediary by the club.[8]

An agreement between an intermediary and a club or a player is referred to as an intermediary agreement. This intermediary agreement must be laid down in writing and must be presented to the professional football board for registration in the form of an appendix to the player contract[9] and will be registered once the applicable legislation, the Articles of Association and/or the regulations of the KNVB, UEFA and/or FIFA and/or decisions by one or more of these bodies have been complied with.[10] The intermediary is notified in writing of the registration of the intermediary agreement.[11]

Each year, before 31 March, the names of all intermediaries registered with the KNVB in the year immediately preceding that year are announced by means of a medium of publication chosen by the KNVB, including the player contracts and/or agreements for the transfer of players with regard to which these intermediaries were involved in the negotiations for the conclusion thereof.[12] The KNVB will also publish the total sum paid to KNVB-registered intermediaries by each KNVB-affiliated club in the aforementioned period for the negotiations on the conclusion of player contracts and/or agreements with regard to the transfer of players.[13] Remuneration received by KNVB-registered intermediaries from clubs not affiliated to the KNVB may be published by the respective national association, but this is dependent on the regulations implemented by such national association.

The first publication of the required information was made public on 31 March 2016. This document shows that KNVB-affiliated clubs together paid a total amount of EUR 9,505,624 as remuneration to intermediaries. The "Big Three", *i.e.* Ajax, PSV and Feyenoord, were responsible for 72,6% of the total amount paid, Ajax being the leader with spending EUR 3,228,614.

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[6] Article 3(2) of the KNVB RI.
[7] Article 6(3) of the FIFA RWWI.
[8] Article 8(1) of the KNVB RI.
[9] Article 6(1) of the KNVB RI.
[10] Article 6(4) of the KNVB RI.
[11] Article 6(5) of the KNVB RI.
[12] Article 3(1) of the KNVB RI.
[13] Article 3(2) of the KNVB RI.

4. Definitions

Four definitions are given in the KNVB RI:

"Intermediary:	*a natural person who or a legal entity which, at a fee or otherwise, represents or wishes to represent players and/or clubs during negotiations with regard to the conclusion of player contracts and/or agreements with regard to the transfer of players registered as such with the KNVB, in accordance with these regulations.*
Intermediary statement:	*the statement adopted by the board, as referred to in article 2.3.a of these regulations in connection with the option of being registered as an intermediary.*
Player:	*a player who is a member of the KNVB as referred to in article 6.2.d of the Articles of Association.*
Intermediary agreement:	*every written agreement between an intermediary on the one hand and a player or club on the other, which provides for the representation by the intermediary, at a fee or otherwise, of the player or club during negotiations on the conclusion of player contracts and/or agreements with regard to the transfer of players".*

The definition of an intermediary provided for under the KNVB RI is slightly wider than the definition of an intermediary under the FIFA RWWI.[14] For example, whereas the KNVB already regards a natural person who *wishes* to represent a player in negotiations concerning the conclusion of an employment contract as an intermediary, FIFA does not. It is submitted that this difference is negligible and it is not clear to the author why such deviation was deemed necessary, since the mere wish of someone to act as an intermediary can hardly be deemed sufficient for the KNVB to exercise regulatory or disciplinary powers over such person.

In practice, the activities of intermediaries are however not limited to negotiating contracts. Intermediaries also perform tasks around the periphery of this activity, including the sourcing of endorsement deals and the provision of legal advice, as well as providing advice on financial planning, image rights exploitation and tax (not to mention some of the 'hand-holding' activities related to a move to a new club or country, such as assisting with house moves and advising on where

[14] Under the FIFA RWWI an intermediary is defined as follows: *"A natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement".*

to send the children to school).[15] It is submitted that these activities, even if performed by a KNVB-registered intermediary, are not necessarily governed by the KNVB RI or the FIFA RWWI, but this may be subject of debate.

5. Registration

The KNVB keeps register of intermediaries,[16] which register is publicly available on the website of the KNVB.[17] Only natural persons and legal entities may be registered as intermediaries by the KNVB.[18] The most recent list of intermediaries (published on 19 September 2016), shows that 209 natural persons and 6 legal entities are registered with the KNVB as intermediaries.

The registration automatically expires on 31 March of each season[19] but is subject to renewal at any time.[20] Upon registration, the intermediary receives proof of registration and is entitled to call himself KNVB-Registered Intermediary; he may however not use the logo's of the KNVB.[21] Upon expiration or termination of the registration, the intermediary must immediately return his proof of registration to the KNVB.[22] The KNVB implemented a system whereby intermediaries can register only once per year, instead of registering for every individual transaction as is the case in other countries.[23]

The registration of an intermediary may be terminated if:[24]

a. An intermediary fails to observe the Article of Association and/or the regulations of the KNVB, UEFA and/or FIFA and/or decisions by one or more of their bodies;
b. An intermediary has been convicted without appeal by a disciplinary body of the KNVB, an association affiliated with FIFA, the UEFA and/or FIFA for violating legislation;
c. An intermediary is placed under guardianship or under protective guardianship;
d. An intermediary has been granted an irrevocable suspension of payment;
e. An intermediary has been declared bankrupt under an irrevocable court judgment;
f. The statutory debt management scheme has been declared applicable to the intermediary; and/or

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[15] Lynam / Ellis / Lewis, Players' Agents, in Lewis / Taylor (Eds.), Sport: Law and Practice, 3rd ed., 2014, 1419.
[16] Article 2(1) of the KNVB RI.
[17] This list was lastly updated on 19 September 2016: www.knvb.nl/downloads/bestand/6570/lijst-geregistreerde-intermediairs, last accessed: 13 October 2016.
[18] Article 1(2) of the KNVB RI.
[19] Article 2(6) of the KNVB RI.
[20] Article 2(7) of the KNVB RI.
[21] Article 2(4) of the KNVB RI.
[22] Article 2(11) of the KNVB RI.
[23] Branco Martins, FIFA's new Regulations on Working with Intermediaries – Agents' perspective, Football Legal #3, June 2015, 50.
[24] Article 2(9) of the KNVB RI.

g. The intermediary has been convicted without appeal under criminal law for committing a crime.

It is submitted that, should an intermediary violate the obligations set out in article 5(1) of the KNVB RI, *i.e.* the provision in the KNVB RI setting out the obligations of an intermediary (see para. 9 below), this may also result in the termination of the registration since article 2(9)(a) of the KNVB RI determines that an intermediary should observe the regulations of the KNVB, including the KNVB RI.

6. Requirements and conditions for registration

The main minimum standard under the FIFA RWWI in respect of registration of intermediaries is that the national associations will at least have to be satisfied that the intermediary involved has an impeccable reputation,[25] or in case of a legal entity, that the individuals representing the legal entity have an impeccable reputation.[26] An intermediary is not allowed to have contractual relationships with leagues, associations, confederations or FIFA that could lead to a potential conflict of interest.[27] These requirements are considered to be complied with if the national association has obtained a duly signed intermediary statement.[28]

By signing the intermediary statement of the KNVB, intermediaries declare, *inter alia*, that they fall under the jurisdiction of the bodies of the KNVB, including the disciplinary bodies and the arbitral tribunal of the KNVB, that they have an *"unblemished reputation"* and that the KNVB receives all information about all payments, of whatever nature, made to them by a club for the representation in the capacity of intermediary.[29]

The KNVB RI determines that natural persons employed by and/or fulfilling any other position at a club, the KNVB, UEFA and/or FIFA cannot act as intermediaries. The KNVB went somewhat further than it was required to do by FIFA,[30] by determining that natural persons who and/or legal entities that can exercise 10% or more of the voting rights at the general meeting of a club cannot be intermediaries either.[31]

Additionally, in order for a natural person or legal entity to be registered as an intermediary or to apply for an extension of his registration as intermediary,[32] the following documents need to be submitted, of which only the signed intermediary statement is a minimum requirement established by FIFA:

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[25] Article 4(1) of the FIFA RWWI.
[26] Article 4(2) of the FIFA RWWI.
[27] Article 4(3) of the FIFA RWWI.
[28] Article 4(4) of the FIFA RWWI.
[29] A standard intermediary statement for natural persons can be downloaded from the website of the KNVB.
[30] Article 4(3) of the FIFA RWWI.
[31] Article 1(3) of the KNVB RI.

a. *"A fully completed and signed intermediary statement;*
b. *A copy of a valid passport and/or valid ID card; and*
c. *An original certificate of good* [sic] *conduct (in Dutch: VOG) or, in the event that the natural person and/or legal entity is not listed in the Persons Database of the Dutch government or in the register of the Dutch Chamber of Commerce, a similar document in the country where the natural person and/or legal entity is registered, subject to approval by the board, with this document having been issued:*
    i. *No later than six months before registration;*
    ii. *With a view to representing players and/or clubs".*[33]

The KNVB charges intermediary registration costs for every registration. These registration costs are determined before 1 February of each year and are announced by the board.[34] The current registration costs are EUR 544,50 (EUR 450, excl. 21% VAT).[35]

Although the KNVB RI go further than strictly necessary in view of the minimum requirements imposed by FIFA, in comparison with regulations implemented by other national federations, the requirements for registration of the KNVB are quite lenient. It is for example not necessary for KNVB-registered intermediaries to have arranged for an adequate insurance,[36] it is not necessary to be fluent in the language of the national federation concerned,[37] it is not necessary for an intermediary to be legally residing in the country of the national federation concerned[38] and it is not necessary to have a personal interview.[39] The current registration costs are also quite moderate in comparison with other countries,[40] although it must be noted that the KNVB may amend the registration fee on a yearly basis.

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[32] Article 2(7) of the KNVB RI determines that these requirements are applicable by analogy in case of a renewal of the registration.
[33] Article 2(3) of the KNVB RI.
[34] Article 2(8) of the KNVB RI.
[35] General information provided on the website of the KNVB (www.knvb.nl/themas/reglementen-en-besluiten/intermediairs, last accessed: 13 October 2016).
[36] Which is a requirement in Portugal (see: Cluny / Oda, FIFA's new Regulations on Working with Intermediaries, National Implementations – Portugal, Football Legal # 3, June 2015, 80).
[37] Which is a requirement in France (see: Moyersoen, FIFA's new Regulations on Working with Intermediaries, National Implementations – France, Football Legal # 3, June 2015, 66).
[38] Which is a requirement in Italy (see: Gallavotti, FIFA's new Regulations on Working with Intermediaries, National Implementations – Italy, Football Legal # 3, June 2015, 52).
[39] Which is a requirement in Spain (see: Crespo / Ripoll Rodríguez, FIFA's new Regulations on Working with Intermediaries, National Implementations – Spain, Football Legal # 3, June 2015, 61).
[40] England EUR 700, Spain EUR 816, Germany EUR 500, Portugal EUR 1,000 and the United Arab Emirates EUR 5,000.

7. Impeccable reputation

As mentioned *supra*, in order to be registered as an intermediary with the KNVB, an intermediary needs to provide an original Certificate of Conduct (*Verklaring omtrent Gedrag* - VOG).[41]

A Certificate of Conduct is not a certificate of *good* conduct as mistakenly referred to in the KNVB RI. In fact, a Certificate of Conduct could more appropriately be denominated as a certificate of *no bad* conduct. Certificates of Conduct are issued by the Dutch State Secretary for Security and Justice. By issuing a Certificate of Conduct it is declared that the applicant did not commit any criminal offences that are relevant to the performance of his or her duties. For example, a taxi driver who has been convicted several times of drunken driving, or an accountant convicted of fraud are unlikely to be issued with a certificate. However, an accountant who has been convicted of drunken driving may well be granted a certificate.[42]

8. Foreign Intermediaries

The sole difference as regards the registration of a foreign intermediary in comparison with the registration of a non-foreign intermediary is that a natural person who is not registered in the Persons Database of the Dutch government or a legal entity that is not registered in the Dutch Chamber of Commerce, shall, instead of submitting a Certificate of Conduct, submit a similar document issued in the country where the respective natural person or legal entity is registered. The document shall be issued no later than six months before registration with the KNVB and shall take into account the activities of the natural person or legal entity in representing players and/or clubs and admission of such document is subject to the approval of the board of the KNVB.[43]

Furthermore, foreign intermediaries are also obliged to fulfill the other requirements that have to be fulfilled by non-foreign intermediaries, *i.e.* the submission of a fully completed and signed intermediary statement and a copy of a valid passport and/or valid ID card.[44]

9. Disclosure and publication of data

As mentioned *supra*, the names of all intermediaries registered with the KNVB and the total sum paid to KNVB-registered intermediaries by each KNVB-affiliated club for the negotiations on the conclusion of player contracts and/or agreements

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[41] Article 2(3)(c) of the KNVB RI.

[42] General information provided on the website of Justis, the authority responsible for the screening on behalf of the Ministry of Security and Justice (www.justis.nl/producten/vog/certificate-of-conduct, last accessed: 13 October 2016).

[43] Article 2(3)(c) of the KNVB RI.

[44] Article 2(3)(a) and (b) of the KNVB RI.

with regard to the transfer of players are published by the KNVB.[45] This required disclosure and publication of data is interesting and may be subject to discussion. As set out above, the services of intermediaries in football are not always related to the conclusion of an employment contract or a transfer agreement, *i.e.* not all services provided by an intermediary are services performed in their capacity as an intermediary. One may wonder whether intermediaries that are remunerated for services outside the scope of intermediary services need to inform the KNVB about these payments. From a strict literal interpretation of clause 10 of the intermediary statement for natural persons of the KNVB[46] one may conclude that intermediaries are not required to disclose information about such payments since this remuneration is not received in the capacity of an intermediary and are only required to disclose information about payments within the scope of intermediary services made by clubs.

Although article 8(1) of the KNVB RI determines that the intermediary agreement must document the agreements with regard to any fee payable to an intermediary by the club, no similar provision has been adopted for agreements between intermediaries and players. Since article 6(3) of the FIFA RWWI determines that "*associations shall also publish the total amount of remunerations or payments actually made to intermediaries by their registered players and by each of their affiliated clubs*", it appears the KNVB will not be able to fully comply with its obligations towards FIFA if intermediaries are not obliged to inform the KNVB of any fees received from players.

One may therefore wonder whether such restrictive wording of Article 8(1) of the KNVB RI and clause 10 of the intermediary statement do not unnecessarily complicate things, both in view of the KNVB's obligations towards FIFA as well as in respect of the pursuit of a high level of transparency on the market of intermediaries. However, it is submitted that, in accordance with Article 8(5) of the KNVB RI, a club shall remunerate an intermediary who represents a player during player contract negotiations. All the services provided for by an intermediary within the scope of intermediary activities would therefore have to be remunerated by the club. All amounts paid to intermediaries in the scope of intermediary services are therefore taken into account in the publication.

10. Conflicts of interests

Pursuant to the KNVB RI, a player cannot be represented by more than one intermediary during the negotiations on the conclusion of a player contract and/or an agreement with regard to the transfer of this player.[47] However, if, during the

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[45] Article 3(1) and (2) of the KNVB RI.

[46] Article 10 of the intermediary statement provides as follows (freely translated): "*I agree that the KNVB obtains any information about any payments of any kind, paid to me by a club for my representation as an intermediary*".

[47] Article 4(1) of the KNVB RI.

negotiations on the conclusion of a player contract and/or agreement with regard to the transfer of a player, the intermediary engages another intermediary and/or collaborates with one or more intermediaries other than those employed by the same legal entity-intermediary for whom the first intermediary works, these agreements must be documented and submitted to the KNVB within the scope of the registration referred to in article 6.1 (*i.e.* the provision determining that an agreement between an intermediary and a player or club must be laid down in writing) of the KNVB RI.[48]

Representing the interests of both a player and club in a single transaction is risky for an intermediary since it is presumed that intermediaries have a fiduciary obligation to act in the best interests of the principal (*i.e.* the player or the club). In *Imageview Management Ltd v Jack*, the English Court of Appeal put it nicely in a dispute concerning a football intermediary:

> *"An agent's own personal interests come entirely second to the interest of his client. If you undertake to act for a man you must act 100%, body and soul, for him. You must act as if you were him. You must not allow your own interest to get in the way without telling him. An undisclosed but realistic possibility of a conflict of interest is a breach of your duty of good faith to your client (...)".*

It is submitted that the same fiduciary obligation is presumed in the Netherlands. However, the KNVB RI contains a provision explicitly determining that it is permissible for an intermediary to represent the interest of a player as well as a club in one transaction, as long as both parties have explicitly given their express written consent for such double representation,[49] which is in line with the FIFA RWWI.[50]

Under the former set of regulations of FIFA governing the activities of intermediaries, the FIFA Players' Agents Regulations (hereinafter: the "PAR"), CAS determined that the consequence of an intermediary acting with a conflict of interest is not the invalidity of one of the two representation contracts, but rather that disciplinary sanctions shall be imposed on the intermediary.[51] As such, should a club discover, and be able to prove, that an intermediary acted with a conflict of interest while negotiating a particular contract, this does in general not take away the club's duty to remunerate the intermediary for his services. This is only different if the club is able to establish that it incurred damages due to the intermediary acting with a conflict of interest, which is normally not easy to prove.

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[48] Article 4(2) of the KNVB RI.
[49] Article 4(3) of the KNVB RI.
[50] Article 8(2) of the FIFA RWWI.
[51] See: CAS 2012/A/2988, §79-84.

11. Agent's obligations

The obligations of an intermediary under the KNVB RI are listed in article 5(1) of the KNVB RI:

a. "To observe the Articles of Association and/or the regulations of the KNVB, UEFA and/or FIFA and/or decisions by one or more of their bodies;

b. To refrain from conduct that may harm the interests of the KNVB, its bodies and/or football in general;

c. To provide all information requested by the KNVB, UEFA and/or FIFA and/or one or more of their competent bodies;

d. To refrain from activities and work that concerns players who are younger than 15 years and 6 months;

e. To refrain from encouraging a player to prematurely terminate his player contract and/or fail to fulfil his obligations under that contract;

f. To ensure that his name and signature or, if the intermediary is a legal entity, the name and signature of a member of staff of the legal entity registered under these regulations, appear in every player contract and/or an agreement with regard to the transfer of the player, concluded through the intermediary's representation;

g. To comply with the applicable legislation (including legislation with regard to employment mediation);

h. To ensure the player contract and/or the agreement with regard to the transfer of the player states the fee paid to the intermediary for the negotiations on the conclusion of the contract and/or the agreement;

i. To refrain from offering and/or granting any consideration of whatever nature, directly or indirectly, to one or more members of the KNVB as referred to in article 6.1 of the Article of Association as a result of or in connection with:

- The negotiations on the conclusion of player contracts and/or agreements with regard to the transfer of players;

- Any gain, service, favour and/or any form of preferential treatment of players of a club;

- Obtaining access to players of a club; and/or

- Recommending an intermediary to players and/or clubs

KNVB members within the meaning of article 6.1 of the Articles of Association are not permitted to accept and/or receive such offers and/or gifts; and/or

j. To refrain from offering and/or granting any consideration of whatever nature, directly or indirectly, to a player and/or a family member of that player in relation to the potential representation of that player. Players are not permitted to accept and/or receive such offers and/or any considerations".

Furthermore, an intermediary is and shall remain at all times responsible and liable for work and activities undertaken or developed by him, on his behalf or on his instructions.[52]

It is not permissible for intermediaries to conclude an intermediary agreement with a term exceeding two years. An extension of the intermediary agreement, for another maximum term of two years, must be recorded in a written agreement. The intermediary agreement may not be renewed tacitly.[53] Although this obligation is shared with the club and/or the player represented by the intermediary, the intermediary shall ensure that his name and signature are laid down in every contract concluded on behalf of the club and/or the player.[54]

As stated *supra*, a failure to respect any of the above-mentioned obligations may lead to disciplinary proceedings and/or termination of the intermediary's registration with the KNVB. Although a violation of any of these obligations may formally lead to the termination of an intermediary's registration with the KNVB, it is submitted that such harsh measure would not always be appropriate.

Although article 5 of the KNVB RI is titled *"Obligations of the intermediary"*, it contains some obligations in disguise for clubs and players that should not be overlooked. For example, although it is prohibited for an intermediary to offer *"any consideration"* in relation to the potential representation of a player, such player also has the obligation to refrain from accepting and/or receiving such offers. Accepting such offers may therefore lead to disciplinary measures being imposed on the player. Another obligation for clubs and players deriving from the KNVB RI is that players and clubs must ensure that the intermediaries representing them have signed the intermediary statement and the intermediary agreement.[55]

12. Remuneration

As to the remuneration due to intermediaries, a distinction is to be made between services provided to players and services provided to clubs.

12.1 Services provided to players

Article 8(2) of the KNVB RI determines that the amount of the fee payable to an intermediary who represents a player is calculated on the basis of the agreed gross annual salary, including a *pro rata* signing-on fee, excluding guaranteed or non-guaranteed premiums and/or bonuses of the player for the full term of the player contract.

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[52] Article 5(2) of the KNVB RI.
[53] Article 6(2) of the KNVB RI.
[54] Article 7(1) and (2) of the KNVB RI.
[55] Article 7(3) of the KNVB RI.

The KNVB opted to stay loyal to the rule under the FIFA PAR, according to which an intermediary would be remunerated with 3% of the annual gross basic salary if a club and an intermediary failed to reach an agreement about the amount of fee payable to the intermediary.[56] This provision however only refers to the situation where a club and an intermediary failed to reach an agreement regarding the remuneration. Such provision may possibly be applied by analogy to the situation where a player and an intermediary have failed to reach an agreement regarding the intermediary's remuneration.

The KNVB also implemented FIFA's minimum standard that intermediaries cannot be remunerated should the representation relate to negotiations on the conclusion of a player contract and/or the agreement with regard to the transfer of a minor player.[57]

Since the FIFA RWWI determines that the remuneration due to intermediaries for a player or a club in order to conclude an employment contract should not exceed 3% of the player's eventual basic gross income for the entire duration of the relevant employment contract,[58] the KNVB RI deviate from the FIFA RWWI in this respect.

It is noteworthy that the FIFA RWWI refers to *"the player's eventual basic gross income for the entire duration of the relevant employment contract"*, whereas the KNVB RI refers to a calculation *"on the basis of the agreed gross annual salary"*. A critical remark that has been expressed in respect of the implemented FIFA RWWI is that the 3% in the FIFA PAR served as a *minimum* guarantee for intermediaries, has been transposed into the FIFA RWWI, but with the intention to serve as a *maximum*.[59] However, one should be aware that the 3% under the FIFA PAR is not the same 3% as under the FIFA RWWI, since 3% over a player's basic gross salary over the *entire duration* of the relevant employment contract is usually higher than 3% over a player's *annual* basic gross salary, *e.g.* in case of a contract period of four years, 3% over a player's basic gross salary over the *entire duration* of the employment contract is four times higher than 3% over the player's *annual* basic gross salary.

Furthermore, the 3% referred to in the FIFA RWWI is only a recommendation and does not, as such, serve directly as a cap. However, when implemented by the national federations, the remuneration of intermediaries might indeed be capped directly. Such direct or indirect cap may constitute a violation of EU competition law. To be justifiable, the proposed cap must have a legitimate objective, the anti-competitive effects must be inherent in the pursuit of that objective and the restriction must be proportionate in light of that objective. It has been argued that setting a fixed cap on the amount that an intermediary may earn from a transaction, irrespective of the services provided by an intermediary, may not be

[56] Article 8(6) of the KNVB RI.
[57] Article 8(7) of the KNVB RI.
[58] Article 7(3)(a) and (b) of the FIFA RWWI.
[59] Kumar Parmar / Tarmurean, Payment to intermediaries, Football Legal # 3, June 2015, 39.

deemed the least restrictive way to prevent excessive fees for intermediaries.[60] In its complaint to the European Commission, the Association of English Football Agents (hereinafter: the "AFA") contends that the 3% benchmark cap infringes article 101(1) and 102 of the Treaty on the Functioning of the European Union.[61]

Not only the FIFA RWWI is currently being challenged, also the regulations implemented by national football federations are currently subjected to legal scrutiny.[62] Since the KNVB chose not to adopt such recommendation in the KNVB RI, the KNVB RI will most likely escape legal challenges from intermediaries for violation on the basis of competition law on the short term.

Finally, it is submitted that the recommended cap of 3% of the player's basic gross income for the entire duration of the relevant employment contract only concerns the total amount of remuneration due *per transaction*. It is understood that the recommended cap only concerns the activities performed by an intermediary that are regarded as intermediary activities. As mentioned *supra,* intermediaries however provide a wide array of services to players that are not strictly speaking intermediary activities. As such, services provided by an intermediary to a player outside the scope of intermediary services, *e.g.* the purchase of a house, may arguably be remunerated separately and are not subjected to the cap.

12.2 Services provided to clubs

Article 8(3) of the KNVB RI determines that clubs that are represented by an intermediary must, if a fee has been agreed upon, remunerate the intermediary by payment of a fixed amount that is agreed upon prior to the negotiations on the conclusion of the player contract and/or the relevant agreement with regard to the transfer of a player. This payment can be made in instalments subject to the written consent of the club and the intermediary.

As mentioned *supra*, should a club and an intermediary have failed to reach an agreement regarding the intermediary's remuneration, the intermediary will be remunerated with 3% of the annual gross basic salary of the player.[63]

The provision determining that intermediaries cannot be remunerated should the representation be related to negotiations on the conclusion of a player contract and/or the agreement with regard to the transfer of a minor is also applicable to clubs.[64]

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[60] Turner, FIFA's proposed player agents reforms: analysis, World Sports Law Report, August 2014, 12.

[61] Mehrzad / Onwere, FIFA Regulations on Working With Intermediaries: analysis, World Sports Law Report, November 2014, 12.

[62] Misic, The new FIFA Intermediary Regulations under EU Fire in Germany, Asser International Sports Law Blog, 12 August 2015 (www.asser.nl/SportsLaw/Blog/post/the-new-fifa-intermediaries¬regulations-under-eu-law-fire-in-germany-by-tine-misic#continue, last accessed: 13 October 2016).

[63] Article 8(6) of the KNVB RI.

[64] Article 8(7) of the KNVB RI.

Under the KNVB RI, a club is not permitted to pay an intermediary or to have an intermediary wholly or partially pay a fee payable to another club, including a fee with regard to the transfer of a player, training fee and/or solidarity contribution.[65] An intermediary is also not permitted to have an interest in future fees, including training compensation or solidarity contribution.[66]

13. Disciplinary powers and sanctions

Different from FIFA, the KNVB remains directly competent to exercise direct disciplinary powers over registered intermediaries. The competence of the disciplinary bodies of the KNVB derives from article 1 of the intermediary statement that intermediaries are required to sign in order to be registered as an intermediary with the KNVB. Although FIFA no longer has direct disciplinary competence over intermediaries, FIFA still exercises indirect disciplinary competence over intermediaries since the FIFA Disciplinary Committee may extend disciplinary sanctions imposed on intermediaries by national associations to have worldwide effect.[67]

First of all, the KNVB may terminate the registration of an intermediary in a limited number of circumstances. Should the KNVB proceed with the termination of a registration, the intermediary is not permitted to register again as an intermediary with the KNVB from the moment of termination for a maximum period of five years, at the discretion of the board.[68]

Registration may be terminated most notably if an intermediary fails to observe the Articles of Association and/or the regulations of the KNVB, UEFA and/or FIFA and/or decisions by one or more of their bodies. Article 2(9)(a) of the KNVB RI determines that a termination on this basis does not affect the powers of the competent disciplinary bodies. On a critical note, it should be mentioned that the application of such provision appears difficult in practice since the disciplinary bodies of the KNVB would no longer have competence over the intermediary upon termination of his registration, as a consequence of which the intermediary would arguably no longer have standing to be sued in subsequent disciplinary proceedings. However, this ambiguity will most likely remain without consequences as the registration will usually be terminated as a direct consequence of a disciplinary procedure itself (as is indeed provided for in article 9(b) of the KNVB RI). A situation where disciplinary proceedings will be instigated against an intermediary only after termination of the registration appears improbable.

The wording of article 9(b) of the KNVB RI is interesting in the sense that it refers to being "convicted without appeal",[69] since a literal interpretation

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[65] Article 8(8) of the KNVB RI.
[66] Article 8(9) of the KNVB RI.
[67] Article 9(2) of the FIFA RWWI.
[68] Article 2(10) of the KNVB RI.
[69] Article 2(9) heading and under (b) of the KNVB RI: The board is entitled to terminate the

would result in the undesirable conclusion that the registration of an intermediary who is convicted in first instance, but lodged an appeal against such decision, may not be terminated, regardless of whether the appeal is upheld or not. This may be problematic in view of the general legal principle of *in dubio contra stipulatorem*, according to which an unclear clause should be interpreted against the party who drafted it, which is arguably all the more true in disciplinary proceedings. It is suggested that this reference be replaced in the future with wording such as "upon the conviction having become final and binding".

14. Dispute Resolution

One of the main criticisms concerning the implementation of the FIFA RWWI is that intermediaries no longer have an international forum where they can bring their disputes now that they are no longer part of the "football family" and that this will lead to chaos and a lack of legal certainty.[70] Instead, under the FIFA RWWI, intermediaries will have to revert to national arbitration committees, if available, established by the national football federations or possibly to the Court of Arbitration for Sport, either as an ordinary arbitration or as an appeal arbitration and alternatively to national ordinary courts.

Most national football association do not have a national arbitration committee compliant with the minimum standards established by FIFA. Should this be the case, the alternative to litigating before ordinary national courts is to integrate an arbitration clause in the contracts determining that the Court of Arbitration for Sport is competent in case of any possible future disputes arising out or in connection with the contract.

As such, whereas all disputes concerning intermediaries used to be submitted to the Players' Status Committee of FIFA, the FIFA RWWI causes a decentralisation of the dispute resolution system. Besides the fact that litigation before ordinary courts may be more time consuming and costly in comparison with sports arbitration, it may also lead to inconsistent standards and results regarding similar intermediary contracts, due to the fact that domestic courts are more directly subjected to domestic legislation or otherwise.[71]

The situation in the Netherlands however appears to be that an arbitration clause in favour of the Court of Arbitration for Sport would be void in light of the mandatory jurisdiction clause in favour of the arbitration committee of the KNVB adopted in the intermediary statement and the KNVB RI.[72] As a consequence,

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registration of an intermediary if an intermediary has been convicted without appeal by a disciplinary body of the KNVB, an association affiliated with FIFA, the UEFA and/or FIFA for violating legislation.

[70] Branco Martins, FIFA's new Regulations on Working with Intermediaries – Agents' perspective, Football Legal #3, June 2015, 50.

[71] Crespo / Torchetti, FIFA's new Regulations on Working with Intermediaries – Changes to the Dispute Resolution System, Football Legal #3, June 2015, 44-45.

[72] Article 9 of the KNVB RI.

e.g. an Uruguayan intermediary representing an Uruguayan player in the conclusion of an employment contract with a Dutch club would have to start proceedings before the arbitration committee of the KNVB in case a dispute arises.

It may be clear that it does not become easier for intermediaries to obtain the remuneration they are entitled to should a club or a player fail to comply with its/his contractual obligations. In this sense, the loss of the Players' Status Committee of FIFA as the international forum for contractual disputes with clubs and players might indeed lead to a lack of legal certainty and coherence.

15. Certification

A topic that is currently being discussed between the main stakeholders in Dutch football is the implementation of a certification for organisations of intermediaries. The idea is not that individual intermediaries will be certified, but that the organisation to which they are affiliated will be. The rationale behind this system of certification is obviously to ensure the quality and reliability of intermediaries, since the warranties that were previously in place, such as the mandatory insurance policy and the need to pass a knowledge test in order to be licensed as an intermediary, were abandoned with the implementation of the FIFA RWWI.

A working group with representatives of the KNVB, ProAgent (the union representing the interests of intermediaries in Dutch football), VVCS and ProProf (the unions representing the interests of players in Dutch football) was created to discuss the requirements that would be necessary for certification.

During a meeting held on 9 June 2015, the working group found common ground regarding the following requirements:

1. *Permanent education.* The relevant organisation would have to require its affiliated intermediaries to participate in permanent education.
2. *Insurance.* The relevant organisation would have to make sure that each of its affiliated intermediaries has an insurance policy in place similar to the insurance policy that was mandatory under the previous regulations.
3. *Legal assistance.* The organisation needs to provide legal advice / support to its affiliated intermediaries.
4. *Code of conduct.* The organisation needs to have a code of conduct in place that is applicable to all its affiliated intermediaries.
5. *Pre-registration.* The organisation may only allow intermediaries to join the organisation if they are registered as intermediaries with the KNVB.
6. *Minimum number of members.* The organisation would need to have at least 50 members or is an officially recognised union.
7. *Independent assessment committee.* The organisation would need to have an independent assessment committee in place in order the assess compliance of its affiliated members with the code of conduct, with the authority to suspend membership.
8. *Financial transparency.* Certain minimum requirements regarding financial transparency of the organisation may be added.

In October 2016, only just before the present contribution had to be delivered to the editors, an agreement appears to have been reached in the working group regarding a licensing system for organisations of intermediaries. The final step to be taken before formal implementation of the licensing system is the ratification by the Council of the KNVB, which will most likely take place in the first quarter of 2017. The main feature of the licensing system is that certified organisations of intermediaries will implement a Code of Conduct, applicable to the intermediaries affiliated to it. A first draft of the Code of Conduct that will be implemented by ProAgent, the sole organisation of intermediaries in the Netherlands, was provided to the author. The wording of this draft-Code of Conduct may be interesting for readers as it may prove to be a benchmark of a system that could be implemented on a larger scale in the future within the Netherlands and abroad. Indeed, should every country have such licensing system in place, it would be easier to verify whether an unknown intermediary encountered in international dealings is a reliable partner or not. If associations of intermediaries prove to be able to effectively erradicate the "bad apples", a system of mutual recognition between licensed organistions of intermediareis from different countries may turn out to be an effective tool in governing the business of intermediaries in football.

The introduction to the Code of Conduct (freely translated into English) reads as follows:

"*The code of conduct expresses today's social norms and values that in Pro Agent's prevailing opinion should be observed when conducting the profession of authorized agent (registered intermediary). Proper care must be devoted to the entrusted interests; this also involves the interests of minors.*

Observing this code of conduct by the members of Pro Agent also justifies the quality label that the KNVB (Royal Netherlands Football Association) has granted to Pro Agent as organization.

The rules are mandatory for Pro Agent's members, and for their conduct in performing their daily work. The agent must seek to be regarded as a person whose interest representation has added value and with whom business can be transacted. For example, the agent may not use inappropriate means, such as announcing or taking steps that bear no relation to the envisaged objective.

Experience has proven that a proper mutual relationship among the agents in general promotes the proper representation of the interests entrusted to them. Without losing sight of the interests entrusted to them and the interest of football in general, agents should seek a relationship of mutual goodwill and trust; in line with this, they should not publicly express any negative opinions regarding one another.

Taking the foregoing into account, the agent can be faced with conflicting duties. He will have to resolve this carefully, subject to the provisions of the regulations that apply to his activities, specifically the regulations of the KNVB and the FIFA.

The following rules of conduct can be viewed as an elaboration of the norms and values formulated above; if there is uncertainty in any situation regarding the manner in which these rules must be applied, they must be be assessed on the basis of those norms. The terms 'agent' and 'intermediary' are both used to indicate the same capacity".

The actual provisions of the Code of Conduct (freely translated into English) are the following:

"*Article 1*

The agent's conduct must be such that the trust in his own professional conduct is not damaged.

Article 2

The agent must prevent jeopardizing his independence in conducting his profession in any way.

Article 3

Each year, the agents must maintain and develop their knowledge and professional skills, taking the fact that they frequently work with minors and the international dimension of their profession into account; at a minimum, the agents must attend the annual KNVB knowledge conference for intermediaries.

Article 4

The agent has a valid certificate of good conduct and has taken out professional liability insurance that covers generally accepted risks.

Article 5

In his contacts with third parties, the agent must consistently provide clarity regarding the capacity in which he is acting in the given situation.

Article 6

The agent must at all times refrain from actively approaching minors, as defined in the KNVB Regulations on Working with Intermediaries. Agents do not make any (private) agreements with players or their family members and/or other representatives regarding intermediary activities for minors. Antedating agreements is strictly forbidden; an agent who commits unauthorized activities in the sense of this article will be held to account by the Dispute Resolution Committee.

Article 7

Negotiations regarding the establishment and/or amendment of an employment contract in football and negotiations regarding an agreement for the transfer of a player are conducted exclusively by the agent who is registered as an intermediary.

Article 8

The agent must refrain from providing any factual data that he knows or at least should know are incorrect.

Article 9

In the interest of the client (player or club) and of football in general, agents must maintain a mutual relationship that is based on goodwill and integrity.

Article 10
The agent must not make any hurtful comments in words or in writing.
Article 11
In the event that an agent and his client terminate their collaboration and the client is represented by a new certified agent, the agent must cooperate if the new agent or his formal client requests that he provides specific information that is relevant for the proper representation of the former client.
Article 12
The agent only contacts a party regarding an affair in which the agent knows or should know that this party is already assisted by an agent by means of an agency agreement through the intermediary of this agent, unless the latter permits the agent to contact the party directly. This also applies if the party in question directly approaches the agent.
Article 13
1. The agent must exercise transparency in his invoicing.
2. The agent arranges his invoice in such a way that the client (player or club) can clearly identify the amounts of the fee and value added tax being charged. The agent must take an active stance and inform his client of his fee at his own initiative.
3. In the event that an advance of payment has been received or if payments on any other account have been received or made for the client (player or club), the agent must separately specify such amounts in the invoice and settle such amounts where necessary and possible.
Article 14
1. The agent is required to exercise accuracy and due care in financial affairs.
2. The agent should avoid incurring unnecessary costs. This also applies in respect of the client's counterparty (club or player).
Article 15
In the event that in dealing with a case, the agent issues instructions to a third party, he must guarantee the allowances and fees to which this third party is entitled.
Article 16
1. The agent must exercise due care in handling the duties with which he is charged.
2. The agent is required to record any oral agreements in writing.
3. The agent must ensure that the organization and arrangement of his office and website (if any) support a proper performance of his work.
Article 17
The interest of the client at all times determines the manner in which the agent must handle his affairs.
Article 18
1. The agent is required to observe the requisite confidentiality; he must remain silent regarding the details of any cases he handles, the person of his client

(player or club) and the nature and scope of his client's interests, unless this information must be disclosed for the proper performance of his work.
2. The agent imposes the same degree of confidentiality on his assistants and personnel.
3. In the event that the agent has promised confidentiality to a counterparty or if this confidentiality results from the nature of his relationship with a third party, the agent will also observe this confidentiality in respect of his client (player or club).
Article 19
The agent may not accept the representation of the interests of two or more parties if the interests of these parties conflict or are likely to conflict. The agent will always act in accordance with the regulations of both the KNVB and FIFA regarding a possible conflict of interest.
Article 20
The agent must inform his client (player or club) of any important information, facts and agreements. To prevent any misunderstanding, uncertainty or dispute, where required, the agent must confirm important information and agreements in writing to his client (club or player).
Article 21
1. In providing information to third parties regarding a case that the agent is handling or has handled, the agent will always take the interests of the client (player or club) into account. The agent does not provide any information without express consent from the client (player or club) and avoids any misunderstandings regarding the capacity in which he is acting.
2. During arbitration or criminal proceedings, the agent will not provide any copy of case documents to the media. The agent takes a reticent stance in granting access to those documents.
Article 22 Non-compliance
In the event of non-compliance with one or more of the rules of conduct set out above, fellow members and/or one or more board members of Pro Agent, or other interested parties can summon a Pro Agent member to appear before the Dispute Resolution Committee to be held accountable for his compliance with the code of conduct in accordance with the provisions of Article 23 up to and including Article 26.
Article 23 Dispute Resolution Committee
The Dispute Resolution Committee has the task of rendering a binding decision on a complainant's complaint that has been filed in writing.
Article 24 Composition of the Dispute Resolution Committee
The Dispute Resolution Committee is comprised of two independent person who are familiar with the sector and a third person, who will be elected by the two persons mentioned above.
Article 25 Possible measures
If it finds that the rules of conduct have been violated, the Dispute Resolution Committee can impose the following disciplinary measures:

- a warning;
- a reprimand;
- a fine;
- a suspension of up to six months as a Pro Agent member, and a possible prohibition to represent himself in any way as being a member of the association during the suspension;
- a definitive termination of the membership;
- the disclosure of any of the measures set out above in a manner to be determined by the competent agency, possibly in collaboration with the KNVB;
- a combination of the sanctions mentioned above.
Article 26 Suspension or expulsion
Any failure to comply with the code of conduct can lead to suspension of the membership or expulsion from the association. The possibility of suspension or expulsion of a Pro Agent member exists in the following cases:
a. the agent repeatedly violates the code and/or
b. the agent fails to implement regulations in the code, even after having been urgently requested to do so by the board and/or
c. the agent violates the code in such a serious manner that this may directly cause damage for another member or other members".

It remains to be seen how such certification system will finally be implemented, but the initiative is certainly laudable since it undoubtedly provides clubs and players with more warranties regarding the quality and reliability of intermediaries as the system currently in place. Particularly the ethical standards adopted and financial warranties, such as the required insurance cover, will ensure clubs and players that intermediaries affiliated to a certified organisation of intermediaries are, in principle, more trustworthy than intermediaries that are not. An important remark is that intermediaries affiliated to ProAgent remain fully independent in their dealings, they only share their membership of ProAgent as the organisation representing the interests of intermediaries at national and international level.

However, at the same time and although the system that will finally be implemented may still be subject to change, one could place some critical remarks in respect of the present draft of the Code of Conduct:

- No Dispute Resolution Committee is currently in place yet and it remains to be seen whether it will finally comprise of credible personalities with knowledge of the particularities of the market.
- Although referred to as a Dispute Resolution Committee, considering the nature of the disputes that will be referred to this committee, a denomination such as "internal disciplinary body" would probably be more appropriate, since the actual contractual disputes will still be dealt with by the arbitration committee of the KNVB.
- Although the implementation of the Dispute Resolution Committee would enhance the reliability of intermediaries affiliated to certified organisations, it

offers no solution in providing a forum for settling contractual disputes between intermediaries and clubs or players.

- In the Netherlands, ProAgent is the only organisation of intermediaries. It is however thinkable that multiple organisations of intermediaries exist concurrently. In such a situation, the Codes of Conduct and the internal Dispute Resolution Committees of these organisations will differ, with a possible loss of coherence and uniformity as a result, which may be a matter of concern.

16. Conclusion

The implementation of the KNVB RI appears to be the consequence of a solid consultation process with all relevant stakeholders in football in the Netherlands. The core principles of the FIFA RWWI have indeed been implemented, except for the cap on the remuneration of intermediaries.

The impact of national law on the activities of intermediaries is fairly limited in comparison with the regulations that have been implemented in other countries and so are the requirements for being registered as an intermediary by the KNVB.

The future will tell whether the diversification of obligations and requirements imposed on intermediaries by the different national football federations will lead to major regulatory problems. However, since the KNVB has established a national arbitral tribunal that appears to comply with the minimum standards imposed by FIFA and since the KNVB RI contains an arbitration clause in favour of this tribunal, it appears that KNVB-registered intermediaries can at least indirectly use the effective private enforcement mechanism in football, by which clubs and players may be sanctioned for failing to comply with decisions of the KNVB.

The developments regarding the implementation of a system of certification for organisations of intermediaries are interesting and the result might set an interesting precedent for other countries.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN PARAGUAY

by *Gerardo Luis Acosta Perez*[*]

1. Introduction

In April 2015, the Paraguayan Football Association, (hereinafter "APF"), in compliance with the new FIFA intermediary Regulations, has adopted for the first time a Regulation on the activity of football intermediaries.

The APF Regulation has followed the guidelines set forth by the FIFA Regulation on Working with Intermediaries, failing to consider some obligations stipulated in national legislation.

2. Applicable national legislation

The intermediation service in the employment activity in Paraguay is not very common; therefore there is not much general legislation available on the subject. However, regarding "sports agents", a specific regulation has been included in the Sports Law, in force since 2006.[1]

According to the Sport Law, a "sports agent" is "*a person performing, occasionally or regularly, in return for remuneration, the activity of acting as a link between the parties interested in the conclusion of a contract regarding professional sports activities in the terms of the above article. The National Sports Secretariat shall control the exercise of the sports agent profession, within the national territory, except in the cases where specific regulations from International Sport Federations exist"* (art. 27). The definition set forth by the Law, almost a *verbatim* adoption from the French *"loi du sport"*, establishes that

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[1] Law Nº 2874/06, approved on 4 April 2006.

the control of the exercise of this profession will be a power of the National Sports Secretariat, in Paraguay, the Ministry of Sports, except in cases where specific regulations from international federations exist, such as in football.

The intermediary is the link between the parties, bringing them close for the conclusion of a contract without taking active part in the execution.

The intermediary shall:

a) be a person or a legal entity,
b) perform his activities regularly, that is to say, it is a professional whose main source of income is the remuneration it is paid for this activity.
c) receives remuneration, deemed as professional fees, since the intermediary is not under an employment relationship, but it is a person exercising a liberal activity, being remunerated by its client. The remuneration is usually called a commission and it is calculated on a percentage of the sum of the contracts executed pursuant to the intermediariess' negotiations.
d) be a link in the relationship between the parties interested in concluding a contract related to the activities of a professional player. The contracts executed may be: sports employment contracts, assignment of image rights contracts, participation in sports competition contracts, marketing contracts, among others.

The Sport Law allows for the international federation to exercise control of the profession and potentially, by delegation of its powers, the national federation but the general principles regarding the profession are set forth by this Law.

In that regard, art. 58 of Sport Law states that: *"A sports agent shall represent only one of the parties in the same contract, who will confer the necessary mandate agreement. This mandate agreement shall detail the sum of remuneration, which shall not exceed 10% (ten percent) of the sum of the executed contract. Any agreement otherwise will be deemed null",* and art. 59 establishes that "*the activity of sports agent shall not be exercised by any person who, de jure or de facto, voluntarily or in exchange for a remuneration, performs management duties in a renowned sports entity, in any body within any such entity, or who has exercised such duties in any of such entities in the last twelve months".*

These general principles, as we will see later on, are an accurate representation of what FIFA has established in the Intermediary Regulations and that has been copied by the APF regulation.

This final indication is important. Art. 58 of Sport Law mentions the type of contract to be signed between the "sports agent" and its client. It is a mandate agreement regulated by the Paraguayan Civil Code (hereinafter CCP, for its acronym in Spanish) from article 880 to 921. Therefore, the Sports Law in Paraguay has equaled the activity of the "sports agent" to that of the "representative" and the rules of this contract shall apply to every situation that is not envisaged in the special legislation.

Regarding "general" legislation of the "mandate agreement", the definition provided by the CCP is the following: "*Through the mandate agreement, a person accepts the powers conferred by another person to represent them in the*

management of their interests or performance of certain acts". As we can see, this definition can include the activity of "sports agents" or as FIFA now calls them, "intermediaries". In Paraguayan law, the mandate can be express or tacit, that is to say it can result from a contract or from unequivocal acts of management of someone else's business. In the scope of football, only the express mandate applies.

An interesting issue in Paraguayan legislation is that the "mandate agreement" is a legal act that must be formalized through a Public deed, before a Notary. Given that the Sports Law equals the activity of a "sports agent" to that of a "representative", it is worth considering if the intermediary agreement shall be formalized through a Public deed. There has not been controversy in this regard up to this date, but we understand that lack of compliance with this formality will render the agreement null between the parties, since the Sports Law simply equals it and does not treat it directly as if it were a contract regulated under the CCP.

We should emphasize that, pursuant to art. 886 of the CCP, the mandate is deemed remunerated by default, which is in agreement with the activity of intermediaries. The CCP stipulates obligations for the representative (art. 891) and the principal (art. 898) which apply to the activity of "sports agents" or "intermediaries" in substitution.

Finally, the "mandate agreement" may be revoked at any time, without the obligation for the principal top pay for this revocation if it takes place before the term expires. In order for a compensation to be payable for this early termination, irrevocability - which is not the same as exclusivity - must be stipulated. It's a provision that is to be considered by "intermediaries" who normally think they are legally safe by just agreeing on exclusivity. Alternative application of the CCP to "intermediation agreements" allows the player or the club, to unilaterally terminate the agreement without having to pay any sum of money. This is so because the "mandate agreement" is considered a unilateral agreement in the CCP and may thus be terminated by the will of one of the parties. Irrevocability is the only guarantee the representative (intermediation agent) can have under this circumstance.

In this legal context, the APF has enforced the Regulation on Intermediaries, which I comment in the next paragraphs.

3. The Regulation on Intermediaries

Art. 1 of the APF Regulation establishes the following general guidelines:

a. Clubs' and players' obligation to use the services of an intermediary registered agent.
b. Obligation to register the contracts in the APF.
c. Player's father or brother or registered lawyer exception.
d. Prohibition of remuneration for the intermediary if the player is underage.

Perhaps the only comment to these principles refers to registration of intermediary contracts, as well as contracts where an intermediary takes part.

Aside from the strictly legal point, we must conclude that the only interest of a "businessman" in registering contracts derives from jurisdictional protection that the national football association may grant. Without this protection, "businessmen" have low interest in registering their contracts, especially to avoid the sums of money collected for their work to become public.

As for the APF, the jurisdictional system is not clearly established in the Regulation, reason why we believe that there are a lot of probabilities that the "intermediaries" will not register their activities as established in the Regulation.

4. Definitions

The Regulations defines "intermediaries" in the same terms as the FIFA Regulations, i.e., a person or legal entity which represents a player or a club during the negotiation of labor agreements; or represents a club in a transfer agreement. The Regulation extends the scope of action to "image agreements" (i.e. Image right contracts).

In the case of a legal entity, it must, at least, adopt the form of a limited liability company or corporation. Non-profit civil associations or unipersonal limited liability companies, are – at first sight – excluded. Foreign companies are also excluded.

5. Registration system

The Regulation establishes the obligation to register "intermediation agents" who, to obtain such registration, shall address a letter to the APF's President, with evidence regarding:

a. Identity;
b. Residence in Paraguay for a period of 2 years, if foreign;
c. Evidence of impeccable reputation, to be proved with the "Judicial Records Certificate" (issued by the Judicial Branch) and "Police Records Certificate" (issue by the Police).

To be registered, an "Intermediation Agent" shall annually pay the "registration right", amounting to USD 2.000.

Furthermore, the "Intermediation Agent" shall have take out civil liability insurance for USD 100.000.

6. Potential conflict of interest

The Regulation does not say anything regarding potential conflict of interest that "Intermediation Agents" may have, which is without doubt an omission that cannot go unaddressed. However, since the APF is governed by Paraguayan law, the provisions of the Sport Law which establish two important limitations, are applicable:

a. "Sports Agent" or "Intermediation Agent" in our case, shall be able to represent and be remunerated by only one party of the contract.

b. A current manager or employee of current or former sport entities, i.e., APF or clubs, or who has been in the last twelve months, shall not exercise the "sport agent" or "intermediation agent" profession, specifically for football.

It is interesting to see how, in this matter, national legislation comes as an aid to APF's *lex sportiva*, which has failed to regulate this issue, and it does so to ensure football association integrity.

7. Obligations of the Intermediary

Pursuant to the regulation of the APF, the intermediary has the obligation of registering all contracts with players or clubs, which is a fine-sounding declaration, but we ignore how it will be enforced. The power of coercion of the APF is very limited in that aspect.

8. Remuneration

The Regulation limits remuneration of the intermediary to 3% of the gross sum of the contract under negotiation, which is not inconsistent with the maximum limit of 10% set forth by our sports legislation, within which the *lex sportiva* has a broad margin of manoeuvre.

But, if it is legally possible to limit the remuneration to 3% as the APF does, it seems to us that in practice such a measure is a mistake that can jeopardize the football world.

Indeed, traditionally, the "businessmen" obtain profit that are, at the very least, equal to 10% over the contracts that are negotiated. A lower sum seems not to be in accordance with the expectations and the financial risks assumed during the time these people are contractually bound to the player. If a federation regulation limits the percentage of their remuneration that falls short of their expectations, these "businessmen", "intermediaries" or "agents" will simply not declare their activities before the national association. And without this declaration, the will of FIFA to *"protect the integrity of football associations"* will be nothing but a pipe dream.

It would have been more suitable to establish the maximum limit allowed by national legislation.

9. Disciplinary Authority

The last part of the Regulation sets standards for a general disciplinary authority, which we believe will never be enforced, since the violations subject to sanctions are not fixed, and neither are the type of possible sanctions. The APF Disciplinary Code does not contain any provisions concerning sanctions on intermediaries; as a consequence, the disciplinary authority shall not be exercised.

In fact, in the scope of sports discipline, a general declaration does not suffice, and the highest transparency regarding punishable actions or omissions must be achieve, as well as the *quantum* of the sanction, also known as the principle of prior definition. None of these are contemplated in the APF Regulation.

Hence, in spite of the general declaration, the APF will not be entitled to exercise its power of disciplinary authority regarding "intermediation agents".

10. Conclusion

For the first time, the APF has implemented the FIFA regulations on working with the Intermediaries but it has not taken into account the peculiarities of such a profession.

With specific regard to the national regulations, it seems that the main concern is to collect money via the "registration" of the "intermediaries" as well as them "taking out liability insurance". In all other aspects, the Regulation is marred with the following inconsistencies:

a) Limitation of the remuneration to 3% (as recommended by the FIFA) which is lower than the normal remuneration paid to intermediaries in Paraguay. As a consequence, football intermediaries will not declare their activities, continue to collect more than 3%.
b) No provisions on disciplinary sanctions on intermediaries.
c) Complete disregard of the inconsistencies regarding conflicts of interests, which have however been envisaged by the Sports Law in Paraguay and the FIFA regulations.

In short, the APF adopted a Regulation that will not help much in the preservation of the "football association integrity".

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN POLAND

by *Michał Bieniak*[*] and *Karol Machnikowski*[**]

1. Introduction

The recent change in international regulations concerning agents or - according to the new terminology - intermediaries caused a need to make relevant changes in domestic regulations. In line with FIFA regulations, those changes should have been implemented in the national federations' regulations on 1 April 2015 at the latest. In Poland, the authority responsible for making the said implementations is the Polish Football Association (*Polski Związek Piłki Nożnej* - "PZPN"). When analysing the changes made in the Polish regulations concerning intermediaries, the only impression we can have is that the PZPN did not go far beyond the rules and recommendations proposed by FIFA, and made only rather modest modifications.

2. Relevant national law

As regards fundamental Polish regulations concerning intermediaries in the world of football, their activity was regulated by the Resolution of the PZPN Board No. III/42 of 27 March 2015 ("Resolution III/42").[1] The PZPN Board, acting on the grounds of Article 36(1)(23) of the PZPN Statute, decided to adopt new international standards and requirements applied by the PZPN to those who - starting from 1 April 2015 - will participate in Poland in negotiating and signing contracts on player transfers between clubs ("transfer contracts") and contracts for professional football players, signed by players with football clubs.

The Resolution III/42 has fully replaced the regulations codified in the previous Resolution I/7 of PZPN Board of 31 March 2006 concerning licences for Football Player Managers. As it has been emphasised in the recitals to the Resolution III/42, in item I, the implementation of the Resolution is strictly

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[1] Resolution of the PZPN Board No III/42 of 27 March 2015 (Uchwala Zarzadu PZPN Nr III/42 z dnia 27 marca 2015 roku) available on: https://www.pzpn.pl/federacja/dokumenty.

connected with the abolition of the Players' Agents Regulations of 29 October 2007 by the FIFA Congress in June 2014. Furthermore, in connection with the fact that - in line with the definitions provided below - particularly intermediation contracts, which are expressly identified as contracts in civil law, a very important regulation in this context is also the Polish Civil Code of 23 April 1964. Finally, we need to point out that due to the implementation of the aforesaid FIFA regulations into the PZPN regulations, appropriate changes were made in the PZPN Disciplinary Regulations ("PZPN Disciplinary Regulations"), which contain provisions concerning the rules of disciplinary liability *inter alia* for transaction intermediaries and the list of penalties envisaged for specific disciplinary violations.

3. Principles

In line with item II of the Resolution III/42, the regulation aims at promoting and securing the execution of optimal ethical standards in relations between clubs, players and third parties, who intermediate in the negotiation and execution of transfer contracts and professional player contracts, protecting clubs and players against the occurrence of any unfair or illegal practices or behaviour in the execution of transfer contracts or professional player contracts. To this end, the Resolution III/42 introduces standards and requirements specified in its provisions, which must be observed when signing each transfer contract or each professional player contract with a player, with the participation of an intermediary.

4. Definitions

The basic terms defined for the purposes of the Resolution III/42 are contained in Article 1 thereof. In line with item 3 in that Article, an intermediation contract is considered to be a written contract signed between a club or a player and an intermediary. Moreover, this definition provides that an intermediation contract should have the form of a contract in civil law concerning intermediation services. The institution of an intermediary is defined in item 5. In line with that definition, an intermediary can be a natural person, a legal person or another organisational unit, registered with the PZPN in accordance with the provisions of the Resolution III/42, who - free of charge or for remuneration - represents a club or a player in the negotiation and execution of a transfer contract or alternatively a professional player contract (including a contract for a specific service or an agency contract), job placement or any other legal relationship. A transfer contract itself is defined in item 10 as an agreement governed by civil law, signed between two football clubs, under which a player's club membership - at the player's consent - is changed, either free of charge or for remuneration.

The basic rule resulting from Resolution III/42 states that when executing a transfer contract or a professional player contract, both the player and the club can engage only the services of intermediaries who are one of the entities specified in the definition presented above.

5. Requirements

Pursuant to Article 2(2) of the Resolution III/42, in order to provide his/her services an intermediary must meet the following requirements:

a) impeccable reputation of the intermediary or in case of transaction intermediaries who are legal persons or other organisation units, impeccable reputation of persons authorised to represent those entities;
b) registration and verification of the intermediary in the registration system maintained in line with the provisions of the Resolution III/42, not later than on the day, on which the intermediation contract is signed;
c) and an intermediation contract is signed with the intermediary and immediately filed with the PZPN.

Furthermore, the Resolution III/42 provides that anyone who has management, administrative, technical or medical functions in:

a) FIFA;
b) continental confederation;
c) national or regional football association;
d) professional league;
e) football club;

or is a member of the foregoing organisations cannot be an intermediary.

Also football referees, assistant referees, trainers, instructors as well as any other entities who are obligated to comply with FIFA and PZPN regulations, or are subject to disciplinary powers of those organisations due to any other form of participation in football are prohibited from being an intermediary.

6. Impeccable reputation

The Resolution III/42 deals with the notion of impeccable reputation which an intermediary must have. As regards intermediaries who are natural persons, first of all, they could not have been convicted with a final and unappealable judgement for any wilful crime or wilful fiscal crime which is subject to public prosecution *ex officio* (unless the record was expunged), and could not have been punished with disqualification in the period covered by the intermediary's declaration or with disqualification for corruption in sport. In case of intermediaries who are legal persons or other organisation units, the above-described requirements must be met by persons authorised to represent those entities. Furthermore, a legal person or another organisational unit cannot have any capital or personal ties to the following entities:

a) FIFA;
b) continental confederation;
c) national or regional football association;
d) professional league;
e) or football club.

7. Conflict of interests

Next, the Resolution III/42 regulates the need to determine every time (i.e. every time before the services of an intermediary are engaged) whether there is or could be a conflict of interest for the player or the club and the intermediary in connection with the execution of an intermediation contract. Article 3(2) defines the conflict of interest, which - within the meaning of the discussed regulation - exists when the intermediary could realise his private (personal) interests or economic gains in negotiation or execution of the transaction, at the expense of the interests of the club, player, football or public interest. A conflict of interest can be ruled out when the intermediary discloses in writing, to all entities involved in the transaction, all his actual or potential conflicts of interest, which exist or may exist between him and other entities involved in a given transaction, and receives – before the negotiations have started – an express written consent from all entities involved in a given transaction for the intermediary to participate in that transaction. Furthermore, the Resolution III/42 regulates the situation where the player and the club wish to engage the services of the same intermediary in one transaction, in which a conflict of interest may arise. In such cases, it is required that both the club and the player give their written consents for their simultaneous representation by the same intermediary, and that it is specified which party will be responsible for paying the fee due to the intermediary. The aforementioned documents should be delivered to the PZPN immediately; should the intermediary fail to do so, he will be unable to continue providing his services to the other party or receive his fee from that party, and the other party will be unable to engage the intermediary's services with respect to a given transaction and to make any payments to him in connection with such transaction.

8. Registration

Acquiring the authorisation to act as an intermediary takes place through registration to the system by the PZPN, and ends after the data reported by the candidate is verified. Verification should be completed within 24 hours of the submission of the required documentation. Moreover, the registration can take place when the following conditions are met:

a) the intermediary himself enters into the system a correctly signed declaration of the intermediary, with the content specified in the discussed Resolution, and can produce a confirmation that the original declaration of the intermediary was dispatched to the PZPN by registered mail. We need to highlight here that in the case of a legal person or another organisational unit, the intermediary's declaration should be signed and submitted on a separate form by each person who acts for those entities;
b) a fee for the entry into the registration system is paid to the specified bank account of the PZPN – this fee is subject to annual indexation.

When a candidate for intermediary meets the above-described conditions, he/she can operate during one sports season. Before starting operations in any subsequent sports season, each and every intermediary must meet the aforementioned conditions again.

If any documents entered into the registration system by the candidate for intermediary do not meet the formal requirements or the candidate failed to pay the fee in the relevant amount, the PZPN summons such entity to correct or complete the procedure within one week. If the time limit ends without the aforementioned being done, the documents sent by the entity are returned and the Team operating as part of the PZPN Legal Commission issues the decision to refuse entry into the registration system. The entity concerned can appeal against the negative decision to the Supreme Appeal Commission of the PZPN. If the entity completes the procedure on time, the procedure brings effects as of the time of initial submission of the documentation.

9. Intermediary's obligations

Every time an intermediation contract is signed, the intermediary must - within 3 days, but not later than the date of the transfer contract or professional contract - enter the intermediation contract into the registration system and send the original copy thereof to the PZPN by registered mail. If those actions are not completed, the transactions executed, with the participation of the intermediary for the PZPN, will be ineffective.

Also all transfer contracts and professional contracts must be registered in the registration system. Intermediary must enter the same into the system within 7 days of their respective date, and file official copies of the abovementioned documents with the PZPN.

It is the intermediary's obligation to disclose in the registration system any contracts and other documents signed by the intermediary with any club or player who is a party to the transaction, in which the intermediary took part, and should the intermediary fail to do so, he may face disciplinary sanctions.

An intermediary or a natural person, who is a shareholder, partner, member, member of Management Board or Supervisory Board, or belongs to any other management or supervision bodies of the intermediary, must not sign – under threat of disciplinary sanctions – any contracts in civil law with players or their representatives other than intermediation contracts, where the subject matter of such contract would consist of representing interests of such players or their statutory representatives with respect to negotiation and execution of transfer contracts or professional contracts (Article 5(1) of the Resolution III/42). To facilitate the process of detection of the above-described practices, the subsequent paragraphs in the discussed Article impose on clubs and players the obligation to report to the PZPN Disciplinary Commission any attempts to have them sign such contracts or instances of purporting to have signed such contracts.

In line with Article 6 of the Resolution III/42, an intermediation contract must contain at least:

a) names and surnames, or names of the parties;
b) scope of services to be provided;
c) term of the contract;
d) the amount of agreed fee for intermediation;
e) manner of payment of the fee;
f) a provision concerning termination or expiry of the contract;
g) and signatures of the parties.

Furthermore, when the intermediary is a legal person or another organisational unit, the intermediation contract must disclose the particulars of the natural person who acts on its behalf in a given transaction.

As a rule, an intermediation contract can be signed with a player who has attained the age of 15 or has received an offer for his/her first professional contract from a club, in accordance with applicable regulations of the PZPN. At the same time, there are additional restrictions as to intermediation contracts signed with players who have not attained the legal age yet. The first such restriction is the requirement that the intermediation contract be signed also by the player's parents or legal guardians. Another is the prohibition for an intermediation contract with a player who has not attained the legal age yet to be signed by an intermediary who is a legal person or another organisation unit.

10. Remuneration

As regards the remuneration of the intermediary, the basic rule is that he can be remunerated only by the club or the player with whom he signed the intermediation contract. In case of an intermediary who acts on behalf of a player, the fee amount should be determined on the basis of the player's basic remuneration throughout the period covered by the contract negotiated with the intermediary's participation. Article 7(3) of the Resolution III/42 contains the PZPN's recommendation as to the total amount of the fee payable to the intermediary for a single transaction - it should not be greater than 3% of the player's basic remuneration for the entire term of the contract. The same amount applies in relations intermediary-club i.e. for a single transaction, the sum payable to the intermediary, who participated in that transaction, should not be greater than 3% of the player's basic remuneration during the term of the contract, when the intermediary helped to win the player for the club, or 3% of the player transfer fee, when the intermediary's services were provided in transferring the player out. Furthermore, the Resolution III/42 makes a provison that the payments made by a club for another club in connection with a player transfer, such as the transfer sum, equivalent for training, or solidarity surcharge, cannot be paid, in full or in part, through the intermediary or directly to him, and the intermediary cannot make such payments himself. This prohibition extends to all and any payments related to future changes in club membership by

a player, and to the execution of another contract by the player in the future. The only exception here is a situation where the intermediation contract, signed by an intermediary with the club, which transfers a player out, provides the terms of payment of the fee for the player's future transfer. The fee shall be set out as a quota in relation to the transfer sum.

The Resolution III/42 introduced a rule that the fee for intermediary's services can be paid out only by the entity who signed the intermediation contract with him and such payment should be made directly. However, a player can authorise the club to make on his/her behalf the payment due to the intermediary under the intermediation contract, which would then be recovered from the player's remuneration under his/her contract. The condition for this type of authorisation to be valid is that it must be included directly in the player's contract, with a precisely determined amount of such payment. Article 7(11) of the Resolution III/42 establishes the prohibition applicable to everyone identified in Section 11 of Definitions in the FIFA Statutes (list of such people is the same as the list of those who cannot be intermediaries) to accept any payments for intermediation where such payments constitute the full fee, or a portion thereof, paid to the intermediary by a party to the transaction in which the intermediary provided his services. It is also prohibited for a player, who has not attained legal age, or for a club to pay any fees to an intermediary in connection with the transfer contract or professional contract of a player who has not attained legal age, and to incur any obligations to pay any such fees in the future. A violation of any of those prohibitions results in disciplinary liability in accordance with the PZPN Disciplinary Regulations.

11. Disciplinary powers and sanctions

The matter of transaction intermediaries' disciplinary liability is described in Article 10 of the Resolution III/42. In line with Article 10(3), a person who acts as intermediary, but does not have appropriate authorisation to do so, cannot be entered on the list of intermediaries for the next two game seasons. In case of a repeated violation, this period is extended to a minimum of five subsequent game seasons, but a permanent prohibition of entry into the list of intermediaries can be ruled as well.

Disciplinary sanctions imposed on transaction intermediaries in connection with the enforcement of the discussed Resolution III/42 will be published on the PZPN website, and their content notified to FIFA as well.

Furthermore, the Resolution III/42 contains a provision that establishes the jurisdiction of the PZPN Football Arbitration Court for any property disputes which may arise between intermediaries, clubs and players, resulting from an intermediation contract or from the enforcement of the Resolution III/42.

At the same time, we need to notice that the disciplinary sanctions related to the activities of transaction intermediaries was also described in Chapter VII of the PZPN Disciplinary Regulations.

In line with Article 99 of the PZPN Disciplinary Regulations, any intermediary who abuses the received authorisation, specified in the PZPN or FIFA regulations, or fails to fulfil the duties specified in those regulations with respect to starting, performing or stopping the activities of an intermediary, is subject to punishment in form of:

a) reprimand;
b) financial penalty of not less than PLN 5,000;
c) and temporary prohibition from participation in any activities related to football.

Moreover, the PZPN Disciplinary Regulations provide that anyone operating as intermediary without authorisation, in particular without registration in line with PZPN regulations, is subject to:

a) financial penalty of not less than PLN 20,000;
b) and temporary prohibition from participation in any activities related to football.

12. Conclusion

Based on the experience from the transfers windows in Poland since the new regulations were implemented, we can notice some of their effects. Firstly, we can still notice a lot of confusion among football stakeholders. It demonstrated, in particular, numerous doubts regarding the manner of operation of the PZPN registration system and the scope of application of the intermediation contracts already in place. The second observation is the following: when we look at the entities that remained active in the transfer market in the last transfers periods, we cannot resist the impression that – despite the initial predictions saying that the new regulations would open the intermediaries' market – it remains almost unchanged..Probably it is a matter of strong reputation of the intermediaries that are active on the market for several years now. However there are also some symptoms which can lead to the hope that in the long run, the time passing from the effective date of the Resolution III/42 would actually lead to stronger execution of ethical principles in this more and more profitable business which football undoubtedly is, and that it will open this business to new, highly qualified persons.But it is necessary to underline once again that it would be surely long process.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN PORTUGAL

by *Pedro Garcia Correia*[*]

1. Introduction

During the 20th century, football as a sports event and in particular in terms of its professional aspect, has been gaining an increasingly larger number of fans and spectators. Such circumstance, alongside with the globalisation of communication, economy and markets, and also the evolution of the means of transport and the growing freedom in the movement of persons (workers), of services, and of capital at European scale and even worldwide scale, has made football cross the limits of the strictly sports and national (geographically scattered) sphere, becoming a supranational, complex and multifaceted reality, which combines social, cultural, political and undoubtedly economic aspects. In fact, it is the economic aspect that stands out when we think of the high financial flows moving among the several operators of this sports discipline. The steep intensification of the legal commercial matters associated with football inevitably entailed the arising of new legal realities and even of new activities, or if we prefer of new operators, with special emphasis on the players' agents who began taking the role of actual *players* and even "playing a decisive role in the sports legal transactions game". Such importance could not – and it did not – go unnoticed by the discipline's regulatory entities and even by the very Legislator. Thus, since the beginning of the nineties decade, FIFA has been regulating the players' agents activity successively approving Players Agents Regulations (hereinafter "PAR-FIFA"). By its Circular Letter no. 1417, dated 30 April 2014, FIFA informed its members of the approval of new regulations applicable to the players' agents, which were now called "intermediaries", to come into force on 1 April 2015. Thus, as of such date and in replacement of the previous Players' Agents Regulations (hereinafter "PAR-FIFA"/2008"), the so called Regulations on Working with Intermediaries (hereinafter "RWI-FIFA") came into

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force.[1] We now should analyse the relevant Portuguese legislation and regulations, namely, the regulations approved by the Portuguese Football Federation (PFF).

2. *Relevant national legal framework*

In compliance with the RWI, and through its Official Communication no. 310 dated 1 April 2015, the PFF informed its ordinary shareholders, clubs and sports companies and all other interested parties, of the new Intermediaries Regulations (hereinafter IR-PFF), to come into force immediately. Without prejudice to the analysis of the system resulting of the IR-PFF, we can forthwith say that just as FIFA authorised (Article 1, nos. 2 and 3 of the RWI-FIFA),[2] when preparing its regulations the PFF took into account the relevant Portuguese legislation, thus laying down, also for such reason, rules different than those contained in the RWI-FIFA.[3] Ultimately, the IR-PFF partly results of the commitment between the minimum imperatives set out in the RWI approved by FIFA and the Portuguese legal system. Besides, it will not be by chance that the PFF safeguards in the regulations it has approved that «*In case of conflict between these Regulations and FIFA's Regulations on Working with Intermediaries, these Regulations shall prevail.*» (Article 1, no. 2, IR-PFF). Nonetheless, before making an analysis of the IR-PFF, it is important to identify the most relevant legal statutes and sports regulations in respect of this matter and that are in force under the Portuguese

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[1] FIFA chose to approve minimum regulating imperatives expressly setting out that Federations are under the obligation to apply them and promote their compliance, for such purpose approving specific regulations but in any case recognising their binding to any such national imperative legal rules that are applicable to them, as well as their faculty of promoting the inclusion of tighter rules that is, rules that are more stringent than the said minimum imperatives, in the regulations they approve.

[2] Addressing both FIFA's and PFF' legitimacy (in concrete the binding nature and regulating enforceability of the Regulations on Players' Agents in force at the time), the Lisbon Court of Appeal ruled in the following terms: «[...] *FIFA is no other than a supranational sports association that is governed by private law rules and it cannot claim to hold authority prerogatives that are exclusive to entities of public nature. But if this assertion is valid in respect of FIFA [...], it cannot forthwith be transposed into internal level given that and as it has already been said, it was an option of the Portuguese State, in respect of National Sports Federations, such as PFF, to delegate regulating power to the same in relation to certain issues inherent in sports activities. Now, the said prerogatives legitimated the approval of exclusive Regulations just as much as the "appropriation", even if through a mere transcription or translation, of Regulations approved by other entities, particularly FIFA, as a supranational organisation that is hierarchically above PFF. Consequently, the application and the submission of the said Regulations released by PFF arises out of the authority powers that have been granted to it by law, and within which PFF can exercise control over the activity of sports representatives "similarly to the exercise by a professional Association". For such reasons they are binding upon sports agents in the football area.*» (Judgement of the Lisbon Court of Appeal of 14/10/2008, Proc. no. 7929/2008 7).

[3] As it will be seen further down, this is the case and for instance, of the prohibition of representing minors and of the mandatory obligation to represent exclusively one of the parties such prohibition and mandatory obligation are not imposed by the RWI-FIFA but are imposed under Portuguese law.

legal system, specifically: *a)* The Physical Activity and Sports Basic Law (PASBL); *b)* The Legal System of Sportspersons Employment Contracts (LSSEC); and *c)* The Legal System of Penal Liability for Unsporting Behaviour (LSPLUB).[4] All these three legal statutes contain legal provisions specifically addressed to agents, but as it will be demonstrated *infra*, they all use the concept of "sports entrepreneurs" (rather than the concept of "intermediaries" – contained in the IR-PFF – or even of "agents").[5] Further to these three legal statutes but not specifically regulating the intermediaries' activity, the following legal statutes are also relevant: *d)* The Penal Code (PC); *e)* The Bar Association Statutes (BAS); *f)* The Individual Income Tax Code (IITC), the Corporate Income Tax Code (CITC) and the VAT Code (VATC).[6] With regard to the provisions approved by national sporting authorities, particularly the PFF and the Portuguese Professional Football League (PPFL), the following regulations are relevant: *g)* The IR-PFF (the object of study in this article and already referred to above);[7] *h)* The Disciplinary Regulations of PFF (DR-PFF);[8] and *i)* The Regulations of Competitions organised PPFL (RC-PPFL).[9] PASBL as *Basic Law* is a law of higher value to the extent that it develops the general bases or the master guidelines which the legal systems of a certain area of activity must abide by; thus, PASBL defines in concrete the bases for the physical activity and sports policies (Article 1 of this law). LSSEC does on its turn set out the legal system of the sportsperson employment contract and the sports training contract, and it was the first legal statute to make reference to intermediaries (referring to them, and as it has been said, as "sports entrepreneurs"). LSPLUB does on its turn set out the system of penal liability for unsporting behaviour, contrary to the values of truth, loyalty and correction and

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[4] Respectively approved by Law no. 5/2007 of 16 January, Law no. 28/98 of 26 June (amended by Law no. 114/99 of 3 August) and Law no. 50/2007 of 31 August (amended by Law no. 30/2015 of 22 April).

[5] We are aware that, taking into account the legal concept used by these three legal statutes, using the expression "sports entrepreneur" would be more correct (and not only more rigorous). However, taking into account the fact that the object of this study is the IR-PFF, we will choose from now on and for that reason alone to use the expression "intermediaries", which is the one contained in such regulations.

[6] Respectively approved by Decree Law no. 48/95 of 15 March (amended by successive legal statutes, the last amendment having been laid down in Law no. 110/2015 of 26 August), Law no. 15/2005 of 26 January (amended by Decree Law no. 226/2008 of 20 November and by Law no. 12/2010 of 25 June), Decree Law no. 442-A/88 of 30 November (amended by successive legal statutes, the last amendment having been introduced by Law no. 67/2015 of 06 July), Decree Law no. 442-B/88 of 30 November (amended by successive legal statutes, the last amendment resulting of Law no. 82-D/2014 of 31 December) and Decree Law no. 394-B/84 of 26 December (amended by successive legal statutes, the last amendment having been introduced by Law no. 63-A/2015 of 30 June).

[7] Articles that are referred to without any express or contextual indication of their respective source belong to these regulations (IR-PFF).

[8] Approved in the Board Meeting of 25 June 2015 and contained in Official Communication no. 430 dated 26 June 2015, which came into force on 01/07/2015.

[9] With the amendments approved in the Extraordinary General Meetings of 27 June 2011, 14 December 2011, 21 May 2012, 28 June 2012, 27 June 2013, 20 June 2014, and 19 June 2015.

likely to fraudulently alter competition results – using, as it will be seen, a wider notion of "sports entrepreneur" when compared with the one contained in the two preceding legal statutes. The PC has special relevance in case of performance of the intermediary activity by someone who is not duly qualified for such purpose and the BAS is relevant in respect of incompatibility issues. The IITC, CITC and VATC pertain all to tax matters. The DR-PFF complements the sanctioning system applicable to the activity and the RC-PPFL is considered herein in respect of the representation of underage athletes. The legal statutes and regulations identified above essentially constitute Portugal's relevant regulating framework pertaining to the performance of the intermediary activity. Let us now analyse de IR-PFF.

3. Principles. IR-PFF's object and scope of application

IR-PFF's underlying principles are essentially laid down in the model of Declaration that the intermediaries are forced to fill out, sign and deliver to the PFF upon their registration, as a result of which the following guidelines apply to the intermediaries activity: 1. *Obedience to the law and to regulations*: Intermediaries must at all times respect and comply with the mandatory provisions of applicable national and international laws (including those pertaining to mediation) and also, within the performance of their intermediaries' activity, they must comply with the FIFA, UEFA and PFF regulations; 2. *Moral and financial repute*: It is an essential requirement for the intermediary to perform its activity, the intermediary's irreprehensible reputation, which can be denied if the same has been convicted for the practice of certain crimes (set out in no. 2 of article 7 of the IR-PFF) or if he is in a situation of insolvency; 3. *Incompatibilities*: There is absolute incompatibility between the intermediary's activity and the performance of any of the duties mentioned in point 11 of Section "Definitions" of the FIFA Statutes;[10] 4. *Conflicts of interest of functional nature*: The intermediary cannot have any contractual relation with leagues, federations, confederations or with FIFA that may lead to a potential conflict of interest, and in case of doubt, the existence of any agreement shall be declared; and of *commercial nature*: The intermediary is forbidden from directly or indirectly participate, or being associated in any way whatsoever, with bets, games of chance and similar activities or transactions connected with football games, nor can he have interest, in an active or passive manner, in companies, undertakings and organisations, regardless of their form, which promote act as brokers or manage such activities ort transactions; 5. *Transparency*: The intermediary cannot receive any payment from a club in relation to a transfer, as remuneration for the transfer, remuneration for formation or solidarity contribution, and he is obliged to supply to the PFF all data on any payment, regardless of its nature, that

[10] Namely Board member, Committee member, referee and assistant referee, coach, physical trainer or any other person responsible for technical, medical or administrative matters in FIFA, a Confederation, Association, League or Club, as well as all other persons obliged to comply with the FIFA statutes.

he receives from clubs or players for his intermediary services; 6. *Duty of cooperation*: The intermediary is obliged to supply to leagues, federations, confederations or FIFA, if required for investigation purposes, all contracts, agreements and registrations pertaining to his intermediary activity, as well as any other documentation pertaining to any part that advises, assists or participates in negotiations for which he is responsible; 7. *Advertising*: The intermediary is obliged to authorize PFF to keep and process all sort of data for publication purposes, including data on any disciplinary sanctions that will have been imposed upon him and that FIFA be informed in such respect. These principles are still materialised by the rules that integrate the object of the IR-PFF, that is, the rules that regulate the hiring of an intermediary's services by a player and a club[11] with a view to *a)* conclude or renew an employment agreement between a player and a club or *b)* conclude a temporary or definitive transfer agreement[12] between two clubs (Article 2). In spite of this limitation of the object, it is reasonable to broadly consider that the essential core of the services provided by intermediaries consists in the promotion and negotiation (or, if we want, in the intermediation) of contracts related with sports, to be concluded and executed by their clients. That is, the principal purpose of the intermediaries' activity (or "the aim") is the conclusion of contracts, of different types of contracts – the "goal-contracts" – by the beneficiaries of such activity.[13] In what concerns the *subjective scope of application*, it can be read in the IR-PFF that it falls upon intermediaries and all players and clubs affiliated to PFF, in PPFL and in football district and regional associations.[14]

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[11] The term club comprehends sports companies (Article 1, no. 4).

[12] In accordance with the LSSEC, the temporary "transfer" (*lato sensu*) assumes the designation "assignment", whereas the term "transfer" (*proprio sensu*) is used in cases when the same is definitive (cf. Articles. 19 and 20 and Article 21 of such legal statute). Thus IR-PFF does in good rigour govern the rendering of intermediation services with a view to the conclusion of: a) sports employment agreements; b) assignment agreements; and c) transfer agreement, including their renewals (Article 5, no. 1).

[13] However, IR-PFF (and also the RWI-FIFA) does not include in its objective scope of application the intermediation of image exploitation, sponsorship and advertising agreements, and as it appears, of employment or service provider agreements executed between a club and a coach. This does not mean that negotiating such contracts does not integrate the typical content of the intermediaries' activity (once the truth is that it does), but only and just that the IR-PFF does not apply to such specific intermediation. Ultimately FIFA, and consequently PFF, assume, via regulatory means (but perhaps naively) that only athletes and clubs – and football's integrity through them (and only through them – deserve being protected from an intermediation activity with no rules.

[14] The expression "affiliated" only reports to players and clubs – thus excluding intermediaries once the latter are not PFF members (cf. Articles 9 and 10 of the PFF Bylaws). But this being the case, it will be legitimate to ask: IR-PFF applies to which intermediaries? To intermediaries of Portuguese nationality or with registered office in Portugal, in case of legal persons? To any intermediary regardless of their nationality or registered office? To those that voluntarily want to register there in spite of their client (player or club) not being affiliated to PFF? Ultimately, we ask: which is the relevant criterion to determine the subjective scope of application of the IR-PFF in what concerns intermediaries? It seems to us that every intermediary, either national or foreign, who wishes to follow up the conclusion of any of the contracts already referred to in representation of a player or a club affiliated to PFF or PPFL (or with football district and regional associations)

4. *Definitions. The activity and its respective contract*

IR-PFF defines intermediary in the following terms: «*the natural or legal person that, with legal capacity, against a remuneration or gratuitously represents a player or a club in negotiations, aiming at the signature of a sports employment contract or a transfer agreement.*» (Article 4). When confronting this definition with the one we find in Portuguese legislation, specifically in PASBL, LSSEC and LSPLUB, the first difficulties arise forthwith: the normative concept of "intermediary" is not found therein – but rather that of "sports entrepreneur"[15] – and the legal definition from which the activity's characterisation is withdrawn is not fully coincident. From these three legal statutes (that are similar but do not fully coincide) we should conclude that in accordance with the Portuguese legislation in force the intermediary (or more precisely, the "sports entrepreneur") is a "*duly accredited natural person or legal person that occasionally or permanently performs the representation and intermediation activity against a remuneration within the negotiation or conclusion of sports contracts (particularly, sports training contracts, sports employment contracts and contracts related to image rights*)". By confronting this legal definition with the one contained in IR-PFF it is possible to point out, and further to the different definition of the person that performs such activity (intermediary *v.* sports entrepreneur), the following divergences: *a)* The representation activity (*proprio sensu*);[16] *b)* The payment of

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or of a player who wishes to be affiliated to the same, shall have to apply for its registration with PFF (and, where applicable with PPFL – cf. Article 23, no. 2, LSSEC). That is, the relevant criterion is thus the affiliation (present or eminent, in the case of players) of the intermediary's client (either a club or a player) or, if we want, of any of the contracting parties. The adoption of an objective criterion is justified to the extent that it will prevent the practice of *forum shopping*. Taking into account, on the one hand, that clubs and players affiliated to Portuguese sports associations have, by reason of the IR-PFF, a special duty of care when hiring an intermediary, and that they must previously certify themselves that the same is registered with PFF (Article 5, no. 2), and on the other hand, that the registration for a sports season is permitted instead of only for each transaction (Article 6, no. 3), all national and foreign intermediaries who wish "to open their business doors" to Portuguese clubs and/or to players that compete or wish to compete in Portugal, will surely decide in favour of this registration with annual periodicity. Besides, the registration for a sports season is financially more advantageous to the extent that a fee in the amount of Euro 1,000 is due per each registration or renewal, both per transaction and per sports season (Article 7, no. 5).

[15] Although the definitions set out in such three legal statutes of Portuguese legislation all concern the intermediation activity and also the representation or even assistance activity, the Portuguese legislator decided using the designation "sports entrepreneur" rather than "intermediary" or "agent".

[16] In reality, in its definition of intermediary (Article 4), IR-PFF also mentions representation – «[...] *person* [...] *that* [...] *represents the player or the club* [...]»; we understand, however, that contrarily to what occurs with PASBL, LSSEC and LSPLUB, it does not do it in the true legal sense but rather in terms of common language use. We think so because all such legal statutes make reference to "representation" as an activity – «set of acts orderly linked for reaching a certain purpose» – and they admit the intermediary's acting in the conclusion of the goal-contracts. Differently, IR-PFF (just like RWI-FIFA) seems to limit the intermediary activity to the negotiation phase of goal-contracts (it can be read in Article 4, «*represents the player or the club in negotiations*»),

a remuneration;[17] *c)* The goal-contracts.[18] All the remaining elements[19] are consentaneous in the scope of one (legal statutes) and the other (IR-PFF). But which is the best concept to define the intermediary activity and which contract type is at the base of such activity? By adopting the intermediary concept introduced by FIFA, IR-PFF speaks of representation contract (Article 9). With all due respect, it appears to us that this is not the best solution forthwith because by reason of its Article 4, the intermediaries' action is limited to the negotiation phase – thus excluding the conclusion of goal-contracts in the name and on behalf of the athlete or of the club – which puts aside the representation activity *proprio sensu* (that is, the practice of legal acts on behalf and in the name of the client cf. Articles 258, 262, no. 1 and 1178, all of the Civil Code). Besides, if we take into account that the

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thus excluding the conclusion of such contracts. In short, we will have to conclude that there is a difference in the system of those legal statutes and of the IR-PFF, such activity being allowed by the former and excluded by the latter. It should also be said that the system contained in IR-PFF (specifically, the limitation of the intermediary's activity to the negotiation phase or and if we want, the exclusion of the conclusion in the name and on behalf of the client) is laid down, in relation to the player, in the regulations approved by PPFL applicable to the first and second divisions of the national football championship; as a matter of fact, under the terms of no. 12 of Article 75 of the RC-PPFL), «*For purposes of application for registration and sports registration, no sports agreement signed by the player's proxy shall be valid or enforceable*». In spite of this prohibition, the signature of the employment contract or of the transfer contract by the intermediary is always mandatory both for PPFL and PFF (Article 10, no. 5) or at least an express reference to such action or the lack of it (cf. Article 75, no. 7, paragraph a), RC-PPFL, and Article 11, no. 4 of the PFF Regulations on the Statute, Category, Application for Registration and Transfer of Players, approved on 25 June 2015). In practical terms, in the light of Portuguese law an intermediary may conclude the sports employment agreement in the name and on behalf of the player or of the club, but in the light of IR-PFF that is not permitted, and in case of the first and second football professional leagues, the sports employment agreement will be deemed invalid for purposes of application for registration and for sports registration if it is not concluded by the player.

[17] The IR-PFF, and differently from the legal statutes that we have been analysing (PASBL, LSSEC and LSPLUB) dispenses with the contract's remunerating nature as its essential element and, therefore, the intermediary is obliged to respect such regulations even in such cases where it acts gratuitously.

[18] Whereas IR-PFF limits the set of goal-contracts to sports employment agreements and transfer contracts (*lato sensu*), LSSEC and LSPLUB use the generic designation "sports contracts"; PASBL does on its turn and strangely enough (once this appears to result in the limitation of the intermediaries' activity to the negotiation or conclusion of the contracts in which one of the parties is mandatorily an athlete) omit transfer contracts and makes a specific reference to sports training contracts, sports employment agreements and contracts related to image rights. Analysing the system contained in PASBL in the part pertaining to intermediaries, it appears that this legal statute still considers the intermediary of the 20th century and in the embryonic phase of its activity, that is, as an agent of players (and only of players). However, Article 37, no. 4 of PASBL sets out that «*The law defines the legal system of sports entrepreneurs*», which and at least cross refers – and we say "at least" because the idea of cross reference to a special legal system is defendable, which would have to be approved (once it does not exist) by an autonomous legislative act – to LSSEC and LSPLUB, which once again extend the set of goal-contracts to all contracts that may be qualified as "sports contracts", there being no relevant argument that can be perceived that may impair including any contract whose object is directly or indirectly related to sports in such concept.

[19] E.g., the fact of the person that performs the activity being a natural person or a legal person, the required accreditation, the intermediation activity and the activity's occasional or permanent nature.

rules pertaining to the remuneration paid to the intermediary (contained in Article 11) establish a relation of interdependence between the intermediary's right to remuneration and the conclusion of the goal-contract, the further we get from the representation activity within the scope of which the remuneration is typically a consideration for that very same activity and therefore not depending on the outcome obtained thereby.

In short, in which legal institution is the intermediaries' activity subsumed into in respect of their relations with their clientele? Reference is indiscriminately made to representation, intermediation, mandate, mediation, agency… We believe that only one of the several contract types set out in Portuguese law corresponds to the intermediaries' activity: the *service provider agreement* – «[...] *the one in which one of the parties undertakes to provide to the other a certain result of his intellectual or manual work, with or without payment of remuneration.*» (Article 1154, Civil Code). In an attempt to try and systematise such activity per client but without claiming to cover all the services that may be offered by intermediaries to their clients (thus restricting ourselves to their typical activity), we present the following table:

Intermediaries' typical activity depending on the client		
Client	Activity	Purpose
Players and Coaches	Contract promotion and negotiation	Sports training contract (not applicable to coaches)
		Sports employment agreements
		Sponsorship agreements
		Agreements for exploitation of image rights (in an individual context)
	Sports, tax and financial consultancy	Progress of sports career and efficient earned income management
Clubs	Contract promotion and negotiation	Agreement for (temporary or definitive) transfer of player
		Sports training contract
		Sports employment agreements
		Sponsorship agreements
		Agreements for exploitation of image rights (in a group context)
	Sports consultancy	Scouting players
	Organising events	Increase in ticket revenue

Once the intermediaries' activity has been essentially schematised in respect of the typical services that integrate it, it is important to know whether such activity is susceptible of receiving specific legal qualification – e.g., representation, intermediation, mandate, mediation, agency? In the light of what has already been said in respect of representation and since intermediation does not have sufficient autonomous expression as mediation (the latter finding a rather larger support in the several legal systems), we will limit our assessment to the institutions of mandate, mediation and agency, all of them being understood, and

we repeat, as different forms of the service provider agreement.[20] As we have seen before, the contract type the closest to the legal provisions laid down in the Portuguese legal system (we are specifically speaking of PASBL, LSSEC and LSPLUB) is the mandate, forthwith because the action of the "sports entrepreneur" in the signature (conclusion) of the goal-contracts on behalf and in the name of his client is set out. We have also seen that this system is different than IR-PFF to the extent that, and contrarily, the latter excludes such type of action from the intermediaries' activity, limiting such activity to the negotiation phase of goal-contracts. In reality, the intermediary's typical activity is essentially limited to the promotion and negotiation of goal-contracts actually rather than their conclusion on behalf and in the name of his client. Thus and as a rule, the practice of legal acts in the name of another person is excluded from its typical activity. Such circumstance is sufficient to put aside the institution of mandate – but it is insufficient, however, to put aside the application of the mandate rules with the required adjustments (Article 1156, Civil Code). Thus, we are now left with mediation and agency. Nowadays, mediation is associated with several activities that are contemplated in legal provisions, within the scope of which the mediator does surely not act as referee nor as an exempt third party, or placed within the economy of the *negotiating trilogy* in a point that is equidistant from the poles occupied by the contracting parties to the goal-contracts (e.g. real estate mediation, insurance mediation, etc.).[21] Regarding the institute of agency,[22] we believe that it is not compatible with the intermediaries' activity.[23] Even if it might be understood that there is a relevant overlapping area between mediation and agency, the truth is that there are decisive differences, such as and forthwith the agent's stable, continued and permanent provision of services, in contrast to the mediator's isolated,

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[20] The mandate is a typical form – and thus a true (legal) subtype of the "service provider agreement" contract type (Article 1155, Civil Code) – and the remaining two institutions are and at the most atypical forms of this contract type.

[21] From the few judicial decisions that address this particular matter, we would point out the Judgment of the Court of Appeal of Lisbon of 24/10/2013 (Proc. no. 3100/11.8TCLRS.L1 2), where it was expressly explained that «[...] *we tend to qualify the "sports entrepreneur" contract as a mixed contract, in which there are elements of the agency agreement that tend to appear in a rather predominant manner and not in an exclusive manner, and where elements of the mandate may also appear, and they are distinct negotiating types* [...]».

[22] It is certain that in the world of football the expression "players agent", etymologically closer to agency than to mediation, was assimilated (and it started being used and understood) by people in general as meaning the intermediaries. This was mainly due to the terminology adopted by FIFA in its respective regulations ("PAR" as already referred to). We believe, however, that the agency's typical features are sufficiently relevant to prevent framing the intermediaries' activity within such contract. Besides, and as it has been seen, the very regulations recently approved by FIFA and presently in force (RWI-FIFA) have abandoned the expression "players agents" and replaced it with "intermediary" – the latter being closer to mediation.

[23] In accordance with the legal definition, «*Agency is the contract under which one of the parties undertakes to promote the conclusion of contracts on behalf of the other in an autonomous and stable manner and against a remuneration, and a certain area or circle of clients may be assigned to it.*» (Article 1, Legal System of the Agency Agreement).

incidental and occasional provision. Just as relevant or even more so, is the fact of the agent being under the obligation to promote the indiscriminate conclusion of contracts, with the main purpose of disseminating as much as possible the products and/or the services provided by the party that hired him (the principal).[24] In our opinion, intermediaries' activity may be understood as mediation and the agreement executed between them and their clients should be legally qualified as a mediation agreement, more precisely, taking into account the intermediaries' field of activity, as a *sports mediation agreement*.[25] Thus there are sufficient ingredients gathered to understand intermediaries as "sports mediators".[26] Taking stock, we can conclude that in the light of the Portuguese legal system in force we are in the presence of an atypical service provider agreement, specifically a mixed agreement, which gathers elements of the mandate and of mediation, which is regulated by the rules that are directly applicable and set out in PASBL, LSSEC and LSPLUB, and also by the mandate rules but with the required adjustments – forthwith setting aside such rules that are contrary to the typical elements of sports mediation identified above (Article 1156, Civil Code).

5. Registration. Requirements and conditions

In accordance with IR-PFF, only natural persons and legal persons that are registered with PFF can perform the intermediary activity (Article 6, no. 1). Besides, such requirement is in syntony with the provisions of PASBL (Article 37, no. 1) and of LSSEC (Articles 22, no. 1 and 23), and it is certain that this latter legal statute requires a double registration (also with the respective league) when the disciplines concerned involve competitions of professional nature such as it is the case of football; thus, the intermediary is under the obligation of registering both with PFF and with PPFL.[27] Therefore, such registration is *conditio sine qua non* for the activity's legal and regular performance,[28] all the more so that it must be

[24] That is clearly not the intermediary's obligation when he performs his activity in the interest of a player or of a club – actually, such obligation would collide with the legal steadiness that characterises the sports labour relationships. Besides, the activity of the intermediaries' typical clientele does not obviously translate into the mass provision of goods or services.

[25] And it is so much so that in accordance with the model of Intermediary Declaration (that he has to deliver upon his registration), he undertakes to respect the mandatory provisions of applicable national and international laws, including those pertaining to… mediation (*sic*). In the present study, nevertheless, we will continue to use the expression contained in IR-PFF – that is, «*representation agreement*», as well using the verb "represent" in its broad sense rather than in its legal regulatory sense.

[26] It should be safeguarded that such designations do not find support in the legal statutes we have analysed – PASBL, LSSEC and LSPLUB (that present a closer connection with the mandate agreement) – but rather in the typical set of services provided by intermediaries and in the manner how they perform their activity day by day, which IR-PFF is closer to.

[27] In case of a corporation, registration is only accepted if a representative of the same is also registered as intermediary (Article 7, no. 4).

[28] The previous registration as a means to control the activity and promote transparency is so important in IR-PFF that the very clubs and players affiliated to Portuguese sports associations

applied for previously to any transaction (Article 6, no. 2), in one of two possible manners: *a)* On a case by case basis per each transaction to be made; or *b)* Periodically per sports season (Article 6, no. 3).[29] The signature and the deposit of the «*representation agreement*» with PFF shall take place previously to the performance of the activity (Article 9, nos. 1 and 3). Thus, and combining these precepts, the intermediary who wishes to perform his activity within a certain transaction shall abide by the following timeline: 1st) Registration as intermediary with PFF and PPFL; 2nd) Signature of the «*representation agreement*» with the client;[30] 3rd) Deposit of the «*representation agreement*» with the PFF (and with PPFL when the client participates in sports competitions organised by the same – presently 1st and 2nd Professional Football Leagues); 4th) Beginning of performance of the agreement. The application for registration (or the application for renewal of the previous registration) must be prepared with the following documents, which must be drawn up in the Portuguese language (Article 7, nos. 1 and 3, IR-PFF): *a)* Copy of the civil and tax identification documents; *b)* Intermediary Declaration

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have a special duty of care when hiring an intermediary, and they must previously certify themselves that the same is registered with PFF (Article 5, no. 2). Besides, «*mandate agreements*» concluded with sports entrepreneurs that are not registered with PFF and PPFL (as well as the contract clauses that set out their respective remuneration) are blown apart by the vice of legal nonexistence (Article 23, no. 4 of LSSEC) – a sanction that has already been applied several times by Portuguese courts (as an example, we refer the Judgments of the Court of Appeal of Lisbon of 14/10/2008 (Proc. no. 7929/2008-7), of 25/11/2011 (Proc. 19/08.3TVLSB.L1-8) and of 24-10-2013 (Proc. no. 3100/11.8TCLRS.L1-2). In the Judgements of the Supreme Court of Justice 15/11/2011 (Proc. 19/08.3TVLSB.L1.S1) and of 23/04/2002 (Proc. 02A844), the lack of registration was sanctioned with the vice of nullity.

[29] The relevant criterion is the sports season rather than the calendar year and, therefore, if a certain person is registered as an intermediary in the middle of the sports season, their registration will only be in force until the end of such sports season, a time when it will expire; renewal may naturally be applied for, or apply for registration per each transaction.

[30] It should be pointed out that in accordance with IR-PFF – that in respect of this point has kept the duration limit set out in PAR-FIFA/2008 and abandoned in RWI-FIFA – the agreement can neither have a duration of more than two years nor contain an automatic renewal clause; moreover, the agreement must be executed in three counterparts – or in four counterparts when the deposit with PPFL is mandatory, and which in this case will keep one of such counterparts (the remaining counterparts being distributed by the intermediary, his client and PFF) – and it must contain and at least, the following data: *a)* identification of the parties, including the intermediary's registration number; *b)* description of the scope, clarifying the nature of the services to be provided; *c)* duration of the legal relation; *d)* intermediary's remuneration for the activity performed; *e)* payment conditions; *f)* date of signature; *g)* rescission clauses, if they exist; and *h)* signatures of the parties with mandatory certification of the player's witnessed signature when the player is party, and a mandatory special mention that he has been delivered a copy of the agreement (Article 9, no. 2). It should also be mentioned that the «*representation agreement*» must be attached to the goal-contracts (in particular, the transfer agreement or the sports employment agreement) upon the player's registration (Article 10, no. 4), such contracts must on their turn contain the signature and the intermediary's registration number in case he has mediated its conclusion (cf. Article 10, no. 5 and still Article 18, no. 1, Regulations on the Status and Transfer of Players 2015 (RSTP-FIFA/2015)) or if the intermediary has not mediated, express mention to such circumstance (Article 10, no. 6).

(hereinafter ID), in accordance with draft attached to IR-PFF;[31] *c)* Declaration on honour on nonexistence of contractual relations with leagues, federations, confederations or with FIFA that may give rise to a potential conflict of interest; *d)* Updated criminal records; *e)* Copy of the appropriate civil liability insurance policy for performance of activity, covering liability for damage up to an amount of Euro 50,000 (fifty thousand euros);[32] *f)* Declaration on nonexistence of situation of insolvency and *g)* Tax and social security clearance certificate issued by competent authorities.[33] Once the registration with PFF is granted, the intermediary may use, within the performance of such activity, the designation "Intermediary Registered with PFF".[34] A fee of Euro 1,000 (one thousand euros) is due per each registration or registration renewal.

Despite the dual registration (with PFF and PPFL) legal requisite, in case of pre-registration – meaning, a registration apart from any specific transaction (transfer agreement or employment contract) –, a single registration, only with PFF, is accepted. In practice, dual registration (also with PPFL) is only demanded if the intermediary's client, club or athlete, participates in sports competitions organised by PPFL (presently 1st and 2nd Professional Football Leagues) and when complying with the obligation of attaching the «representation agreement» to the transfer agreement or the employment contract upon the player's registration.

We should also remark that the obligation to deliver all documents in Portuguese has been, in practice, managed by PFF with some flexibility in the sense that the deliver of such documentation in a foreigner language (for example,

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[31] IR-PFF, such as RWI-FIFA, contains two ID drafts, one for natural persons and one for legal persons. The content of the drafts in both Regulations is very similar. In respect of the ID we cannot but point out the apparent contradiction between its content and the IR-PFF itself; as a matter of fact, the intermediaries therein declare that they undertake, within the scope of the performance of their activity, «*to comply with the Statutes and regulations of FIFA, UEFA and PFF*» (point 1, 2nd part, ID). Now, under the terms of Article 5, no. 6, paragraph d), IR-PFF, «*All other persons under the obligation to comply with FIFA Statutes* [...] *are forbidden from performing activity as an intermediary.*». That is, on the one hand (through the ID) the obligation to comply with the FIFA Statutes is imposed on intermediaries, and on the other hand (in IR-PFF) it is set out that the existence of such obligation prevents the performance of activity as an intermediary, which does not make sense. Therefore, the above extract transcribed from IR-PFF should be eliminated.

[32] Differently from what was set out in PAR-FIFA/2008, RWI-FIFA no longer requires intermediaries to sign a civil liability insurance policy to perform their activity. However, PFF maintains such obligation imposing the delivery of copy of an insurance policy covering liability for damage up to an amount of Euro 50,000 (fifty thousand euros) upon registration.

[33] They are negative certificates of debt that must be applied for before the Tax and Customs Authority (within the tax scope) and of the Social Security Institute (within social security payments).

[34] Such permission does not cover, however, the use of PFF marks or logos (Article 6, no. 5). As a matter of fact, marks and logos of sports federations are protected by law that sanctions the violation of any of their exclusive rights with the application of a fine of Euro 3,000 to Euro 30,000, in case of a legal person, and Euro 750 to Euro 3,500, in case of a natural person (cf. Articles 5 and 9 of Decree Law no. 45/2015 of 9 April).

[35] RWI-FIFA does also not supply any definition for "*impeccable reputation*", limiting its reference in the ID draft to criminal sentence for a financial or violent crime, hinting that such sentence would be incompatible with an "*impeccable reputation*".

in English, Spanish, French) has been accepted already. The same approach is adopted by PFF regarding any other document that a foreign intermediary may not be able to get in his country. If that is the case, a proof of such impossibility must be delivered to PFF.

6. Impeccable reputation. The Intermediaries Commission

Under the terms of IR-PFF, whoever does not have an irreprehensible repute is considered to be prevented from performing activity as an intermediary (Article 7, no. 2, paragraph a)). IR-PFF does not give us a clear and specific definition of "irreprehensible repute". Thus, lacking an objective definition[35] – what was forthwith imposed because the irreprehensible repute (or the absence thereof) may serve as grounds for denying registration or even for cancelling an intermediary's registration and, therefore, for the impossibility of a certain person performing such activity – such concept may be minimally densified by resorting to the remaining situations that are also deemed as cause for impediment for a person to perform such activity (paragraphs b), c) and d) of no. 2 of Article 7).[36] Meaning, instead of placing the absence of such requirement alongside the remaining situations preventing the performance of activity as an intermediary, these should be listed as circumstances that materialise the lack of irreprehensible repute.[37] The IR-PFF solution does in the abstract lead to subjectivity and, therefore, to potential arbitrariness. For the appraisal of such requirement, IR-PFF innovated when it created a commission – called "Intermediaries Commission" (hereinafter "IC") – composed of five members (Article 8). As a matter of fact, this Commission is vested with competence to «*issue at any time mandatory and binding opinions, on its own initiative or at the request of any party interested*», about «*the repute of the candidates to intermediaries*» and «*the repute of intermediaries; in this case there may be cancellation of the registration*».[38-39]

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[36] That is: *a)* Conviction for crimes committed within the scope of legislation on violence, racism, violence and xenophobia in Sports, up to five years after the sentence has been served, unless a different sanction has been applied by judicial decision; *b)* Conviction for crimes within the scope of doping or for behaviours susceptible of affecting the competition's truth, loyalty and correction and their result on the sports activity, up to five years after the sentence has been served, unless a different sanction has been applied by judicial decision; *c)* Conviction for any crime punishable with imprisonment for more than three years, up to five years after the sentence has been served, unless a different sanction has been applied by judicial decision. In our understanding the "irreprehensible repute" requirement should precisely be negatively defined by resorting to duly listed situations, which would show they had not occurred.

[37] Thus, irreprehensible repute (or moral repute, as we prefer) would be positively deemed a requirement for the performance of activity as an intermediary, and the conviction for the practice of certain crimes duly listed would remove such requirement – using, for instance, and negatively, the following formulation: "A person is deemed not to have moral repute if they have been convicted by judicial decision that has become res judicata, for the practice of…".

[38] IC decisions on repute must take into account the disciplinary, professional and sports record of the candidate or of the intermediary, and they are mandatorily made by two thirds of its members

7. *Incompatibilities and conflicts of interest*

Both LSSEC and IR-PFF set out a system of incompatibilities that is, a list of entities, activities, offices or functions that are considered incompatible with the performance of activity as an intermediary. Thus, in accordance with LSSEC and IR-PFF, the following are (respectively) banned or forbidden from performing activity as intermediaries: *a)* Sports companies, clubs, sports managers, holders of offices in bodies of sports companies, coaches, sportspersons, referees, doctors and masseurs (Article 25, LSSEC) and *b)* Members of the corporate bodies of FIFA, of a Confederation, Federation, League, Football Association or Club, the members of the Boards and Commissions of FIFA, of a Confederation, Federation, League, Football Association or Club, sportspersons, referees, assistant referees, coaches or any other person responsible for a club's technical or medical team, employees of FIFA, of a Confederation, Federation, League, Football Association or Club, as well as other persons under the obligation to comply with the FIFA Statutes (Article 5, no. 6). Thus, these are "endogenous incompatibilities" that is, imposed by the specific regulations of the intermediary's activity. In contraposition to these, we cannot but mention two other situations that constitute "exogenous incompatibilities", therefore imposed by specific regulations of other activities: the profession of lawyers and solicitors. As we have seen above, the intermediary activity may be essentially characterised as mediation activity. In our understanding, mediation is incompatible with the performance of the profession of lawyer and of solicitor.[40] Further to the incompatibilities, IR-PFF as well as Portuguese legislation

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– which in a universe of five implies the consensus of at least four members.

[39] If the creation of IC with the competences vested in it does not suffer from the vice of unconstitutionality, it will at least suffer from regulatory insufficiency, not only due to an imperative of legal certainty but also and mainly because the decisions passed by IC may entail the prohibition of a certain person (natural or legal) performing activity as an intermediary, thus acquiring a relevance incompatible with the normative superficiality contained in IR-PFF. When weighing collective interest (performance of the activity by morally reputed persons) and the freedom of choice of the intermediary profession, it is reasonable to demand for procedural response mechanisms to have been set out (e.g., claim and/or appeal) against the decisions of IC that declared that a certain person was prevented from performing their activity as an intermediary due to lack of (irreprehensible) repute.

[40] In respect of the profession of lawyer, it should be mentioned that in the original version of BAS the mediation activity was expressly set out. However, since the 2005 revision and presently in the new BAS (in force since the beginning of October 2015), the mention to mediation is limited to the activity of transferable securities and real estate mediation (Article 82, no. 1, paragraph n)). In a first analysis, such limitation suggests that the mediation activity in general – particularly with the exception of transferable securities and real estate mediation – became compatible with the profession of lawyer. However, we believe this is not the case, because there is a core principle that has remained unchanged in BAS: «*The performance of the profession of lawyer is irreconcilable with any office, function or activity that may affect the exemption, independence and dignity of the profession.*» (Article 81, no. 2, BAS). In our opinion, both the services typically provided by intermediaries as sports mediators and their form of remuneration, are precisely capable of affecting the exemption, the independence and the dignity of the profession of lawyer. Besides, as we will have the opportunity to establish further down, the form of remuneration of intermediaries is itself

proclaim the concern of avoiding conflicts of interest within the exercise of the intermediary's activity. The general rule in this respect contained in IR-PFF says that «*Before hiring the services of an intermediary, the player and the club must endeavour their best efforts to ensure, in relation to all of them, that there is no conflict of interest and that there is no risk of there being any.*» (Article 12). The emphasis, in respect of the accountability of all the parties involved in the sense of avoiding a conflict of interest is put on the player and on the club that hire the services of an intermediary, However, there are rules (in IR-PFF and not only) that are specifically addressed to intermediaries, particularly those that: *a)* Prevent intermediaries from representing both contracting parties to the goal-contract (Article 5º, no. 3, IR-PFF, and Article 22, no. 2, LSSEC); *b)* Ban intermediaries from receiving from clubs or from making payments of amounts pertaining to a transfer, particularly as compensation, for training or solidarity contribution (Article 11, no. 4, IR-PFF); *c)* Obligate intermediaries to be exclusively remunerated by the party they represent, and the assignment of credits is forbidden (Article 11, no. 5, IR-PFF); *d)* Impose upon intermediaries that, upon their registration, they must declare on their honour and in writing, that they do not have any contractual relationship with any leagues, federations, confederations or with FIFA, that may lead to a potential conflict of interest, and in case of doubt they must reveal the existing binding links (Article 7, no. 1, paragraph c), and ID). The theme of conflicts of interest takes special relevance, and being included in the sphere of concerns for safeguarding sports integrity and truth, it is actually the order of the day. It will be sufficient to bear in mind the problematic issue of the "players funds" or of the economic rights held by third entities – a reality commonly referred to in international jargon as "*TPO*", that is, "*Third Party Ownership*"; all the more so that such realities have begun to integrate, in a relevant manner, the

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irreconcilable with the deontology rules of the profession of lawyer in respect of this matter – forthwith because it is contrary to the general principle that «*Lawyers' fees must correspond to an appropriate economic consideration for the services actually rendered* [...]» (Article 105, no. 1, BAS), and in the second place because and as a rule, the intermediary's remuneration depends on the conclusion of the goal-contract, that is, it depends on the result obtained, which and in accordance with BAS would constitute a *quota litis pactum*, which is forbidden by the same (Article 106, nos. 1 and 2, BAS). Several bodies of the BA have already been called to rule on the incompatibility between the profession of lawyer and several modalities of the mediation activity (including the intermediary's activity – at the time "football players agents"), having always concluded the existence of incompatibility. As an example, please see the Opinions of the General Council nos. E-29/03 of 06/02/2004 (activity of football players agent), 26-PP/2009-G of 17/09/2009 (insurance mediation and conflict mediation activity), 39-PP/2010-G of 18/10/2011 (mediation and alternative dispute resolution means), 60/PP/2011-G of 16/02/2012 (conflict mediation activity) and 15/PP/2012-G of 21/11/2012 (banking promotion activity), the Opinion of the Regional Council of Oporto no. 53-PP/2012-P of 13/11/2013 (football players agent activity) and the Opinion of the Regional Council of Lisbon n. 47/2008 of 16/03/2008 (activity of external promoter of banking entity). This does not mean that lawyers cannot exercise a mandate in favour of athletes, clubs or coaches; dissimilarly, the exercise of the intermediaries' activity is banned to them because it is incompatible such as it is defined in the law. In short, the intermediary cannot practise acts specific of lawyers, and the latter cannot exercise the intermediary's activity.

object of the activity of some intermediaries.[41] As a matter of fact, there are several situations that may lead – or at least facilitate – a conflict of interest: the payment by the club of the remuneration of the intermediary who acts in the interest of the player,[42] the simultaneous representation by the intermediary of the two contracting parties to the goal-contract – either two clubs (transfer agreement), or one club and one player (e.g., sports employment agreement) – or of the player to be transferred and the club of origin, the ownership of economic rights pertaining to a certain player, the participation in the share capital of the sports company (club), the contractual relationship with the league or the federation, etc. In every situation, the intermediary is placed or may see himself placed under the "cross fire" of the opposing or diverging interests of clubs, players, or even of his own with any of them.[43] Realising these risks, both Portuguese legislator and PFF soon set out rules to prevent these situations. Thus, the intermediary can only represent one of the contracting parties to the goal-contract (Article 22, no. 2, LSSEC, and

[41] In this respect, it should be recalled that the Executive Committee of FIFA did, on 18 and 19 December 2014, when promoting the approval of alterations to the RSTP (in force since 1 April 2015), amending Article 18ter thereto (only in force since 1 May 2015), forbid the conclusion of agreements that granted the title to economic rights to third parties (particularly intermediaries). It should still be said that RSTP-FIFA both in its present draft (2015) and in the 2012 draft (RSTP-FIFA/2012) expressly adverts to the influence of third parties on the clubs, both in respect of players' hiring or transfer and in respect of competition.

[42] This was in fact current practice, that is, in spite of representing the player intermediaries would in most cases rather be paid by the club.

[43] Exemplifying: *a)* When acting in the interest of one player but being remunerated by the club, the intermediary will lose (or may lose) his independence before such club to the detriment of interests of the player who is his client; *b)* By simultaneously representing the two contracting parties (two clubs or one player and one club) the intermediary will have to, under penalty of adversely affecting one of his clients, adopt a neutral position and, therefore, incompatible with the partiality specific of an effective representation; *c)* By simultaneously representing the player to be transferred and the club of origin, the intermediary will seek, in the interest of the latter, to facilitate the transfer, particularly favouring before the club of destination (that will have to pay the transfer and also undertake to pay the player's salary package) the increase of the price of such transfer to the detriment of the player's contractual conditions, and at the service of the former increase his contractual conditions with the new club, which may determine the reduction of the transfer price or even make its materialisation difficult; *d)* Being the holder of the economic rights pertaining to a certain player and representing the club that hired such player, the intermediary, having return on his investment upon such player's subsequent transfer to a new club, may not only feel tempted to provoke such transfer (undermining the stability of the player's contractual binding link with his client) but also upon such future transfer and still in representation of the same club, now assignor, seek to ensure its materialisation even if for a lower price than the one his client seeks, thus favouring the assignee club that is not his client; *e)* Being the holder of shares representing the share capital of a sports company (club) and representing a player in the negotiation of the sports employment agreement to be executed between the player and such club, the intermediary will share, although by reflection, the latter's interest in establishing lower salary conditions; *f)* Performing functions in any body of PFF or PPFL (particularly with disciplinary competence) and representing a club or a player that are affiliated with them, in case of dispute between his client and any of such entities or if they promote disciplinary proceedings against the former, the intermediary will ineluctably fall into a conflict of interest.

Article 5, no. 2, IR-PFF);[44] the intermediary can only receive his remuneration from the party he represents (Article 24, no. 1, LSSEC, and Article 11, no. 5, IR-PFF);[45] the intermediary shall abstain from receiving or paying, on account or in favour of the creditor club, respectively, any transfer premium, compensation for transfer, compensation for training or solidarity compensation (Article 11, no. 4, IR-PFF); the intermediary is under the obligation to advise about or at least reveal any contractual relationship he has with leagues, federations, confederations or with FIFA, that may result in a conflict of interest (Article 7, no. 1, paragraph c) and ID, IR-PFF).

8. Remuneration

As we have seen, the matter of the remuneration of the intermediary is closely linked to the problematic issue of conflicts of interest; in this scope it is important to bear in mind that the responsibility for payment of the intermediary's remuneration mandatorily falls on the party in the interest of which he has acted.[46] However, it

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[44] It should be noted that RWI-FIFA does not contain this prohibition, permitting simultaneous representation provided that the intermediary obtains the consent of the parties involved (Article 8, nos. 2 and 3, RWI-PFF). However, if the requirement for exclusive single representation were in fact demanded and complied with by intermediaries and their clients, this would prevent the creation of monopolies by some intermediaries and would liberalise the market of sports mediation activity, once the contracting parties (players and clubs) would be forced to resort to the services of a second intermediary.

[45] Moreover, the assignment of credits is forbidden (Article 11, no. 5, *in fine*); analysing the RWI-FIFA in this respect, it appears to us that PFF made a wrong transposition of this prohibition, excluding it from its appropriate context. As a matter of fact, RWI-FIFA also prohibits the assignment of credits but in respect of the prohibition of the intermediary receiving or paying, on account of a club, an eventual compensation for transfer, for training or for solidarity contribution due to another club (Article 7, no. 4, RWI-FIFA), which is understood as a means to avoid fraud to the rule; already in the context of payment of the remuneration that would normally be due to the intermediary, to be paid by his client, either a player or a club, the prohibition of assignment of credits makes no sense once what is under consideration here is the prohibition of the intermediary receiving its remuneration from his client's counterparty; but in such case it would not be an assignment of credits but rather an assumption of debt since the credit belongs to the intermediary. However, there are some people that make reference to assignment of credit in this context to mean the hypothesis of the player assigning his labour credits (over the club) in favour of the intermediary whose services have been hired, as a form of payment of the remuneration due to the latter. In the first place, and in spite of the assignment of remuneration credits for payment of the intermediary's remuneration being possible, it does not seem to us that the same deserves specific treatment in IR-PFF; the general rules on this matter (contained in the Labour Code and in the Civil Code) should rather be applied; in short, we maintain what we have said before about the wrong transposition of RWI-FIFA by IR-PFF in what concerns the prohibition of assignment of credits. The fact of the law limiting the assignment of remuneration credits to the part susceptible of attachment does not mean that the intermediary's remuneration must be subject to such limit. Differently, only in the case of the player and the intermediary agreeing on the payment of the remuneration through such means (assignment of credits) will such limit function, without prejudice, however, of the remainder, where existing, being paid by any other means.

[46] In any case, after completion of the transaction – to be read as conclusion of the goal-contract –

is now important to ascertain how the remuneration due to the intermediary in consideration for the services provided by him shall be set. In respect of the remuneration's amount, LSSEC sets out that the parties (intermediary and client) may freely agree on a certain amount, but such agreement must be in writing to the extent that it has to be set out in a clause in the «*representation agreement*». If the parties say nothing in this respect, the maximum amount of such remuneration will correspond to 5% (five per cent) of the overall amount of the goal-contract (Article 24, no. 2, LSSEC), without making a difference between sports employment agreements and transfer agreements. IR-PFF did not follow the recommendation contained in RWI-FIFA (that sets the remuneration of intermediaries at three per cent) and just like these Regulations authorised (by making reference to national and international legislation on this matter), sets out as the additional maximum remuneration of the intermediary (just like LSSEC)[47] the amount corresponding to five per cent of the player's gross income (when what is under consideration is the conclusion of a sports employment agreement, either in representation of the club or of the player) or of the price of transfer (in case of mediation of a transfer agreement) – Article 11. We cannot but point out the difficulties raised by the draft of this precept, particularly in what concerns the value of the goal-contract, that is, the value on which the percentage due to the intermediary will be computed. No. 1 of such precept, sets out that «*The amount of the remuneration due to an Intermediary hired to act in the name of a player is calculated based on the gross income corresponding to the period of duration of the agreement*». Hence, within the scope of the player's "representation" by the intermediary, the latter's remuneration, whether or not it is set in the agreement, is always calculated based on the player's gross income for the period of duration of the agreement. The reference to the duration of the agreement is also made in the default (or supplementary) provisions, that is, for such cases where the parties have not contractually set out the intermediary's remuneration. In respect of such cases, IR-PFF sets out the following: *a)* When the intermediary acts in the interest of the player, his remuneration shall not exceed 5% of the player's gross income for the period of duration of the employment agreement (Article 11, no. 3, paragraph a)); *b)* When the intermediary acts in the interest of the club with a view to executing a sports employment agreement (with a player), his remuneration shall likewise not exceed 5% of the player's gross income for the period of duration of the employment agreement (Article 11, no. 3, paragraph b)); *c)* When the intermediary acts in the interest of the club with a

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IR-PFF authorises the player to mandate the club in writing to pay the remuneration due to the intermediary in his name (Article 11, no. 6). We are not dealing with an assumption of debt here, once the responsibility for payment of the remuneration continues to fall on the person of the player. It is rather the carrying out of the physical payment by the club but on account and in the name of the player who will have a debt to the club.

[47] That is, such as set out in LSSEC, IR-PFF allows the parties, intermediary and client to freely set, but in writing, the intermediary's remuneration; if the agreement does not address this issue, the 5% percentage rules as the maximum limit imposed on the parties.

view to conclude a transfer agreement (with another club[48]), his remuneration shall not exceed 5% of the eventual transfer premium, and remuneration is also possible subject to future conditions (Article 11, no. 3, paragraph c)).[49] By combining no. 1 and no. 3 of Article 11, it results that the base for the remuneration of the intermediary in "representation" of the player is always the player's gross income for the period of duration of the agreement, even when it is contractually set out; when in "representation" of the club and aiming at signing the sports employment agreement, such criterion does not necessarily have to be the base for the remuneration, if contractually set out, but that will be the case if the supplementary provision is applicable.[50-51]

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[48] In the original text it can be read differently «*When the Intermediary has been hired to act in the name of a club for purposes of conclusion of a transfer agreement with a player* [...]»; we assume that the expression «*with a player*» results of a slip of the pen since the transfer agreement is signed between clubs and, therefore, the same should be replaced with «*with a club*».

[49] We do not recognise any practical use in the reference to an eventual premium, nor in the qualification of the conditions as future, once a condition is future by definition (cf. Article 270, Civil Code).

[50] Under the terms of Article 11, no. 2, the club shall agree the remuneration before carrying out the transaction and the payment may be made in one lump sum or in instalments. There is no equivalent rule for the player and, therefore, IR-PFF fails to set out the form of payment of the intermediary by the player. Such matter will fall under the scope of the contractual freedom of the parties, and the payment in one lump sum or in several tranches is also admitted.

[51] In respect of such cases where such criterion is applicable, it is most important to ask: is the percentage on the player's gross income for the duration contractually set out (the duration of the contract term) or for its actual duration? Moreover, do the eventual or actual renewals (set out in the agreement) count for such purpose? The letter of the precept is in fact not very enlightening. We believe that the reference for the base for calculating the intermediary's remuneration must be the economic value of the contract mediated by him, thus relegating to second plan – which is the same as saying because it is irrelevant – the performance or non performance of the goal-contract. Thus, with the criterion of "player's gross income for the period of duration of the agreement" being applicable, the additional 5% percentage or another one that may be set out in the «representation agreement» will be computed on the gross income for the term set out in the sports employment agreement, regardless of the actual duration of and actual compliance with the same. That is, even if the sports employment agreement ceases before the end of its term, or even if the club stops paying the player the remuneration due, and unless otherwise provided for, the intermediary is always entitled to his remuneration, computed based on the agreement's overall value. Exemplifying in a simple manner: with a 5% percentage being applicable by reason of the additional system or by reason of express contractual provision, and the intermediary manages to obtain "in representation" of the player a sports employment agreement with a duration of three sports seasons, with a remuneration with value of Euro 100,000 (one hundred thousand euros) per season having been set out, a remuneration for an amount of Euro 15,000 (fifteen thousand euros) will be due to the intermediary – [Euro 100,000 x 3] x 0.05. In respect of the hypothesis of setting out the possibility of renewal of the sports employment agreement – which and by majority of reason is extended to the renewal upon agreement subsequent to the execution of the agreement – we understand that as a rule and without prejudice to a specific provision of the parties on such matter, the remuneration shall only be due if such renewal actually occurs. As a matter of fact and as a rule, the renewal is not a fact of sure or even mandatory consummation, and it is conditioned to the occurrence of certain circumstances.

9. *Intermediaries' obligations*

In the light of everything that has been stated so far, it is possible to conclude that several obligations arise out of the discipline contained in the IR-PFF and in the legal statutes analysed (*maxime*, PASBL, LSSEC and LSPLUB) to all parties involved in the negotiation and conclusion of a "sports agreement", be it the intermediary, a club or an athlete. Taking into account the object of the present work, however, we will focus on the obligations (and accessory duties) imposed upon the intermediaries, which are obligations *de facere e de non facere*. Assuming the sufficiency of everything that has already been stated above, we will limit ourselves to listing the following obligations: *a)* Previous registration delivering all elements required including the duly signed ID, and payment of a Euro 1,000 (per each registration or renewal); *b)* Complying with the Statutes and regulations of FIFA, UEFA and PFF; *c)* Signature and previous deposit of the agreement, whose content shall contain the elements and respect the limits (e.g. duration, remuneration) set out in IR-PFF; *d)* Signing a civil liability insurance policy with coverage for damage up to Euro 50,000; *e)* Informing PFF about any contract alteration within a 10 day term; *f)* Abstaining from representing under aged sportspersons (under 18);[52] *g)* Keeping secrecy in relation to the facts of the personal and professional life of their clients;[53] *h)* Abstaining from holding any office and from establishing any binding relation that are deemed incompatible with the intermediary's activity; *i)* Ensuring the non existence of conflicts of interest particularly resulting of any contractual relationships with leagues, federations, confederations or with FIFA; *j)* Abstaining from simulating or pretending the existence of any contractual relationship with leagues, federations, confederations or with FIFA, within the scope of their activity as intermediaries; *k)* Abstaining from directly or indirectly proposing to any other party involved in a transaction that the same depend or be conditioned by the player's agreement with a certain intermediary; *l)* Exclusively

[52] By way of this limitation, intermediaries may only act, besides clubs and coaches (we add), in the interest of athletes that are already 18 years of age.

[53] This obligation arises out of the provisions of Article 37, no. 3, PASBL. However, and more than just a mere obligation imposed on intermediaries, it is also a prerogative of theirs, to the extent that and in principle, they are under no obligation to reply to the questions they may be asked about such facts within the scope of judicial proceedings (cf. Articles 417, no. 3, paragraph c), Code of Civil Procedure, and 135, no. 1, Code of Penal Procedure). The PASBL precept is referred to facts pertaining to the personal or professional life of «*sports agents*» but, however, no definition is given of the same. In the section dedicated to «*sports agents*» (Articles 34 and following, Section II, Chapter IV, PASBL) sportspersons, technicians, sports managers and the very "sports entrepreneurs" (intermediaries) are included. A systematic and literal interpretation would lead and for instance, to the exclusion of clubs and coaches, which does not seem fit: professional secrecy should rather cover the facts of the personal and professional life of the intermediaries' clients (particularly, athletes, coaches or and *mutatis mutandis*, clubs). From the above stated and in our understanding, the ID is illegal to the extent of the part where the intermediary is obliged to declare that «[...] *I consent to the entities referred to obtaining any other pertinent documentation from any other party that advises, assists or participates in the negotiations which I am responsible for*». (point 9, 2nd part).

representing one of the contracting parties to the goal-contract; *m)* Receiving their remuneration only from the part they represent; *n)* In the absence of a written agreement with the client, accepting the limits imposed by IR-PFF and LSSEC to the value of the remuneration; *o)* Abstaining from receiving or paying, on account or in favour of the creditor club, respectively, any transfer premium, compensation for transfer, compensation for training or solidarity contribution; *p)* Abstaining from participating, directly or indirectly, on their own or through a third party (a natural or legal person), in betting, games of chance and similar activities or transactions in connection with football games; *q)* Abstaining, under penalty of criminal liability, from adopting unsporting behaviours contrary to the values of truth, loyalty and correction susceptible of fraudulently changing the competition results; *r)* Supplying to FIFA, UEFA, PFF and PPFL all contracts, agreements and registrations connected with their activity as intermediaries; *s)* Supplying to PFF all data pertaining to any payment, regardless of its nature, they may receive from clubs or players in consideration for their intermediation, and also authorising it to keep and process all data referred to in the two previous paragraphs, as well as publicising (including informing FIFA) about any sanctions they may have been applied by PFF.

10. Disciplinary and criminal liability. Sanctions

As we have seen in the beginning of this study, intermediaries are not affiliated to PFF or to PPFL. However, the regular exercise of their activity depends on their previous registration with such entities, a procedure that includes and in particular, the ID. In such Declaration, the intermediary undertakes, namely, to accept and comply with the mandatory provisions of applicable national and international laws, including those pertaining to mediation, and also the FIFA, UEFA and PFF Statutes and regulations. Therefore, and further to the mandatory provisions of applicable national and international laws – such applicability that does not depend on such Declaration – the intermediary is, by way of the ID, subject to disciplinary proceedings by PFF, as a legal person of sports public interest and, therefore, with competence for the exclusive exercise, per discipline or disciplines, of regulatory, disciplinary and other powers of public nature – cf. Articles 14 and 19 of PASBL, and 2 and 10 of the Legal System of Sports Federations (hereinafter, LSSF).[54] In reality, civil, disciplinary, misdemeanour, criminal liability may all, in the abstract, result from the exercise of activity as an intermediary. We will limit ourselves to the sanctions plan and within it we will focus on disciplinary and criminal liability, once they are the most relevant for the present study. With regard to *disciplinary liability*, we have to take into account and in the first place, that as an entity vested with the statute of sports public interest, and as it has been said, PFF

[54] Approved by Decree Law no. 248-B/2008 of 31 December, amended by Decree Law no. 93/2014 of 23 June. This legal statute also approves the conditions for granting the statute of sports public interest.

competence for the exclusive exercise of regulatory and disciplinary powers is recognised. Besides, IR-PFF itself sets out that PFF is responsible for the imposition of sanctions to any of the parties (players, clubs and intermediaries) who violates its provisions (Article 13, no. 1).[55] Besides, such disciplinary power is supported by PASBL.[56] Thus, in DR-PFF, specifically in its title II, chapter IX (Articles 173 and following), under the caption «*About infringements specifically pertaining to delegates to the games of the clubs, coaches, intermediaries and other sports agents*», we can find several conducts typified as infringements and their respective sanctions, and the infringements set out for managers (title II, chapter V, Articles 112 and following[57]) are also relevant because they are applicable by express reference (Article 173, DR-PFF). We find three precepts in DR-PFF

[55] It is also set out that PFF notifies FIFA of any disciplinary sanctions imposed on any Intermediary, and the FIFA Disciplinary Commission decides if the sanction is applicable worldwide, in accordance with the FIFA Disciplinary Code (Article 13, nos. 2 and 3).

[56] Under the terms of which «*Within the sports scope, the disciplinary power of sports federations is exercised on the clubs, managers, sportspersons, coaches, technicians, referees, judges and in general, on all sports agents that perform sports activities contained in their statutory object, under the terms of the respective disciplinary system.*» (Article 54, no. 1). PASBL also sets out that «*Sports agents that are punished with a penalty of incapacity to exercise sports functions or functions as managers of a sports federation cannot exercise such functions in any other sports federation for the term of duration of such penalty.*» (Article 54, no. 2, PASBL).

[57] That is, false declarations and fraud (punished with a sanction of suspension to be determined between 2 years and a fine to be set between Euro 1,020 and Euro 2,040); corruption and coercion (punished with a sanction of suspension of 2 to 10 years and accessorily a fine to be set between Euro 2,550 and Euro 12,750 or suspension of 1 to 8 years and accessorily, to a fine to be set between Euro 1,020 and Euro 2,040, in the light of the actual conduct, and the attempted form is also punishable); corporal offences (punished with a sanction of suspension of 1 to 5 years and a fine to be set between Euro 1,020 and Euro 2,040); incitement to indiscipline (punished with a sanction of suspension of 1 to 3 years and a fine to be set between Euro 1,020 and Euro 2,040); discriminatory behaviour (punished with a sanction of fine to be set between Euro 1,020 and Euro 2,040); statements on arbitration and the organisation of competitions before official games (punished with sanction of suspension between 1 and 3 months and accessorily with a sanction of fine to be set between Euro 1,020 and Euro 2,040); manipulation of the game or of the outcome of the game with a view to obtaining a betting benefit, sanctioned with a fine to be set between Euro 2,550 and Euro 12,750 and suspension of 4 to 25 years; participation in sports betting, sanctioned with a fine to be set between Euro 1,020 to Euro 5,100 and the omission of the duty of reporting an infringement, sanctioned with a fine to be set between Euro 1,020 and Euro 2,040 and suspension of 6 months to 2 years (all set out under caption «*sports betting*»); non compliance with deliberations (punished with a sanction of suspension of 3 months to 1 year and fine to be set between Euro 306 and Euro 816); incentives to third parties for the purpose of influencing the outcome of the game (punished with a sanction of suspension of 3 months to 1 year and fine to be set between Euro 306 and Euro 816); injuries and offences to reputation, sanctioned with suspension of 1 month to 1 year and fine to be set between Euro 306 and Euro 816; and threats sanctioned with suspension of 2 months to 1 year and fine to be set between Euro 408 and Euro 1,020 (set out under caption «*Threats, injuries and offences to reputation*»); non attendance in proceedings (punished with a sanction of suspension of 3 months to 1 year and fine to be set between Euro 306 and Euro 816); non observance of other duties (punished with a sanction of suspension of 15 days to 1 month and fine to be set between Euro 102 and Euro 816). Please note that DR-PFF provisions set out the fines in a specific legal monetary unit called "unit of account" (UC). Currently, 1 UC = Euros 102. The fines referred above, expressed in Euros, result from this equation.

specifically set out for intermediaries: *a)* The violation of the duty of care (Article 177); *b)* Usurpation (Article 178)[58] and *c)* Undue use of industrial property of PFF (Article 179).[59] The duty of care set out in Article 177, DR-PFF, integrates some of the obligations set out in IR-PFF, once *a)* An intermediary who acts simultaneously in the name and on account of the player and of the club is sanctioned with the impossibility of registration for 1 to 3 sports seasons (cf. Article 5, no. 3); *b)* An intermediary who proposes and in any way hires, directly or indirectly, any other party involved in a transaction and such party thereby becomes dependent on or conditioned by the player's agreement with a certain intermediary, is sanctioned with reprehension (cf. Article 5, no. 5); *c)* An intermediary that signs a representation agreement that does not contain the legal requirements required under IR-PFF is sanctioned with reprehension (cf. Article 9, nos. 1 and 2); *d)* An intermediary who does not inform PFF of any alteration in a contractual position, of subcontracting or of any other alteration to the representation agreement is sanctioned with reprehension (cf. Article 9, no. 4); *e)* An intermediary who does not communicate to PFF full information on all remunerations paid or payments made within the scope of his activity is sanctioned with a fine of Euro 1,020 to Euro 5,100 (cf. Article 10, nos. 1[60] and 4 and point 8 of the ID). In general, within the scope of disciplinary liability, the following sanctions may be applied to intermediaries: reprehension; fine; cancellation of registration;[61] impossibility of registration[62] and impediment (Article 20, nos. 1 and 3, DR-PFF).[63] In what

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[58] «*Any natural or legal person that actually exercises activity as an intermediary, and has been prevented under the terms of the Intermediaries Regulations of PFF is sanctioned with a fine of 10 to 50 UC* [meaning, Euro 1,020 to Euro 5,100]».

[59] «*Any intermediary that uses the marks, logos or any other distinctive signs of PFF is sanctioned with the impossibility of registration from 1 to 3 sports seasons*».

[60] It should be noted that no. 1 of Article 10 of IR-PFF – that imposes the obligation to communicate to PFF complete information on all and any remunerations or payments agreed – is only referred to the player and to the club, thus omitting the intermediary. Taking into account that, in DR-PFF, the provision of non compliance with such obligation and respective sanction is specifically addressed to the intermediary, such omission does not appear to be correct.

[61] The sanction of cancellation of registration determines ceasing the exercise of activity as an intermediary for a period of sports seasons, and the intermediary shall, within a term of three days after the decision that applied the sanction has become *res judicata*, deliver his intermediary card at the registered office of PFF (Article 39, DR-PFF).

[62] The sanction of impossibility of registration determines that the intermediary cannot renew his application for registration as intermediary for a certain number of sports seasons, and he shall, within a term of three days after the decision that applied the sanction had become *res judicata*, deliver his intermediary card at the registered office of PFF (Article 38, DR-PFF).

[63] The application of disciplinary sanctions falls within the competence of the Non professional Section of the Disciplinary Council of PFF (Articles 5, no. 2 and 202, no. 1, DR-PFF); its decisions can be appealed from to the Plenary of the Non Professional Section, such appeal to be presented within a term of three calendar days (cf. Article 247, no. 1, DR-PFF); the decisions of the Plenary can be appealed from to the Sports Arbitration Court (necessary arbitration) within a term of ten days counted from notification of the decision (cf. Articles 4, nos. 1 and 3, paragraph a), and 54, no. 2, of the respective Law (LSAC), approved by Law no. 74/2013 of 6 September and amended by Law no. 33/2014 of 16 June). On its turn, the decisions of arbitral colleges are susceptible

concerns *criminal* liability, LSPLUB and the Penal Code are relevant. LSPLUB – which and we recall, sets out the system of penal liability for unsporting behaviours, contrary to the values of truth, loyalty and correction and susceptible of fraudulently alter the results of a competition – sets out the following criminal conducts: *a)* Passive corruption (Article 8);[64] *b)* Active corruption (Article 9);[65] *c)* Influence peddling (Article 10)[66] and *d)* Criminal conspiracy (Article 11).[67] About the common penal legislation, (PC) it is important to make reference to the usurpation of functions.[68]

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of appeal to the Administrative Central Court, unless if the parties agree to appeal to the chamber of appeal, expressly waiving the appeal from the decision that will be rendered (Article 8, no. 1, LSAC). In case such an agreement is reached, the decision that will be rendered by the chamber of appeal may also be appealed from to the Supreme Administrative Court, and when it is in contradiction with a judgment rendered by the Administrative Central Court or by the Supreme Administrative Court in respect of the same fundamental point of law, within the scope of the same legislation or regulations (Article 8, no. 7, LSAC).

[64] Passive corruption: «*The sports agent who on his own or with the consent or ratification of a third party requests or accepts for himself or for a third party undue property or non property advantage or a promise in respect of the same, for any act or omission aiming at altering or distorting the outcome of a sports competition, is punished with a sentence of imprisonment of 1 to 5 years».*

[65] Active corruption: «*Whoever on his own or with the consent or ratification of a third party gives or promises a sports agent or a third party, with his knowledge, undue property or non property advantage, for the purpose referred to in the previous article, is punished with a sentence of imprisonment of up to 3 years or with a sentence of fine».*

[66] Influence peddling: «*Whoever on his own or with the consent or ratification of a third party requests or accepts for himself or for a third party undue property or non property advantage or a promise in respect of the same, to abuse of his real or supposed influence before any sports agent with the purpose of obtaining any decision aimed at altering or distorting the outcome of a sports competition, is punished with a sentence of imprisonment of up to 3 years or with a sentence of fine, if there is not a heavier sentence applicable by reason of another legal provision.*» (no. 1) and «*Whoever on his own or by means of the consent or ratification of a third party gives or promises another person a property or non property advantage for the purpose referred to in the previous number, is punished with a sentence of imprisonment of up to 2 years or with a sentence of fine of up to 240 days, if there is not a heavier sentence applicable by reason of another legal provision*» (no. 2).

[67] Criminal conspiracy: «*Whoever promotes, creates, participates in or supports a group, organisation or association whose purpose or activity are addressed towards the practice of one or more crimes set out in the present law, is punished with a sentence of imprisonment of 1 to 5 years.» (no. 1) and «Whoever leads or directs the groups, organisations or associations referred to in the previous number, is punished with the sentence therein set out increased by one third in respect of its minimum and maximum limits.*» (no. 2), and «[...] *it is deemed that there is a group, organisation or association when what is under consideration is a set of at least three people acting concertedly during a certain period of time»* (no. 3).

[68] Set out in and punished under Article 358, and the provisions set out in its paragraph b) are relevant here: «*Whoever exercises a profession or practises a specific act of a profession in respect of which the law requires a certain capacity or the compliance with certain conditions, expressly or tacitly claiming to have it or have fulfilled them, when he does not have it or does not fulfil them, is punished with a sentence of imprisonment of up to 2 years or with a sentence of fine of up to 240 days*».

11. Tax matters

In respect of the tax framework of the intermediaries' activity Circular Letter no. 15/2011 of 19 May from the Tax and Customs Administration (Circular-TCA) essentially has to be taken into account. Circular-TCA conveys the understanding of the TCA about some questions pertaining to the intermediaries' activity in respect of Corporate Income Tax (CIT) and in respect of VAT, specifically, «*in the conclusion of assignment agreements, acquisition and renewal of players' sports rights*». The notion of "sports entrepreneur" contained in LSSEC being important, as well as assuming as assumptions the fact that intermediaries can only "represent" one of the parties and be remunerated by the party they "represent", TCA supports the following understanding:

a) In respect of CIT: *1.* If the sports entrepreneur is the representative of the player in the negotiation of an agreement, he is legally banned from representing and/or receiving remuneration from the club and, therefore, the charges incurred with the remuneration of the services provided by the sports entrepreneur who acted in representation of the player cannot be deductibles for purposes of assessment of the club's taxable profit (Article 23, no. 1, CITC); *2.* Even if such charges were to be deemed indispensable, they could not be deductibles for purposes of assessment of the club's taxable profit once they constitute third party charges that the same was not legally authorised to bear (Article 45, no. 1, paragraph c), CITC); *3.* The exception to what is referred to in the previous number occurs when there is an agreement between the three acting parties in which it is assumed that the entrepreneur acts in representation of the player but the club accepts to pay the sports entrepreneur the remuneration that is due by the player, once such payment to the sports entrepreneur constitutes and (accessory) remuneration of the athlete and, therefore, it is subject to IIT. In this situation, the charges incurred with the remuneration for the services rendered by the sports entrepreneur may be deemed as club expenses (Article 23, no. 1, CITC); *4.* In case the sports entrepreneur represents the interests of a club based on a written agreement, the remunerations that will be paid to the former by the club may be deemed as expenses provided that they meet the conditions set out in the law (Article 23, CITC), particularly that they actually correspond to the providing of a service in representation of the club.

b) In respect of VAT: *5.* The providing of intermediation services within the temporary or definitive assignment of a player, regardless of where the registered office, permanent establishment or domicile of the sports entrepreneur is located at, is subject to VAT (cf. Article 6, no. 10, paragraph e), VATC), when the purchaser of such intermediation service providing is the player and the transaction which the intermediation pertains to is subject to taxation on national territory (cf. Article 6, no. 6, paragraph a), VATC); *6.* The providing of intermediation services within the temporary or definitive a

ssignment of a player, regardless of where the registered office, permanent establishment or domicile of the sports entrepreneur is located at, is not subject to VAT (cf. Article 6, no. 9, paragraph e), when the purchaser of such intermediation service providing is the player and the transaction which the intermediation pertains to is not subject to taxation on national territory (cf. Article 6, no. 6, paragraph a), VATC, *a contrario*); *7.* If the purchaser of the intermediation service providing within the temporary or definitive assignment of a player established on national territory, such service providing is subject to VAT (cf. Article 6, no. 6, paragraph a), VATC), regardless of where the registered office, permanent establishment or domicile of the service provider is located at (sports entrepreneur); *8.* If the purchaser of the intermediation service providing within the temporary or definitive assignment of a player is not established on national territory, such service providing is not subject to VAT (cf. Article 6, no. 6, paragraph a), VATC *a contrario*), regardless of where the registered office, permanent establishment or domicile of the service provider is located at (sports entrepreneur); *9.* The VAT borne by a club within an intermediation service providing carried out by a sports entrepreneur that corresponds to a service actually provided to the club under the terms of a representation agreement, can be deducted from the tax on the taxable transactions he will make (Articles 19, no. 1, paragraph a) and 20, both of the VATC); *10.* If the intermediation service providing is rendered to the player although the club has borne the charges incurred with the remuneration for the services provided by the sports entrepreneur (even if the agreement referred to in § 3, it is not entitled to VAT deduction once the service is provided to the player and not to the club.

12. Conclusion

The new regulations on intermediaries – specifically RWI-FIFA and consequently, IR-PFF[69] – are not actually oriented towards dignifying intermediaries or their activity, to the extent that they do not promote safeguarding their professional deontology, nor their expertise or competence. These objectives are clearly overlapped by the concern of defending, in an intransigent manner, the integrity of the sports phenomenon, both from a sports point of view (by fighting the situations of conflicts of interest and the influence of intermediaries in sports management decisions), and on the economic financial plan (preventing the practice of crimes of such nature, e.g., corruption, money laundering and tax fraud). However, we would say that the integrity of the sports phenomenon would also be promoted when dignifying the intermediaries' activity, which could and should be achieved by approving more specific regulations, that is, focused on the intermediaries themselves, rather than on the relationships that the players and the clubs may

[69] Link to IR-PFF: http://org.fpf.pt/Portals/0/Documentos/Centro%20Documentacao/2014/CO_Regulamento_Intermediarios.pdf.

establish with them. It is actually symptomatic that the FIFA regulations is the one «*on working with intermediaries*», containing rules addressed to the players and to the clubs rather than to intermediaries and evading addressing the intermediaries' activity from a present perspective, by means of which consideration was taken of the typical activity of such professionals that and as we have seen, is not exhausted in the "representation" of players and clubs. Thus, the approval of regulations and legal statutes specifically addressed to intermediaries containing a sound and defined deontological code is imperative, both on the plan of sports regulation (national, European and international), and on the legal plan, *maxime* at European Union level, with mandatory reflex on the legislation of the several countries. The integrity of the sports phenomenon would surely be reinforced and sports agents would benefit (players, clubs, coaches, managers, intermediaries) and the very spectators.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN QATAR

by *Ettore Mazzilli*[*] and *Konstantinos Antoniou*[**]

1. Introduction

During last decade, the State of Qatar has been qualified as an "attractive" destination for top quality football players in the light, on the one hand, of the available financial resources of the Qatari Clubs and, on the other hand, of the passion of the relevant sporting authorities to develop Qatari Football and transform Qatar as a sports hub in all the Middle East. In the last years, we have witnessed the conclusion of several multi-million transfers of famous football players to Qatari clubs. Just to mention a few examples, one can easily distinguish the transfers of Gabriel Batistuta to Al Arabi SC (2003), Juninho Pernambucano to Al Gharafa SC (2009), Pep Guardiola to Al Ahli SC (2003), Frank and Ronald de Boer to Al Rayyan SC (2004), Sonny Anderson to Al Rayyan SC (2004), Raul Gonzales to Al Sadd SC (2012), Xavi Hernandez to Al Sadd SC (2015). Even though at the beginning of this new development phase, the attention was mainly focused on signing well known players of advanced sporting age, recently this approach has changed. In fact, Qatar, considered as the leader in the Middle East region in football players' transfers, has become now a favourable destination also for younger and more ambitious international football players that wish to participate with Qatari clubs at high level competitions. In particular, the several achievements and continuous

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successful presence of the Qatari clubs in the major AFC Competitions, the state-of-art sports facilities in the State of Qatar as well as the qualified technical, medical and administrative personnel engaged by the Qatari clubs have formed a lucrative environment for the development and evolution of football players, either local or international, at very high standards. Under these circumstances, the role of intermediaries (previously players' agents) has become even more important in the light not only of the multi-million transfers in the country, but mainly due to the responsibilities and commitments that such transfers entail to the parties involved. Therefore, it is imperative that a transparent, clear, functional but also realistic regulatory framework is put in place in order to regulate the intermediaries' activities in the State of Qatar for the protection of the integrity of the sport as well as the interests of all relevant stakeholders, i.e. players, clubs, intermediaries and the national football associations.

Before entering into any details concerning the subject matter of this chapter, it is important to note that up to 3 February 2013 the activity of the then players' agents was regulated by the applicable FIFA Regulations on Players' Agents (editions 2001 and 2008 respectively) whereas on 3 February 2013 the first QFA Regulations on Players' Agents were adopted by the QFA Executive Committee and entered into force with immediate effect. For reasons that shall be explained in a separate section of this chapter, for the period as from 1 April 2015 until the adoption of the QFA Regulations on Working with Intermediaries (hereinafter also referred to as: the "*QFA Regulations*") by the QFA Executive Committee,[1] QFA, via its Circular dated 24 April 2015, decided as an interim measure the application of the relevant FIFA Regulations on Working with Intermediaries. However, already in the recent amendment to the QFA Statutes at the Ordinary General Assembly held on 15 December 2014, in preparation and anticipation of the new Regulations, it was foreseen that a Players' Agent "*is defined in accordance with the respective applicable regulations. It includes the intermediaries defined in accordance with the respective applicable regulations*". In brief, the QFA Regulations are based on the content of the respective FIFA Regulations on Working with Intermediaries (hereinafter also referred to as: the "*FIFA Regulations*"), whereas QFA decided to include several other provisions in the light of the particularities of the region and the past experience concerning the activity of players' agents. Certainly, the process of drafting and reviewing the relevant QFA Regulations was not easy due to the general incertitude and concerns surrounding the content of the FIFA Regulations, the adoption of which has created several discussions within the football family. Definitely, even though the QFA Regulations are changing radically the old regime of players' agents' activity in the State of Qatar, the football authorities are confident that these new rules shall establish a transparent, clear but also strict legal framework within which Intermediaries are called to exercise their professional activity.

[1] The QFA Regulations on Working with Intermediaries were approved by the QFA Executive Committee on 30 January 2016 and came into force with immediate effect.

2. Relevant national law

In terms of relevant national law, and contrary to other countries, up to date there is no codified *stricto sensu* "Sports Law" in the State of Qatar. However, various provisions of different laws appear to be pertinent from a legal point of view in relation to the activity of intermediaries. In this respect, references could be found in several basic legal documentation of the Qatari legislation,[2] and in particular the Labour Law no. 14 of the year 2004,[3] as amended by Law no. 3 of the year 2014, as well as Law no. 22 of the year 2004 regarding promulgating the Civil Code.[4] In particular, concerning the provisions of the Civil Code that could have a direct application in the present matter, reference is made to articles 717-721 [Elements of agency], 722-728 [Obligations of the Agent], 729-733 [Obligations of the Principal] and 734-737 [Termination of Agency]. In addition to the above, in the QFA Regulations, reference to Law no. 15 of the year 2011 concerning Combating Trafficking of Human Beings was maintained from the previously applied QFA Agents' Regulations.[5]

3. Principles - definitions

As stated in the FIFA Regulations,[6] the Associations are required to implement and enforce at least the minimum standards/requirements subject also to national law and shall draw up regulations that shall incorporate the principles established therein.[7] Therefore, as expressly confirmed in the relevant Preamble, "*these new regulations shall serve as minimum standards/requirements that must be implemented by each association at national level, the latter having the possibility of further adding thereto*".

On account of the above mentioned considerations and basic principles envisaged under the FIFA Regulations, QFA decided to follow FIFA's instructions and consequently put in place a new system that hopefully shall contribute to the increased need of more transparency and stricter monitoring of the activity of intermediaries, clubs and football players. As expressly stated in the QFA Regulations, "*These Regulations are based on the FIFA Regulations on Working with Intermediaries, which came into force as from 01 April 2015,*

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[2] For more information on the sports law and regulations in the State of Qatar, see E. Mazzilli, 'Qatar', in F. Hendrickx, R. Blanpain, M. Colucci (eds) *International Encyclopaedia for Sports Law*, KluwerLaw International BV Netherlands, 2014; also see E. Mazzilli / M. Cockburn, 'General Principles and Sports Justice in the State of Qatar', in M. Colucci, K.L. Jones (eds) *International and comparative Sports Justice (European Sports Law and Policy Bulletin 1/2013*), 503-521.

[3] www.almeezan.qa/LawPage.aspx?id=3961&language=en.

[4] www.almeezan.qa/LawView.aspx?opt&LawID=2559&language=en.

[5] Art. 2§1 of QFA Players' Agents Regulations.

[6] www.fifa.com/mm/Document/AFFederation/Administration/02/36/77/63/RegulationsonWorkingwithIntermediariesII_Neutral.pdf.

[7] Art. 1§2.

applying within the scope of the contractual relationship between the Intermediaries and the players or the clubs, as the case, in particular, to all matters relating to the services of Intermediaries to conclude transactions between the players and the clubs, or conclude a transfer agreement between two clubs".

The QFA Regulations govern the occupation and engagement of the services of Intermediaries[8] by Players[9] and/or Clubs[10] to: a) conclude an employment contract between a player and a club, or b) conclude a transfer agreement between two clubs.

In addition, as an element which differentiates the QFA Regulations to the FIFA Regulations, the QFA Regulations also govern the activity of Foreign Intermediaries[11] if they are involved in a transaction in connection with a Club affiliated to or a Player registered with QFA or to be registered with QFA after completion of the transaction on which the Foreign Intermediary is acting. As such, in order to protect the interests of the Local Intermediaries[12] as well as Local Players,[13] Foreign Intermediaries are required to register firstly with QFA[14] and then, if the relevant transaction involves a Local Player, a Foreign Intermediary must include in the pertinent transaction and/or act through a Local Intermediary, while fulfilling all requirements as per the laws of the State of Qatar governing business activity as well as the provisions of the QFA Regulations. Therefore, in strict application of the aforementioned fundamental principle, any transaction in breach of the above mentioned requirements, shall be considered null and void and without any legal effect whatsoever. For the avoidance of any doubt, the QFA Regulations do not cover any services which may be provided by Intermediaries to other parties such as managers or coaches, whereas such activity in the territory of Qatar is regulated by the applicable laws of the State of Qatar.

4. Registration requirements and conditions

As a general principle, Players and Clubs are entitled to engage the services of Intermediaries when concluding an employment contract and/or transfer agreement, whereas subject to the exceptions foreseen under Art. 4§1[15] and

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[8] See Definitions: "*a natural person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement. An Intermediary can be either a Local or Foreign Intermediary".*

[9] See Definitions: "*a football player who is or is intended to be registered with the QFA".*

[10] See Definitions: "*a member club affiliated to and recognized by the QFA".*

[11] See Definitions: "*an Intermediary that is not a Local Intermediary".*

[12] See Definitions: "*an Intermediary with Qatari Nationality or continuously resident in Qatar for more than 3 years".*

[13] See Definitions: "*a Player with Qatari Nationality".*

[14] Annex 3 of the QFA Regulations.

[15] Art 4§1: "*The parents, siblings or spouse of the Player may represent him in the negotiation or renegotiation of an employment contract".*

4§2[16] concerning exempted individuals, they are forbidden from using the services of non-registered Intermediaries. As was foreseen also previously in the FIFA Agents Regulations and confirmed also by CAS jurisprudence, QFA decided to leave to the discretion of the Player or Club to represent themselves in any matter relating to a transaction. In the selection and engaging process of Intermediaries, a Player or Club shall act with due diligence, using all reasonable endeavours to ensure that the Intermediaries fulfil all relevant requirements, including but not limited to the signature of the Intermediary Declaration and the Representation Contact. However, as also stated in the FIFA Regulations, the engagement of Officials, as defined in the FIFA Statutes, or Players as Intermediaries by Players and Clubs is strictly prohibited, otherwise an Intermediary becoming an Official or a Player shall have his registration cancelled or suspended for as long as he remains an Official or a Player.

Concerning the procedure and documentation required for the registration of Intermediaries with QFA, the latter, by means of Annexe 3 of its Regulations, has put in place a clear and not complicated process related thereto. Registration is a mandatory requirement not only for natural persons but also for legal entities.

First of all, the Intermediary or applicant shall submit a written application for registration as Intermediary to the QFA. In addition to the impeccable reputation that the applicant needs to demonstrate, which shall be analyzed in the relevant section, the applicant may not, under any circumstances, hold a position as an official, employee, etc. at the QFA, QSLM,[17] FIFA, a Confederation, a national association, a league, a club or any organisation connected with such organisations and entities up to two years prior to the respective application.

Furthermore, the applicant may not have any financial interest or any form of ownership whatsoever in a Club, either directly or indirectly, must be holder of a bachelor degree or equivalent, write/speak at least one of the official languages of FIFA whereas for the registration as a Local Intermediary, such applicant must write/speak Arabic.

Definitely, registration with QFA is not free of charge. As such, QFA has decided to apply an administrative fee for the Local and Foreign Intermediaries and higher one for legal entities, paid each time the applicant wishes to register with QFA. This appears to be quite reasonable given that registration with QFA, once approved, shall be valid for one year, which means that, contrary to other associations, an Intermediary registered with QFA shall not have the burden to follow the same process each and every time he/she wishes to register a transaction.

In a nutshell, in terms of documentation, in addition to the relevant Intermediary Declaration for natural and legal persons as well as submission of the respective representation contract, the applicant shall submit, where applicable, the following:

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[16] Art 4§2: *"A legally authorized practicing lawyer in compliance with the rules in force in his country of domicile may represent a Player or a Club in the negotiation of a transfer or employment contract".*

[17] Qatar Stars League Management, an organization subordinate to and recognized by the QFA.

a. Written application;
b. Copy of Qatari Passport and proof of residency;
c. For foreign applicant, copy of passport and proof of residency;
d. Police clearance certificate or police criminal records;
e. Copy of the bachelor degree and proof of language skills;
f. Signed declaration that: a) he does not hold a position as an Official as per the FIFA Statutes b) he is not a Player;
g. Signed declaration that he does not have any financial interest or any form of ownership whatsoever in a Club, either directly or indirectly;
h. For legal entities, copy of the commercial registration or any similar document;
i. Proof of payment of the administration fee;
j. Any other additional document deemed necessary by the QFA (e.g. Non-objection certificate by the applicant's sponsor in the State of Qatar, documentation concerning conflicts of interest).

Approval of the applicant's registration with QFA shall mean that the Intermediary shall be entitled to act on behalf either of a Club or Player, whereas on the same time shall mean that the Intermediary agrees to abide by and adhere to the provisions of the QFA Regulations and be submitted to the disciplinary authority and jurisdiction of QFA in respect to any act or omission arising out or in connection with his activity.

Finally, with regards to legal entities, registration as Intermediary shall be effected only by a natural person already registered as an Intermediary with QFA whereas any Intermediary activity on behalf of such legal person may be carried out only by a natural person registered – and authorized to act - as Intermediary.

5. Representation contract

In order to be entitled to represent a Player and/or a Club, the Intermediary must have entered into a valid written Representation Contract[18] with the Player and/or Club prior to carrying out any activity on their behalf.

In this respect, QFA Regulations provide for the minimum elements that such Representation Contract should contain, including, but not limited to: the names of the parties, the scope of services, the duration of the legal relationship, the remuneration due to the Intermediary, the general terms of payment, the date of conclusion, the termination provisions and the signatures of the parties. If the Player is a Minor,[19] the Player's legal guardian(s) shall also sign the Representation Contract in compliance with the national law of the country in which the Player is domiciled. As it is obvious, the parties are in any case at liberty to enter into additional agreements or provisions provided that they are consistent with requirements of the QFA Regulations, the QFA Statutes and other applicable rules

[18] See Definitions: *"any agreement or contract to be entered into by and between an Intermediary and a Player and/or Club in relation to the provision of Intermediary activity".*
[19] See Definitions: *"A Player who has not reached yet the age of 18".*

and regulations, the QSLM Statutes and Regulations, the FIFA Regulations on Working with Intermediaries, the relevant AFC regulations, if any, and the laws applicable in the territory of the State of Qatar. Finally, the maximum duration of the Representation Contract shall be two years, even though it may be extended for another maximum period of two years by a new written agreement.

In order to keep the standards of transparency high, the Representation Contract shall be deposited by the concerned party to the QFA within ten days of its having been executed, whereas the same time limit applies also for any early termination or variation thereof. More importantly though, failure to deposit to the QFA the Representation Contract (and any variations thereof) as well as the respective registration requirements as per these Regulations not only shall constitute a breach of the Regulations, but Representation Contracts (and any variations thereof) that have not been deposited to the QFA shall not have any binding legal effect and consequently shall be considered null and void by the QFA decision-making and/or judicial bodies.

6. Impeccable reputation

As per Art. 3§3 of the QFA Regulations, in addition to the respective requirements foreseen under Annex 3 concerning the registration of Intermediaries, QFA has to be satisfied that the Intermediary involved has an impeccable reputation whereas if the Intermediary concerned is a legal person, QFA has to be satisfied that the individuals representing such legal entity within the scope of the transaction in question have an impeccable reputation. Despite the fact that it is difficult to pinpoint with precision what could be defined as impeccable reputation, QFA has adopted a case by case approach, which give a certain flexibility to the deciding authority/body whether to accept or not the registration of an applicant as Intermediary.

Having said that, there are several provisions in the QFA Regulations related to this fundamental requirement. First of all, as basic requirement for the registration as Intermediary, the QFA Regulations require the submission of the Intermediary Declaration for natural and legal persons, by means of which, the Intermediary, *inter alia*, declares that he has an impeccable reputation and confirms that no criminal sentence has ever been imposed upon him for a financial or violent crime. Suffice to mention that pursuant to Art. 10§1 of the QFA Regulations, "*Intermediaries shall abide at all times by the obligations and principles described in the Intermediary Declaration, part of these Regulations as Annex 1 and 2*". More importantly, it needs to be emphasized that in considering whether such requirement is fulfilled, QFA will examine among others the applicant's criminal records or police clearance, which is a mandatory requirement foreseen for the registration as per Annex 3, his financial history (e.g. any history of bankruptcy) as well as any dealings related to the game of football or otherwise which the QFA could deem relevant. In any case, §13 of Annex 3 of the QFA Regulations grants the right to QFA to request additional documents in that direction (e.g. recommendation letter, copy of disciplinary records from other football associations).

7. *Conflicts of interests*

One of the major changes that FIFA Regulations have brought to the activities of Intermediaries is the aspect of the conflicts of interests. Following FIFA Regulations, even though the Players and Clubs should ensure that no conflict of interest exists, QFA has adopted a similar provision in its Regulations by means of which no conflict of interest exists if the Intermediary discloses in writing an actual or potential conflict of interests and acquires from the other parties concerned the relevant written consent. For the avoidance of any misunderstanding as well as for the sake of legal security, not only such written consent should be acquired before the beginning of the relevant negotiations, but also shall be confirmed in writing which party will remunerate the Intermediary. QFA has qualified this issue as a requirement for the registration of an Intermediary with QFA, since it is mandatory that any such documentation should be submitted during the registration process.[20]

Related to this matter, it should not be left unmentioned that it is also prohibited: a) any interest or any form of ownership or any kind of influence whatsoever in a Club, either directly or indirectly; b) any interest in the business or affairs of an Intermediary or an Intermediary Entity by a Player, a Club or Club official; c) any direct or indirect interest of any nature whatsoever related to a registration or economic right of a Player by an Intermediary; and, d) an offer or attempt to offer any consideration of any kind to any Club or Player in relation to entering into a Representation Contract with that Intermediary.

8. *Intermediaries' obligations*

Intermediaries' obligations in the QFA Regulations are not collected in an individual article but can be identified in several parts of the regulations, the most important of which are the following:

- an Intermediary should not become an Official or Player, otherwise he shall have his registration cancelled or suspended for as long as he remains an Official or a Player;[21]
- shall not carry any activity unless duly registered as per Annex 3;[22]
- shall be permitted to represent a Player or a Club only by concluding a validly executed written Representation Contract;[23]
- shall deposit and notify the Representation Contract with QFA as well as any early termination or variation thereof within ten days of such event;[24]
- shall have the duty of disclosure in written in the event of an actual or potential conflict of interests;[25]

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[20] Art. 7§3 and Annex 3 of QFA Regulations.
[21] Art. 2§5.
[22] Art. 3§1.
[23] Art. 5§1.
[24] Art. 5§6.
[25] Art. 7§2.

- shall have no interest or any form of ownership or any kind of influence whatsoever in a Club, either directly or indirectly;[26]
- shall ensure that no Player, Club or Club official have any interest in his business or affairs;[27]
- shall have no interest, either direct or indirect, of any nature on the registration or economic rights of a Player; [28]
- shall respect and adhere to the statutes, regulations, circulars, directives and decisions of the competent bodies of the QFA, QSLM, FIFA, AFC, the Court of Arbitration for Sport and any other competent judicial body/tribunal established or recognized by the QFA as well as the applicable laws in the State of Qatar;[29]
- shall comply in every transaction with the provisions of the aforementioned statutes, regulations, directives and decisions of the competent bodies of the QFA, QSLM, FIFA and the AFC, as well as the applicable laws in the State of Qatar;[30]
- shall abide at all times by the obligations and principles described in the Intermediary Declaration as per Annex 1 and 2;[31]
- shall ensure that the registration requirements are satisfied at all times throughout his registration with QFA;[32]
- upon his registration with QFA, shall be subject to the disciplinary authority and jurisdiction of QFA in respect to any act or omission arising out or in connection with his activity;[33]
- specifically for Foreign Intermediaries, in addition to their registration with QFA, if the relevant transaction involves a Local Player, then the Foreign Intermediary must include in the pertinent transaction and/or act through a Local Intermediary, while fulfilling all requirements as per the laws of the State of Qatar governing business activity.[34]

9. Remuneration

With regards to the issue of remuneration of Intermediaries, QFA decided to follow the basic recommendations of the FIFA Regulations. As such, as a general principle, an Intermediary shall only be directly remunerated by his client, i.e. by the Club or the Player for whom he acts.[35] However, it is possible that the Player may give his

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[26] Art. 7§4.
[27] Art. 7§4.
[28] Art. 5§5.
[29] Art. 9§1.
[30] Art. 9§2.
[31] Art. 10§1.
[32] Annex 3§B (9).
[33] Annex 3§B (18).
[34] Art. 1§2 and Annex 3 section A§2.
[35] Art. 6§1.

written consent for the Club to pay the Intermediary on his behalf, whereas such payment made on behalf of the Player must reflect the general terms of payment agreed between the Player and the Intermediary.[36] If acting on behalf of a Player, the Intermediary's remuneration shall be calculated on the basis of the Player's annual basic gross income, including any signing-on fee, but excluding the Player's other benefits (e.g. a car, a flat, etc.)[37] whereas agreement shall be made in advance whether the Player shall remunerate the Intermediary with a lump sum payment at the start of the employment contract that the Intermediary has negotiated for the player or whether with annual instalments at the end of each contractual year.[38] On the other hand, if the Club is the client of the Intermediary, remuneration shall by paid to the Intermediary via a lump sum agreed prior to the conclusion of the relevant transaction, whereas it is left to the discretion of the parties to agree also payment in instalments.[39]

Coming now to the controversial issue of the percentage proposed by FIFA in its regulations concerning payments to Intermediaries, QFA's decision was to leave the parties the possibility to agree on the amount of remuneration under free terms, making reference though to the same principle adopted in the FIFA Regulations, i.e. the recommendation[40] to adopt the following benchmark:

- if acting on behalf of a Player, the total amount of remuneration should not exceed three per cent (3%) of the Player's basic gross income for the entire duration of the relevant employment contract;
- if acting on behalf of a Club, the total amount of remuneration should not exceed three per cent (3%) of the Player's eventual basic gross income for the entire duration of the relevant employment contract;
- if acting on behalf of a Club in order to conclude a transfer agreement, the total amount of remuneration should not exceed three per cent (3%) of the eventual transfer fee paid in connection with the relevant transfer of the Player.

In this respect, concerning payments between clubs in relation to players' transfers, it shall be ensured by the clubs concerned that no payment related to transfer compensation, training compensation or solidarity contributions, are made to/by Intermediaries.[41]

Specific care has been undertaken concerning payments to Intermediaries, when a Player is a minor. In this respect, it was decided to leave the same provisions included in the FIFA Regulations by means of which Players and/or Clubs that engage the services of an Intermediary are prohibited from making any payments to such Intermediary if the Player concerned is a Minor.[42]

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[36] Art. 6§2.
[37] Art. 6§3.
[38] Art. 6§4.
[39] Art. 6§5.
[40] Art. 6§6.
[41] Art. 6§7.
[42] Art. 6§9.

10. Disciplinary powers and sanctions

As already mentioned above, by means of registering as Intermediary with the QFA, the Intermediary agrees to be subjected to the disciplinary authority of the QFA. The disciplinary authority of QFA towards its registered Intermediaries is not only foreseen in the relevant FIFA Regulations,[43] but also expressly reserved in several provisions of the QFA Regulations. In particular, as stipulated under Annex 3 Section C§18, "*By registering with QFA, the Intermediary agrees to abide by and adhere to the provisions of these Regulations and be submitted to the disciplinary authority and jurisdiction of QFA in respect to any act or omission arising out or in connection with his activity as Intermediary (Local or Foreign)*". On such basis, in the QFA Regulations there is a specific chapter concerning disciplinary sanctions,[44] in which the relevant competences as well as the sanctions towards Intermediaries, Players and Clubs are foreseen in detail.

In particular, the QFA Disciplinary Committee, as first instance judicial body, is competent for imposing the relevant sanctions,[45] whereas as second instance body the QFA Appeal Committee is competent to hear appeals against decisions of the QFA Disciplinary Committee.[46] In order to provide uniformity with the other applicable regulations of the QFA, actual or future, it is also stipulated[47] that "*Decisions of QFA Disciplinary Committee as well as of the QFA Appeal Committee may be appealed in accordance with the QFA Statutes, the QFA Disciplinary Code and other relevant rules and regulations*".

In terms of sanctions, the QFA Regulations, on the basis of the general provisions of the QFA Disciplinary Code, foresee different kinds depending on the respective perpetrator. In this respect, sanctions against Intermediaries[48] consist of a reprimand or warning, a fine of at least QAR 15,000, a suspension of registration for up to twenty-four months, a registration cancellation, a ban on taking part in any football related activity as well as any other sanction provided in the QFA Disciplinary Code. On the other hand, sanctions against Players[49] include a reprimand or warning, a fine of at least QAR 15,000, a match suspension for up to twenty-four months, a ban on taking part in any football related activity as well as any other sanction provided in the QFA Disciplinary Code. Finally, the sanctions that may be imposed against a Club by QFA competent judicial bodies are a reprimand or a warning, a suspension of official(s), a fine of at least QAR 15,000, an exclusion from competition(s), a transfer ban for up to two consecutive registration periods, a deduction of points, a demotion to a lower division as well as any other sanction provided in QFA Disciplinary Code.

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[43] Art. 9§1.
[44] Chapter VI [Disciplinary Sanctions].
[45] Art. 13§1.
[46] Art. 13§2 of QFA Regulations and Art. 123 *et.seq.* of QFA Disciplinary Code.
[47] Art. 13§2.
[48] Art. 14§1.
[49] Art. 15.

11. Conclusion

The task of drafting the new QFA Regulations, in the process of which the underwritten had been directly and actively involved, definitely was not easy. As a general remark, to our opinion, the new FIFA Regulations on Working with Intermediaries could be considered more a sort of delegation of responsibilities to the national associations than a real "de-regulation" of the system. FIFA's decision to open the "game" to a big pool of individuals as well as to legal entities is a reflection of a reality that says that in every licensed agent corresponded other ten non-licensed. FIFA wished to assign a considerable proportion of its responsibilities to the national associations, who may have a more direct control over the activities of Intermediaries. FIFA's intention was to create a more transparent, but also flexible, legal framework, which the national associations are now called to adjust and implement at national level in accordance also with their national mandatory laws and the particularities of their regions.

Having analyzed the basic principles of the QFA Regulations, it appears evident that we are talking about a complete different reality in the world of players' or clubs' representation. New challenges can already be anticipated not only from the point of view of the Intermediaries, players and/or clubs, but also from the national associations since their role shall be more vital and active in the light of the new obligations requested by FIFA Regulations to them.

On account of the above, several discussions have taken place within the football family expressing their concerns related to the lack of uniformity and certain ambiguity in application of the new regulations. The Intermediaries are now called to apply the different rules imposed by each and every association and therefore follow different procedures concerning the exercise of their activity in the respective territories. In this environment, upon recommendation of the Legal Department, QFA decided to reach out officially to the Asian Football Confederation in order to establish a working group between the AFC Member Associations under its auspices for discussing the content of the regulations of each and every association and try to find, if possible, grounds for adoption of a common approach concerning the regulation of the activity of Intermediaries. Upon such proposal from QFA, AFC has already initiated the relevant process by contacting its member associations. We firmly believe that such initiative could bring positive results to all relevant stakeholders, since uniformity and legal certainty are two basic elements for the success of a newly introduced regulation.

In the light of the above, pending the further progress and conclusion of the process initiated by AFC upon suggestion of the QFA as stated above, it was a primary aim of QFA to apply the new concept while respecting the particularities of the region, the interests of its members and local intermediaries. It is clear that amendments may need to take place in the long run and after having carefully assessed the application in practice of these new Regulations from the Players, the Clubs and the Intermediaries. Definitely, QFA has already undertaken all necessary

measures internally in order to be able to monitor efficiently the activity of Intermediaries and also the implementation of the new rules by all concerned parties. Despite the challenges that such project may bring not only in terms of educating players and clubs in the content of the new regulations and the monitoring of their implementation, we firmly believe that QFA will be able to meet the high standards of responsibility imposed by the QFA Regulations, since transparency and control of the internal relations concerning players' transfers is a major milestone for QFA and the new regulations can form an efficient tool to that direction. In any case, it is quite interesting to see how each and every association will implement the basic principles of the FIFA Regulations in its own respective territory; nevertheless, no one can deny that each association has to be ready to deal with the increased administrative, disciplinary and monitoring tasks delegated by the FIFA Regulations.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN ROMANIA

by *Geanina Tatu*[*]

1. Introduction

On 23 April 2015, the Executive Committee of the Romanian Football Federation adopted the "Regulations on Working with Intermediaries" (hereinafter called RLI), which replaced the old "Regulations on Players' Agencies (hereinafter called RAJ) adopted by the Executive Committee of the FRF (RFR) on 11 July 2011. The new regulations were the result of FIFA's adopting a minimum set of criteria on players' agencies (renamed "intermediaries") embodied in the *"Regulations on Working with Intermediaries"* (hereinafter called RWI), come into force on 1 April 2015. Art. 1, par. 2 RWI enforces on the national associations the adoption and putting into practice of a minimum threshold of regulations regarding the activity of the intermediaries, embodied in an assembly of norms contained in the RWI.

When saying that RLI replaced the old regulations of RAJ, we base our affirmation on the interpretation of legislative technique norms. In their rush to comply with the FIFA requirements, FRF adopted regulations which transposed almost identically the RWI norms, but neglected the technical side of the normative process. Thus, the RLI does not expressly mention the fact that it totally abolishes the RAJ norms. Yet, taking into consideration that these two sets of regulations standardize the same group of juridical relationships, as well as their succession in time, based on applying the principle of tacit abolition, the result is that the RLI completely replaces the RAJ regulations. As this study reveals, even the transitory norms contained in the RLI are incomplete and insufficient.

The reason to adopt a new set of regulations on the activity of player agencies / intermediaries is to be found in the FIFA objectives concerning this field. Thus, it is aimed that the clubs' and players' protection enhancement be attained within the process of negotiations and conclusion of labour / transfer contracts which also involve their remunerated agents, the imposition of a minimum set of criteria regarding the registration of intermediaries with the consequence of enhancing

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their activity's transparency. The recent penal causes settled in Romania, concerned with fiscal irregularities derived from the lack of transparency and impossibility of controlling the activity of players' agents pointed towards the necessity of adopting more articulated regulations in the field. Although the regulations contained in the RLI strictly concern the relationship between the intermediaries and the Romanian Football Federation and make no reference to the fiscal aspects of the intermediaries' activity, the implementation of a higher level of transparency of the operations they run would also lead to a more efficient fiscal monitoring of the contracts they conclude.

Although, the RLI, basically, consist of norms already contained in the RWI, there are some significant differences, as the Romanian Football Federation tries to amend the international norms to the actual reality of the internal activity of players' agents.

2. Relevant Internal Regulations

"The Regulations on Working with Intermediaries" has a structure similar to that of the regulations enacted by FIFA. Thus, without displaying any recitals to indicate the reason for its enactment, the RLI defined their field of application in art. 1. According to the mentioned norm, the Regulations standardize the activity of Intermediaries, exclusively aiming at connecting players and the clubs in view of negotiating a labour / civil contract of a football player, or at connecting two clubs in view of concluding a player transfer agreement within a national Association or another club from another national Association.

Therefore, the main field of application of the RLI is represented by the services concerning:

- intermediation of negotiation / renegotiation of a labour contract / civil convention concluded between a player and a club;
- intermediation of concluding a domestic / international transfer agreement of a player from one club to another, regardless of the Federation to which they are affiliated.

Next, art. 1, par. 2 of the RLI states that its application "*should not strictly be limited to the activities of Intermediaries as describes in paragraph 1*", but also applies "*in the case of services which may be delivered by Intermediaries to the clubs' official representatives or coaches"*. This rule is not present in the RWI, representing an element of novelty with concern to the area of potential clients of the intermediaries. Thus, besides players and clubs, even clubs' official representatives and coaches may call upon the services of the intermediaries.

To this purpose, art. RLI defines the client to be "*a player, a club, a club's official representative or a coach requesting an Intermediary for the services stipulated in art. 1, par. 1*".

Another new element of the Romanian national regulations is the definition of the area of persons exempt from the application of the RLI, but who may still

perform intermediation activities in the field of football. To this, art. 3 RLI, under the marginal "Exempt Persons" rules that:

"*1. One of the parents, the child, brother, sister, legal guardian or husband / wife of the player may represent the latter throughout the negotiation or renegotiation of a labour / civil contract.*

2. A natural person, legally authorized to practice law in compliance with the legislation in force in their country of residence may represent a player or a club throughout the negotiation of a transfer or of a labour / civil contract.

3. To avoid any kind of doubt, no official representative of any club may be an Intermediary on behalf of and for the club they represent".

Following the analyses of the regulatory provisions, the result is that the persons stipulated in paragraph 1. (*one of the parents, the child, brother, sister, legal guardian or husband / wife of the player*) may only represent *the player* throughout the negotiations / renegotiations of a labour / civil contract which is to be concluded with a football club, and the persons legally qualified as lawyers in their country of residence may represent *the player as well as the club* throughout the time of negotiations of a transfer agreement or labour / civil contract. It is essential that to these persons the RLI provisions do not apply, thus they are not compelled to register themselves as intermediaries and they are not governed by the clauses of a standard representation contract.

Taking all these aspects into consideration, another problem arises, that of nationally observing the norms of competition rights. If the limitation of the fees charged by the intermediary at 3% of the gross amounts awarded as income or of the transfer amounts awarded within the respective transactions, regulated by the RWI, makes for the object of an intimation of the European Commission with concern to breaching onto the competition community norms, the RLI dispositions attain a national discrimination concerning the intermediaries and the persons who may act as intermediaries on the ground of their lawyer quality. Thus, there is no distinction between the reasons of preferential treatment granted to lawyers when they act as intermediaries, since they are not compelled to submit to the limitations imposed by the RLI. Even though this provision was present also in the old regulations, still the imposition of supplementary restrictions, especially with concern to limiting the fees charged, would only worsen the problem.

Art. 3 RLI expressly stipulates that when an official representative of a club performs intermediation activities on behalf of and for the club where they are activate, they do not have the quality of an intermediary in the sense of the regulations, and thus, the norms of the regulations are not applicable to them.

On a general view, the RLI contains the principles of performing the activities of an intermediary, their registration conditions and requirements, the minimum clauses supposed to be contained in the intermediation contract, provisions regarding any conflicts of interest, disciplinary procedures and penalties. These aspects shall be analysed individually in the sections to follow.

3. Principles of organization and performance of an intermediary's activity

The regulations adopted by the Romanian Football Federation do not contain a separate section dedicated to the principles governing the activity of the intermediaries. Nevertheless, these, seen as fundamental rules with general applicability, can be identified in different articles of the regulations.

Thus, the following can be distinguished:

a) the principle of good-will when performing intermediation activities.

This principle is implicitly defined in art. 2, par. 5 RLI, which rules that "*a Client or an Intermediary is forbidden from hiding or misrepresenting reality or any fact concerning the transaction in which they were involved*". Developing this principle, at paragraph 6, the same article rules that:

"Any of the parties to a transaction are forbidden to:

a) suggest in any way, directly or indirectly, to another party of the transaction that the respective transfer / contract depends on the agreement of their Client to be represented only by a certain Intermediary;

b) condition in any way the transfer / contract on the agreement of the Client to be represented only by a certain Intermediary".

On the basis of the same principle, "*a club should take all reasonable measures to make sure that the official representatives of the club comply to the provisions of the present Regulations*" (art. 2, par. 7 RLI).

Consequently, the RLI imposes the obligation to comply with the principle of good-will on the parties of the intermediation contract as well as the parties of the transaction to make for the object of the intermediation. Thus, the Client and the Intermediary should act such as the transaction envisaged be concluded with consent, revealing all its essential details and agree with the interests of all parties involved. Moreover, the clubs and their official representatives, as well as the players/clients should not make the conclusion of a labour contract/ transfer conditional on the person of the intermediary involved in the transaction.

b) the principle of publicity to third parties

As a consequence of the intermediaries' obligation to register themselves, FRF shall publish the registration numbers of all Intermediaries, and in the case of intermediation companies (legal entities registered as Intermediaries) their names, in a list on the FRF's official website which should be periodically updated (art. 7, par. 1 RLI).

FRF also has the right to publish, in any way and at any time they deem necessary, a list of the transactions, which made use of an Intermediary's services.

With regard to the amounts resulting from the intermediation activity, FRF has the right to publish, in any way and at any time they deem necessary, the total consolidated amounts representing the payments made to the Intermediaries by the players / coaches / clubs' official representatives and the total consolidated amounts representing the payments made by the clubs to the Intermediaries.

Lastly, FRF has the right to publish any decision with regard to these

Regulations, in any way and at any time they deem necessary, including the names or any other relevant information of an Intermediary who suffered a disciplinary sanction, including if an entry is suspended or withdrawn.

Analysing the above mentioned rules, we notice that the principle of publicity concerning the activity of the intermediaries doesn't have an absolute character, and so, FRF shall publish, ex officio, only the names and registration numbers of all the intermediaries, on a list which will be periodically updated. Concerning the other aspects of their activity (performed transactions, received payments and mentions of aberrations committed by the intermediaries), FRF has the right to publish this information, by their own choice ("in any way and at any time they deem necessary"). Taking into account the purpose declared by FIFA for these regulations, namely that of enhancing the transparency of the intermediaries' activity, we believe that the solution chosen by FRF will not help achieve this objective. Even in the old regulations the list of players' agents was made public. The novelty would be the publishing of relevant information regarding their activity. Since making this public falls within the responsibility of the tutelary forum, even its efficiency is affected.

c) *the principle of information*

The obligation to information stipulated by the RLI involves two aspects: on the one side there is the obligation to information which is attached to the parties of the Intermediation Contract, in favour of the Romanian Football Federation, and on the other side there is an obligation to information within the relationship between the same parties with concern to the existence of a potential conflict of interests.

Thus, RLI rules that any of the parties to the Intermediation Contract have an obligation to inform FRF regarding any amount of money paid in regard to the respective intermediation contract, within 30 days from the day of the payment. This obligation is in place to fulfil the publicity formalities mentioned in the previous paragraph, and to keep track of the payment conditions imposed by the RLI.

Also, any parties to the Intermediation Contract have an obligation to inform FRF of any written agreement existing between the parties regarding a transaction. The information should be disclosed within 30 days of the date when:

a) the parties concluded, in writing, such an agreement; or

b) a person became the employee / collaborator of a club and had a pre-existing written agreement with an Intermediary; or

c) a person registered themselves as an Intermediary and had a pre-existing written agreement with a club as employer / collaborator.

This obligation is imposed in order to facilitate the monitoring of the activity of the intermediaries by the Romanian Football Federation.

The mutual obligation to information on the parties, concerning an existing conflict of interests is foreseen in art. 8, par. 12 RLI: "Intermediaries, players, coaches and official representatives of the clubs shall inform in writing of any

conflicts of interest which they might have regarding a transaction and shall obtain the prior express consent of the other parties involved in the respective transaction, so that their activity may continue. One copy of the written consent expressed by the parties to the transaction shall be communicated to FRF within 30 days from the date of its completion, but no later than the date of registration of a transaction with the competent forum".

Consequently, we can note that the norms on avoiding conflicts of interest do not have an imperative character. Thus, one of the parties, with explicit knowledge, may consent to the other party being represented by a person that might have a conflict of interest concerning that transaction. The agreement should be expressly and priorly communicated to FRF, within 30 days from the date of editing, but no later than the day when the transaction was registered.

4. Definitions

Unlike the international regulations, RLI contains the definitions of the essential terms which operate in these regulations. These definitions are strictly contained in Addendum no. 1 RLI, but they can be met throughout the contents of the Regulations, without being mentioned in the Addendum. Consequently, even though the Addendum provides for the definition of the Intermediary, there is no mentioning of the definition of the Client. The concept of Client is contained in art. 2, par. 1 RLI: "*'The Client' may be a player, a club, an official representative of a club or a coach requesting an Intermediary for their services stipulated in art. 1, par. 1"*.

With concern to the remuneration owed to the Intermediaries, the Addendum defines the concept of "*gross income*". This is explained as the gross remuneration of the player / coach / official representative of a club, excluding any bonuses conditional on the competitive performance of the player or club.

The Club, as a Client, is "any sports structure taking part in official competitions organized or acknowledged by FRF or any other national Association affiliated to FIFA".

The Intermediary is any natural person or legal entity organised as a trade company which performs intermediation activities and is registered with FRF in compliance with Addenda 2 and 3 of the present Regulations.

The novelty leading to changing the name of the Regulations is the permission for legal entities to perform intermediation specific activities. In the old Regulations, RAJ, the players' agent was defined as "*a natural person who intermediates, on commission, players and clubs in view of negotiating or renegotiating a labour/civil contract or intermediates between two clubs in view of concluding a transfer agreement, in compliance with the dispositions mentioned in the present regulations."* Consequently, only natural persons could have the qualities of players' agents.[1] Yet, the players' agent could organise their

[1] The activity of players' agents may be performed only by natural persons to whom FIFA/FRF/ another national association has issued a license for such an activity. (art. 3 paragraph 1 RAJ).

activity as a single trade company, but only in the form of a professional organisation, conditional on the exclusivity of their object of activity. If they chose this option, they couldn't perform the activity of players' agent as an authorised person.

The intermediation activity is defined as an activity performed by a person registered as an Intermediary in view of concluding a transaction for or on behalf of a player, coach, official representative of a club, or a club.

The transaction is, in the light of the RLI, any negotiation or connected activity, including any prior communication meant to determine the conclusion, cease or alteration of the terms of a contract between a player /coach /official representative of a club and a club, the facilitation of, or legitimation of enrolment of a player from one club to another club (regardless if it concerns a temporary or a permanent transfer). Thus, this includes all the activities performed by the intermediary in order to achieve the object of the intermediation contract.

RLI marks a difference between the standard intermediation contract and the intermediation contract. *The standard intermediation contract* is the standard contract to be found in Addendum 4 of the Regulations. *The intermediation contract* is any agreement between an Intermediary and a player / coach / official representative of a club or a club. The intermediation contract shall mandatorily contain at least the clauses imposed by the Standard Intermediation Contract.

As a consequence, RLI does not impose the use of the Standard Intermediation Contract within the activity of the Intermediaries. Yet, its clauses represent a mandatory minimum and they should be inserted in any intermediation contract which is in the scope of these Regulations. On the grounds of contractual freedom, the parties may adopt any clauses they deem necessary, the only limitation being in the sense of inserting the provisions of the Standard Contract in their agreement. Taking into consideration that the latter one contains essential and limiting clauses concerning the intermediaries' activity, it is assumed that it would constitute the rule to normalize contractual relationships in this field.

5. Registration of intermediaries

ThE Intermediaries' obligation to register, be it natural persons or legal entities, is stipulated, as a general assignation, in art. 4 RLI. This states that "*natural persons or legal entities willing to perform intermediation services have the obligation to register themselves with the FRF*".

The registration procedure and the requirements, which the applicant should fulfil, are given in detail in Addendum no 2 of RLI. Thus, any natural person or legal entity with the intention of acting as an Intermediary shall register themselves with the FRF. The registration shall be valid for one year. Every January, the Intermediary should renew their registration. Exceptionally, in 2015, the registration of Intermediaries shall start in April.

The new regulations replace the licensing procedure provided for by the RAJ. According to the old regulations, in order to obtain a players' agent licence, the applicant was submitted to an examination organized by FRF, twice a year, in

March and September, under the supervision of FIFA. This licence had a validity period of 5 years, and upon the expiration of it, the applicant had to pass again a new examination to have it renewed.

The registration procedure starts with a written request addressed by the applicant to FRF. Together with the request, the applicant shall also submit a written statement consenting to their agreement with observing its statuses, regulations, directives and decisions taken by the competent bodies of FIFA and FRF, as well as the jurisdiction of the Court of Arbitration for Sport in Lausanne.

The registration file should contain the following documents:

- written requests;
- valid criminal record of the natural person or legal entity, as case may be;
- written statement attesting their consent to observe the statuses, regulations, directives and decisions of the competent bodies of FIFA and FRF, as well as the jurisdiction of the Court of Arbitration for Sport in Lausanne.
- Copy of the identity document / registration certificate (CUI);
- Receipt of registration fee payment.

The registration fee shall be annually settled by the FRF Executive Committee. For the year 2015, by Decision of the Executive Committee of FRF on 23.04.2015, the amount of the registration fee was settled at 1,500 Euros. We can notice that the amount is much lower than that requested for the exam registration for awarding the players' agent's licence in the old regulations (25,000 Euros).

The competent body for checking the compliance of the registration file and fulfilment of the minimum requirements by the applicant is the License and Affiliation Management Unit within FRF. Against the decision of rejection of a file pronounced by this entity, the applicant may submit a request before the National Chamber of Litigation Settlement of FRF, to reassess the registration request and ascertain if all conditions stipulated in the RLI are fulfilled. The CNSL Decision may be appealed to the Appeal Commission of FRF, under the conditions provided for by the Statutes of the Romanian Football Federation.

After registering as Intermediary, the respective person shall be able to use, throughout all official communications, the title: "FRF Registered Intermediary".

6. Requirements and conditions imposed on the intermediaries

RLI establishes throughout their norms, certain requirements and conditions that a person must fulfil to be registered as intermediary. These are not contained in a distinct section, but they can be identified within the general framework of the regulation. Certain conditions imposed on the intermediaries derive from the imperative of limiting the conflicts of interest, others from the requirement of fulfilling the conditions of good reputation or of observing the national juridical norms.

These requirements shall be mentioned as enumerable in this section, following to be analysed by large in the coming sections. Thus, the intermediaries should fulfil the following requirements:

a) *the requirement for registration* – as shown, any natural person or legal entity meaning to act as Intermediary shall register themselves with FRF, registration which shall stand valid for one year;
b) *the requirement for incompatibility avoidance* – a club's official representative (such as the one defined in the FRF Statutes and Regulations), a coach or a player may not be registered as Intermediaries. An Intermediary acting as a player, coach or a club's official representative shall be suspended from the FRF Registered Intermediaries' List all throughout the duration of the incompatibility status;
c) *the requirement for impeccable reputation* – the applicant should bring forth proof of their impeccable reputation. To this end, the applicant should submit, together with the registration request, their updated valid criminal record.[2]
d) *the requirement for observing the FIFA/FRF statutes and regulations, as well as the jurisdiction of TAS* – the applicant shall submit with FRF a written notice attesting their consent to observing the statutes, regulations, directives and decisions of the FIFA and FRF competent bodies, as well as the jurisdiction of the Court of Arbitration for Sport in Lausanne.

On top of these conditions of a general character, RLI imposes on the Intermediaries certain other intermediation specific obligations which shall be analysed in a separate section.

7. Impeccable reputation

The requirement for impeccable reputation is no novelty in the regulations on the intermediary activity. The old regulations, RAJ, stipulated in art. 6, par. 1, that the "*Applicant should be a natural person with an impeccable reputation. It is deemed thst an applicant has an impeccable reputation, if they have never been convicted for financial or violent crimes*".

The new regulations also impose this condition. In Addendum 2, which describes the registration conditions, it is specified that "A*n applicant is deemed to have an impeccable reputation, if they have never been convicted for financial or violent crimes*".

Consequently, the condition of impeccable reputation assumes that the Intermediary should not have committed two types of crime: financial or violent. Following *a contrario* interpretation of these provisions, this condition of impeccable reputation makes no reference to the possibility of having committed other crimes, thus the condition does not assume that the applicant should not have a criminal record. These two types of crime are also mentioned in the FIFA regulations, when mentioning the condition of impeccable reputation.

The modalities of verifying these conditions are stipulated in the RLI and they are specific to the intermediary registration stage. Thus, together with the

[2] Criminal records register the persons convicted or against whom penal or administrative character measures were taken.

intermediary registration request, the applicant should submit a valid criminal record (this stands valid for 15 days from the date of issue).

Moreover, in the registration file, the applicant should also attach a statement on their own responsibility, the contents of which are provided for in Addendum 5 of the RLI. Within this record, the applicant expressly declares that they "suffered no criminal conviction on account of financial or violent crimes". Taking into account the fact that the Intermediary registration stands valid for just one year, its renewal requires the submission of a new file containing a new criminal record as well as a new statement on their own responsibility.

The problem arises when deciphering what happens if the condition of impeccable reputation is no longer fulfilled throughout the validity of the registration. The new regulations no longer stipulate, as the old RJA did, the obligation of the FRF to permanently monitor all players' agents' fulfilment of all the conditions. Art. 16 of the RJA stipulated that "*The national association permanently controls if the players' agents continue to fulfil all conditions in view of holding a players' agent licence, with the help of the Commission for Players' Agents*".

Should a players' agent no longer fulfil the conditions (any of the conditions mentioned in art. 6, 9 and 10 RJA) to own a license, FRF withdraws their license. Yet, should a players' agent be able to fulfil again the respective requirements, the Commission for Players' Agents within FRF would set a reasonable term until when the mentioned requirements need to be met. Should at the end of this term, the conditions still be unfulfilled, the players' agent licence will be permanently withdrawn.

The new Regulations no longer stipulate the procedures to suspend or withdraw the registration of Intermediaries. The decrease of the registration / licence validity from 5 years to 1 year was deemed to reasonably ensure the control of the impeccable reputation condition through the annually submitted documents, on the occasion of renewing their registration request.

8. Conflicts of interest

The conflicts of interest are largely regulated by RLI, which grants this topic a special section. As proven, the norms to regulate this institution do not have an imperative character. Thus, one of the parties may give their consent that the other party be represented by a person with a conflict of interest with concern to that transaction. The agreement should be express and prior, and communicated to FRF within 30 days from the date of its conclusion, but no later than the registration of the transaction.

Art. 8 RLI rules that an Intermediary may represent only one of the parties of a transaction, except for the case when the Intermediary and the other parties involved totally comply with the conditions on dual / multiple representation.

The conditions allowing for dual / multiple representation are:

a) The Intermediary has concluded a representation contract with one of the

parties of the transaction ("the first party") and the intermediation contract was registered with the FRF; alternatively, the Intermediary has concluded a sub-contracting agreement in connection with the first party observing the conditions stipulated in the RLI;

b) The Intermediary obtains the prior written consent of all parties regarding the representation of the Intermediary of all the parties of a transaction ("the other party / parties");

c) once the Intermediary and the other party / parties have agreed on the terms and conditions (but prior to their concluding an intermediation contract), the Intermediary should inform, in writing, about all the details of the agreements proposed, including but not limited to, the remuneration payable to the Intermediary by the parties;

d) all parties are given reasonable possibility of appealing to independent legal counselling and / or, in the case of a player, to counselling from the players' union, prior to expressing their written consent;

e) after being granted this possibility, all parties express their special consent, in writing, to the Intermediary to conclude an intermediation contract with another party / other parties in the proposed terms and conditions.

These conditions should be cumulatively fulfilled prior to concluding the intermediation contract which may have an issue with a conflict of interest. Should any of the parties not express their special consent, in writing, according to the above conditions, the Intermediary is forbidden to receive any remuneration from the other party / parties for the envisaged transaction, and the other party / parties are forbidden to benefit from the services provided by the Intermediary or to make payments to the Intermediary for the respective transaction. The Intermediary may continue to represent only the first party in the respective transaction and be paid for these services, according to the associated intermediation contract.

This aspect of the conflict of interest makes reference to double / multiple representation. Yet, there are limitations which are aimed at avoiding other circumstances which might give rise to a conflict. Thus,

- an Intermediary or an intermediation company may not hold shares or a position within a football club. Similarly, a club, player, coach, or official representative of a club may not hold shares or a position within an intermediation company nor an interest in the activity of an Intermediary.
  The interest is defined as being in a position or association of such kind as to allow the exercise of material, financial, commercial, administrative or any other kind of influence on the club's or Intermediary's business, as case may be. The lack of this interest is also extended to certain persons and companies, such as:
  (i) husband / wife, child, parent or brother / sister of the Intermediary or player / coach / official representative of the club, as case may be; and / or
  (ii) a company whose any legal or patrimonial interest or any participation is

owned by the intermediary, player or coach or official representative of the club or any husband / wife, child, parent or brother / sister of the intermediary or player / coach / official representative of the club, as case may be;

(iii) a company whose control or financial, commercial, administrative, managerial or any other kind of influence may be exercised by the person or husband / wife, child, parent or brother / sister of the Intermediary or of the player / coach / official representative of the club, as case may be.

- An Intermediary may not have any interest of any kind in connection to the right of legitimation of a player. This includes, without being limited to, having any interest in a player's future transfer emolument. This doesn't prevent the Intermediary acting exclusively for a club, within a transaction, to be remunerated rationally to the total amount of the transfer emolument generated by that transaction.
- An Intermediary should not give, offer or seek to offer any advantage of any kind, to the club, club's official representative, coach or player having as a result easing of the access to the players. It is also forbidden to promote the Intermediary's services to the players in connection with a transaction in exchange for any benefit, service or any kind of preferential treatment regarding the club's players. The clubs, coaches, club's official representatives and players are forbidden to accept such offers or to receive such advantages.
- An Intermediary should not give, offer or seek to offer any advantage of any kind to a player (or any member of that player's family) in connection with concluding an Intermediation Contract with the respective Intermediary. The players are forbidden to accept such offers or to receive such advantages.

9. The intermdiaries' obligations

In contrast to the old regulations, RLI no longer stipulates in a separate section the rights and obligations of the intermediaries. Yet, by regulating the clauses of the intermediation contract, these obligations can be identified. Moreover, in the previous sections we have treated in detail aspects which may be defined as obligations of the intermediaries (the obligation to act in good-will, obligation to registration, obligation to avoid a conflict of interest, etc.).

This section shall strictly treat the intermediaries' obligations deriving from the standard intermediation contract suggested by the RLI. To this end, we can notice that the Regulations impose certain specific obligations in connection with the intermediation contract. Thus, the intermediary has the obligation, prior to performing Client specific representation activities, to conclude an intermediation contract, in written form, which shall be registered with the FRF.

For this purpose, the contract shall be concluded on a model form containing the minimal clauses contained in the standard intermediation contract. The expression of the text implies the fact that the written form of the contract is

an *ad validitatem* condition. In addition, all adjustments to the contract, throughout its performance, must be notified to the FRF.

Another Intermediary-specific obligation associated to their activity derives from sub-contracting the services which are the object of the intermediation contract. When an Intermediary delegates or sub-contracts any of the intermediation services, their obligations, services or responsibilities in connection with their client or any other Intermediary, they should:

a) send a copy of the intermediation contract concluded between the new Intermediary and client;
b) register the conditions under which they delegate or sub-contract the mentioned obligations and include them in the written Agreement given by the client with concern to this operation;
c) send a copy of the written Agreement of the client with concern to this operation.

RLI also stipulates a limitation on the Intermediary to conclude contracts with certain Clients, taking into consideration their age. Thus, an Intermediary is forbidden to approach, directly or indirectly, or to conclude an agreement concerning a player's intermediation activity before the 1st of January of the year when the player turns 16 years old. Taking into account that it is allowed to conclude an intermediation contract with a minor who is above 16, it is forbidden to conclude a contract between an Intermediary and a minor player (that is between 16 and 18 years old), without the signature of a parent or legal guardian of the minor.[3]

Another specific obligation regards the disposable nature of the intermediation contract. An Intermediary may sign with a Client one Intermediation Contract for one single transaction. Upon the end of the transaction the contract ceases. This obligation is particularly important from the point of view of the duration of the intermediation contract (maximum 2 years), but this is concluded in view of a determined purpose (completion of the Transaction), its duration being influenced by the achievement of a certain target.

10. Remuneration of the agent

This is the most controversial innovation of the FIFA regulations implemented in the national Regulations on intermediaries. RLI rules that an Intermediary should be remunerated by the Client they represent. Consequently, they may not be paid by other persons for the services performed on the grounds of the intermediation contract. We can differentiate payments made by a natural person as a Client, from a Football Club acting as a Client.

The Client – the natural person disposes of more modalities of making payment, limiting modalities stipulated by the RLI:

a) direct payment to the Intermediary;
b) when the player / coach / official representative of the club may deduct from

[3] In Romania, the state of infancy subsists until the completion of the age of 18. The 16 year old minor may conclude on their own, without the consent of their legal representative a valid labour contract.

the net wages periodically paid to the player / coach / official representative of the club an amount in favour of the Intermediary, to cover the obligations assumed by the Client by the intermediation contract registered with the FRF.

When the Intermediary and player / coach / official representative of the club mutually agree on the provisions of the Intermediation Contract that a commission (a lump sum or partial payments) shall be paid in view of performing a certain transfer, the commission shall be calculated based on the gross income of the player / coach / official representative of the club in compliance with the provisions of the contract concluded by the player / coach / official representative of the club following the activity performed by the Intermediary.

If the player / coach / official representative of the club and the Intermediary agreed on partial payments, the Intermediary has the right to receive the owed amounts by the end of the contract or by the time the player / coach / official representative of the club signs a new contract, without appealing to the services of the Intermediary.

Regarding the payment made by the Client – the legal entity, the fees for the intermediation services performed shall be settled as a lump sum priorly agreed upon. All payments or remunerations of any kind made to any person in connection with the intermediation activity performed for or on behalf of the club should be fully registered in the accountancy of the club. Yet, this provision does not forbid an Intermediary working for a club to sub-contract or delegate these activities, responsibilities and services to another Intermediary.

RLI also imposes restrictions on third parties, in regards to payment modalities. Thus, an Intermediary or Intermediation Company may not pay directly the remuneration associated with an intermediation to a person who was not involved in the transaction. But this provision does not affect the possibility of a company paying its employees or other parties to the contract who have no connection with the intermediation activity. This principle also applies in connection with the training / promoting compensations. A club which must pay to another club solidarity contributions and / or training compensations and / or any other kind of payment deemed as associated to the transfer has the obligation of making direct payment to the beneficiary club.

In connection with the limitation of fees charged by the Intermediaries within their intermediation contracts, the FIFA as well as the RLI regulations underline that the percentages regulated in this field are only recommendations. Moreover, within the standard Intermediation Contract contained in the RLI Addendum, there is no stipulation of such a percentage. Consequently, the entire topic of intermediary fee limitation may not stand out. Yet, a question arises as to what was the aim of FIFA when they made this "recommendation"?

We believe that this recommendation was made only as a declaration, to draw the attention of the Clients to the amounts which some Intermediaries may demand. These norms are not imperative, representing just a recommendation, some type of benchmark which FIFA deems right for the remuneration of an

intermediation activity. It is thus up to the parties to appreciate the effort made by the Intermediary and their rightful remuneration. As a *recommendation*, RLI stipulates that:

"The Client and Intermediary *may* use the following indices:

a) The total remuneration of an Intermediary for a transaction in which they represented a player / coach / official representative of a club shall not exceed 3% of their gross income, throughout the entire duration of the respective contract.
b) The total remuneration of the intermediary for a transaction in which they represented a club for the conclusion of a contract with a player / coach / official representative of a club shall not exceed 3% of their gross income, throughout the entire duration of the respective contract.
c) Taking also into account the provisions of art. 8 (conflict of interest), the total remuneration of the intermediary for a transaction in which they represented a club in view of a transfer of a player shall not exceed 3% of the transfer emolument effectively paid to the release club for the transfer of the respective player".

Even though the expression in point c) may seem imperative, looking on the whole at the norm which is only a recommendation, we believe these limits cannot be imposed by the standard Intermediation Contract.

11. Disciplinary powers and sanctions

Concerning the competency of settling litigations having as object breaching onto the RLI, the determination depends on the character of the transactions concluded by the Intermediaries.

Relevant non-conformities and litigations in connection with the international transactions (when one party of the transaction is not affiliated to the Romanian Football Federation) fall under the competence of the FIFA Disciplinary Commission which is empowered to impose sanctions in compliance with the FIFA Disciplinary Regulations.

Regarding relevant non-conformities and litigations in connection with the national transactions concluded by Intermediaries, the FRF Disciplinary and Ethics Commission has the competency of disposing sanctions, expressly provided for in the RLI.

These sanctions may be:

Against the Intermediaries:
- reprehension or warning;
- sport penalty of minimum 5,000 Romanian lei;
- prohibition to participate in any football associated activity.

Against players, coaches or official representatives of clubs, as Clients:
- reprehension or warning;
- sport penalty of minimum 5,000 Romanian lei;

- suspension for a number of games;
- prohibition to participate in any football associated activity.

Against clubs, as Clients:

- reprehension or warning;
- sport penalty of minimum 10,000 Romanian lei;
- prohibition to perform transfers;
- withdrawal of points;
- demotion to an inferior league.

These sanctions may be applied separately or cumulatively. RLI does not regulate the special procedure for settling this kind of litigations and thus, the procedure norms contained in the Romanian Football Federation Disciplinary Regulations shall apply.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN RUSSIA

by *Inna Elizarova*[*]

1. Introduction

The new Regulations of the Football Union of Russia (RFU) on working with intermediaries were approved by the Executive Committee of the RFU on 30 March 2015 by the Act of the Executive Committee n. 164/4, and came into force on 01 April 2015. The previous RFU Regulations on agents' activity became invalid at the moment the new Regulations came into force.

The RFU Regulations on working with intermediaries aim to govern the involvement of intermediaries in the relations between football clubs and football players concerning player's transfers from one club to another, and also conclusion (amendment, termination) of the employment contract between players and clubs. These are the only two cases of intermediaries' involvement which are governed by the RFU system and regulations. It is presumed that clubs and players can only use intermediaries' services when employment contracts and transfers are concerned, and not in any other case. In this sense, the Regulations cover the activities of football clubs and their officials, football players and other subjects of football in accordance with FIFA and RFU documents, and of the intermediaries themselves.

The new Regulations were drafted in accordance with FIFA and RFU statutes, FIFA Regulations on working with intermediaries, other relevant FIFA and RFU regulations, and by taking in due consideration the legislation of Russian Federation. It is worth mentioning already that they followed the FIFA Regulations with adoption of all recommended clauses (e.g. 3% fixation of the maximum intermediary fee), but also they kept the strong versions of several provisions from the old agency regulations (e.g. the prohibition of the conflict of interest).

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The purpose of the present overview is to explain the new system created by the Football Union of Russia to substitute players' agents with the intermediaries.

The following sections cover the main principles, relevant Russian law, the questions of representation contracts with intermediaries, their registration, disputes resolution, as well as other essential aspects of activities involving intermediaries.

2. Relevant national law

In the Regulations' Preamble the reference is made to the relevant legislation of Russian Federation.[1] The provision of intermediary services, thus performing transactions by someone else's instruction and in someone else's interest, is regulated by civil law of the Russian Federation. A commission contract, a contract of delegation and an agency contract provide the legal framework for intermediary services. The agency contract distinguishes itself from the other two types of abovementioned contracts. It implies that the agent performs not only legal actions (the so-called direct intermediary actions which lead to legal consequences) but also compulsory *de facto* actions (such as collecting information, organizing and holding negotiations, etc.).

The relations between an agent and a principal are regulated by Chapter 52 of the Civil Code of Russia; which is devoted to the agency services.[2] In accordance with article 1005 of the Civil Code of Russia, under the agency contract one party, the agent, is obliged for remuneration to perform certain legal and other activities. This is done by instruction of another party, the principal, acting on his own behalf but on principal's expense or on behalf of and on expense of the principal.

The agency contract is considered concluded when there is an agreement between the parties on all the essential conditions of such a contract (article 432 of the Civil code of Russia). The Civil code names just one specific essential condition for the agency contract: a condition on its subject. Other conditions can be considered essential if by the claim of one of the parties an agreement on such a condition must be reached. Consequently, to define the subject of an agency contract it is sufficient to indicate the agent's general competence without specifying its character and conditions.

In general, agency contract is considered to be a fee-based contract. Within the framework of the agency agreement the agent is obliged to present an act of rendered services and the report.

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[1] Regulations of the Football Union of Russia (RFU) on working with intermediaries, Preamble. Moscow, 2015. [http://rfs.ru/rfs/documents/strategies/ [Sept. 01, 2015].

[2] Civil Code of Russia. [http://www.gk-rf.ru [Sept. 01, 2015].

3. Principles

The Preamble of the Regulations makes reference to two specific principles to which the Regulations are directed. These are the protection of rights and interests of players and clubs and the principle of transparency. To be more specific, the principle of protection of rights and interests of the players and football clubs aims to create mechanisms of preserving them from being involved in illegal, bad faith activities. Another principle is provision of control and transparency of players' transfers and of conclusion (amendment, termination) of employment contract with intermediaries' involvement.

Moreover, the Regulations state that players, clubs and intermediaries, when executing their rights and obligations, must act in good faith and reasonably. It is not allowed to execute any rights only with the intention to cause harm to another person. Any actions abusing the established regulating norms with an illegal goal, and other bad faith behavior, are prohibited.

4. Definitions

The article of the new Regulations devoted to the main definitions[3] specifies that the central participants of the intermediary relations are the players, clubs, intermediaries, as well as the main organizations and organs involved such as FIFA, UEFA, RFU, the leagues, the RFU Commission on working with the intermediaries. The article also covers such basic concepts as transfer of the player, transfer contract and official RFU competitions.

The '*intermediary'* is defined as a physical or legal person (including foreign) who for remuneration or free of charge represents the interests of players or clubs in the negotiations with the aim of making a transfer contract or concluding (amending, terminating) an employment contract.

The Regulations also define *'officials'* as all official representatives with organizational and administrative functions in the football organizations. This encompasses subjects of football, including but not limited to supervisors, coaches, referees, inspectors, delegates, technical and other workers, members of judicial organs, etc. This definition is key to understand who cannot act as an intermediary under the Regulations.

5. Registration

Within the Football Union of Russia the responsible branch for any administrative issues regarding working with intermediaries is the Commission of RFU on working

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[3] Regulations of the Football Union of Russia (RFU) on working with intermediaries, Article 1. Moscow, 2015. [http://rfs.ru/rfs/documents/strategies/ [Sept. 01, 2015].

with intermediaries.[4] It is therefore responsible for registering of the intermediaries in RFU, and also for any communication with FIFA on this matter.

Article 5 of the Regulations is devoted to the registration of intermediaries. The registering of the intermediaries is an obligation of a player or club, depending on who has a representation contract with the intermediary. The Regulations specifically mention that even if a player or club authorize an intermediary himself to perform the necessary registration procedures with RFU, it does not relieve a player or club from possible liability in regard to such registration.

The registration of the intermediary is due within thirty days from the conclusion of the relevant representation contract. In order to duly register the intermediary, the Commission requires a standard Intermediary's declaration (which is presented as an annex to the Regulations) and basically repeats the FIFA text, and the contract concluded with the intermediary (including all additional agreements and annexes to it, if any). These documents are presented each time a contract is concluded with an intermediary. A registration is performed by the Commission within five working days upon the receipt of the documents by the Commission.

The intermediary is denied the registration in case the documents do not satisfy the requirements set by the Regulations, or in case any other provisions of the Regulations are not duly respected. The decision on the denial of registration must be motivated. It must be communicated to the intermediary within three working days after the Commission issues it, either in person or via email.

6. Requirements and conditions

As previously mentioned, the RFU Regulations strictly define the situations when clubs and players are allowed to use the services of intermediaries.[5] The players have the right to engage the intermediaries' services when transferring from one club to another and also when concluding (amending, terminating) an employment contract with a club. The clubs are permitted to use the services of intermediaries exclusively in two cases: to hold negotiations with the aim to conclude an employment contract with a player and (or) to hold negotiations with the aim to conclude a transfer contract.

The Regulations provide very specific requirements to a representation contract to be concluded with an intermediary.[6] Article 4 contains a list of the obligatory conditions of a contract with intermediary, and also a standard form of a contract is provided as an annex to the Regulations.[7] Any contract being signed

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[4] Statute of the Football Union of Russia, article 44. Moscow, 2013. [http://rfs.ru/rfs/documents/founding_docs/ [Sept. 01. 2015].

[5] Regulations of the Football Union of Russia (RFU) on working with intermediaries, Article 2. Moscow, 2015. [http://rfs.ru/rfs/documents/strategies/ [Sept. 01, 2015].

[6] Regulations of the Football Union of Russia (RFU) on working with intermediaries, Article 4. Moscow, 2015. [http://rfs.ru/rfs/documents/strategies/ [Sept. 01, 2015].

[7] Regulations of the Football Union of Russia (RFU) on working with intermediaries, Annex 4 and 5. Moscow, 2015. [http://rfs.ru/rfs/documents/strategies/ [Sept. 01, 2015].

with an intermediary by a player or club must be signed using a standard form. If needed it can be translated into another language. It is worth mentioning, that the standard form of the representation contract provided in the Regulations is a novelty of the new system. The standard form is rather detailed and particular, with quite long lists of rights and obligations of both parties, articles on financial conditions, parties' liability, confidentiality, arbitrary clause, etc. Making this standard form obligatory for usage does not leave much for generally recognized in the civil law *'freedom of a contract'* principle. It seems as it is directed at formalization and standardization of the relationship with intermediaries and at avoidance of uncertainties and possible disputes.

The Regulations state that any player always has the right to conclude his employment contract without using services of an intermediary, even if he has a valid contract with one.[8] To protect the player's right in this regard and to avoid abuse of rights by the intermediaries it is obligatory to include such provision in a representation contract between a player and an intermediary.

The new Regulations kept the old principle of the maximum duration of a representation contract concluded with an intermediary. Same as before, the duration cannot exceed two years and the automatic prolongation is prohibited.[9] Upon the contract's expiration the parties may conclude a new one.

A specific practice, which is provided under the Regulations, is a compulsory document called the '*payment declaration'*. This declaration is required for signature under the Regulations.[10] In fact this document was already introduced in the previous Regulations on agents' activity. At that time it was a compulsory condition for the registration of player's employment contract whether or not an agent was involved in its conclusion or player's transfer. With the new Regulations it is only obligatory for presentation when an intermediary is actually involved on behalf of at least one side of the deal.

The payment declaration is not the same as an intermediary declaration introduced by the new system. The payment declaration is a standard form document which specifies the intermediary involved in the transaction and the amount of remuneration due to him. In case the player is transferred from one club to another within Russia, the declaration is signed by the old (releasing) club, the new (engaging) club and by the player. Each of them is obliged to report the name of the intermediary the party is represented by and the amount of the fee payable to him. In case there is no transfer (e.g. the player is a free agent, or the player comes from a club of another national association) the declaration is only signed by the new club and the player. In case the player leaves the club and is transferred to the club of another association, the declaration is only signed by the old club.

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[8] Regulations of the Football Union of Russia (RFU) on working with intermediaries, Article 4 par. 4. Moscow, 2015. [http://rfs.ru/rfs/documents/strategies/ [Sept. 01, 2015].

[9] Regulations of the Football Union of Russia (RFU) on working with intermediaries, Article 4 par. 3. Moscow, 2015. [http://rfs.ru/rfs/documents/strategies/ [Sept. 01, 2015].

[10] Regulations of the Football Union of Russia (RFU) on working with intermediaries, Article 7. Moscow, 2015. [http://rfs.ru/rfs/documents/strategies/ [Sept. 01, 2015].

In the first two cases the signed declaration is presented to the relevant league, which is responsible for the registration of player's employment contract. It is then the league's responsibility to forward the document to the RFU Commission on working with intermediaries. In the last case the club itself sends the declaration directly to the Commission.

The standard form of the payment declaration is provided as an annex to the Regulations.[11] It is only due when there is at least one intermediary involved in the conclusion of an employment contract with a player or in the case of a player's transfer. The intermediary himself is not required to sign the document. It can be seen that the declaration is directed only at the Russian clubs and its purpose is to provide to the RFU the first-hand information on the amount of intermediaries' commissions which are paid by the players and the clubs.

Regarding other aspects of the new system, RFU Regulations, same as FIFA, put the intermediaries outside the dispute resolution system created in football. The intermediaries do not fall under the jurisdiction of RFU Dispute resolution chamber and RFU Players' Status Committee. However, instead of leaving these cases for the jurisdiction of general courts of the Russian Federation, the Regulations introduce an obligatory jurisdiction of Sports arbitration court established by the autonomous non commercial organization "Sports arbitration chamber".[12] This is an arbitration court established by the Olympic committee of Russian Federation and Russian Association of sports law.

The statute of the abovementioned Sports arbitration court states that the decision of this court can be appealed to the Court of arbitration for sport in Lausanne, unless otherwise agreed by the parties.[13] However, the RFU Regulations specifically provide that the decisions of the Sports arbitration court in the first instance are final and cannot be appealed. The same provision is repeated as an article in the standard form of the intermediary representation contract. Thus, for some reason, the RFU created a situation when all the disputes arising from the contracts with intermediaries must be submitted to the jurisdiction of a given arbitration court and cannot be appealed then to CAS. It seems like quite a questionable route to be taken with the disputes concerning intermediaries' activity.

7. Impeccable reputation

The RFU Regulations do not contain a specific article on impeccable reputation of the intermediaries. They do, however, mention that the players and the clubs do

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[11] Regulations of the Football Union of Russia (RFU) on working with intermediaries, Annex 3. Moscow, 2015. [http://rfs.ru/rfs/documents/strategies/ [Sept. 01, 2015].

[12] Regulations of the Football Union of Russia (RFU) on working with intermediaries, Article 13. Moscow, 2015. [http://rfs.ru/rfs/documents/strategies/ [Sept. 01, 2015].

[13] Rules of Sports arbitration court established by the autonomous noncommercial organization "Sports arbitration chamber", article 47. Moscow, 2003. [http://law.infosport.ru/xml/t/default.xml?mid=10&pid=7 [Sept. 01, 2015].

not have a right to use services of an intermediary with outstanding conviction.[14]

This provision is reflected in the standard form of the Intermediary's declaration, where the intermediary states that he confirms the lack of any outstanding conviction.

No other reference is made in the RFU Regulations to the reputation of the intermediary. Thus it seems like the only obligation in this regard is the absence of any outstanding conviction. Anything else is left out of the scope of the Regulations, including the concept of *'impeccable reputation'* as such.

8. Conflicts of Interests

Contrary to the provisions of FIFA Regulations on working with intermediaries, RFU Regulations do not allow double representation. This concept remained in force from the previous RFU Regulations on agents' activity.

Article 3 of the current RFU Regulations on working with intermediaries states that before involving an intermediary, the player and/or the clubs must make reasonable efforts to ensure the lack of conflict of interest and the possibility of such. If the club and the player wish to use the services of the same intermediary, such double representation is prohibited. Also it is not allowed to engage officials, as they are defined in article 1 of the Regulations, as intermediaries.

Therefore the conflict of interest under RFU Regulations on working with intermediaries is made a broad concept. It includes not only the double representation as such, but a general possible conflict of interest between the participants of football relations. Moreover, officials are not allowed to receive any payments from clubs or players in regard to transactions; including employment contracts. Consequently, players and clubs are not allowed to pay to officials in this regard.

9. Intermediary's obligations

The RFU Regulations do not contain a specific article on the obligations of the intermediaries. However, there are two specific chapters on the obligations of the players and the clubs. A conclusion can be made therefore that the new system is directed at regulations and controlling the activities of the players and the clubs, who are free in engaging the intermediaries services but are directly responsible for any actions performed in this regard. It is then their (e.g. clubs' and players') obligation to choose an intermediary satisfying the conditions of the Regulations (e.g., with no outstanding conviction, no conflict of interest, not being an official of any football body, etc.), to conclude a correct representation contract with him as provided by the Regulations and the standard form of the contract, and to duly register it with appropriate authorities.

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[14] Regulations of the Football Union of Russia (RFU) on working with intermediaries, Article 2 par. 9. Moscow, 2015. [http://rfs.ru/rfs/documents/strategies/ [Sept. 01, 2015].

The focus of the new system is made to the clubs and players, whereas technically anyone satisfying the conditions set by the Regulations can be an intermediary. Perhaps this can be an explanation of why the Regulations do not provide any specific list of obligations for the intermediaries themselves.

10. Remuneration

The new Regulations establish several obligatory rules in regard to intermediaries' remuneration.[15] First of all, it is stated that an amount of remuneration must be defined in the representation contract. The Regulations provide that all payments to intermediaries can be made only via bank transfer and must be performed by the club or the player directly (e.g. payments to intermediaries cannot be made by any third parties). No remuneration can be received by an intermediary if a player concerned is less than eighteen years old. This is a new provision, introduced by the new system, which obviously is aimed at protecting young players.

The amount of intermediary's remuneration is calculated based on the gross salary of the player. It is by gross salary that all fixed income of the player is understood, such as monthly salary, sign-on fees, etc. Therefore, any types of match or performance bonuses and natural income (such as the provision of apartment, car, etc.) are not included in the calculation of the intermediary's remuneration.

As already mentioned before, the new system adopted by the RFU incorporated the concept of the maximum fee to the intermediary amounting to three percent from player's total gross salary, transfer fee, or the remaining value of player's contract in case the player is transferred to another club and the intermediary represents the releasing club. The Regulations also specifically mention that maximum three percent means the total remunerations paid to all intermediaries in relation to one specific deal. Thus, if more than one intermediary is involved on behalf of one party, their cumulative remuneration cannot exceed the established three percent.

The amounts of intermediaries' remuneration in each transaction are also reflected in the payment declaration; the nature of which was explained above. On the basis of the received information the Commission publishes the financial information concerning the remunerations paid to the intermediaries by the club and the players.

11. Disciplinary powers and sanctions

The Regulations mention two main RFU bodies where the issue of sanctions and disciplinary powers is concerned: the RFU Commission on working with intermediaries and the Control-Disciplinary Committee of RFU.

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[15] Regulations of the Football Union of Russia (RFU) on working with intermediaries, Article 6. Moscow, 2015. [http://rfs.ru/rfs/documents/strategies/ [Sept. 01, 2015].

For the violation of the RFU Regulations the player can be sanctioned with a warning and a fine in the amount up to 500,000 (five hundred thousand) rubles. The warning can be applied by the Commission, whereas the fine is applied by the Control-Disciplinary Committee by the Commission's proposal.[16]

In case the Regulations are violated by the club, the following sanctions can be applied: a warning, the registration ban of the new players up for twelve months, a fine up to 2,000,000 (two million) rubles. Same as with the players, a warning can be applied by the Commission itself whereas the ban and the fine fall under the competence of the Control-Disciplinary Committee.[17]

Both in cases concerning the players and the clubs, the sanctions can be applied within two years after the Commission found out (or should have found out) about the violation; the sanctions can be combined. The application of the sanctions is performed in accordance with the Disciplinary Regulations of RFU and other relevant documents.

The Regulations throughout the text mention several specific prohibited acts for which the involved parties can be sanctioned, such as the presentation of the falsified documents, match-fixing, payments performed to the officials. The Commission publishes the list of sanctioned intermediaries. Likewise, it also has the competence to inform FIFA on sanctions which it had applied.

12. Conclusion

To summarize, the new intermediary system adopted by RFU, largely follows the system established by FIFA. It also keeps several previous stronger concepts, such as the maximum duration of the representation contract and the prohibition of the conflict of interest. The main obligations in relation to the intermediary activity are imposed on the clubs and the players, who are responsible for registration of representation contracts.

It is rather early to judge the effectiveness of the new system and its impact on the day-to-day business of the participants of football relations. Yet it seems that the new system will create more transparency of intermediaries' involvement and put intermediary's activity within a stricter framework of Russian civil law, with the obligatory control of the national sporting federation.

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[16] Regulations of the Football Union of Russia (RFU) on working with intermediaries, Article 10. Moscow, 2015. [http://rfs.ru/rfs/documents/strategies/ [Sept. 01, 2015].

[17] Regulations of the Football Union of Russia (RFU) on working with intermediaries, Article 12. Moscow, 2015. [http://rfs.ru/rfs/documents/strategies/ [Sept. 01, 2015].

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN SAUDI ARABIA

by *Bandar Al Hamidani*[*]

1. Introduction

Intermediaries, in the essence of their meaning have profound impact in the transfer market in the world of football. FIFA (Federation International de Football Association) has implemented new regulations named "Regulations on Working with Intermediaries" (RWI) that all nations are currently working to adopt.

FIFA has advised that it is essential to protect both players and clubs from being involved in unethical and/or illegal practices and circumstances in the context of concluding employment contracts between players and clubs and of concluding in transfer agreements.

All nations must comply with the minimum standards that FIFA has instructed in the new regulations, which includes the Saudi Arabian Football Federation (SAFF).

SAFF was founded in 1956 and in the same year joined FIFA and Asian Football Confederation (AFC). The SAFF is the Saudi governing body for football in Saudi Arabia.

When professional football started in Saudi Arabia, SAFF began developing and improving laws and regulations to regulate the relationships between Saudi football players and clubs.

On 11 June 2014 the General Assembly of FIFA passed a resolution (number 64). This cancelled the existing "Regulation relating to Players Agents" and replaced it with a new "Regulation on Working with Intermediaries" (ROWWI). The ROWWI came into force on 1 April 2015.[1]

The ROWWI was adopted in Saudi Arabia pursuant to the Resolution

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[1] Article (2) of the Saudi ROWWI.

issued by the Executive Board of SAFF number 8400/Q/1 dated 1 July 2015.

The objective of the ROWWI is to promote the relationship between intermediaries and players and/or clubs. It aims to regulate methods and principles of negotiation between them and sets out their rights and obligations. The ROWWI also allows SAFF to implement its own regulations which determine the procedures and methods to resolve disputes between clubs, players and intermediaries.[2]

The ROWWI in Saudi Arabia also deals with drafting and preparing Footballers Employment Agreements between football players and clubs; and preparing player transfers or loan agreements between clubs.[3]

In 2015 SAFF established a Disputes Resolution Chamber to adjudicate in disputes involving intermediaries.

This chapter examines Saudi Arabia's overview on registration requirements for Intermediaries, remuneration, and disciplinary powers and sanctions regulating the working with intermediaries.

2. Key Principles of the ROWWI

SAFF has adopted a similar approach to the FIFA Regulation as to the scope of the Principles and Definitions. The arrangements between players, their intermediaries and clubs are, according to Article 3 of the ROWWI, based on three key principles:

1. Football clubs and players may benefit from intermediaries' services when it comes to the execution of football players' employment agreements and/or loan and transfer agreements.
2. An intermediary must be registered in accordance to the provisions of Articles 4 and 5 of the ROWWI in Saudi Arabia. When an intermediary is selected, players and clubs must use their best endeavors to ensure that an intermediary has signed the intermediary declaration and representation agreement.[4]
3. Officials – as defined below – are prohibited from working as intermediaries.

These provisions are aimed at associations in relation to the engagement of the services of an intermediary by players and clubs to terminate an employment contract between a player and a club. The provisions can also conclude a transfer agreement between two clubs.

3. Definitions

There are 12 definitions indicated in the ROWWI in Saudi Arabia including but not limited to the following,

- *Federation*: Saudi Arabian Football Federation (SAFF).

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[2] Saudi Arabian Football Federation website www.thesaff.com.sa/.

[3] FIFA *Regulations on Working with Intermediaries* available at www.fifa.com/mm/Document/AFFederation/Administration/02/36/77/63/RegulationsonWorkingwithIntermediariesII_Neutral.pdf.

[4] Article (3) of the Saudi ROWWI.

- *The Committee*: The committee of professionalism and players status at SAFF.
- *Officials*: All members of boards of directors and committees, referees and their associates trainers and associates, technical-medical, administrative affairs officials of the federation, professional associations and clubs, and any other individuals related to any legal person.
- *Intermediary*: A natural or legal person who represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer or loan agreement with a fee or free of charge.
- *Commission*: The fee which the intermediary takes for the tasks done pursuant to the Saudi ROWWI.[5]

4. Registration

As indicated in Article 4 of the ROWWI in Saudi Arabia, a SAFF must keep a specific record for intermediaries which will be published pursuant to the regulations of the ROWWI in Saudi Arabia. However, Intermediaries must be declared each time they are involved in any transaction. Clubs and players who use intermediary services must submit the intermediary declaration and any other documents requested by the Federation for any transaction. In addition, SAFF has the right to require any further information or documentation.

5. Registration Requirements for Intermediaries

In order to be officially registered with SAFF the intermediary must:

a. not hold a criminal record nor has violated any public regulations or customs;
b. not be subject to any active decision taken against him issued by a sports authority or any disciplinary suspension or is prevented from participating in any football activity;
c. hold a college degree. However, an intermediary is exempt from holding a degree when he has experience of not less than 10 years as a professional director at a professional club and/or as a players' agent;
d. be a Saudi national;
e. submit a written intermediary application;
f. be fluent in English, speaking and writing or submit a letter confirming that the intermediary has an employee fluent in English or dealing with a translation office;
g. have a special office for his activity as an intermediary and must submit a valid Lease contract;
h. provide a letter signed by the applicant to confirm that the applicant does not hold any official work at SAFF, FIFA , AFC, Association, League or any club or any when submitting the application;

[5] Article 1 of the Saudi ROWWI.

i. provide a letter signed by the applicant to confirm that the applicant does not has any direct or indirect financial or commercial interest or any form of financial or business relationship with the SAFF or any club;
j. not have any contractual relationship with FIFA, AFC, SAFF or leagues that could lead to a potential conflict of interest. Intermediaries are precluded from implying, directly or indirectly, that such a contractual relationship with FIFA, AFC, SAFF or leagues exists in connection with their activities;
k. provide a statement of his experience in the football at least 5 years;
l. submit a copy of his ID and passport;
m. pay the registration fees (currently SAR 10,000 riyals per annum) to the account of the Committee at SAFF. In comparison, Saudi Arabia's fees are half of the United Arab Emirates Football Associations (UAEFA) registration fees currently costing UAE 20,000 per annum. In addition, Intermediaries in Saudi Arabia that have an office registered with the relevant authorities are not required to pay any amount made in an employment, transfer or loan transaction upon registering the player. Where intermediaries in the United Arab Emirates (UAE) they are required to pay 5% of any amount made in every employment, transfer or loan transaction upon registering the player. Furthermore, intermediaries must pay 10% if they do not have an office in the UAE.[6]
n. submit any documents request by the Committee;
o. when applying for registration, declare that he will comply in full with the Laws, regulations, directives and decisions issued by the competent authorities at the SAFF, AFC and FIFA and sign the declaration in accordance with Annex 1 or 2 of the ROWWI in Saudi Arabia; and
p. submit to SAFF the representation contract between the intermediary and the player and / or club.

6. Impeccable Reputation

Pursuant to Article 5 of the ROWWI in Saudi Arabia (and as mentioned in (o) above) the intermediary must sign a declaration (*Annex 1 for natural person and annex 2 for legal person*) in a prescribed format. The completed application and declaration must then be submitted to the Committee at SAFF.

The applicant is required to make certain declarations and must satisfy various other requirements including the following:[7]

a. pledge to respect and comply with any mandatory provisions of applicable national and international laws, including in particular those relating to his activities as an intermediary. In addition, an intermediary agrees to be bound by the Laws and regulations of SAFF, AFC and, FIFA in the context of carrying out his activities as an intermediary;

[6] Article (6) of the UAEFA Regulations.
[7] Annex (1) and (2) of the Saudi ROWWI.

b. declare that he has an impeccable reputation and confirms that no criminal sentence has ever been imposed upon him for a financial or violent crime;
c. declare that he has no contractual relationship with SAFF, leagues, AFC or FIFA that could lead to a potential conflict of interest. In case of any uncertainty, the relevant contract must be disclosed;
d. acknowledge that he is precluded from implying, directly or indirectly, that such a contractual relationship with SAFF, leagues, AFC or FIFA exists in connection with his activities as an intermediary;
e. declare that, he shall not accept any payment to be made by one club to another club in connection with a transfer, such as transfer compensation, training compensation or solidarity contributions;
f. declare that he shall not accept any payment from any party if the player concerned is a minor;
g. consent to SAFF to obtaining full details of any payment of whatever nature made to him by a club or a player for his services as an intermediary;
h. consent, to the leagues, SAFF, AFC or FIFA to obtain, if necessary, for the purpose of their investigations, all contracts, agreements and records in connection with his activities as an intermediary or if any third party involved;
i. consent, to SAFF publishing details of any disciplinary sanctions taken against him; and
j. consent to SAFF to use any data or information for the purpose of their publications.

7. Conflicts of Interests

Prior to engaging the services of an intermediary, the SAFF requires a number of measures to be adhered to so as to avoid conflicts of interest arising. Players and/or clubs shall ensure that there are no conflicts of interest are likely to exist either for the players and/or clubs or for the intermediaries prior to engaging the services of an intermediary. If the intermediary discloses in writing that there is any actual or potential conflict of interest and the intermediary obtained in writing consent of all the other parties involved prior to the start of the relevant negotiations, then no conflict of interest is deemed to arise. When a player and a club each want to use the services of the same intermediary for the purpose of the same transaction, the player and the club must give their express written consent prior to the start of the relevant negotiations, and shall confirm in writing which party (player and/or club) will remunerate the intermediary. The parties shall inform the Committee within 72 hours of any such agreement and accordingly submit all the aforementioned written documents within the registration.[8]

[8] Article (9) Saudi ROWWI.

8. Disclosure and Publication of Full Details

The requirements relating to disclosure and publication of payments to an intermediary are provided by Article 7 of the ROWWI. These are as follows: players and clubs are required to disclose to the Committee the full details of any and all agreed payments of whatsoever nature that they have made or that are to be made to an intermediary. When SAFF requests players and clubs to disclose all contracts and agreements signed with intermediaries, information should be disclosed within 72 hours for each transaction. All contracts and agreements signed with an intermediary shall be attached to the transfer agreement, loan agreement or the employment contract, as the case may be, for the purposes of registration of the player. The transfer agreement, loan agreement or the employment contract must include the name and the signature of the intermediary, if the player and club have used the services of an intermediary. In the event that a player and club have not used the services of an intermediary in their negation they have to prove that to be the case. SAFF is required to disclose at the end of May of every calendar year on its official website, the names of all intermediaries it has registered, details of transactions in which they were involved and the total amount of all remuneration or payments actually made to intermediaries by their registered players and by each of their clubs. SAFF may publish their registered players and clubs any information relating to transactions that have been found to be in breach of the ROWWI of Saudi Arabia.

9. Remuneration

Article 8 of the ROWWI sets out particular requirements in relation to the remuneration arrangements for an intermediary in Saudi Arabia:

Type I - Player Representation

The total amount of remuneration due to an intermediary who represents the player in negotiation must *not exceed 3%* of the total monthly income of the player for the entire duration of the player's employment contract.

Type II- Club Representation Whether Transfer Contract or Loan Contract

The total amount of remuneration due to an intermediary who represents a club in a negotiation of *transfer or loan contract of player must not exceed 3%* of the total monthly income of the player for the entire duration of the player's employment contract.

Type III- General Principles

- Clubs that engage the services of an intermediary shall remunerate him by payment of a lump sum agreed prior to the conclusion of the relevant transaction. In case of the completion of a transfer process or loan, the agreed lump sum will be calculated as part of the maximum permitted 3% entitlement referred to above.
- Clubs shall ensure that payments to be made by one club to another club in connection with a transfer or loan agreement, such as transfer compensation, training compensation or solidarity contributions, are not paid to intermediaries and that the payment is not made by intermediaries.
- After the conclusion of the relevant transaction and the signing of the employment agreement between the player and the club, the player may give his written consent for the club to pay the intermediary on his behalf. The payment made on behalf of the player must be in accordance with the terms of payment agreed between the player and the intermediary.
- Officials are prohibited from receiving any payment from an intermediary of all or part of the fees paid to that intermediary in a transaction. Any official who contravenes the above shall be subject to disciplinary sanctions.
- Players and/or clubs that engage the services of an intermediary when negotiating an employment contract and/or a transfer agreement are prohibited from making any payments to such intermediary if the player concerned is a minor.[9]

10. Disciplinary Powers and Sanctions

Powers

In accordance to Article 10 of the ROWWI, the Committee has the power to impose sanctions and penalties on any party violating the requirements of the ROWWI. SAFF is required to publish the disciplinary sanctions against any intermediary and to inform FIFA in relation to any disciplinary sanctions taken against any intermediary. In addition, the Committee may impose sanctions on any intermediary, club or player violates SAFF regulations and/or AFC regulations and FIFA regulations.

Sanctions

The new regulations ensures that SAFF is obliged to publish accordingly and to inform FIFA of any disciplinary sanctions taken against any intermediary. The SAFF Committee may impose a minimum of one or more sanctions such as a

[9] Article 8 of the Saudi ROWWI.

written warning, a financial penalty of *no* less than SAR 20,000 and not exceeding SAR 200,000 register suspensions, register holding or impose a ban on any football-related activity.

11. Conclusion

With the new regulations outlined by FIFA and establishing these minimum standards, the business of intermediaries will change significantly. The ROWWI serves to promote the role of an intermediary and the contractual relationship between intermediaries, football players and clubs. Intermediaries will be competing with other intermediaries not only on a national but also on a global perspective.

This will subsequently reduce the financial burden on football clubs and prevent unlawful practices. There will be transparency between National Associations that regulate intermediates at a local level. This will allow FIFA to monitor members that are implementing the minimum standards set out in the new regulation.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN SERBIA

by *Ksenija Damjanovic*[*]

1. Introduction

FIFA Regulations on Working with Intermediaries require from associations to implement and enforce at least these minimum standards/requirements in accordance with the duties assigned by these regulations, subject to the mandatory laws and any other mandatory national legislative norms applicable to the associations.[1]

In particular, FIFA Regulations on Working with Intermediaries preamble sets forth the following:

"These regulations shall serve as minimum standards/ requirements that must be implemented by each association at national level, the latter having the possibility of further adding thereto".

FIFA Regulations on Working with Intermediaries no longer attempt to regulate access to the activity, but instead to control the activity itself: players and clubs should be able to choose any party as an intermediary, but they would have to respect certain minimum principles.

The second objective is supervision of transactions relating to transfers of football players in order to enhance transparency, i.e. establish a transparent registration system.

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2. Relevant National Law

Sports law is one of the youngest branch of law in Serbia; consequently, Serbian sports law system has not yet been sufficiently developed.

The Law on Sports was adopted in 2016. In addition to this law, sport-related issues are also subject to various laws: Law on Obligations, Civil Procedure Law, Criminal Laws, Arbitration Law, Law on Prevention of Doping in Sport, etc.

The Law on Sports of the Republic of Serbia defines mediation in sports transfers as a kind of professional activity in sport (Art. 27, par. 1 of the Law on Sports of the Republic of Serbia, the Official Gazette of the Republic of Serbia No. 10/2016). Professional activities in sport can be performed by sport experts who fulfil the conditions set out in this Law and who possess a work permit issued in compliance with regulations of competent national and international sports associations. However, the mentioned Law does not contain the precise definition of an intermediary.

The Regulations on the Nomenclature of Sports Professions and Vocations from 2013 provide the definition of a sports intermediary and set forth the conditions and qualifications necessary for obtaining the professional title of a sports intermediary. Pursuant to these Regulations, a sports intermediary could only be a natural person.

Pursuant to Art. 44 of the mentioned Regulations, a sports intermediary is someone who deals with mediation in transfers of sportsmen from one sport-related organization to another.

Pursuant to Art. 45, typical duties performed by a sports intermediary are: keeping track of the current state of affairs in a certain sport; assisting athletes in finding an engagement and concluding an employment contract; helping sport-related organizations in finding and engaging the services of suitable athletes; intermediating between sport-related organizations with relation to transfers of athletes.

Pursuant to Art. 47, the following terms and conditions are required in order to obtain the professional title of a sports intermediary:

1. completed high school and a suitable III level training program;
2. completed three-year college related to physical education and sport, economics, management or law, and a II level training program;
3. completed university related to economics, management or law and a I level training program;
4. completed university in sports management.[2]

In addition, the Law on Sports prescribes that intermediary services concerning transfers of athletes from one sports organization to another can also be provided by sport-related companies, i.e. entrepreneurs, provided they have a

[2] Artt. 44, 45 and 47 of the Regulations on the Nomenclature of Sports Professions and Vocations.

qualified sports expert bearing a professional title as one of their employees, as well as a work permit issued by the competent national sports association.[3]

Since the Law on sport is an act of greater legal power, one issue remained: The Regulations on the Nomenclature of Sports Professions and Vocations should be adjusted with the Law, which has been adopted in the beginning of 2016.

The activity of an intermediary is regulated by the civil law rules on the mandate and providing services.

3. FAS Regulations on Working with Intermediaries – Principles and Definitions

The Football Association of Serbia (FAS) has followed the ideas of FIFA in passing its Regulations on Working with Intermediaries, making them comply with the FIFA Regulations on Working with Intermediaries.

The FAS Board for Emergency Issues adopted the Regulations on Working with Intermediaries pursuant to Art. 50 of the FAS Statute in a meeting held on 8 June 2015.

On a meeting held on 12 July 2016, the FAS Executive Board has adopted the Regulations on amendments of the Intermediary Regulations.

Key principles of the new Regulations are:

- Players and clubs must act with *due diligence* when selecting an intermediary.
- For the sake of transparency, a *registration system for intermediaries* shall be put in place and intermediaries shall be registered for every transaction they are involved in.
- full *disclosure and publication* of the remuneration and payments made to intermediaries as a result of transactions that they are involved in.
- *Mandatory Intermediary Declaration* for natural and legal persons (as annexes to the Regulations).
- Payment *of intermediary fees*: identifying which entity (clubs or players) are responsible for paying intermediary fees and *adopted maximum commission rate of 8%.*
- *Conflicts of interest*: proper disclosure if any conflicts of interest by all parties involved.
- *Protection of minors*: non-payment of commission if the player concerned is a minor.
- An Intermediary can be any person- natural or legal, but it must be a legal resident of Serbia.

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[3] Art. 94, par. 2 of the Law on Sports of the Republic of Serbia, the Official Journal No. 10/2016.

4. General Provisions

An intermediary is defined as "*a domestic natural or legal person who is a legal resident of Serbia, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement*".[4]

Regarding the definition of an intermediary, FAS used its right "to go beyond the minimum standards/requirements set in FIFA regulations" and introduced more restrictive rule in relation to definition – they limited the activity of an intermediary only to the domestic persons, while the scope of application remained the same as in FIFA Regulations, "*the negotiation or renegotiation of an employment contract of a Player with a Club or the negotiation to conclude a transfer contract between two clubs".*

"The rules of these Regulations are related to the engagement of an intermediary by players and clubs:

a. in order to conclude an employment agreement between players and clubs;

b. in order to conclude a transfer agreement of a player between two clubs".[5]

Remarkably, conclusion of employment contracts with coaches does not fall under the scope of intermediary activities.

It should also be noted that legal entities were not previously entitled to neither be players' agents nor receive licenses. In contrast, the new Regulations allow for companies to act in this capacity under the condition that they are legal residents of Serbia.

5. Requirements and Conditions

Specific requirements are set forth for the agreements to be concluded between the intermediary and his client (club or player), which will be subject to mandatory registration at the FAS.

6. The Players' Agents Regulations – Before Adoption of the Regulations on Working with Intermediaries

A sports agent could only be a natural person with a licence, i.e. a work permit issued by FAS. The procedure for obtaining the licence started by submitting a written application to FAS by a natural person who intended to work in this field. This application could be submitted only by a natural person who was a Serbian citizen, or a foreign citizen who had had two years of continuous residence in the

[4] Art. 2 of FAS Regulations.

[5] Art. 3 of FAS Regulations.

Republic of Serbia, was not convicted nor was under police investigation; did not have a function in foreign or domestic football associations, club associations, organisations or associations related to these institutions.[6]

All the work in relation to approval of licences for sports agents in FAS was performed by the Committee for Licence Issuance.[7] The Committee invited the candidate to take a written exam according to the schedule determined by FIFA, after verifying the written application and fulfilment of conditions.[8] The candidate who passed the exam had to obtain a professional liability insurance policy from an internationally recognized insurance company.

The athlete's parents, brothers, sisters or a spouse were free from obligation to obtain the mediation licence relating to negotiations for concluding employment agreements.[9] Likewise, the attorney authorized in accordance with the law in force in his residence state was also free from obligation to obtain the mediation licence relating to negotiations for concluding employment agreements or transfer agreements.[10]

The possibilities for entering the market are much wider now since there is no requirement of taking the exam, nor the payment of fees. Moreover, it is possible for a legal entity to become an intermediary now. FIFA's idea that a legal entity can become an intermediary has been adopted. Nevertheless, the foreign intermediaries are not permitted to exercise its activities in Serbia. The natural persons must have Serbian citizenship and residence while the legal persons must be registered within Serbian territory. But, the Regulations have not been totally coordinated with the Law on Sports (it must be mentioned that intermediary services concerning transfers of athletes from one sports organization to another can be provided by entrepreneurs/sport-related companies, provided they have a qualified sports expert bearing a professional title as one of their employees, as well as a work permit issued by the competent national sports association- Art. 94, par. 2 of the Law on Sport).

It could be concluded that FAS Regulations have fewer conditions to be fulfilled than the Law on Sports.

In order to prove that the intermediary is a Serbian resident, a player or a club who engaged him will enclose to FAS (along with intermediary's declaration): for natural person – Serbian citizenship and residence, respectively, for legal person – evidence that he is registered on the Serbian territory.

The prerequisite for a person wishing to perform the work of an intermediary is their *impeccable reputation* and *no conflict of interest*:

The impeccable reputation requisite is contained in Articles 8, 9 and 10 of FAS Regulations.

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[6] Art. 3 of FAS Regulations on Agents.

[7] Art. 5 par. 1 of FAS Regulations on Agents.

[8] Art. 6 par. 2 of FAS Regulations on Agents.

[9] Art. 3 par. 1 of FIFA Players' *Agents* Regulations.

[10] Art. 3 par. 1 of FIFA Players' *Agents* Regulations.

Having in mind the fact that there are no more professional, i.e. licensed player agents, it is to be expected to have more competition wishing to succeed in this business. Therefore, it is up to players and clubs to decide to whom to give their trust.

"In engaging and choosing an intermediary, both clubs and players must act with due diligence. The due diligence implies that they will provide the relevant intermediary declaration and the contract concluded between two parties".[11]

As mentioned above, the players and clubs shall act with "due diligence" while choosing an intermediary. This implies that they shall use reasonable endeavours *to check the reputation* of the person (or the relevant company), conclude a *valid representation contract* and *make sure that the intermediary has signed the intermediary declaration* (the text of which is contained in Annexes 1 and 2 to FAS Regulations).

It is up to players and clubs who use the services of an intermediary to submit to FAS the relevant intermediary's declaration required by Annexes 1 and 2 of FAS Regulations on Working with Intermediaries, along with the above mentioned evidence.

Each time when engaged in a transaction, the intermediary concerned must sign the appropriate Intermediary Declaration Form.

The condition of an impeccable reputation is considered to be met if FAS possesses the duly signed Intermediary Declaration.

7. Conflict of Interests

FIFA imposes the obligation to control the activities of intermediaries on those who engage them - they should check if there is any conflict of interest.

In order to avoid the potential conflict of interest FAS also forbids entering into the following contractual relationships:

"It is forbidden to engage the officials, namely every board member, committee member, referee and assistant referee, coach, trainer and any other person responsible for technical, medical and administrative matters in FIFA, a Confederation, Association, League or club".[12]

This is not the only situation leading to a conflict of interest. For example, if an intermediary has concluded more representation contracts, it is possible that two athletes who have concluded representation contracts with the same intermediary apply for the same job in the same club. The intermediary has the same obligations towards both of them - to inform them of every opportunity for conclusion of an employment agreement and relevant circumstances in relation to it, and to protect their interests during negotiations for conclusion of an employment agreement.

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[11] Art. 5 of FAS Regulations.

[12] Art. 7 of FAS Regulations.

The intermediary can fulfil the obligation of informing the athletes with no obstacles; however, he will not be able to fulfil adequately the obligation of protecting their interests, since the athletes' interests in such a situation would be in collision. If this was the case, the intermediary would have to terminate one representation contract, inform his clients on potential conflict of interests and focus his work on just one of the clients.

Pursuant to Art. 28 of FAS Regulations.

"It is considered that there is no conflict of interest if the intermediary in writing reveals all real and potential conflict of interest which could arise with a party included in the relevant action, in relation to the transaction, representation contract or mutual interests, and if he receives the expressed written approval before the relevant negotiations commence, from all other interested parties".

Also, it is possible that an intermediary represents both the player and the club.

"If a player and a club wish to engage the services of the same intermediary within the scope of the same transaction under the conditions established earlier, the player and the club concerned shall give their express written consent prior to the start of the relevant negotiations, and shall confirm in writing which party (player and/or club) will remunerate the intermediary. The parties shall inform the Committee Working with Intermediaries of any such agreement and accordingly submit all the aforementioned written documents within the registration process. Such agreement and all the other relevant documents and information should be disclosed to the FAS".[13]

8. Registration of Intermediaries

In accordance with Article 3 of FIFA Regulations on Working with Intermediaries, it is a compulsory prerequisite for an intermediary to be registered with the association where he desires to provide his services prior to initiating any activity. This provision has important practical consequences.

"If an intermediary is involved in the transaction he must be registered in accordance with rules of FAS Regulations".[14]

In other words, any contract (either transfer or employment), which has been concluded using the services of an intermediary will be considered as a transaction, and will be subject to mandatory registration with FAS.

For the sake of transparency, FAS has designed a new system of intermediary registration and a new body whose jurisdiction relates to registration, control and cooperation with intermediaries. This Regulation provides only the basic rules to be further clarified and developed in the Rules of Procedure of the

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[13] Art. 29 of FAS Regulations.

[14] Art. 6 of FAS Regulations.

Committee Working with Intermediaries, which should be adopted in the near future.

"The Committee Working with Intermediaries performs actions related to the registration and all other rights and obligations of an intermediary, player and club who use his services.

FAS Executive Board shall choose the members of the Committee and it shall consist of a president and two members. The Committee must be composed out of one Bachelor of Law and one Bachelor of Economics.

The Committee's performance is defined in the Rules of Procedure of the Committee Working with Intermediaries".[15]

As already mentioned, if they receive a properly signed Intermediary Declaration from the player/club in accordance with Annexes 1 and 2 of FAS Regulations, it shall be considered that the intermediary as a natural person has an impeccable reputation, i.e. that the individuals representing a legal entity related to the respective work have an impeccable reputation.

The procedure of registering an intermediary as a natural person starts by submitting the Intermediary Declaration in accordance with Annex 1 of Regulations on Working with Intermediaries, and the procedure of registering an intermediary as a legal entity begins by submitting the Intermediary Declaration in accordance with Annex 2 of Regulations on Working with Intermediaries.[16]

The submission of the Intermediary Declaration to FAS must be done each time an intermediary is engaged by a player or a club.[17]

When registering an intermediary it is necessary to submit to FAS all the existing representation contracts between the club and the intermediary, as well as between the player and the intermediary.

"The representation contract that the intermediary concludes with a player and/or a club must be deposited with the association when the registration of the intermediary takes place".[18]

If an intermediary is already registered with FAS, it is up to the player or club to submit to FAS the representation contract concluded with this intermediary

Regarding the Art. 6.2 of FIFA Regulations (*When an Intermediary has not been engaged for the purposes of the Transaction, the Club and/or the Player shall specifically disclose that fact to the FA)* it is not inserted into FAS Regulations.

9. Representation contract

An intermediary and a club or/and a player, as the case may be, must have entered into a representation contract prior to such intermediary carrying out intermediary

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[15] Art. 14 of FAS Regulations.

[16] Artt. 12, 13 of FAS Regulations.

[17] Art. 11 of FAS Regulations.

[18] Art. 17 of FAS Regulations.

activities. It is up to the contractual parties to draw the representation contract as they desire, since the standard contract form for mediation in sport does not exist anymore (a contract by which a sports agent is obliged to make a contact between a player and a club for negotiations on conclusion of an employment agreement or a transfer agreement).

According to Art. 16 of FAS Regulations, a representation contract is valid provided it contains the following mininum information:

- the names of the parties to the representation contract,
- the scope of the services provided by the intermediary under the representation contract (for the avoidance of doubt the scope of the contract shall specifically include the exact activities the Intermediary shall perform)
- the duration of the legal relationship between the parties,
- the remuneration due to the intermediary under the representation contract together with the general terms of payment of such remuneration,
- the completion date,
- the termination provisions of the representation contract
- the signature of the parties to the representation contract
- competence of the authority in case of dispute.

In the event that a player is a minor, the player's legal guardian(s) shall also sign the representation contract.

The FAS Regulations no longer provide a non-mandatory standard representation contract in the Annexes, nor do they stipulate the maximum validity of the representation contract.

Pursuant to art. 15 of FAS Regulations "clubs and players must state the nature of their legal relationship which they have with its intermediaries in the representation contract, i.e. whether the business activities of an intermediary relate to providing services, counselling, hiring or some other legal relation".

The conclusion is that a player can have more than one intermediary (one for counselling, another for providing services...).

"If the player is a minor, the player's legal guardian(s) shall also sign the representation contract in compliance with the national law of the country in which the player is domiciled".[19]

The Family Law of the Republic of Serbia also defines this issue: the most important articles are Art.64 (legal capacity of the child) and Art.72 (representation of the child). A child who has not reached fourteen years of age (a young minor) may undertake legal operations whereby he/she acquires exclusively rights, legal operations whereby he/she does not acquire either rights or obligations and legal operations of small significance. (for example, a gift).

From the age of 14 until 18, a child is partly competent to conclude all of his business as a young minor, even all business as an adult, with the prior or subsequent consent of his/her parents, which could be provided afterwards.

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[19] Art. 5 par. 2 of FIFA Regulations on Working with Intermediaries.

A child who has reached the age of fifteen may undertake legal operations whereby he/she manages and disposes of his/her income or property acquired through his/her own work.

If a party notices the lack of parents' accordance, i.e. that the contract is voidable, than the legal representative has the time limit of 3 months to give his accordance and by doing that the contract is convalidated, but without the accordance the contract can be annulled in the time limit of one year as from the date of notification of the reason for voidance, i.e. three years as from the contract conclusion.

"The representation contract concluded between an intermediary and a player/club must be submitted to the association upon the intermediary's registration".[20]

10. Disclosure, Registration of Operations and Publication

What can be surprising for intermediaries is the requirement that all information about the intermediary will be public. FAS is required to publish a list of intermediaries who provide their services with reference to specific transactions.

"Players and/or clubs are required to disclose to the Committee the full details of any and all agreed remunerations or payments of whatsoever nature that they have made or that are to be made to an intermediary.

In addition, players and/or clubs shall, upon request of the Committee, disclose to the competent bodies of the leagues, associations, confederations and FIFA, all contracts, agreements and records with intermediaries in connection with activities in relation to these provisions, for the purpose of their investigations".[21]

"Committee shall make publicly available at the end of March of every calendar year, on official website of FAS, the names of all intermediaries they have registered as well as the single transactions in which they were involved.

In addition, Committee shall also publish the total amount of all remunerations or payments actually made to intermediaries by their registered players and by each of their affiliated clubs.

The overall amount of fees paid by each club individually and by all the players together will also be published".[22]

"Committee may also make available to their registered players and affiliated clubs any information relating to transactions that have been found to be in breach of these provisions that is of relevance for the pertinent irregularities".[23]

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[20] Art. 17 of FAS Regulations.
[21] Art. 18 of FAS Regulations.
[22] Art. 19 of FAS Regulations.
[23] Art. 20 of FAS Regulations.

11. Remuneration – Payments to Intermediaries

"The amount of remuneration due to an intermediary who has been engaged to act on a player's behalf shall be calculated on the basis of the players' basic gross income for the entire duration of the contract".[24]

"Clubs that engage the services of an intermediary shall remunerate him by payment of a lump sum agreed prior to the conclusion of the relevant transaction. If agreed, such a payment may be made in instalments".[25]

Unlike FIFA, which has established the recommended compensation to intermediaries in the amount of 3% of the contract amount, FAS decided to establish a possible limit ("cap") for such remuneration/commission. For their services intermediaries cannot receive more than 8% of the contract amount (from gross income of the player during the whole period of the contract or the overall amount of transfer fee between the clubs).

"The total amount of remuneration per transaction due to intermediary who has been engaged to act on a player's behalf should not exceed eight per cent (8%) of the player's basic gross income for the entire duration of the relevant employment contract".[26]

As already mentioned, the player can conclude agreements with more than one intermediary. Following that logic, the player can conclude more than one contract with the same intermediary, which raises the following questions: if there are more contracts concluded with one intermediary, is it possible to circumvent the regulation and pay 8% for counselling plus 8% for conclusion of the employment contract? Can the intermediary receive 16% in this way? Or if there is more than one intermediary, could it be that the total compensation of 8% is to be divided among all of them? This issue is certainly not clear to me.

"The total amount of remuneration per transaction due to intermediary who has been engaged to act on a club's behalf in order to conclude an employment contract with a player should not exceed eight per cent (8%) of the player's eventual basic gross income for the entire duration of the relevant employment contract".[27]

"The total amount of remuneration per transaction due to intermediary who has been engaged to act on a club's behalf in order to conclude a transfer agreement should not exceed eight per cent (8%) of the eventual transfer fee paid in connection with the relevant transfer of the player".[28]

International experience in the matters at hand here shows that agents sometimes abuse their monopoly position with respect to certain players or clubs,

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[24] Art. 21 of FAS Regulations.
[25] Art. 22 of FAS Regulations.
[26] Art. 23 par. 1 of FAS Regulations.
[27] Art. 23 par. 2 of FAS Regulations.
[28] Art. 23 par. 3 of FAS Regulations.

with the amount of their fees exceeding the salaries of the players they deal with or the amount of the transfer to be received by the club. Therefore, for a more transparent and fair regulation of such relations, the maximum amount of the intermediaries' possible remuneration/commission was set:

"*Clubs shall ensure that payments made or to be made by one Club to another Club in connection with a Transfer of the Player, such as Transfer compensation, Training compensation or solidarity contributions are not paid to and/or by Intermediaries. The assignation of such claims to an intermediary is also prohibited*".[29]

The Intermediary Declaration also mentions this (Annex 1 and 2 FIFA Regulations on Working with Intermediaries and Annexes 1 and 2 FAS Regulations on Working with Intermediaries) in point 5: an intermediary states he shall not accept any payments conducted by one club to another in relation to a player's transfer, such as transfer compensation, training compensation or solidarity contribution.

Who pays the intermediary?

Following the contractual logic, the intermediary should be paid by a person who hired him, with one exception.

"Any payment for the services of an intermediary shall be made exclusively by the client of the intermediary to the intermediary".[30]

"After the conclusion of the relevant transaction and subject to the club's agreement, the player may give his written consent for the club to pay the intermediary on his behalf. The payment made on behalf of the player shall be in accordance with the terms of payment agreed between the player and the intermediary".[31]

The positive side of this solution is referring to the club's solvency, transparency and better supervision over the activities of the intermediary and the compensation he receives.

"Officials, as defined in point 11 of the Definitions section of the FIFA Statutes and art. 6 of FAS Regulations on working with intermediaries, are prohibited from receiving any payment from an intermediary of all or part of the fees paid to that intermediary in a transaction. Any official who contravenes the above shall be subject to disciplinary sanctions".[32]

Regarding minor players the FAS Regulations (like the FIFA Regulations) prohibit the payment of intermediary's commission in relation to transactions with minors.

"Players and/or clubs that engage the services of an intermediary when negotiating an employment contract and/or a transfer agreement are prohibited from making any payments to such intermediary if the player

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[29] Art. 24 of FAS Regulations.
[30] Art. 25 par. 1 of FAS Regulations.
[31] Art. 25 par. 2 of FAS Regulations.
[32] Art. 26 par. 1 of FAS Regulations.

concerned is a minor, as defined in point 11 of the Definitions section of the Regulations on the Status and Transfer of Players".[33]

Intermediaries will not permitted to be paid by a player or club if the player concerned is under the age of 18, even though a player may well have entered into a professional contract by this stage.

12. Jurisdiction in the case of dispute

Finally, FIFA no longer claims jurisdiction over disputes that could arise between intermediaries and their clients or other intermediaries. It entrusted national associations to deal with these kinds of disputes. FAS also followed this FIFA idea and declined the jurisdiction over the potential disputes between intermediaries and clubs, as well as between intermediaries and players.

Art. 30 of FAS Regulations regulates disputes*: "In the case of a dispute between the player and the intermediary, i.e. the club and intermediary, the regular court agreed by both parties shall have jurisdiction. It is forbidden to agree on jurisdiction of the FAS and FIFA bodies".*

Intermediaries, Players and Clubs must bring any potential dispute to Ordinary Courts.

13. Disciplinary Powers and Sanctions

"FAS bodies (national disputes) and FIFA bodies (international disputes) shall pronounce disciplinary measures for disrespect of the rules of FAS Regulations on working with intermediaries".[34]

This article is questionable because according to article 9.1 of FIFA Regulations on Working with Intermediaries the responsibility for the imposition of sanctions on any party violating the applicable provisions lies with the national association.

Furthermore, according to art. 9.2 of FIFA Regulations on Working with Intermediaries, except having the obligation to impose the sanction, (national) associations also have the obligation to publish it accordingly and to inform FIFA of any disciplinary sanctions taken against any intermediary. FIFA Disciplinary Committee is then to decide on the extension of the sanction to have worldwide effect in accordance with FIFA Disciplinary Code.

"FAS shall inform the FIFA bodies on all pronounced disciplinary sanctions".[35]

"The disciplinary procedure can be initiated on the basis of application by the Committee, the player or the club".[36]

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[33] Art. 26 par. 2 of FAS Regulations.
[34] Art. 31 of FAS Regulations.
[35] Art. 34 of FAS Regulations.
[36] Art. 32 par. 1 of FAS Regulations.

This is a bit unusual since there is no opportunity for an intermediary to initiate the disciplinary procedure. Intermediaries are not the members of the FAS, but their activities are ruled by its rules and they must be registered with it (Intermediary's Declaration states that the intermediary accepts to respect regulations and statutes of the competent association, Confederation and FIFA). By signing the Intermediary Declaration, intermediary gives consent to the FAS powers of inquiry and the publication of any aspect of an inquiry as well any decision taken against him, so FAS has jurisdiction over issuing sanctions for any violation of its internal regulations or statutes.

I must refer to the Intermediary Declaration provided in the Annexes of the Regulations on Working with Intermediaries.

14. Intermediary Declaration Form

There are two kinds of Declaration form: one for natural persons and another for legal entities.

Annex of FAS Regulations states the FIFA Intermediary Declaration form

Each intermediary who wants to exercise such an activity must sign an Intermediary Declaration, through which he, she or it undertakes to respect various obligations – we shall state some of them:

1. Respect and comply with any mandatory provisions of applicable national and international laws including in particular those relating to job placement when carrying out the intermediary's activity. In addition, he agrees to be bound by the statutes and regulations of the associations and confederations as well as by the FIFA regulations and FIFA Statutes in the context of carrying out the activities of intermediary.
2. Declare that he is not "official" as defined in point 11 of the FIFA RSTP
3. Declare to have impeccable reputation and confirm that no criminal offence has ever been imposed upon him for a financial or violent crime.
4. Declare that there is no contractual relationship with the leagues, associations, confederations or FIFA that could lead to a potential conflict of interest
5. Refuse payments made by one club to another club in connection with a transfer.
6. Refuse payments, in whatever form, relating to a transaction involving a player who is a minor.
7. Agree not take part in, either directly or indirectly, or otherwise be associated with betting, gambling, lotteries or similar events or transactions connected with football matches.
8. Give consent to the FA obtaining full details of any payment of whatsoever nature made to me by a club or a player for my services as an Intermediary.

[37] Art. 32 par. 2 of FAS Regulations.

11. Give consent, pursuant to article 9 paragraph 2 of the FIFA Intermediaries Regulations, to the competent FA publishing details of any disciplinary sanctions taken against me and informing FIFA accordingly.

The declaration is practically the same as the declarations contained within FIFA Intermediary Declaration.

"The disciplinary procedure is lead by the authorized bodies, i.e. in the first instance – FAS Disciplinary Committee and in the second instance – FAS Appeal Commission".[37]

The decision of the second instance body – FAS Appeal Commission – is final.[38]

Procedural and other rules determined by the FAS Disciplinary Code are applicable to the disciplinary procedure.[39]

15. Conclusion

FAS Regulations on Working with Intermediaries were adopted two months after FIFA Regulations had come into force. It leads to the conclusion that there was enough time to get familiar with the mentioned Regulations, but not enough time to see them in practice and compare the solutions of other associations. Since it was the beginning of the 2015 summer transfer period, FAS found the Regulations on Working with Intermediaries to be an initial solution, which should be further developed.

The first thing that comes to my mind when reading these regulations is the fact that an intermediary is not an affiliated FAS member.

According to FIFA Regulations on Working with Intermediaries, an intermediary cannot be a party in a FIFA dispute. Nevertheless, for the sake of protecting clubs and players, I think that an intermediary's status and work in the football world to which he undoubtedly belongs should be defined and determined by appropriate regulations. This implies that an association is to determine certain criteria on who can act as an intermediary. However, FAS has provided only a general definition that a natural or legal entity, Serbian entity, can act as an intermediary by signing the Declaration Form.

It is reasonable to question if any association has the capacity and even authorization to check the truthfulness of information in the Declaration signed by an intermediary.

The new Regulations on Working with Intermediaries impose the amendments of FAS Regulations since all of them were made and entered into force before intermediaries were present in the world of football. I am primarily talking about the respective articles of FAS Statute and Disciplinary code related to agents. It is even necessary to insert the new articles into the Regulations.

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[38] Art.32 par. 3 of FAS Regulations.

[39] Art.33 of FAS Regulations.

It is to be expected the Regulations on Work of the Committee Working with Intermediaries to be implemented in order to clarify this system.

Likewise, the intention of protecting minors by forbidding the payments to intermediaries working with them is in my opinion questionable. It should be maybe allowed to pay the commission to an intermediary if a minor becomes professional, while it should be forbidden to pay the commission to an intermediary for a scholarship agreement etc. An even better solution in this case could be the limitation of maximal duration of a representation contract between a player and an intermediary.

I have to mention the solutions of other associations which state that in order to represent a minor an intermediary should posses a special authorization from the association which has additionally estimated his capacity and ability.

Apart from determining the new registration system and regulating the vocation of intermediaries under FAS, FAS has the opportunity to make profit. Many associations collect money from registration fees, so called annual memberships, while others even take percentage out of intermediary's fees.

In short, the Serbian system has followed FIFA Regulations in many issues, but even though they have not inserted many additional articles, it still turns out to be a complex document.

In order not to be in collision with any national law or FAS regulations, many other regulations should be taken into consideration.

There is plenty of room for manoeuvre and I am positive that this is not the final version of the regulations determining the intermediary activities in Serbia.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN SLOVAK REPUBLIC

by *Tomáš Gábriš*[*]

1. Introduction

Although the status and activities of players' agents have been in the centre of attention at the international and specifically EU level for quite some time by now, this issue has been rather underestimated and neglected by the legislation and scholarship[1] in Slovakia. It was only internal regulation of sports associations, drawing mostly from the models of international federations that regulated this profession to a certain extent. From among such internal norms, those by FIFA and the Slovak football association (hereinafter referred to as the 'SFA') were most detailed. However, since FIFA has abolished its rules on players' agents and has replaced it with Regulations on Working with Intermediaries in 2015,[2] the SFA has followed suit and introduced its own *Directive on the Activities of Intermediaries*,[3] which will be discussed in this Chapter.

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[1] With the exception of J. Čorba, *Obchodnoprávne a súťažnoprávne aspekty športu*, Košice, Univerzita Pavla Jozefa Šafárika, 2012, 82 ff.; T. Gábriš, *Sports Law in* Slovakia, Alphen, Kluwer Law International, 2012, 150-151, 194-197; and T. Gábriš, *Športové právo*, Bratislava, Eurokódex, 2011, 157-161.

[2] FIFA Regulations on Working with Intermediaries of 21 March 2014. Available at: www.fifa.com/mm/document/affederation/footballgovernance/02/36/77/63/workingwithintermediariesenweb_neutral.pdf.

[3] The Slovak Regulations on Working with Intermediaries (Smernica SFZ o činnosti sprostredkovateľov) of 7 April 2015 is available at: https://www.futbalsfz.sk/fileadmin/user_upload/Legislativa/Predpisy_SFZ/20150407_Smernica_SFZ_o_cinnosti_sprostredkovatelov.pdf (16 August 2016).

2. Relevant national law

The issue of players' agents is not explicitly addressed by any national piece of legislation in Slovakia. The new Act on sports no. 440/2015 Coll., replacing the previous Act no. 300/2008 Coll., did not introduce any specific regulation of the profession of agents either, and does not invoke the notion of sports agents (or intermediaries) at all.

Additionally, albeit the new Act introduced an employee status for the players performing dependent work (traditional employer-employee relationship) – in contrast to their previous status of being self-employed – the regulation of work placement as laid down in a separate Act on employment services no. 5/2004 Coll. does not apply to sportspeople, and hence also not to the intermediaries, who are not to be considered providers of employment services in Slovakia.

Legal basis of intermediary activities thus fully lies within the scope of private law, as it is accepted in Slovakia that agents (intermediaries) perform their activities under Civil or Commercial Code contracts.

According to J. Čorba, the activity of agents or intermediaries has a nature of a business activity and they must be considered entrepreneurs – traders providing intermediary services. The agents could originally only have been natural persons in the football sector, despite the fact that, in practice, legal entities were often established by the agents (with a sort of a 'responsible representative', who was holding an agent licence) without any negative consequences. The new rules on intermediaries in football allow for legal entities to act as intermediaries as well.

The contract between an intermediary and a sportsman is usually a contract of a civil law nature (mostly a procurement contract under §774 et seq. Civil Code) in Slovakia, unless agreed otherwise, since the player's sporting activity is not his/her entrepreneurial business activity. On the other hand, a contract between an intermediary and a club, both being entrepreneurs, should be concluded under the Commercial Code (as a procurement contract pursuant to §642 et seq. Commercial Code) according to Slovak law.[4]

The same author also paid special attention to the contractual relationship between a player and his/her manager, being a person different from the players' agent. Managers and athletes used to sign agency contracts, procurement contracts or some sorts of atypical and mixed contracts, with a commitment by the manager to arrange for various matters relating to participation of the athlete in sports competitions, arranging contact with media and fans, negotiating advertising contracts, sponsorship contracts, endorsement of the personality of the athlete, and on the other hand, the commitment of the athlete to pay a compensation for the manager's services. This agreement, if the athlete performed his/her activity as an entrepreneur within the object of his/her trade licence should have been concluded under the Commercial Code

[4] J. Čorba, *Obchodnoprávne a súťažnoprávne aspekty športu*, Košice, Univerzita Pavla Jozefa Šafárika, 2012, 103-107, 83 et seq., mainly 87.

according to J. Čorba; otherwise it was to be concluded under the Civil Code. In the event that only one of the activities would be such for which the athlete holds a trade licence, the whole relationship should have been subject to the Commercial Code.

Under the new SFA rules on intermediaries in football, the difference between agents and managers becomes blurred. Under the new Directive of the SFA, the intermediary can perform both the activities of former agents as well as the activities of former managers. In that case, the rule applies that the Commercial Code is applicable in case any of the intermediated activities falls within the scope of players' business activities, since the Commercial Code is applicable if both parties – the intermediary and the player – act within the scope of their business. Otherwise, the contract is to be considered as concluded under relevant provisions of the Civil Code, unless agreed otherwise by the contracting parties.

A rare example of Slovack case law may be mentioned in this respect, concerning the status and duties of former managers, dealt with by the District Court in Ružomberok, no. 6C/20/2005, 5Co/594/2005. The complainant sued the respondent (defendant) for an amount of payment, claiming that he had signed a contract with the defendant on 1 June 2003, the subject-matter of which was the provision of management services by the applicant to the respondent in the area of the respondent's sporting activities, while the defendant had committed herself to pay to the applicant remuneration as specified in Art. III. of the contract. The defendant properly discharged her obligations to pay the remuneration under the contract up until the month of April 2004 inclusive. By a letter dated 1 May 2004 she terminated the contract based on a claimed failure by the applicant to meet his contractual obligations. By a letter dated 12 May 2004 the applicant announced that he did not accept the termination and considered the contract still valid and binding, and at the same time he urged the defendant to specify the claimed breach or non-performance of his contractual obligations. Since the applicant did not receive any response, his legal representative in a letter dated 11 June 2004 urged the respondent to respect the contract in question; however, the defendant did not reply.

At the trial, on 7 June 2005, the defendant through her legal representative stated that the claim was unfounded on the grounds that the defendant terminated the contract because the plaintiff did not comply properly with his obligations under the contract, which had stipulated that the plaintiff was to perform activities leading to conclusion of contracts, respectively activities consisting in brokering an occasion for the conclusion of contracts. The complainant did not fulfil this obligation properly, respondent claimed. Alternatively, in the event that the withdrawal would have been considered by the court as lacking just cause, defendant's counsel additionally argued for invalidity of the contract based on the argument that the contract was not specific enough and it was unclear due to the fact that it was not clear from the contract itself for how long the contract was concluded – whether it was concluded for a fixed or indefinite period. The contract

was namely originally concluded for an indefinite period while there was additionally stated in handwriting that the contract was concluded for a fixed period. This caused an internal conflict in the contents of the contract and thus the contract did not meet the requirements of §37 of the Civil Code (requiring the contract to be clear and precise), the legal representative of the defendant claimed. Further internal conflict in the contract was claimed to arise from the fact that it was not clear whether the plaintiff was required to perform activities of brokering players' contracts or just engage in activities directed at the conclusion of contract, i.e. to seek an opportunity to conclude a contract. Furthermore, the representative of the respondent referred to internal inconsistency of certain provisions in relation to the remuneration, whereby he claimed that in some parts of the contract the remuneration was due upon introducing opportunities to the player to enter into a players' contract, which is a completely different situation.

The judge acquainted himself with the contract concluded pursuant to §269 Sec. 2 of the Commercial Code between the defendant and the plaintiff, dated 1 June 2001, in which the applicant undertook to provide management services for the player. The contract defined the management services as an organizational support of sporting activities of the player, as seeking sports clubs that could be interested in sporting performance of the player with respect to her skills and physical capabilities, furthermore as searching for sports clubs outside the Slovak Republic as instructed by the player with respect to her skills and physical capabilities, to engage in activities directed to broker to the player opportunities of concluding contracts under which she would carry out sporting activities for sports clubs, to perform legal actions on behalf of the player towards terminating her sporting activities in sports clubs and towards subsequent transfers to other sports clubs that offer more favourable conditions to the player, as well as other activities linked to the sporting career of the player. The defendant undertook to pay to the manager a remuneration of 10% of the total reward to which she would become entitled under any players' contract concluded.

Based on this wording, the court considered that the management services (duties) of the applicant in relation to the contract were defined clearly and precisely, similarly as the payment obligations of the defendant in relation to the applicant. Thus, the court found for the plaintiff, adjudicating the respondent to pay to her manager the remuneration as agreed in the contract concluded under the Commercial Code.

3. Principles

The new SFA Directive on the activities of intermediaries has been approved by the SFA Executive Committee and entered into force on 7 April 2015. Upon entry into force of this Directive, the original system of licensing and registration of players' agents under the previous rules governing the operation of the SFA players' agents and clubs' agents was abolished. All licences granted previously became

null and void and their holders were required to return these to the SFA within 30 days from the entry into force of the new Directive. Repealing the previous rules did not, however, affect the validity of contracts concluded under the previous SFA rules governing the activities of clubs' and players' agents, of 11 September 2001. The legal relationships arising before the entry into force of the new Directive still remain to be governed by the previous rules.

The transitional provisions in Article 12 of the Directive stipulate in this respect that a natural person who as of 31 March 2015 possessed a license as a 'players' agent licensed by the SFA' under the previous rules, shall be considered an intermediary under the new Directive. The SFA hence automatically, as of 1 April 2015, considers all these individuals as being intermediaries. For the sake of clarity, the Directive additionally states that where the present SFA rules and regulations use the term 'players' agent' or 'players' and clubs' sports agent' this means 'intermediary' under the new Directive.

services to players and clubs in respect of the following transactions:

a) conclusion, amendment or termination of contracts between players and clubs under Slovak law, of which at least one party is a member of the SFA,
b) conclusion of contracts on the transfer of players between two clubs within the SFA, and in the case of a transfer of a player from a club which is a member of the SFA into a club falling under the competence of another national association and *vice versa*,
c) provision of consultancy services the result of which may not be the conclusion, modification or termination of contracts under letters a) and b).

The new Directive regulates the activities of intermediaries providing

Under Article 3 of the Directive, in any of the aforementioned transactions players and clubs are only entitled to use services of an intermediary who is registered in accordance with this Directive, and with whom they have concluded and registered a contract on representation. Hence, a system based on the new FIFA Regulations on Working with Intermediaries (Article 3)[5] and similar to that of other national associations was introduced – to register the intermediaries with the national associations. In fact, the Directive is explicitly based on the respective FIFA Regulations, which is to apply *mutatis mutandis* in accordance with the Slovak law to any relations and issues not regulated by the SFA Directive.

A player and a club may not use the services of an intermediary who is not registered in accordance with the SFA Directive or an intermediary who is enlisted in a special list by the SFA due to his previous infringements of this Directive. Violation of this provision by a player or a club amounts to a disciplinary offence.[6] This limitation with respect to choosing the intermediary does not apply, however, to cases where the player is represented by his legal guardian, a spouse

[5] FIFA Regulations on Working with Intermediaries of 21 March 2014; Available at: www.fifa.com/mm/document/affederation/footballgovernance/02/36/77/63/workingwithintermediariesenweb_neutral.pdf .

[6] Article 64(1) letter a) of the SFA Disciplinary Rules.

or a lawyer who is entitled under the law of the Slovak Republic or any other European Union Member State or other State which is a member to the European Economic Area to work in accordance with their terms as an attorney-at-law (an advocate).[7] These persons are not considered intermediaries and are not subject to the SFA Directive at all.

Furthermore, under the new Directive, when choosing an intermediary, the players and clubs must act with due care and due diligence. This means first and foremost that the player and the club are obliged to undertake all that is fair to require from them to ensure that the intermediary enters into a representation contract with the player or the club. This mirrors the rule laid down in Article 2(2) of the FIFA Regulations.

The validity of players' contracts or transfer contracts is not dependent, however, on compliance with the provisions of the Directive. This reflects the rule laid down in Article 1(4) of the FIFA Regulations. Hence, even contracts signed with the use of an intermediary not registered under the SFA Directive are perfectly valid and effective. Additionally, a failure by an intermediary to register as an intermediary or any intermediary deregistration or suspension by the SFA exerts no effect on authorization of a player to play for a club under a contract procured by the intermediary in question.

In case any disputes should arise from a contract concluded between an intermediary and a player or a club under the Directive, these disputes fall within the competence of the Dispute Resolution Chamber of the SFA.[8]

In case of any need for interpretation of the Directive, a competence to interpret it was given to the SFA Executive Committee which is to decide after seeking an opinion of the SFA Legislative, Legal and Ethics committee. Any such request for interpretation must be in writing.

4. Definitions

A key concept of the Directive is the term 'intermediary'. For the purposes of the Directive, intermediaries are any natural or legal persons registered in accordance with the Directive, who, for remuneration or free of charge,

a) represent a player and/or a club in negotiations and provide other services designed to conclude, modify or terminate contracts between players and clubs, of which at least one is a member of the SFA,
b) represent a club in negotiations and provide other services which aim to conclude a contract on the transfer of a player, or
c) provide consultancy services not leading to conclusion, modification or termination of contracts between players and clubs.

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[7] E.g. Act no. 586/2003 Coll. on advocacy and amending Act no. 455/1991 Coll. on trades (Trade Act), as amended.

[8] As specified in the Regulations on the SFA Dispute Resolution Chamber.

The definition is at first sight somewhat broader than in the FIFA Regulations, mainly due to the inclusion of point c) – considering as intermediaries also those who provide consultancy services to the clubs or players. Still, albeit not mentioned in the definition of an intermediary in the FIFA Regulations, Article 5 provides for the possibility that the representation contract includes also a provision on consultancy services within the scope of intermediary activities.

With regard to internal SFA norms, under the Directive, an intermediary is deemed to be a sports expert within the meaning of Article 2 letter r) of the SFA Statutes. At the same time, the Directive provides that the activity of an intermediary may not be performed by any official or employee of the SFA (as defined in the SFA Statutes). The latter rule is in line with the FIFA Regulations, Article 2(4).

5. Registration

According to Article 4 of the Directive, a natural or legal person wishing to pursue the profession of an intermediary must, before taking up the activity, be registered under this Directive. A fee for registration as an intermediary is 100,- Euro.

The SFA Registry registers a natural person or a legal person wishing to carry out business as an intermediary at its written request, after completion of a personal interview pursuant to the Directive. The application for registration is to be accompanied by:

a) a copy of an identity document;
b) a certificate of integrity;
c) a document proving that the applicant has no arrears in payment of taxes, duties or tariffs, and that he is not under any bankruptcy proceedings, restructuring proceedings, enforcement proceedings and is not in liquidation;
d) in case of an applicant being a legal entity, an extract from the Commercial Registry or another registry, which clearly shows the basic information of the legal person, for example business name, seat, identification number, legal form, object of business activity, the statutory authority, the authority with powers of control,
e) an Intermediary Declaration as attached in Annex no. 1 to the Directive.

The Declaration to be submitted by an applicant is very similar in case of natural persons and legal persons and it basically copies the FIFA Intermediary Declaration. The major deviation consists only in that the Slovakian Declaration includes also an explicit submission of an intermediary to the disciplinary competences of the SFA and to jurisdiction of the SFA Dispute Resolution Chamber with respect to any potential disputes arising under this Directive and any disputes concerning the activities of the intermediary.

The intermediary is to undertake in the Declaration to respect and comply with mandatory provisions of the relevant national and international regulations, particularly those concerning the activities of an intermediary. In addition, the intermediary is to agree that he is bound by the Statutes and regulations of the

national associations (the SFA) and of the confederation (UEFA), as well as the Statutes and regulations of FIFA.

The intermediary is also to confirm that he holds no position as an official within the SFA or FIFA, and that he shall not hold such a position in the foreseeable future, further that he meets the standards of personal integrity, no penalty or protective measure was imposed on him for any crime, and that he is in no contractual relationship with leagues, national associations (SFA), confederations (UEFA) or FIFA, which could lead to a conflict of interest. In case of any doubt, any such relevant relationship should be made public. He is also to take into account that it is banned to indicate, directly or indirectly, that he is in any contractual relationship with the leagues, national associations (SFA), confederations (UEFA) or FIFA in connection with his activities as an intermediary.

Furthermore, the intermediary undertakes in the Declaration not to accept any payments due between clubs concerning a transfer of a player, such as transfer fees, training compensations or solidarity mechanism payments, not to accept any payments from any party in respect of a minor player younger than 15 years, and not to participate directly or indirectly, or otherwise not to be associated with betting, lotteries and similar events or transactions relating to football matches. He also undertakes not to own a share, actively or passively, in companies, organizations, etc. that promote, negotiate, prepare or control such events or transactions.

The intermediary moreover expresses through the Declaration his consent that the national association (SFA) may obtain full details of any payments of any kind which have been paid to the intermediary for his intermediary service by clubs or players. He also gives consent that players, clubs, leagues, national associations, confederations or FIFA may receive any information, if it is necessary for the purposes of investigation, concerning any contracts, agreements and records relating to his intermediary activities. Likewise, consent is given to the above authorities to obtain other relevant documents from any third party, which advises, assists or participates directly in the negotiations of the intermediary (however, under the laws of the Slovak Republic, this does not affect attorney services provided by registered advocates). He also gives the competent national authority consent to receive and process data contained therein for the purpose of their publication, and to publish these under the Directive on intermediaries.

Furthermore, he gives the competent national authority (SFA) an approval in accordance with the SFA Directive on the activities of intermediaries to disclose details of any disciplinary sanctions that have been or will be imposed on the intermediary and to provide such information to FIFA.

Finally, the intermediary in his statement also agrees that this Declaration is available to all members of the competent authorities of the national association, and he undertakes to observe and respect the Directive on intermediaries, including the authority of the SFA Registry to keep and publish data under this Directive, and the jurisdiction of the SFA Dispute Resolution Chamber as a body to decide

any disputes arising from legal relations based on the activities of the intermediary – under a threat of disciplinary sanctions of prohibition of performing intermediary activities within the SFA area of competence (i.e., in the territory of the Slovak Republic).

Certain special rules apply in case the intermediary is a legal person. This means in particular that any individual acting on behalf of the company must hand in a separate Intermediary Declaration; but otherwise the Declaration of a legal entity contains essentially the same commitments and statements as contained in the Declaration of a natural person.

Upon filing an application with all the annexes as mentioned *supra*, including the Declaration, a personal interview is to be attended by the applicant in order to be registered as an intermediary by the SFA.

The interviews with applicants for registration take place at the premises of the SFA at least twice a year, in March and in September of each calendar year. The SFA establishes a committee for this purpose, composed of representatives of the SFA. The personal interview should cover the issues of

a) regulations of the SFA, UEFA, and FIFA,
b) personality rights and law of contracts,
c) moral aspects of intermediary activities.

The personal interview with a legal entity must be attended by a person representing the legal entity, who is older than 18 years, authorized to represent or act on behalf of the legal entity under the applicable law, and who will participate in the activities as an intermediary.

The SFA evaluates each application for registration by the applicants-natural persons and grants the registration provided that

a) the applicant is older than 18 years of age,
b) the applicant has completed secondary education or proves in a personal interview he has at least five years of experience as a football player or as an official or any similar experience in sports management,
c) the applicant attached to the application all the requested documents,
d) the applicant attended the personal interview, and
e) the applicant met all conditions laid down in the Directive.

Similarly, the SFA grants the registration to the applicant-legal entity, provided that

a) the applicant attached to the application all the requested documents,
b) the person older than 18 years who is authorized to represent the legal person under the applicable law and who will participate in the implementation of intermediary activities attended the personal interview and submitted formal certificates of training or experience and met all other conditions laid down in the Directive.

If the registration is granted, the SFA registers the intermediary and the intermediary is assigned a registration number. The intermediary will be enlisted as an 'SFA registered intermediary' in a separate registry maintained by the SFA,

being published also on the website of the SFA. The intermediary shall also be entitled to use the designation of being an 'SFA registered intermediary'. After registration, the SFA registered intermediary is obliged to immediately notify the SFA of any changes in the registered data or in the prerequisites for registering, if applicable.

The SFA shall reject an application for registration in writing, provided

a) the applicant does not meet the standards of personal integrity,
b) the application for registration and its appendices do not contain the required information,
c) the applicant did not participate in the personal interview,
d) the applicant does not meet the conditions laid down in the Directive.

A new application for registration can not be filed before the lapse of six months from the moment of rejection of the previous application for registration.

6. Representation contract requirements and conditions

Under Article 5 of the Directive, a player or a club is required to specify in the contract the subject-matter of the representation contract signed with an intermediary so as to indicate whether it is a consultancy service, another service, or any other legal relationship that is the subject-matter of the contract. A representation contract must be in writing and must be concluded before the intermediary begins to operate under this contract. The contract and its amendments and supplements should be executed in two copies at least, whereby each contracting party is to receive one copy.

In line with the FIFA Regulations (Article 5), the representation contract must contain at least:

a) the designation of parties (in case of a natural person: name, surname, date of birth, place of residence, number of identity card (ID card) or passport number, citizenship; in case of a legal person: the business name, seat, identification number, and a statutory body),
b) the legal nature and the range of services contracted,
c) the duration of the contract,
d) the fee, payable to the intermediary,
e) the general terms of payment,
f) the date of signing the contract,
g) the provisions on termination of the contract,
h) the signatures of the parties.

If a player is a minor, the representation contract must be signed by a legal guardian of the player.

The representation contract may be concluded for a maximum of two years from the date of its signing by both parties and the extension can take place only once, in written form, for a maximum of further two years, whereby such an amendment can not be concluded earlier than six months before the expiry of the

previous contract. This exceeds the rules laid down in the FIFA Regulations and was introduced partially following the model of previous SFA rules on players' agents.

The contract and the supplements must be submitted to the SFA Registry for registration within 15 days of their signing. The SFA Registry registers the representation contract or its supplement within 15 days of their delivery, if they comply with the terms of the Directive and the information contained therein is accurate and complete. In case any of the conditions for registration is not met, the SFA Registry refuses to register the representation contract or its supplement.

With the aim of exerting control over the actual activities of intermediaries, Article 6 of the Directive (in line with Article 6 of the FIFA Regulations) additionally introduces an obligation for a player and a club to reveal to the SFA upon request full details of any agreed remuneration or charges of any nature that have been remitted or are to be remitted to an intermediary on the basis of a representation contract. A player or a club is obliged to provide to the competent authorities of the SFA, leagues, national associations, confederations and FIFA, any contracts, agreements and records relating to the activities of intermediaries, for examination and investigation. These documents will subsequently be annexed to the registered contract. Players and clubs are obliged to act so as to avoid any obstacles to reveal such information and documents (i.e. not to agree on protection of trade secrets in this respect, or on imposing contractual penalties for disclosing the information).

Players and clubs are also obliged to ensure that each and every contract on a player's transfer or any players' contract which was concluded using the services of an intermediary, includes the name and signature of the intermediary. Should the player or the club have not used the services of an intermediary, this must be stated in the contract as well.

The SFA is to publish on its website and keep up to date, a list of all registered intermediaries, including their registration numbers and a list of intermediaries whose registration was revoked or suspended under the Directive, stating the reason thereof and the relevant provision of the Directive. Currently, the SFA lists 38 intermediaries on its website, at: www.futbalsfz.sk/legislativa/sprostredkovatelia.html.

According to Article 11 of the Directive, any decision on registration of an applicant, refusal of an application for registration, suspension or revocation of registration of an intermediary, or on his inclusion in a list of intermediaries who violated the Directive, or a decision on the registration or refusal of registration of a representation contract or its amendments, is to be executed by the SFA Registry through performing the said action in the relevant list or registry. The respective decision of the SFA Registry can always be appealed to the Appeals Committee of the SFA. A lodged appeal does not have a suspensive effect, though. Still, the Chairman of the Appeals Committee may, upon a reasoned application by the person authorized to file an appeal, decide on the suspensory effect of a properly and timely filed appeal.

The SFA Registry is to provide for notification of all its decisions and the decisions of the Appeals Committee on appeals against the decisions of the SFA Registry through the Official Report of the SFA and on the website of the SFA, and shall perform the necessary actions in the Information System of the Slovak Football (ISSF) or in the FIFA TMS, if applicable. A list of intermediaries who breached this Directive is also to be published in the ISSF and on the website of the SFA.

The SFA is also required to make publicly available on its website at the end of March of each calendar year the names of all registered intermediaries and individual transactions in which those intermediaries were involved in the previous calendar year. The SFA is also to disclose the total amount paid to all registered intermediaries by all clubs and all the players in the relevant period. The published amount is the total consolidated amount that all the players and clubs paid to all registered intermediaries during the period.

In the year 2015, the overall amount paid to intermediaries from transactions falling under the Slovak Directive, equalled to 157.109,- EUR.

Finally, the SFA Registry is also obliged to provide any member of the SFA – upon his request – any available information on intermediaries and transactions that were not in accordance with this Directive together with reference to the provisions of the Directive that had been breached, if the applicant proves his legal interest in the matter at issue.

7. Impeccable reputation

The Directive requires that intermediaries are of an impeccable reputation. According to Article 4(4) and 4(5) of the Directive, an applicant-natural person proves his integrity by an extract from the system of criminal records[9] not older than three months. Such a document is required to be submitted also by a foreign national through a representation office (embassy) of his State of origin in the Slovak Republic. If such an office does not exist in the Slovak Republic, the applicant submits a certificate of integrity issued for that purpose by a competent authority of the State of which the applicant is a citizen.

In case of an applicant-legal person, the integrity is to be demonstrated by a person representing a statutory body of the legal person, or persons who are members of the statutory body of the legal entity, and also other persons authorized to act on behalf of or for the legal person, persons who are members of the body with control function within the legal person, and persons that within the internal organizational structure of the legal person are to be involved in implementing the intermediary activities.

The SFA shall maintain on its website, and continually update, the list of intermediaries whose registration was revoked or suspended under the Directive, stating the reason thereof, including the reason of the loss of impeccable reputation.

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[9] Act no. 330/2007 Coll. on criminal records and on amendments to certain laws, as amended.

8. Conflicts of Interest

Article 8 of the Directive addresses the issue of conflict of interest, following closely the model of Article 8 of the FIFA Regulations. Before engaging an intermediary, a player or a club is obliged to undertake all that is fair to require from them to prevent any conflicts of interest, for example in the event that the intermediary should act as an intermediary for both the player and the club in the same transaction.

However, even in such a case the conflict of interest is not present if the intermediary informs the club and the player of all existing or potential conflicts of interest in respect of the transaction, in respect of the representation contract, or in respect of other related transactions. In such case, the intermediary is to obtain an express written consent of all parties concerned before the start of the respective negotiations.

Additionally, if the player and the club intend to use services of the same intermediary in the same transaction, a representation contract with such an intermediary must be concluded besides the written consent, before the start of the respective negotiations. The player and the club shall then submit the relevant documents to the SFA Registry along with the registration of the relevant contract.

9. Intermediaries' obligations

Some specific duties of intermediaries are regulated in Article 4(15-20) of the Directive. The intermediary is in particular obliged to send to the SFA his signed Declaration (the text of the Declaration is in the Annex 1 of the Directive) as of 1 March of each calendar year.

If an intermediary at any time during the year no longer meets the prerequisites for registration, the SFA shall promptly invite him for redress and shall set a deadline for redress of not less than three months from the receipt of the invitation to remedy. The intermediary is obliged to comply with the invitation within the time specified in the call. During this period, the intermediary can not pursue his activities, and his status of a registered intermediary is suspended. In this case, a player or a club is entitled to immediately withdraw from the representation contract with the intermediary concerned. If the problem is not remedied even after the set period, the intermediary is required to cease his operations and the SFA Registry shall terminate his registration.

In general, an intermediary is obliged to stick to the rules laid down in the Directive. Should the intermediary violate this Directive seriously or repeatedly, the SFA Registry shall initiate disciplinary proceedings and shall also suspend the registration of such an intermediary. Until the end of the disciplinary proceedings the intermediary can not carry out his activities under this Directive. In such case a player or a club is again entitled to immediately withdraw from the representation contract concluded with the intermediary concerned. If the Disciplinary Committee

finds the intermediary guilty of a serious misconduct under the Directive, the SFA Registry shall cancel his registration.

Furthermore, while the intermediary may employ other employees, their tasks must be limited to ancillary activities associated with intermediary activities. This rule was taken over from the previous SFA rules on the activities of the players' and clubs' agents. The intermediary is obliged to send to the SFA Registry a list of all his employees and any updates thereof, if applicable. Each employee listed must have been an employee of the intermediary at least three months prior to enlisting. In case of termination of employment, the intermediary is obliged to immediately notify the SFA of this and to request a deletion from the list of employees.

Finally, an intermediary who wishes to terminate his activities is obliged to inform the SFA Registry thereof, including the day as of which he requests a deregistration.

10. Remuneration

Rules on remuneration of the intermediaries are provided for in Article 7 of the Directive, being in harmony with Article 7 of the FIFA Regulations. The amount of remuneration due to an intermediary who represents a player is to be calculated based on underlying gross remuneration that the player is entitled to, for the entire duration of his player's contract concluded between the player and a club.

Unless an intermediary agrees in a representation contract with a player or a club otherwise, a recommended amount of remuneration for an intermediary (in accordance with the FIFA Regulations[10]) is

a) 3% of the gross basic remuneration of the player for the entire duration of his player's contract,
b) 3% of the transfer fee paid for the player.

An intermediary who represents a club is to be paid a lump-sum payment by the club, the amount of which shall be agreed before the relevant transaction. The remuneration may be paid in instalments.

If a player or a club use the services of an intermediary in the transfer of a minor player younger than 15 years, or when concluding a representation contract with a minor player under 15 years of age, it is forbidden that the intermediary receives any remuneration. Here a clear deviation from the FIFA Regulations can be seen in setting the age limit of a minor player at 15 years of age instead of 18. This deliberately evades the principle laid down in the FIFA Regulations taking into account the usual contractual practise within professional football in Slovakia, claiming the FIFA rule would be a disproportionate restriction of the intermediary activities.

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[10] FIFA Regulations on Working with Intermediaries of 21. 3. 2014. Available at: www.fifa.com/mm/document/affederation/footballgovernance/02/36/77/63/workingwithintermediariesenweb_neutral.pdf.

Any payment for the services of an intermediary must be paid exclusively by the client of the intermediary to the intermediary himself, unless the Directive provides otherwise. A club can not make any payment to another club (be it a transfer fee, training compensation or a solidarity payment) through an intermediary. However, a player and a club may agree in writing that the club will pay the remuneration of an intermediary on behalf of the player. Such a payment should nevertheless be in accordance with the fee arrangements agreed between the player and the intermediary in the representation contract.

Finally, the Directive takes over the FIFA Regulations rule that an official or employee of the SFA must not accept any payment from the intermediary from the remuneration due to the intermediary – in order to prevent any doubts of bribery.

11. Disciplinary powers and sanctions

Under Article 9 of the Directive, any breach of obligations laid down in the Directive is a disciplinary offence[11] for which the Disciplinary Committee of the SFA imposes a disciplinary sanction as specified in the SFA Disciplinary Rules. The SFA is thereby obliged to inform FIFA on imposing any disciplinary sanction upon an intermediary in relation to infringements of this Directive. The FIFA Disciplinary Committee will then decide on whether the disciplinary sanction is to be extended to the whole world. The latter principle is taken over from the Article 9 of the FIFA Regulations.

As a specific offence regulated in the Directive, a use of a document in the proceedings under this Directive with the knowledge that it is falsified or incomplete, or concealing any document important for assessing compliance with the Directive, is a serious breach of obligations.

12. Conclusions

The new SFA Directive on the activities of intermediaries partially copies the FIFA Regulations on Working with Intermediaries. Often even the numbering of Articles regulating the same issues is the same. A major deviation is to be seen mainly in allowing the intermediaries to be remunerated for working with minor players between the age of 15 to 18, which is not allowed under the FIFA Regulations. The prohibition was mainly perceived as a disproportionate interference with the free market principles. Other differences between the SFA Directive and the FIFA Regulations consist mainly in intermediaries in Slovakia submitting themselves in the Intermediary Declaration explicitly to the disciplinary powers of the SFA and to the jurisdiction of the SFA Dispute Resolution Chamber with respect to any breach of the Directive or with respect to any dispute arising

[11] Article 64(1) of the SFA Disciplinary Rules.

from the Directive. In this respect, a special list of intermediaries who breached the Directive is to be drawn up and published. Otherwise, the principles of the FIFA Regulations are followed, adding some rules from the previous SFA norms on players' agents. These are e.g. the rules on a list of employees of the intermediary, rules on an oral interview (replacing the previous written examination), and a rule on limiting the duration of validity and effectivity of a representation contract, also introducing special rules for re-negotiation of the representation contracts.

To conclude, within the previous year and a half, since the Directive is in force, no major dispute or problem with respect to activities of intermediaries has occurred so far in Slovakia. It seems the system works relatively well and gained acceptance by the intermediaries as well as by the whole football movement in Slovakia.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN SOUTH-AFRICA

by *Diederick Jankowitz*[*]

1. Introduction

The SAFA (South-African Football Association)[1] National Committee approved and implemented the new intermediary regulations on 2 April 2015.[2]

As a consequence, the former system according to which agents were accredited and registered was repealed and the intermediaries were requested to return their accreditation licences. This request raised difficulties for the intermediaries to implement it rapidly and smoothly and some of them refused to return their licences.

Furthermore, the South-African football intermediaries association ("SAIFA") applied to the High-Court of South-Africa in order to get a review of the SAFA's decision to implement the regulations of FIFA, as they stand without substantial changes.

The SAIFA's starkest issue to justify the review application was the fact that the agents were not eager to accept the gross reduction of their commission on the transfer contract of the footballers, which could be slashed from 10% to a mere 3% per each transaction.

SAIFA succeeded in their application and SAFA invited all stakeholders, included intermediaries and their representatives to make suggestions as well as proposals to the Association in order to make an informed decision with regards to the implementation of the "new" FIFA regulations. These proposals and presentations were brought to SAFA on 13 November 2015 by the South-African football players Union (SAFPU) and SAIFA

The legal and constitutional committee of SAFA examined the above mentioned proposals on 11 December 2015.

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[1] www.SAFA.net.

[2] www.safa.net/governance/intermediaries2.

Then, SAFA concluded that the initially implemented regulations dated 1 April 2015 had to be revised and amended.

These regulations were revised, amended and approved by the National Executive Committee of SAFA (NEC). The regulations are more or less a copy of the FIFA regulations and came into effect only on 2 April 2016.

2. Relevant national law

In South-Africa, all of the acts and/ or regulations are subject to the sovereign constitution of South-Africa, Act 108 of 1996.[3] The last mentioned act determines the right of freedom of association which would be applicable on clubs.[4] Pursuant to such act there is no limitation to any of the rights contained therein except if a limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.[5]

The Law of Contract in South-Africa will be applicable to any transaction concluded in South-Africa. Such law is mostly governed by case law and is based on three basic theories. The subjective consensual theory, which postulates that enforceability depends on the concurrence of the subjective wills of the contracting parties (consensus ad idem).

The objective declaration theory which postulates that enforceability of a contract depends on the concurrence of the declared intentions of the parties.

The reliance theory which postulates that enforceability depends on the reasonable expectations conveyed to the mind of each party by the words or conduct of the other.

It is important to note that in South-Africa the courts won't follow the said theories rigidly and will apply them in combination or separate depending on what the merits of each and every case dictates.[6]

The South African Football Association have its own statutes which came into force and effect on the 26 September 2015.[7]

Further to this the Labour Law of South-Africa would be applicable and this would include the Labour Relations Act 66 of 1995 as the relationship between a club and a player would constitute an employer/employee relationship.

3. Principles

When concluding an employment contract and/or transfer agreement players and/ or clubs are entitled to make use of the services of an intermediary. The player and/or club must act with due diligence when selecting the aforementioned intermediary.

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[3] Constitution of the Republic of South-Africa, 108 of 1996.

[4] Ad section 18 of the Constitution of the Republic of South-Africa.

[5] Ad section 36 of the Constitution of the Republic of South-Africa.

[6] Christie's Law of Contract in South-Africa 7th ed.

[7] SAFA Statutes 26 September 2015.

Any Intermediary must be registered on the Intermediary Regulation Tool System (IRT) beforehand.

The engagement as intermediary of officials of SAFA, the League, FIFA,CAF, COSAFA or any affiliated clubs or any association connected to these is prohibited. The intermediary regulations applies in the same regard to practicing attorneys and Advocates within the Republic of South-Africa who wishes to Act as an Intermediary.[8] It will furthermore also apply to any family member who wishes to Act as an Intermediary for a player.

4. Definitions

In the definitions supplied by SAFA the definitions of intermediary and due diligence are being recalled verbatim from the ones that are offered by FIFA.

In these definitions the word Audit is given its normal everyday meaning and CEO refers to the Chief Executive Officer of SAFA.

Transaction is given a very broad based definition and it means any negotiation or related activity, including any communication relating or preparatory to the same, the intention or effect of which is to create, terminate or vary the terms of a player's contract of employment with a Club, to facilitate or effect the registration of a player with a Club, or the transfer of the registration of a player from a club to a Club (whether on a temporary or permanent basis). A completed transaction is one that has so achieved the creation, termination or variation of the terms of the player's contract of employment with a Club, the registration of the player with a Club or the transfer of the registration from a club to a Club.

It is unnecessary to stipulate any other definitions and these are the only definitions that SAFA is providing for in their regulations on working with Intermediaries.[9]

5. Registration

For the sake of transparency, each Member Association of FIFA, is required to implement a registration system for Intermediaries that is public and transparent .

Intermediaries must be registered in the said system every time they are individually involved in a specific transaction.The clubs must ensure that if a person wishes to act as an intermediary he/ she must submit an intermediary declaration to be registered in accordance with the provisions of SAFA.

Following the conclusion of the relevant transaction, a player engaging the services of an intermediary of an employment contract, must submit to the member association of the club (the League if a professional club) the relevant Intermediary declaration, any other documentation required by the member association (the League if applicable) or SAFA such as certified proof of residence,

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[8] Article 3 of SAFA's Regulations on working with intermediaries – 2 April 2016.

[9] SAFA's Regulations on working with intermediaries – 2 April 2016.

a certified copy of identification document as well as the representation contract between the Player and Intermediary.

Following the conclusion of the relevant transaction of a transfer agreement between two clubs, the clubs must submit to the association the Intermediary Declaration, any other documentation required by the member association (the League if applicable) or SAFA such as certified proof of residence, certified copy of identification document as well as the written agreement between Club and Intermediary for services rendered.

The aformementioned documentation must be submitted each and every time an agreement is concluded. The relevant club is also required to submit said documentation to SAFA.

In addition to the aforementioned requirements an investigation may be conducted by SAFA or the relevant club to ensure that the intermediary does have an impeccable reputation.

6. Requirements and conditions

The specific representative relationship must be recorded in the representation agreement. The contents of the last mentioned agreement must at least include: names of the parties, scope of services, 2 year duration of the legal relationship, remuneration due to the Intermediary, general terms of payment, date of conclusion.[10]

Any payments made or to be made must be disclosed to SAFA, which in turn in association with FIFA and CAF may request the necessary documents to enable them to conduct the necessary investigation in the matter.

At the end of the calendar year, SAFA must on its official website post a list of all of the intermediaries that registered an agreement in that year as well as the agreements they registered.

7. Impeccable reputation

In deciding whether or not a person does have an impeccable reputation, one must conduct a thorough investigation to conclude whether or not the person have been convicted of a violent or financial crime.

If the person was not convicted on any of those crimes she/he is deemed to have an impeccable reputation.

8. Conflicts of interests

Players and intermediaries must ensure, as far as it's possible, that there would be no conflict of interest, if an intermediary becomes aware of the fact that there is

[10] SAFA's Regulations on working with intermediaries – 2 April 2016 paragraphs 6, 7, 10 and 11.

a potential conflict of interest, he must disclose this fact to the association. If all of the parties concerned after the disclosure still want to proceed with the transaction they may do so but must stipulate in writing that they wish to proceed.

If this has been done it would be deemed that no conflict of interest existed.

9. Intermediary's obligations

SAFA's regulations on working with intermediaries provides in article 10 that the intermediary is obliged to comply with all of the statutes, rules and regulations relating to intermediaries. He must always act in the interest of his client and should not induce his client to commit a breach of contract. The intermediary may not represent the interest of more than one party per transaction.

Should the intermediary fail to comply with the aforementioned requirements, she/he may be sanctioned by SAFA in one of the following ways: by reprimanding him/ her, censure, caution, payment of a fine or payment of compensation to the aggrieved party.

10. Remuneration

Like previousley stated herein, SAIFA's main difficulty with the regulations was that their remuneration would be cut from 10% to a mere 3% per transaction. These regulations were amended accordingly, as a result of the representations and proposals that was supplied to SAFA on 13 November 2015, on the 2nd of April 2016.

According to the agreed, revised, implementing regulations, the total amount of remuneration payable to the intermediary must be negotiated between the player and the intermediary and agreed upon in writing.

If the player and the intermediary do not have a written agreement the minimum percentage of 3% will be applicable.

The amount of remuneration may not exceed 10% of the total value of the players' salaries as established by the footballers' employment contract.

From the above, it is clear that the minimum legal 3% percent is applicable only where and when no different, specific written clause is agreed in this regard to fix a higher percentage. Therefore, leaving to the parties, intermediary and player, the faculty of stipulating a different value of compensation, the opposition of SAIFA to the first implementing SAFA intermediariesy regulations was effectively solved and thus the FIFA regulations could be definitively implemented through the second revised SAFA regulations.

11. Disciplinary powers and sanctions

Any aggrieved party that wishes to file a complaint may do so in writing and

address it to SAFA. SAFA must then investigate the complaint within the time frames as stipulated.

If there is *a prima facie* case against the intermediary, SAFA must act in conformity to the regulations and its disciplinary code.

If the intermediary is found guilty of misconduct then SAFA can inform FIFA of the decided and applied sanction and the latter's disciplinary Committee will then decide if the sanction would have worldwide effect or not.

As stated in paragraph 9 SAFA can only issue certain sanctions. The disciplinary code stipulates the process to be followed.

12. Conclusion

Except for the intermediaries' compensation, SAFA implemented the FIFA regulations without major changes. The need for a rigorous and smooth implementation was urgent and due to the fact that South-Africa has huge problems with unregistered agents, who acted as agents for different players, even though this is prohibited, precisely because they are not formally registered. So the indispensable requirement for promoting transparency is here missing. The lack of registration jeopardizes the SAFA objective of sufficiently regulating and monitoring all the transactions and it is therefore not in the real interest of the players and clubs.

The system as it is implimented at this point in time shifts the focus to each and every transaction and it would therefore be more efficient and functional in South-Africa if everybody involved would have an impeccable reputation. This would therefore result in better transparency.

At the time of writing this report, the first transfer period since the implimentation of the new regulations has been only recently completed and so feedback is still to come.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN SPAIN

by *Juan De Dios Crespo* and *Enric Ripoll González*[*]

1. Introduction

At the Executive Committee held on March 2014, FIFA approved the new regulations that modified the activity of Player's Agents forever. With the intention to *promote and safeguard considerably high ethical standards in the relations between clubs, players and third parties, and thus to live up to the requirements of good governance and financial responsibility principles*[1] FIFA decided to eliminate Agents.

FIFA developed a new legal framework that shall only serve as the minimum standards and requirements that must be implemented by each association at the national level. Giving them the floor to develop those minimum standards implies that each and every association has had to create their own regulations before the entering in force of the new Regulations before the 1st of April 2015.

The Spanish Football Federation (hereinafter the "RFEF"), only published their regulations on the 31st of March. This left little time for Agents working in Spain to study the new regulations in order to be able to negotiate contracts for the 2015 summer transfer window.

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[1] Preamble of the Regulations on Working with Intermediaries.

2. Relevant National Law

The Sports legal framework in Spain consists of a large number of Laws pertaining to different areas, Civil Law, Administrative Law even Criminal Law.

Regarding the activity of the Intermediaries itself, the main law that has to be taken into account is the Civil Code, which regulates the Mandate and the lease of services. But if we speak about the relevant laws that shall be known by an Intermediary to perform his activity then we have to add some laws to the list.

The 1990 Sports Law that regulates Sports within the country plus the regional laws that each Province (in Spain there are 17 "Provinces" called Comunidades Autónomas) which decided to develop a Regional Sports law, establish some sort of General Framework to develop the sports activity.

The 2013 Law of *protection of athletes' health and fight against doping in sport* shall be known by the Intermediary since it could be held responsible and sanctioned in accordance with its content in case of participation in the prohibited behaviour.

The last modification of the Criminal Code, include Match-fixing not only for sporting interests (as it was drafted before) but also for economic reasons such as betting, and not only regarding professional competitions (only the two first categories of Football and the first category of Basketball are considered legally professional competitions in Spain) but also include those competitions that, although not legally professional, are the highest category of their respective modality, specialty, or discipline.

Finally, due consideration should be given, of course, to the Rules and Regulations of the Spanish football Federation regarding Intermediaries, including, but not limited to, the new Intermediaries Regulations.

3. The RFEF Regulations

3.1 Principles and Definitions

The Spanish Federation decided to maintain the definitions and main principles included in the FIFA regulations, including them in the preamble of its own Regulations.[2] Therefore an Intermediary in accordance with the Spanish Regulations will be:

> *"A natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement".*[3]

Once the RFEF decided to implement the same principles, it is obvious that the scope of application of the regulations has to be the same that FIFA

[2] Preamble of the Regulations on Working with Intermediaries.
[3] Art Definitions of the Regulations.

established: *the negotiation or renegotiation of an employment contract of a Player with a Club and the negotiation to conclude a transfer contract between two clubs*.[4]

It is easy to conclude, as a preliminary point, that the RFEF has simply implemented the FIFA Regulations and then increased the obligations of the Intermediaries.

As an example the aforementioned, the FIFA Regulations oblige Intermediaries to be registered before the National Association and prevents Clubs and Players to contract any Official (as it is defined in the FIFA Rules) as an Intermediary. Additionally, the RFEF also specifically prohibits any transaction or contract where an Intermediary takes part is conditional on any representation contract signed between the Player and the Intermediary.

3.2 Requirements and Conditions

In order to enforce FIFA's mandate regarding the registration of Intermediaries, the RFEF has considered it important to implement the following registration requirements:

1. Both persons, natural and legal, can be registered as Intermediaries, but in case of legal persons, it will be able to be registered but also all its representatives, being the latter the only who will be able to sign the contracts and carry on with the negotiations.
2. Since any operation in which an Intermediary has taken part shall be registered before the RFEF, the Intermediary itself shall be registered with the RFEF *before* the conclusion of the agreement.
3. The RFEF establishes the same regime of incompatibility established by FIFA regarding contractual relationships of Intermediaries with leagues, federations, associations, confederations or FIFA.
4. There is an important difference to the FIFA regulations, which is that the activities contained within the scope of the representation contract cannot be delegated, ceded, subcontracted, rented, sold or subjected to any kind of disposal.

3.3 Registration

Article 4 of the RFEF Regulations establishes the registration procedure, where in addition to disclosure of the relevant documents the applicant will have to undergo a personal interview in which RFEF will decide if the applicant is suitable to give advice to Players or Clubs. It is even more surprising that the regulations do not establish any kind of information about the criteria that will be evaluated in the interview, leaving too much room for the Federation to reject any application because of subjective reasons.

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[4] Art. 1 of the Regulations.

The payment of an annual fee for this year is 816 euro (in case of legal persons, the fee shall be paid for each representative), it is also a condition for the registration, together with signing the Code of Ethics and the Intermediary Statement in Annex 1 or 2 of the regulations (the first being for natural persons and the second for legal persons).

If the personal interview is overcome, all the documents are presented (and approved) and the fee is paid, the RFEF will authorize the registration of the applicant as Intermediary (article 5). It is worth saying that the registration of an Intermediary by the RFEF only allows him to practise his activity within the national territory of Spain; therefore, an Intermediary that has clients in different countries will need to be registered before each relevant national association to work within their territory.

Despite some controversial points, it should be noted that unlike other federations, the RFEF does not preclude foreigners from the registration process and does not require the applicants to be Spanish-speaking.

According to article 6, the registration of an Intermediary can be cancelled in case the Intermediary fails to fulfil all the requisites established in the previous articles, if sanctioned or in case he/she asks for it.

3.4 Impeccable Reputation

The impeccable reputation requirement is contained in article 4.3.d) which must be fulfilled in order to prove the reputation of the applicant to the RFEF. The applicant must provide the Intermediary Statement included in Annex 1 or 2 of the Regulations.

Those annexes contain the pledge of the Intermediary accepting the new regulations:

1. Their commitment to fulfil and accomplish all the terms and conditions,
2. That they are not an "official" as defined in article 11 of the FIFA RSTP
3. That they have never been convicted of an economic or violent offence.
4. That they do not have any kind of contractual relationships with leagues, federations, etc.
5. The agreement to refuse any payments from other clubs related to transfers such as transfers fees, solidarity mechanisms or training compensations.
6. Their agreement to not accept any kind of payment if the Player is a minor.
7. Their agreement to refuse to take part in or relate to any kind of activity regarding lotteries, betting or gambling
8. Their consent to the National Associations, leagues, confederationsand FIFA to obtain all the information about payments received from players and clubs.
9. Their consent to National Associations, leagues, confederations and FIFA to investigate third parties that could assist the Intermediaries during the negotiations that they are carrying out.
10. Their consent to the National Association to save all the information obtained for processing in order to be published.

11. Their consent to the National Associations, leagues, confederations and FIFA to publish disciplinary measures taken against them.

The most controversial point of this Statement is without any doubt number 9, where the Intermediary gives its consent to the National Associations, leagues, confederations and FIFA to investigate and obtain any kind of information even from third parties, for example the Intermediary's lawyer. This kind of consent is a clear attempt against one of the basic principles of a lawyer's activity, the obligation of professional secrecy. A lot of conflicts regarding this "consent" are sure to arise in the future.

3.5 Registration of Operations

The FIFA Regulations modify the Agent's activity, control the operations in which the Intermediaries participate, and therefore, there has to be a procedure that ensures that every transfer or employment contract signed by an Intermediary is registered before the National Association. Article 7 of the RFEF Regulations establish when and how an operation has to be registered:

1. Negotiation of an employment contract between a player and a Club: when the Player hires the services of the Intermediary, shall be first obliged to send all documents to the RFEF in order to register the operation. If the negotiation carried out is about the conclusion of a transfer contract, the Club that hired the Intermediary must send the documents to the RFEF.
2. The communication to the RFEF of the statement included in Annex 1 or 2 (Intermediary Statement for natural or legal persons) shall be done each time that an operation included within the scope of article 1 takes place.
3. The communication shall be annexed to the employment or the transfer contract, signed by the Intermediary.
4. In order to register the Player with a team, the RFEF will have to have the representation contract between the Intermediary and the Player. Without the representation contract, the Player will not be registered.
5. The register of Intermediaries will be public and will include all the operations they participate in.

3.6 The Representation Contract

With the intention to establish a standard framework, and facilitate its own work, the RFEF has decided to impose the content of the Representation Contract referred to in article 7.4:

1. To represent a Club or a Player, the Intermediary shall have a concluded contract of representation duly signed by the parties.
2. The scope of the contract shall specifically include the exact activities the Intermediary shall perform.

3. The usual information shall be included, such as names of the parties, period of time the contract will be in force, amount to be paid to the Intermediary, day of start and termination clauses.

In this respect, the specific requirements are:

1. The *maximum* term of the contract that is allowed is two (2) years.
2. If the Player is a minor, his legal guardian will have to sign the representation contract.
3. The contract shall be provided, in three copies (four if the player is registered with a different national association), before the RFEF *within the next 10 days after the signature of the contract, regardless the date when it comes into force.*
4. Any amendment to the contract *shall be registered with the RFEF.*
5. The performance of the activities included in the scope of the contract *cannot be delegated, ceded, subcontracted, sold or subject to any kind of disposal.*

3.7 Obligation of Disclosure

According to article 9 of the Regulations, all the documents signed between Intermediaries and Clubs or Players shall be disclosed to the RFEF jointly with all the payments made to them. This obligation has to be fulfilled before the end of the year in order to allow the RFEF to publish during the month of March the list of all the registered Intermediaries and the operations in which they have participated during the previous year.

In its eagerness to control the activity of Intermediaries the RFEF suffers from some systematic contradictions in the Regulations. This is one of the clearest examples; the first paragraph of article 9 establishes the obligation of players and clubs to communicate the details of *all remuneration or payments of any kind* that have been cleared or will be made to an Intermediary. Considering that the purpose of the regulation is limited to the operations included in Article 1.1: *negotiation or renegotiation of contracts and closing operations of transfer between clubs,* it is questionable if the RFEF has the jurisdiction to force a player or a club to give information about a contract signed with an Intermediary, such as, for example, the negotiation of advertising contracts. It is questionable if these are within the scope of the Regulations, and as a result these types of contracts ought to be subject only to the ordinary or arbitral tribunals of Spain, or directly to the CAS. This raises the question: what would be the consequence of not reporting that information?

The same Article 9.1 establishes a new twist to the systematic contradiction of these Regulations:

> *At the request of the competent organs of the RFEF players or clubs shall, for research purposes, all contracts, agreements and records with linked to these provisions.*

The first sentence of the article creates an obligation to report any compensation paid to an Intermediary, whatever its nature, notwithstanding that players or clubs will have to disclose to those bodies only the contracts, agreements and records of Intermediaries that are related to activities linked to these provisions, i.e. negotiation or renegotiation of contracts and closing operations of transfer between clubs.

There is obviously a clear contradiction. Should we interpret the obligation to report any remuneration paid to an Intermediary in a systematic manner, and disclose only those relating to the scope of the regulations, or is it necessary to consider it an additional obligation? Unfortunately, only the decisions of the bodies of the RFEF and FIFA resolving conflicts will determine the response to this question.

3.8 Remuneration

The remuneration of Intermediaries has not followed the FIFA's recommendation of limiting the amount to 3%, the RFEF established other limitations to the payments made to intermediaries:

1. The remuneration of an Intermediary shall be calculated on the gross salary of the employment contract of the Player.
2. The Payment will be made with a fixed sum agreed to before the conclusion of the contract, however, it could be made in multiple instalments.
3. As agreed to by the Intermediary itself through its Statement of annex 1, the payments that shall be made from one club to another such as solidarity or training compensation, cannot be made to Intermediaries.
4. The Intermediaries will be paid by their clients regardless of who they are, but a Player and a club may agree that the latter will be responsible to pay the Intermediary that participated in the negotiations.
5. Officials cannot receive any kind of amount from an Intermediary.
6. Last but not least, if the Player is a minor, players and Clubs that hired an Intermediary to negotiate a transfer or an employment contract, are prevented to pay any amount to the latter.

Obviously, this last point has raised numerous concerns. On one hand, the paragraph does not mean that a player under 18 cannot hire an Intermediary as a representative. On the other hand it establishes that the Intermediary will not be paid in connection with the negotiation of the employment contract or the transfer, leaving Intermediaries in the position of having to work for free for a minor without the guarantee that upon reaching the age of maturity, the minor will continue working with them.

This controversial article has two key points that must be considered. First of all the rules concerning the duty of disclosure present difficulties. Under the regulations a minor could conceivably hire an Intermediary with the payment of a fee. Does the inclusion of this fee require the agent to disclose the transaction

as the payment of intermediaries in such transactions are not part of the Regulations? In addition, the parents of the minor could hire an Intermediary signing a private agreement that will not fall at all within the scope of the Regulations, since only Intermediaries, Clubs and Players are obligated to disclose information to the football authorities.

There is a further hidden contradiction in the regulations. Article 10 establishes that Players and Clubs cannot pay an Intermediary if the Player is a Minor, but article 6 of the Intermediary's Statement establishes that the Intermediary accepts to not receive payments from third parties if the Player is a minor.

There is no provision in the regulations that prevent Intermediaries to receive remuneration from third parties when the Player is a minor, only from Players and Clubs, but the Intermediary's Statement forces them to give their consent to not receive any money from Players, Clubs and third parties. Does this mean that the Annex of the Regulations is increasing the width of the Regulations?

Does this mean that an Intermediary cannot receive a payment from a third party if the Player is a Minor? Not even for the negotiation of an Image rights contract? Can the Intermediary regulations, whose scope is the negotiation of employment contracts and transfer agreements, prevent an Intermediary to be paid for the negotiation of a contract with Nike, Adidas or Under Armour for a player of 16 years?

3.9 Intermediaries' Obligations

Intermediaries must also observe some obligations such as not contacting or attempting to convince a Player who is already under a contractual relationship with another Intermediary to terminate such relationship. The Intermediaries are also prevented from inducing players under contract with a Club to terminate the employment contract.

This article finds its origin in article 22 of the old FIFA Agents' Regulations. Its purpose is to prevent a war between Intermediaries. From a practical point of view, the RFEF lost the opportunity to improve this rule by including a term before the expiry of the contracts (with other Intermediaries) within which the Intermediary could contact the Player in order to offer him his services.

3.10 Conflicts of Interest

Article 12 regarding the Conflicts of Interest is a direct implementation of the FIFA rule. FIFA imposes the obligation to control the activities of the Intermediaries on those who hire them, where it forces Clubs and Players to investigate any conflict of interest that the Intermediary may have. At the same time if the Intermediary discloses to the parties any potential conflict and the parties agree to hire him, expressly accepting such conflict in writing, then the conflict of interests disappears.

Even if the two parties of a negotiation want to hire the same Intermediary it is allowed so long as the contract includes such an agreement and all information is disclosed to the RFEF.

3.11 Disciplinary Powers and Sanctions

FIFA delegated to each National Association the ability to impose sanctions as well as the Dispute Resolution Proceedings. In Spain the RFEF established an unnecessarily convoluted and complicated process.

Articles 14 and 15 of the Regulations establish that the Jurisdictional Committee of the RFEF will be *the body in charge of hearing the economic disputes where an* Intermediary is a party, and the requirement to bring those disputes before it.

In this sense, it is important to note that only *economic disputes* would be admissible before the Jurisdictional Committee. This decision leaves any other discussion such as termination of the contract for non-fulfilment of the obligations of the contract out of RFEF Jurisdiction, forcing Players and Clubs to bring any other non-economical dispute to Ordinary Courts.

In addition, the Jurisdictional Committee could inhibit its jurisdiction if the parties issue the economical claim directly to Ordinary Courts. This provides an incentive to bring every dispute before Ordinary Courts. Finally, the regulations allow for the possibility for the minor player to sign a contract with the intermediary in the future, without being currently paid. It is unclear if such a dispute can be heard by the Jurisdictional Committee.

Moreover, the RFEF Rules and Regulations that are actually in force, such as their Statutes and Disciplinary Rules, predate the publication of the Intermediaries' regulations and do not include any provision recognizing this new reality. It is to be expected that the Disciplinary Code and the General Regulations will be modified to include a reference to Intermediaries so that any breach of regulations and sanctions can apply to Intermediaries.

4. Conclusion

Considering that the RFEF had the opportunity to establish the ground work from the outset, the new Regulations do not create a fair framework where all the parties can feel protected, and with their obligations and rights clearly established. Instead the Federation has imposed a new regime establishing a large number of obligations without granting the proportional rights to those obligations. The Intermediaries will only have the chance to bring a dispute before the RFEF in case of an economic dispute. It is unclear whether the termination of the contract by the Player or the Club and the subsequent request of compensation fit into the "economical-dispute" requirement, or if this concept refers only to outstanding amounts. The question remains whether the regulations effectively protect all parties.

It is more than evident that FIFA had the intention of changing the rules of the game and imposed on the Intermediaries a new legal framework where they are forced to disclose all their activities, their remuneration, their contracts and the terms of their agreements. This new legal framework left those agents (in the broad sense of the concept) without any kind of protection, leaving their activity under the governance of every National Association. This will also force players and intermediaries to hire new agents in every country where they have a client or a potential interest.

Under the new FIFA regulations, that the RFEF practically assumed entirely, no father will be allowed to negotiate the contract of his 17 year old son, even being a lawyer. Without proper registration the father will also have to suffer a personal interview where the RFEF will decide its acceptance based on some unknown criteria, not disclosed in the regulations.

In the authors' opinion the RFEF Intermediaries regulations, instead of clarifying the new situation created by FIFA, have been drafted and published without proper reflection. The systematic errors and contradictions in the rules have created more confusion, leaving doubt on how the Intermediaries will have to develop their activities or protect their interests.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN SWITZERLAND

by *Luca Tettamanti*[*]

1. Introduction

Following the issue by FIFA of the "*Regulations on working with Intermediaries*" (hereinafter "FIFA IR"), which contained a directive to each national association,[1] the Swiss Football Association (hereinafter "ASF") issued the "*Regulations on the cooperation with Intermediaries*" (hereinafter "ASF IR") which came into force on 11 April 2015. These new regulations, drafted in German and French languages, substitute the previous ASF "*Regulation on Player's Agents*" (hereinafter "ASF PAR"), issued on 24 November 2001 and its successive amendments.

It should be noted that the ASF IR prevails over the FIFA IR. However, pursuant to article 1 ASF IR, the FIFA IR applies without restriction when the ASF IR does not contain any particular provision, apart from the compulsory application of mandatory State rules.

This has an impact on some specific topics better explained *infra*.

ASF IR is directed towards individuals and entities which are naturally bound by the ASF statutes and decisions but also towards intermediaries who become subject to its application by the signature of the mandatory "*Intermediary Declaration*" prepared by and filed with the ASF.[2]

As a preliminary remark, it is interesting to note that, unlike other countries/national associations, the system of intermediaries in Switzerland faces two different legal pillars: sport regulation and State law.

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NB: Terms referring to individuals in this contribution are applicable to both genders. Any term in the singular applies to the plural and *vice-versa*.

[1] Pursuant to article 1(2) FIFA IR, associations are required to implement and enforce at least these minimum standards/requirements and to draw up regulations that shall incorporate the principles established in these provisions.

[2] Similar to the legal scheme of the so called "*contract of adhesion*".

Indeed, the method of regulating intermediaries in Switzerland is not confined within the scope of sporting regulation but also has a legal basis in the Swiss "*Code of Obligations*" (hereinafter "CO")[3] as well as specific limits in the Swiss "*Federal Act on Services of Labour and Lease of Services*" (hereinafter "LSE").[4]

Both of the above-mentioned legal provisions have a significant role in the proper implementation of the ASF IR and led to some particularities in its text.

It is probably in view of such legislation that ASF followed a simple approach by regulating in the ASF IR only the main aspects of this particular profession.

2. Relevant national law and authorisations

ASF IR is now the primary source of law which regulates the services of an intermediary in the world of Swiss football.

Pursuant to its article 2(1), ASF IR regulates the services of an intermediary delivered in connection with (i) the conclusion of a new employment contract or its extension between a player and a club registered with the ASF and (ii) the conclusion of a transfer agreement between two clubs, of which at least one is affiliated to the ASF.

Whilst some doubts may arise on the application of the LSE when the intermediary introduces or assists two clubs to conclude a transfer agreement without representing the player concerned, the matter may become more complex in relation to Swiss employment law policies, for those intermediaries who put in contact or negotiate employment contracts between a club, as employer, and a player, as employee.

Indeed, due to the importance of their role in recruitment, intermediaries carrying out these services are bound not only by the ASF IR, or FIFA IR, but also by the mandatory rules of LSE.

In particular, pursuant to article 1(2), LSE applies to *employment agents*[5] who practice "*on a regular basis*" meaning either by offering this service as a major part of their business[6] or by exercising that activity at least ten times per year.[7]

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[3] In the original French version "*Loi fédérale complétant le Code civil suisse (Livre cinquième: Droit des obligations)*".

[4] In the original French version "*Loi feìdeìrale sur le service de l'emploi et la location de services*" (LSE) of 6 October 1989, published in French, German and Italian language at https://www.admin.ch/opc/fr/classified-compilation/19890206/index.html (last visit: 25 September 2015).

[5] Meaning "job-placers". Therefore the LSE does not apply to intermediaries dealing with other type of services or consultancy not related with employment of athletes and to sports where no labour contract is signed to compete (for instance, sponsorship or endorsement contracts).

[6] Meaning by offering themselves as job placers via web or other public media or even by including such activity in the scope of their company in the Swiss registry of commerce.

[7] Article 2 governmental *Ordinance implementing the LSE* (OSE).

These employment agents must obtain an authorisation from the Cantonal Employment Office in which they have their seat (entity) or they are domiciled (individual). Additionally, recruitment agents who regularly work on job placement abroad (i.e. from Switzerland to other countries) or with regard to foreign workers coming to Switzerland[8] must obtain a federal authorization of the Economy State Secretariat (hereinafter "SECO") in addition to the Cantonal authorisation.[9]

To obtain this authorization, an intermediary must comply with strict preconditions set out in the LSE[10] including *inter alia*, (i) being a Swiss national or holding a permanent domicile; (ii) being registered in the Swiss registry of commerce; (iii) working in a proper organised office,[11] (iv) do not carry out any other activity which conflicts with the interests of employers and employees and (v) having a some years professional experience in the market where the recruitment is performed.[12]

It has to be noted that only intermediaries with their seats or domicile in Switzerland can be registered in the Swiss registry of commerce. Consequently, intermediaries based abroad cannot fulfil the LSE criteria and therefore prevented from undertaking their business on a regular basis in Switzerland.

To be consistent with the reality of the football market, SECO have confirmed that subject to lodging appropriate documentary evidence of the relationship, foreign intermediaries are permitted to act jointly with Swiss intermediaries, who remains the only ones entitled to introduce players with Swiss clubs, and share any revenue from the transaction undertaken.[13]

3. Definitions and Principles

ASF plainly followed the definition of FIFA IR and, by article 2(2) ASF IR, considers an intermediary as: "a *physical or a legal person which, upon payment or for free, represents a player and/or a club in relation to the negotiation in connection to the conclusion or the extension of an employment contract, or a club in connection with the negotiation and conclusion of a transfer agreement*".

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[8] Conversely, in case of foreigners placed abroad, the Swiss intermediary is subject to LSE only if at least part of the activities to place the foreigner are performed in Switzerland (SECO, "*Indications and Comments to LSE*").

[9] Articles 2 and 3 LSE. Job-placers, and thus intermediaries *in casu*, who act without authorisation under the LSE may be fined up to CHF 100,000 pursuant to article 39(1), lit. a) LSE.

[10] Article 3 LSE.

[11] This condition tries to avoid the creation of mere "p.o. box companies" providing services of job placement.

[12] Article 3(2), lit. b) LSE and article 9 OSE. For "*multi-year professional experience*" is normally considered an experience in the market of at least 3 years (Commentary by SECO to the LSE, 29).

[13] Official circular letter by SECO to ASF on 14 March 2012 – published in French language at: www.football.ch/it/Portaldata/1/Resources/dokumente/Conditions_l_gales_-_Informations_du_SECO.pdf (last visit: 25 September 2015). Having obviously in mind that if the activity performed is related to the conclusion of a player's employment contract, only the Swiss intermediary shall have its remuneration granted and allowed under the LSE.

However, the definition contained in ASF IR has to be read in conjunction with article 412 CO on brokerage contracts ("*courtage*" in French) whereby the broker ("*courtier*" in French) "*is instructed to alert the principal to an opportunity to conclude a contract or to facilitate the conclusion of a contract in exchange for a fee".*

For the sake of completeness, pursuant to article 412(2) CO, for what is not specifically set forth in the relevant part of the CO, the brokerage contract is usually subject to the general provisions governing mandate contracts (established in articles 394 ff. CO). Thus, for intermediaries it is necessary to comply with the general principle of trust and inform the player or club of any circumstance that is relevant to the transaction or about the solvability of the counterparty and give an account of his activity.[14]

In view of the foregoing, introducing a player and a club or two clubs to negotiate and conclude an employment or transfer contract could be regarded as a brokerage contract under articles 412 ff. CO. Accordingly, an intermediary can be considered a broker even if he does not complete the negotiations or conclude the employment contract but simply puts the two parties concerned in contact or begins the relevant negotiation.[15]

As for the general principles implemented by the ASF IR, although the reform of FIFA seems to suggest an unrestrained mode of operation for the intermediaries working in football, there are some peculiar aspects that must be taken into account when considering the activities of intermediaries in Switzerland.

Pursuant to article 4(1) ASF IR, all intermediary-client relationships must be regulated by a written "*representation contract*" signed in advance between the parties,[16] which has to fulfil certain minimum requirements in addition to those established by article 5(2) FIFA IR.[17]

A standard form of the "*representation contract*" containing these minimum requirements, which complies also in part with those listed at article 8 LSE, is provided by ASF as Annex 1 to the ASF IR.

These minimum elements of the contract are as follows.

Under article 4, lit. (a) ASF IR, the representation contract shall include the ability for either party to freely terminate the agreement at any time. The justification for this flexibility stems from the concept of trust which must always exist between the intermediary and his client, as in all the mandate contracts as prescribed under article 404 CO.[18] This last provision is specifically recalled in the

[14] A. Rigozzi in *Player's Agent World Wide*, The Hague 2007, 533.

[15] CAS 2011/A/2660 V. D'Ippolito v/ Danubio FC, §§ 8.34 – 8.36.

[16] In case the player concerned is a minor, also the minor's parents or legal guardian(s) must sign the "*representation contract*" together with the player. It is submitted that The wording "*representation contract*", which ASF borrowed from the previous ASF PAR and from FIFA IR, reflects the previous approach regarding "agents" and their representation of players or clubs, and it should be possibly replaced by a more appropriate name as "*mediation contract*".

[17] Whoever is whishing to operate as and with an intermediary must use or peremptorily take in consideration the representation form attached at Annex 1 of the ASF IR's.

[18] In its English free translation: "*Art. 404 1 The mandate contract may be revoked or terminated*

text of ASF IR, therefore it is accepted that the only limit to the right of termination arises when such termination can occur "*at an inopportune time*" as per article 404(2) CO.[19] This article goes some way to protect the flexibility of the relationship between the intermediary and could prohibit a clause which for example allowed the client to appoint another intermediary or agencyto look for the same job pursuant to article 8(2) LSE.

Under article 4, lit. (b) ASF IR, when a player appoints an intermediary, the agreed remuneration payable by the client cannot be higher than 5% (five per cent) of the first year's gross salary negotiated by the intermediary.[20] This is another direct consequence of the application of the same limit provided by article 9 LSE which protects job-seekers from paying excessive commissions to brokers on their salaries. On the contrary, it has to be noted that no such a limitation applies when it is a club that appoints an intermediary to negotiate either with a player or with another club.

Under article 4, lit. (c) ASF IR the last criteria imposed is the inclusion of a provision establishing the jurisdiction of the Court of Arbitration for Sport of Lausanne – Switzerland (hereinafter "CAS") in case of any dispute arising from or related to the contract. This provision should ease the referral of any issue to a sport court rather than to civil jurisdictions and in this respect it is in line with articles 89 and 95 ASF Statutes. However, as already pointed out by commentators, the imposition of the CAS jurisdiction may create discrepancies with the LSE affecting and possibly even annulling its competence.[21] Moreover, it has to be considered whether such imposition can be considered as an interference or constraint to the consent to arbitrate the dispute, which may even affect the material validity of the arbitration agreement.[22] For the sake of completeness, ASF IR has not provided for the nullity of a jurisdiction clause referring the dispute to another forum and this requirement is the only one of the three above-listed where infringement does not violate the CO or LSE. It will therefore be a matter of practical approach by ASF to register or not contracts not containing a jurisdiction clause referring a dispute to the CAS.

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at any time by either party. 2 However, a party doing so at an inopportune juncture must compensate the other for any resultant damage".

[19] For instance, in football this can be the case when a player terminates the contract one day before the signing of his employment contract negotiated by the intermediary not to pay him the due fees. In these cases the intermediary can request the payment of compensation for any resultant damage only if the client did not have serious reasons (Swiss Federal Tribunal ("SFT") 4C_78/2007, c. 5.4.

[20] As clarified by article 3 "*Ordinance on Fees, commissions and security under the law on the employment service*", (O-Emol LSE), if more intermediaries cooperate to the implementation of the contract, the fees cannot be invoiced more than once to the job-seeker with the only exception of when the job-placer had to cooperate with foreign job-placers to place the job-seeker. In such a case the fee can be raised up to the half of the original fee.

[21] For a detailed and extensive analysis, A. Rigozzi, op. cit., 536 – 539.

[22] SFT 4P.172/2006 judgment of 22 March 2007 Guillermo Cañas v. ATP Tour & CAS. For a discussion of the problem of "forced arbitration" in sport, see A. Rigozzi, *L'arbitrage international en matière de sport*, Helbing & Lichtenhahn, 2005, N. 475 ff. and N. 811 ff.

In addition to these three explicit minimum requirements, another interesting point to be further analysed is the option for the player or club to appoint the intermediary on an exclusive basis. Although the ASF IR is silent on this particular point, this right is explicitly granted according to the standard "*representation contract*" provided as Annex 1 to ASF IR, which contains two boxes to be ticked in case the client intends to grant the intermediary exclusivity or not in their legal relationship.

Firstly, pursuant to Swiss jurisprudence and legal scholars, under certain circumstances the agreement of the parties to grant to the broker an exclusive position can be considered as a waiver of the necessity for the same broker to establish a causal link between his activities and the conclusion of the contract of by the client in order to receive the agreed fees.[23]

However, such circumstance may create problems where the brokerage contract is construed as a job-placement by a broker (i.e. an intermediary) of his job-seeker (i.e. a player). This kind of relationship is regulated by the LSE which, under its article 8(2), makes the parties' choice in favour of exclusivity null and void.[24]

This approach is aimed to protect the job-seeker, in this case the player, as the weaker party providing him the maximum freedom to use another job-placer, *rectius* another intermediary, in his search for employment and not to restrict his right of choice. In other words, individuals looking for a new job cannot face difficulties in finding a new employer due to an exclusive relationship with a particular intermediary.[25]

For this reason, the same protection cannot be provided where an intermediary acts for a club, as employer, and not for the player.[26]

Finally, the right of a client, player or a club, to act alone in concluding an employment or transfer contract is valid and recognised even where exclusivity is granted to an intermediary. Therefore, the client will not be obliged to pay the intermediary a fee in cases where the brokerage contract does not stipulate a prohibition preventing the client acting alone.[27] It should be noted that the standard "*representation contract*" of ASF IR does not provide for such specification.

As a final remark regarding the duration of the contract between an intermediary and his client, player or club, although no reference is made in the

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[23] C. Ammann in *Basler Kommentar*, Basel, 4th ed., 2007, art. 412 n. 13 ff.; SFT 103 II 129 and SFT 100 II 361.

[24] In its French version: "2. *Sont nuls et non avenus les arrangements qui: a. interdisent au demandeur d'emploi de s'adresser à un autre placeur*; (…)"; A.Ritter, *Das revidierte Arbeitsvermittlungsgesetz*, Bern, 1994, 98 ff.

[25] Commentary by SECO of LSE, 45.

[26] CAS 2013/O/3310 agent X v/ Club Y (unpublished), § 110 quoting Magg, Clint, Das Spielervermittlerreglement der FIFA, Bern, 2012, p. 198; CAS 2007/A/1371 (issued on 8 August 2008) José Ignacio Urquijo Goitia *v/* Liedson da Silva Muñiz and FIFA, § 6.25.

[27] CAS 2007/A/1371 (issued on 16 february 2010) José Ignacio Urquijo Goitia *v/* Liedson da Silva Muñiz, § 11.18; CAS 2006/A/1019 Gurel v/ Ozalan, 9.

text of ASF IR to a particular term, the standard ASF "*representation contract*" prescribes a maximum duration of 2 (two) years. However, considering the right of the client to terminate the contract with the intermediary at any time under article 4, lit. (a) ASF IR, this appears more as a clerical mistake created by the reproduction by ASF of the previous standard "*representation contract*" issued by the same ASF pursuant to the ASF PAR. In fact, such previous regulations provided for a maximum duration of two years in its articles to comply with the now obsolete FIFA PAR.

4. Declaration of the intermediary

In addition to the above contractual requirements, pursuant to article 5 ASF IR, whoever uses the services of an intermediary in concluding a transfer or employment contract must ensure by reasonable means that the intermediary signs, without any modification, the "*Intermediary Declaration*" attached to the ASF IR as Annex 2 and 3 (respectively referred to an intermediary as individual or entity). At the same time, if a party chooses not to use the services of an intermediary, they must sign and file the "*Declaration of No Services of Intermediary"* attached as Annex 3 for the club and as Annex 4 for the player.[28]

Parties must complete and sign the "*Declarations*" at the time the contracts (or contract extension) is executed.

Pursuant to article 6(1) ASF IR, these various "*Declarations*" have been attached to the "*ASF Standard Professional Player Contract*" that any professional player in Switzerland has to sign to compete in the top tier of Swiss football[29] to ensure their use. The club must then submit with its relevant league an original copy signed by all the parties involved in concluding the "*ASF Standard Professional Player Contract*" executed or extended, and its corresponding "*Declarations*", either together with the request of registration of the player or within 10 (ten) days from its renewal.[30]

On the other hand, pursuant to article 7 ASF IR, when an ASF club uses the services of an intermediary to conclude a transfer, it must file the relevant "*Declaration*", no later than 10 days after the execution of the transfer agreement. This process applies both to national and international transfers of players to a club in the ASF and *vice versa*. Clubs that opt not to use the services of an intermediary for a national or international transaction must file the corresponding "*Declaration*" with the ASF also within the same time-limit.

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[28] In the event a player appointed an intermediary who is then paid by the club of the player on his behalf, the club has to fill the "*Declaration of No Services of Intermediary*" whilst the player must file the "*Intermediary Declaration*" where it will appear that the fee is paid by the club (SFL circular letter to clubs on 25 June 2015).

[29] Which are the Super League and Challenge League, 1st and 2nd tier of Swiss football, managed by the Swiss Football League - SFL. Players and clubs are authorized and may sign those contracts also in the lower tiers, named as Promotion League, First League and Second Interregional League.

[30] This derives also by article 3(1) and (1bis) "*Regulations on the Status of Non-Amateur Players*" of the ASF.

In all the above cases, pursuant to article 8 ASF IR, the club is obliged to file the relevant "*representation contract*" with the intermediary together with his "*Declaration*".

Although the system appears to be quite bureaucratic, ASF did not establish in the ASF IR any particular consequence in terms of validity or enforceability of the "*representation contract*" signed by the intermediaries involved if they are not filed with the ASF or if the relevant "*Declarations*" are not filed and deposited with the ASF.

As for their content, the "*Declarations*" provided by ASF are the same as those attached by FIFA to the FIFA IR, the only difference being that they specifically refer to LSE as the primary source of law that the intermediaries must respect.

The only addition is that the "*Declarations*", at clause 8 provides for each intermediary to complete the information relating to the type of contract (transfer or employment), the parties to the contract, the total amount of commission and the party making payment.

5. Registration

Pursuant to article 9 ASF IR, ASF keeps a registry of intermediaries together with the Swiss Football League.

ASF must register the intermediaries on the basis of the "*Declarations*" duly recorded.

The situation under the ASF IR is straight forward: if an individual or an entity wishes to represent, players or clubs as an intermediary in transfers or contract negotiations and/or their conclusion, they need to register with the ASF but only if the respective transaction is successfully concluded. This means that an intermediary must be registered with ASF and SFL only if the relevant "*Declaration*" is signed and filed with the ASF in connection with a particular transaction.

Consequently, as ASF made it clear, "*the registration of intermediaries is always conducted at the same time when they participate in a concrete transaction. Conversely, there is no "abstract" registration or independent from a concrete transaction*".[31]

An important corollary is that ASF has not settled any particular duration for the registration as an ASF-authorised intermediary to last. It seems therefore that, once an intermediary is registered with ASF, it will keep his registration, although linked to the transaction performed, indefinitely.

Furthermore, as ASF has avoided the prior registration system adopted by other national associations, ASF decided not to request the payment of any fee for the registration of an intermediary.

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[31] Circular letter by ASF on 11 April 2015. Original French text: "*L'enregistrement des intermédiaires se fait donc toujours et en même temps uniquement lorsqu'ils participent à une transaction concrète. En revanche, il n'y a pas d'enregistrement « abstrait », respec-tivement indépendant d'une transaction concrète*".

6. Publication

ASF requires that intermediaries operating in Switzerland disclose details and some aggregate data relating to their business which is then published on the ASF website.

Pursuant to article 10 ASF IR, before the end of March of every year, the ASF shall publish on its website a list containing the names of all the intermediaries registered during the previous twelve months and the transactions in which they have participated.

ASF do not disclose the remuneration received by any intermediary.

However, ASF will publish on its website the total remuneration paid to intermediaries during the previous twelve months by all players registered with an ASF club and the total remuneration each club separately paid to intermediaries during the previous twelve months.

It should be noted that the intermediary by signing the "*Declaration*", at point 10 explicitly consents to the use, storage and publication of such data by the ASF.[32]

7. Requirements and conditions

ASF IR and the LSE, include regulations aimed at keeping intermediary activities clean and transparent:

7.1 Impeccable reputation

Pursuant to point 3. of the ASF "*Declaration*", the intermediary must confirm a flawless and irreproachable reputation and no criminal convictions for a financial or violent crime. This condition, which is no further specified in the text of the ASF IR, amounts to a self-certification, via the "*Declaration*" and does not form part of any pre-requisite to be registered as intermediary with the ASF. This follows on from the approach of the ASF not to implement a preventative but, a case by case registration.

The ASF has not issued any detailed directive to specify the concept of "financial or violent crime". However, the absence of such crimes corresponds to the applicable minimum professional standard provided for by the LSE at article 3. The necessity of having a "*good reputation*" as a condition to obtaining the authorisation under article 3(2), lit. c) LSE has been better defined as the absence of: previous convictions, injunctions, bankruptcy or fiscal debts if occurred in relation to job placement activities or to the damage of workers or that put in danger the capacity of the job-placer to manage those type of activities.[33]

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[32] In its original French version: "*10. Je consens, conformément à l'art. 6 al. 3 du Règlement de la FIFA sur la collaboration avec les intermédiaires, à ce que l'association concernée détienne et traite toute donnée à des fins de publication*".

[33] The candidate has to attach to his application recent proofs of his good reputation which are dated

Consequently, the ASF can rely upon the filter made by the competent cantonal or federal authorities in terms of "*good reputation*" of the intermediaries registered in Switzerland.

7.2 Conflicts of Interests

As recalled by the "*Declarations*", according to the FIFA IR principles, the intermediary shall not hold any position among those listed at point 11 of the Definitions in the FIFA Statute[34] and they can neither have, nor suggest having, any contractual relationship with any league, association, confederation or FIFA that can create a conflict of interest.

Under article 3(1), lit. c) LSE, a job-placer, (including an intermediary), cannot exercise any activity that may conflict with the interest of his client (being a player or a club). Normally this rule prevents employers undertaking job-placement activities connected with their main business and thus employing their clients. In football this situation is prevented *ab origine* by the officials (especially board members of clubs) being prohibited from becoming intermediaries. On the other hand, the fact that intermediaries can be also the managers or representatives of the players does not constitute a conflict of interest preventing the intermediary from obtaining the authorisation of the LSE.[35]

Under article 415 CO if a broker acts in the interests of a third party in breach of the brokerage contract, this can lead to him forfeiting his right to receive his remuneration and expenses. This provision derives from the general concept of good faith and fiduciary obligation that a broker is required to comply with as in all contracts to which articles 394 and 398 CO on mandate apply.

Therefore, although not specified in the ASF IR, Swiss and sporting jurisprudence confirm that an intermediary can represent both a player and a club in a transaction if both are fully aware of the intermediary's dual representation.[36] If it is shown that the intermediary acted in good faith and his client was aware of the potential conflict of interest, there is no violation of article 415 CO and the intermediary remains entitled to his remuneration.

8. Remuneration

Payment of remuneration in exchange for the services of the intermediary is a necessary part of the intermediation contractual relationship.

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no longer than two years before (Commentary by SECO to the LSE, 30).

[34] Point 11 of the Definitions of the FIFA Statutes recites: "*Official: every board member, committee member, referee and assistant referee, coach, trainer and any other person responsible for technical, medical and administrative matters in FIFA, a Confederation, Association, League or Club as well as all other persons obliged to comply with the FIFA Statutes (except Players and intermediaries)*".

[35] A. Rigozzi, *op cit.,* 527.

[36] SFT 111 II 366; CAS 2012/A/2988 PFC CSKA Sofia v. Loïc Bensaïd, §§ 118 – 119.

However, although pursuant to article 412 CO brokerage contracts are necessarily mandates in return for payment, the ASF IR explicitly allow under article 2(2) the possibility of services being provided free of charge.

This is especially true in case of mediation involving minors where, as imposed by the FIFA IR and confirmed by point 6 of the "*Declaration*" of the ASF IR, intermediaries are not permitted to charge commission where they are negotiating an employment contract or a transfer. On the contrary the possibility to provide free services implies the ability for an intermediary to conclude a contract with a minor[37] under the ASF IR.

Apart from this it is usual practice for the client to pay the broker. In particular, pursuant to article 413 CO, in order to substantiate the request of remuneration, a broker as well as an intermediary[38] must prove he has performed an effective activity and, in particular, his involvement in the transaction where his activity has been causal to its conclusion. Swiss and sporting jurisprudence have confirmed this.[39] On the contrary, if not specifically provided for in the contract, the broker cannot request the reimbursement of his expenses as the aim of the provision is to remunerate only a successful result.

The ASF IR copes with the issue of remuneration according to the limit imposed by LSE. Therefore, it is interesting to note the differences between the provisions regarding the remuneration to be paid by the club compared to the remuneration to be paid by the player.

What concerns intermediaries representing players, as *supra* exposed, is that the ASF IR provides in article 4(2), lit. b) that the agreed remuneration cannot exceed 5% of the first year's gross base salary (including social charges and deductions for board and lodging)[40] set out in the employment contract negotiated by the intermediary.[41] Consequently, any different provision in the "*representation contract*" would not be enforceable under Swiss law.

On the other hand, what concerns intermediaries acting for a club is thatthere are no directives in the ASF IR or mandatory provisions in the LSE regarding any applicable limit remuneration. This applies both in cases where the intermediary works in relation to the conclusion of a transfer or an employment contract.

ASF IR is also silent on the possibility of an intermediary acting for both player and club and receiving double remuneration for the same transaction. This is possible considering that the FIFA IR, which supplements ASF IR, provides

[37] As defined in point 11 of the "*Definition*" section of the "*FIFA Regulation on the Status and Transfer of Players*". Provided that the same contract is signed also by the minor's parents or legal representatives.

[38] Article 9(2) LSE.

[39] SFT 84 II 542; SFT 72 II 84; CAS 2007/A/1371 (issued on 8 August 2008) José Ignacio Urquijo Goitia v/ Liedson da Silva Muniz & FIFA, §§ 6.21 – 6.22.

[40] VAT can be charged to the client even if the remuneration then goes beyond this limit (article 3*a* of O-Emol LSE).

[41] Art. 9 LSE; Article 3 O-Emol LSE.

under article 8(3), albeit conditional on the express previous written consent being given by all the parties. This is also accepted by in Swiss jurisprudence in limited cases and to the extent that any form of conflict of interest is avoided.[42]

Finally, in cases where the parties do not expressly establish the remuneration due by the client to the intermediary, according to article 414 CO they are deemed to have agreed a fee determined by the tariffs, if they exist, or otherwise by custom.

Considering that the amounts established in the FIFA IR - which apply to ASF IR in the case of appointment of an intermediary by a club - are simple indications,[43] they do not appear as tariffs in football. Therefore it is submitted that it will be possible that a judge may be guided by such directives as a custom in the football sector but only if the future implementation in practice of the FIFA IR by national associations will follow them.

If tariffs and custom do not exist, the judge in his discretion has to determine the amount of the remuneration for the intermediary[44] but it must correspond to the services effectively rendered by the intermediary, taking in consideration the circumstances of the specific case, the type and the duration of the mandate, the level of responsibility, the profession and position of the agent.[45]

9. Disciplinary Powers and Sanctions

Under article 11 ASF IR, any violation of the regulations can be prosecuted *ex officio* by the ASF General Secretary or upon denunciation.[46]

All disciplinary issues arising in the context of an intermediary agreement according to article 50 ASF Statutes fall within the jurisdiction of the "*ASF Commission of Control and Discipline*". This Commission is the competent body to pronounce disciplinary sanctions against intermediaries applying the "*ASF Disciplinary Regulations*".

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[42] This is the case, for instance, if the obligations of the intermediary is limited to put in contact the parties, or to pass some conditions between them or if one party gave specific instructions on the elements of the accepted transaction in advance. In case of doubt on the validity of double representation, the intermediary must seek the express consent of the parties not to lose his entitlement to remuneration pursuant to article 415 (F. Rayroux in Commentaire Romand, Code des Obligations I, 2nd edition, Helbing Lichtenhahn, article 415, N.3, 2496).

[43] Article 7(3) FIFA IR provides for "benchmarks" equal to 3% of the player's basic gross income for the entire duration of the relevant employment contract for intermediaries appointed by clubs and players and 3% of the transfer fee paid in connection with a transfer of a player for intermediaries appointed by clubs.

[44] SFT 101 II 109, 111; C. Ammann, Basler Kommentar, Obligationenrecht I, 5th edition, Art. 414 OR, N1 and N5.

[45] In CAS 2011/A/2660 V. D'Ippolito v/ Danubio FC, in a case where the broker was "*only asked to begin negotiations*" and he did not participate to further stages and where he had "*quite moderate responsibility in the completion of the transfer*", the Panel decided to grant him the 3% of the transfer fee paid between two clubs for the transfer of a player.

[46] ASF has not implemented a system where disciplinary violations are prosecuted by sporting prosecutors.

Once determined and final, all sanctions and other disciplinary measures shall be published (as expressly accepted by the intermediary in signing the relevant "*Declaration*") on the ASF website to provide transparency ASF will communicate all such decisions to FIFA, who then decides on their worldwide extension.

As already mentioned, the scope and application of the set of rules contained in the ASF IR, is directed towards individual and entities which are naturally bound by the ASF statutes and decisions.

Indeed no doubt on the above may arise as intermediaries are now explicitly referred to as "*Officials*" in the "*Definitions*" part of the ASF Statutes.[47] Furthermore, by signing the "*Declaration*", the intermediary consents "*to be linked, in relation to the activity of intermediary, with the statutes and regulations of the association (in particular the ASF and its sections), of the confederations and of FIFA*".[48]

Therefore, there can be no doubt as to the jurisdiction of the "ASF Commission of Control and Discipline" with regard to intermediaries and the ability of this body to impose disciplinary sanctions on them in relation to their activity.

10. Conclusion

The introduction of the FIFA IR has theoretically deeply revolutionized the *scenario* of football agents and in particular the way they will conduct their operations in the football world in the light of the extent of deregulation now introduced. However, this presumed deregulation now faces the peculiarities of each national State and football association more than when FIFA PAR was in force.

This is all the more true in Switzerland, where moreover FIFA has its seat, where the football market is regulated by ASF, an association which chose an apparent "less is more" approach to intermediaries.

However, whilst ASF has interpreted the FIFA IR as creating a set of rules which are very thin and flexible encumbering intermediaries operating in Switzerland with few obstacles, the same ASF, and thus intermediaries keen to operate in Switzerland, must comply with the strict limits imposed by State laws and LSE in particular. This also enforces a form of protectionist approach against foreign intermediaries which clashes with the current global scenario of football.

The result is that the ASF IR, due to the requirement to take into account and be subject to the mandatory rules of job placement in Switzerland, includes provisions which seems to follow different scopes in a twin-track policy.

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[47] In its English translation, point 9 of the Definitions includes amongst the Officials : "*the individuals and entities that provide services of intermediaries according to the ASF IR*".

[48] In the original French version: "*je déclare que l'entreprise que je représente et moi-même sommes d'accord d'être liés, en relation avec notre activité d'intermédiaires, par les statuts et règlements des associations (en particulier de l'Association Suisse de Football et de ses sections), des confédérations et de la FIFA*".

Provisions such as the necessity for intermediaries to register with ASF on a case by case basis and free of any charge or the ASF's decision to leave to the contractual freedom of the parties the remuneration that should be paid by a club to an intermediary follows the concept of deregulation. On the other hand, rules such as the maximum remuneration for an intermediary appointed by a player fixed at 5% of the player's gross first year's salary or the right for the client to terminate the contract with the intermediary at any time, which derive with no modification from the job-placement world, seems not to fit with the specificity and the daily reality of the football world and leaves it open to potential malicious implementation by the client or other intermediaries.

All these and other peculiarities of the ASF IR, which have been covered in this article, demonstrate that the ASF has regulated less but in a very effective way by explicit or implicit reference to other *lex superior*.

In such regard, it will be interesting to see how contracts signed between intermediaries and players abroad may coexist with the strict limitation imposed by the ASF IR. Considering that the activity of intermediary acting as job-placer in Switzerland has to comply with the LSE and the same intermediaries must have a proper authorisation issued by the competent authorities, foreign intermediaries shall be obliged to work together with Swiss intermediaries to perform their activities in Switzerland. However, this situation will cause a potential conflict between agreements previously signed between players or clubs and their intermediaries abroad which do not comply with the above-mentioned Swiss rules.

It is clear that the figure of the intermediary in Switzerland is not open to misinterpretation; it is also probably too soon to expect that the ASF should push for a more autonomous application of its own rules, in compliance with the principle of specificity of football. However, this is an objective that the ASF may seriously consider after the initial application of this new very peculiar regulation.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN TURKEY

by *Dilara Demirel*[*]

1. Introduction

The FIFA Executive Committee approved the new Regulations on Working with Intermediaries to come into force on 1 April 2015. The new set of Regulations conduct an in-depth reform of the players' agents system through a new approach based on the concept of intermediaries. In June 2015 the Turkish Football Federation (hereafter the "TFF") implemented the FIFA regulations. In this article we will focus on the main provisions of the new TFF regulations and we will outline the main differences with the FIFA regulations.

2. Relevant National Law

TFF adopted its most recent legal statutes under the Law No. 5894, on 5 May 2009. Pursuant to Article 1 of the Law, the TFF was established as an autonomous organization and as being subject to private law for the purposes of conducting and organizing football activities in line with national and international rules and representing Turkey in and outside Turkey in the field of football. Law No. 5894 specifies that TFF is responsible to publish its regulations in accordance with the FIFA regulations.

3. Principles and Definitions

When the new FIFA regulations on intermediaries came into force on 1 April 2015 they introduced the new concept of intermediary defined as "*a natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract, or represents clubs in negotiations with a view to concluding a transfer agreement*".

The FIFA regulations state in their Article 1.2 that "*associations are*

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required to implement and enforce at least these minimum standards/requirements in accordance with the duties assigned in the regulations, subject to the mandatory laws and any other mandatory national legislative norms applicable to the associations. […]. And in their Article 1.3 *"The right of associations to go beyond these minimum standards/requirements is preserved."* We should therefore state from the outset that in implementing the regulations Turkey opted to go beyond these minimum standards and made it obligatory for intermediaries to be natural persons. However, we should also mention that formerly it was forbidden for these natural persons to form entities, now it has been made possible but the ones forming the entity should be intermediaries and intermediaries themselves should follow the action as a natural person, not as an entity. It has been stated in the article 4.6 of the TFF Regulations as *"Persons who engage in the intermediation activity are obliged to sign and submit to TFF the Intermediary Declaration in accordance with annex 1 of the regulations. It is obliged to perform the intermediation activity personally by a natural person. Intermediaries may organise their commercial activities as a company. Even in this case, the activity of an intermediation shall be performed personally by licensed persons in accordance with the regulations".* The regulations also indicates that *"using their rights and authorities, intermediaries shall carry out the intermediation activity personally, if the intermediation activity is carried out within the scope of a company, provide that the partners and authorized persons of the company carry out the conditions stated in the regulations and provide that the persons carry out personally the intermediation activity".*

The scope of the TFF Regulations can be seen as follows *"Article 1: The regulations aims at the procedures and principles of the services of an intermediary in relation to concluding an employment contract between a player and a club and concluding a transfer agreement between two clubs.*

Article 3: Players and clubs are entitled to engage the services of intermediaries save for the exceptions provided in the regulations when concluding an employment contract and/or a transfer agreement.

In the selection and engaging process of intermediaries, players and clubs shall act with due diligence and are obliged to comply with the provisions. In particular, the players and clubs shall represent the contract concluded between the parties and they are responsible for the intermediaries having the intermediary license and signing the relevant Intermediary Declaration.

Whenever an intermediary is involved in a transaction, he shall be registered to TFF pursuant to article 4 below".

Article 4 introduces us to the stricter requirements that TFF has enacted to become an intermediary:

"Article 4: Natural persons who want to be an intermediary shall fulfil the conditions below:

a) Being a Turkish citizen or having a legal residence and working permit in Turkey.

b) Not being placed a final judgement for match-fixing or incentive premium or the crimes stated in side headed "the conviction section" of the football disciplinary regulations.
c) Not being sentenced for affecting match result, betting, doping, discrimination and fraud by the Discipline Committees
d) Fulfil other conditions to be determined by TFF".

In alignment with the FIFA regulations, TFF also forbids the following:

"Persons on duty or on the committees either voluntary or paid in FIFA, confederations affiliated with FIFA, TFF, other country associations etc., composition of a league and clubs or persons being an active player, football coach, trainer, and match officials shall not engage in the intermediation activity. Additionally, intermediaries shall not be in relation arising from a contractual relationship that could lead to a potential conflict of interest with FIFA, confederations affiliated with FIFA, TFF, other country associations, composition of a league, etc. while carrying out their duties.

Those who are active football players, coaches and others in the sector of football, are not allowed to be directly a part of intermediation activity or to be indirectly active in intermediation activity including being a partner of a company, one of whose activities is intermediation. After they finalise their activity in football, these persons are allowed to be a part of intermediation activity only on the condition that they acquire an intermediary licence within the scope of the regulations".

Violators will be subjected to the article 4.7: *"In the cases of violations of these articles, the violators face deprivation of their rights for one or more years and these persons shall not obtain a football intermediation license even if their active football activity ends".*

4. Requirements

Under article 6 of the TFF Regulations the intermediary registration applicants will be evaluated by the assessment committee appointed by the TFF Board of Directors and the applications that do not bear the requisites of the regulations will be refused.

"Article 6: The assessing committee appointed by the TFF Board of Directors evaluates whether the application complies with the provisions of the regulations.

The licence candidate may file an appeal against the decision of refusal within 7 days as of the date of notification. The persons may reapply at least 1 year later as of the date of the finalisation of the decision of refusal provided that the cause for refusal disappear.

The intermediaries whose licence applications are accepted are obliged to participate in "the football intermediation education seminar" organized by TFF. In case the intermediary does not participate in "the football intermediation education seminar" his/her licence is suspended until participation".

Thus with this article, TFF introduces the obligatory football intermediation education seminar.

5. Conditions

TFF regulations specifies the conditions for licensing intermediaries under articles 7 through 9.

"Article 7: The intermediation licence is provided for those who fulfilled all the conditions. Licences are handed to the intermediaries on the condition that the intermediaries provide documents proving that the annual registration fee and process fee are paid.

The total annual fee has been decided as 10.000 Turkish Liras

Intermediaries receive the title of "Licensed Football Intermediary by the Turkish Football Federation" after their name and surname. Intermediaries may use the logos which are allowed by TFF on hard-copies of all documents and business cards. However, they are prohibited from using the names and logos of FIFA and TFF.

The transfer of the license to a third natural or legal person is prohibited.

Article 8: It is obliged to obtain a visa for the intermediation license yearly. The intermediaries are responsible for paying the annual visa fee determined by the Board of Directors of TFF and the presentation of information and documents requested by TFF.

Article 9: It is possible to lose the intermediation license in case of failing one of the requisite conditions for obtaining the license; quitting intermediation activity at own request; as a result of a discipline proceeding or other reasons stated in the regulations.

In case of failing one of the requisite conditions for obtaining the licence, unless otherwise provided in the special provisions, an appropriate and final time is given to complete the missing condition to the intermediary. In case of not being completed within the time given, the licence is cancelled.

The licence of an intermediary who does not obtain visa for two consecutive years is cancelled."

6. Registration of Intermediaries

Pursuant to Article 11 of the TFF regulations, players and clubs engage the services of an intermediary only if the intermediary has signed the intermediary declaration and has obtained the licence in accordance with the regulations".

Intermediaries are obliged to submit the intermediation contracts which have been signed with players and clubs within 7 days as of the date of signature and submit the duplicate receipts of fees paid by himself/herself within 7 days as of the date of transaction to TFF within the scope of their activities.

Players and clubs are obliged to submit the professional football

contracts and transfer contracts which have been signed with the participation of the intermediary within 7 days as of the date of signature and submit the duplicate receipts of fees paid to the intermediary within 7 days as of the date of transaction to TFF within the scope of their activities.

This obligation of notification shall be in force every time a transaction is made within the scope of their activities.

Players and/or clubs shall, upon request, disclose to the competent bodies of the TFF, confederations and FIFA, all contracts, agreements and records with intermediaries in connection with activities in relation to these provisions, for the purpose of their investigation. Players and/or clubs shall in particular reach agreements with the intermediaries to ensure that there are no obstacles to the disclosure of the above-mentioned information and documents.

TFF shall make publicly available at the end of March of every calendar year, on the official TFF website, the names of all intermediaries it has registered as well as the transactions in which they were involved. In addition, TFF shall also publish the total amount of all remunerations or payments made to intermediaries by their registered players and by each of their affiliated clubs. The figures to be published are the consolidated total figure for all players and the individual clubs' consolidated total figure.

7. Representation Contract

Article 13 of the regulations defines the representation contract as:

"*In terms of transparency, in an intermediary contract, player and clubs are supposed to indicate legal structure of legal relationships with intermediaries that is to say if this relationship is a service, a consultancy, a representation or another type of legal relationship.*

Key elements of a legal relationship between a player and/or club and an intermediary shall be identified in a written contract to be signed before the start of the intermediation activity.

The validity of contracts between minor players and intermediaries depends on the consent of the minor's legal representatives."

The regulations introduces an additional term:

"The contract may be for up to two years. Clauses stating that the contract period extends automatically at the end of the duration are invalid. If the parties require continuing their contractual relations, they shall sign a new contract for which the maximum is up to two years.

Intermediary contracts shall comprise the names of parties, scope of the intermediation activity, contract date, duration of contract, fee arising from the intermediation activity, payment terms, the scope of services, termination provisions and parties' signatures. In the case that the intermediation activity is organised as a company, the information about this company shall be included in the contract and signatory circular verifying that the intermediary is competent to represent the company".

8. Impeccable Reputation

Impeccable reputation is referred to in Article 4: *"In addition to the conditions regulated in this article; in order to acquire an intermediary licence or to get a visa for his/her licence, the applicant shall be occupationally, socially and ethically well-recognised and have an impeccable reputation".*

Believing the term "impeccable reputation" to be too abstract, TFF introduced additional terms to ensure soundness of reputation and made it obligatory for intermediaries to not be placed with a final judgement for match-fixing or incentive premium or the crimes stated in side headed "the conviction section" of the football disciplinary regulations and not be sentenced for influencing match result, betting, doping, inequality and fraud by the Discipline Committees.

9. Conflicts of Interest

Article 19 of the regulations states that:

"Intermediaries, players and clubs shall use reasonable endeavours to ensure that no conflicts of interest exist or are likely to exist during the intermediation activities. Intermediaries shall not be in cooperation or have a common interest with other parties or their intermediaries during the negotiations of transfer or professional player contracts.

No conflict of interest would be deemed to exist if the intermediary discloses in writing any actual or potential conflict of interest he might have with one of the other parties involved in the matter and if he obtains the express written consent of all the other parties involved prior to the start of the relevant negotiations.

If a player and a club wish to engage the services of the same intermediary within the scope of the same transaction under the conditions established in paragraph 2 above, the player and the club concerned shall give their express written consent prior to the start of the relevant negotiations, and shall confirm in writing which party (player and/or club) will remunerate the intermediary. The parties shall inform TFF of any such agreement and accordingly submit all the aforementioned written documents".

10. Agent's Obligations

The rights and obligations of intermediaries, players and clubs are studied separately under articles 15 through 18.

"Article 15: Intermediaries may;

a) Enter into contacts with players or clubs provided that they fulfil the conditions stated in the regulations

b) Negotiate contracts on behalf of a player or a club if the player or club asks him/her to do so. If intermediaries are granted authorisation by a notarised proxy, they may enter into a contract.

c) Represent interests of a player or a club which has granted authorisation to do so; and also file applications with the TFF in relation to administrative procedures and decisions concerning that player or club by submitting the letter of authority.

Demands and applications of a player relating to conflicts with third parties that could lead to legal consequences may only be made by himself/herself or his/her lawyer.

Article 16: Using their rights and authorities, intermediaries shall

a) Abide by provisions; statutes and regulations of FIFA, confederations affiliated with FIFA and TFF; the Intermediation Declaration; all decisions taken by authorised bodies of FIFA and TFF,

b) Provide that all transactions made with his/her participation comply with statutes and regulations of FIFA, confederations affiliated with FIFA and TFF,

c) Not carry out activities that cause the termination of an ongoing professional player contract before the date of ending, or violation of contractual obligations or leading to this result, in particular not meeting with another club on behalf of the player without the consent of the club that has contracted with the player,

d) Not organise transfer meetings without the consent of the player or the club, and must inform them about all kinds of contract negotiations' details and events, and protect their best legal interest,

e) Provide that the name of the represented party is expressly indicated in all contracts made with his/her participation with his/her own name and signature,

f) Hand over required information and documents to FIFA, confederations affiliated with FIFA and TFF upon request,

g) Participate in courses and seminars organized by TFF,

h) Carry out the intermediation activity personally, if the intermediation activity is carried out within the scope of a company, provide that the partners and authorized persons of the company carry out the conditions stated in the regulations and provide that the persons carry out personally the intermediation activity.

11. Rights and Obligations of Players

Pursuant to article 17 of the TFF regulations, players shall:

a) Abide by statutes, regulations and rules of FIFA, UEFA and TFF and all decisions given by competent institutions of TFF and FIFA,

b) Benefit only from the services of licensed intermediaries pursuant to the regulations, without prejudice to the exceptions stipulated in the regulations prohibiting anyone without license to indirectly or directly negotiate contracts with clubs on their behalf or to perform activities coming within the scope of intermediation activities,

c) Control that the intermediary involved currently has a licence to perform that activity, that his/her licence is not aborted and suspended before the player enters into a contractual relation with an intermediary,
ç) Submit required documents and information to TFF, UEFA and FIFA if requested,
d) Comply with all contracts made with intermediaries,
e) Explicitly state the use or nonuse of the services of a players' agent in the relevant employment contract. Any contract concluded as a result of negotiations conducted by a licensed players' agent who was engaged by the player concerned shall specify the players' agent's name and title.

Pursuant to article 18 of the TFF regulations, clubs shall:

a) Abide by provisions, statutes and regulations of FIFA, confederations affiliated with FIFA and TFF, all decisions taken by bodies of FIFA and TFF, and provide that all voluntary or paid persons in charge comply with these rules,
b) Make use of the services of only licensed intermediaries; reserving the exceptions on the regulations, not let directly or indirectly any unlicensed person carry out transactions to be considered within the intermediation activity or negotiate contracts with clubs or players on behalf of them,
c) Make sure that the other party of the contract negotiation has been represented by licensed intermediaries in the negotiation process; not let any unlicensed person enter into negotiations; not enter directly or indirectly into any contractual relationship with unlicensed persons,
d) Before entering into a contractual relationship with an intermediary, control that the intermediary is licensed for carrying out this activity; his/her licence has not been cancelled or suspended,
e) Give required information and documents to FIFA, confederations affiliated with FIFA and TFF upon request,
f) Indicate expressly if clubs make use of the services of a licensed intermediary within the scope of professional player contracts and transfer contracts; provide that if participation is present, the name and title of the intermediary who participates in the negotiations on behalf of the club, the player or the other party are expressed in the contract,
g) Not encourage the player to violate the contract made with his/her intermediary.

12. Remuneration

Article 14 of the regulations deals with remuneration of intermediaries:

"It is manatory to determine the amount of remuneration and the conditions of payment to be made to intermediaries in contracts".

The article refers to FIFA's 3% recommendation but the remuneration can be decided freely in accordance with the principles of common law. The application of the recommended 3% price cap for remuneration of intermediaries seems difficult and confusing since it could not be made compulsory.

Article 14 states that the amount of remuneration due to an intermediary who has been engaged to act on a player's behalf shall be calculated on the basis of the player's annual basic gross income. In the calculation of the player's annual basic gross income, other incomes and profits without guarantees like success fees, bonuses and privileges are not considered.

Clubs that engage the services of an intermediary shall remunerate him by payment of a lump sum agreed. If agreed, such a payment may be made in instalments.

Clubs shall ensure that payments to be made by one club to another club in connection with a transfer, such as transfer compensation, training compensation or solidarity contributions, are not paid to intermediaries and this payment is not made by intermediaries. This includes, but is not limited to, owning any interest in any transfer compensation or future transfer value of a player. The assignment of claims is also prohibited.

Any payment for the services of an intermediary shall be made exclusively by the client of the intermediary to the intermediary. In the case that the intermediary represents a player, after the conclusion of the relevant transaction, the player may give his written consent for the club to pay the intermediary on his behalf. The payment made on behalf of the player shall be in accordance with the terms of the contract agreed between the player and the intermediary.

If any further payment beyond the registered contract is made, the intermediary shall be fined for the amount of extra payment without prejudice to the other sanctions stated in the regulations. Under any circumstances the amount of payment shall not be less than the amount stated in the regulations.

13. Disciplinary Powers and Sanctions

Article 20 of the regulations is concerned with disciplinary powers and sanctions:

"Intermediaries, players, clubs and other persons who violate the regulations, other provisions of FIFA, UEFA or TFF are referred to PFDK (professional football disciplinary council) to be sentenced. It is possible to make an appeal against decisions of PFDK only before the Arbitration Committee.

Organs of inquiry and discipline committees may make use of and appreciate freely all kind of proofs including news, photographs, and videos from the press and media organs within the scope of investigations carried out for the suspect of violation of the provisions related to TFF intermediation activities.

Intermediaries, players and clubs that have been under strong suspicion about the violation of the discipline will be liable to prove during the disciplinary inquiry and proceedings that they have acted in accordance with the provisions".

Under article 14, TFF regulations toughens the sanctions put forward by FIFA.

In fact while FIFA states that:

"Players and/or clubs that engage the services of an intermediary when

negotiating an employment contract and/or a transfer agreement are prohibited from making any payments to such intermediary if the player concerned is a minor". TFF adds that *"it is forbidden for intermediaries to sign representation contracts and engage services as an intermediary for minors under 15 years of age. The violators of this provision face annulation of their licence and deprivation of their rights permanently"*.

14. Conclusion

We hope that FIFA's new approach will be successful and fulfil the shortcomings of the old "players' agents" system. However, with the intermediary system FIFA, itself, is moving out of the system. Setting just the minimum obligations, FIFA forces the national associations to introduce their own systems. Considering global football and international transfers of players across the world, this approach is bound to cause problems in the foreseeable future. FIFA should have enacted internationally binding rules at least for the international transfers. The new regulations makes it compulsory for intermediaries to be issued with a license from each country they engage their services in. For example, if a player is from Germany but plays in England and wants to transfer to a Turkish club, the intermediary needs to get a licence from all 3 countries, all of which probably have different sets of regulations and requirements.

THE IMPLEMENTATION OF THE FIFA REGULATIONS IN UKRAINE

by *Anton Sotir*[*]

1. Introduction

The adoption of the new Regulations on Working with Intermediaries ("FFU Regulations")[1] by the Football Federation of Ukraine ("FFU") leaded to significant changes of the entire system of intermediary / agent services in Ukraine.

Since FIFA has identified only a framework of a new system, allowing national associations to self-regulate such activity in more detail, the FFU decided to combine previously existing rules with the ones formally required by FIFA. Initially, it was interesting to see what outcome would be achieved after such discretion granted by FIFA to national associations was finally implemented worldwide and how intermediary activity, being also internationally-oriented, dealt with all national particular regulations and rules.

It seems that in Ukraine the system of intermediaries is not working at all, raising the question of reasonableness of implementing a new system and showing that self-regulation, at least in Ukraine, is not as efficient as the previous uniform regime of the so-called "FIFA Agents".

The below analyses of the FFU Regulations will shed the light on how the new system is supposed to work in Ukraine, what possible challenges it is facing and how it may influence on the international market of provision of the intermediary services in general. Moreover, after more than 18 months of the implementation of the FFU Regulations the summary of what has been done, how it works and what should be improved is presented in this analyses.

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[1] Full text of the regulations may be accessed within the following link (in Ukrainian): www.ffu.org.ua/files/ndocs_686.pdf .

2. Relevant national law

The legislation of Ukraine does not specifically regulate any activity of sports/football intermediaries, granting a wide discretion to sports associations to deal with such matters. Therefore, the only document regulating an activity of football intermediaries in Ukraine is the FFU Regulations on Working with Intermediaries finally adopted and approved on 17 April 2015 by the FFU Executive Committee.

The FFU Regulations are generally based on the FIFA Regulations on Working with Intermediaries ("FIFA Regulations"), albeit having a lot of particularities and imposing stricter requirements on the persons willing to undertake intermediary activity and register the transactions with the FFU. They are composed of four chapters, totalling to 23 articles, and two annexes being the intermediary declarations applicable to natural and legal persons respectively.

The scope of the regulations is limited to the Ukrainian market only, covering any intermediary activity aimed on a (re)negotiation of the employment contract with Ukrainian club or transfer of the player to Ukrainian club. Such activity relates to the players and the clubs. Negotiation with or on behalf of the coach does not fall under the scope of the regulations. This corresponds to the scope provided for in par. 3 and 4 of article 3 of the FIFA Regulations.

In addition to the FFU Regulations, the FFU issues a separate ruling containing further requirements concerning the formal exam for candidates intending to obtain the status of the permanent intermediary (the "FFU Order"). Although the FFU Order formally is not a part of the FFU Regulations, its actual function is to define the date of the upcoming exam, to specify in more detail the general provisions, imposing additional requirements and obligations on the potential intermediaries, practically becoming an addendum to the initial regulations, which will be discussed below. Given that the exams for permanent intermediaries shall be conducted two times per year, the FFU Order (with the same content and list of requirements) has been published three times few weeks before the exam: on 3 June 2015, on 23 October 2015 and 15 May 2016.

Importantly, the FFU Orders relate only to the permanent intermediaries (for more details please see below), while the instructions as to how the person may obtain temporary permission (the only available option for the foreigners) have not been published yet.

Besides specific rules within the football realm, the Commercial Code of Ukraine generally regulates an agency activity for commercial transactions. This legislation does not directly influence on the FFU Regulations or the FFU in general, but being obligatory in Ukraine may indirectly influence on the sports intermediary activity in Ukraine. In any event, the FFU Regulations (and its previous editions regarding player's agents) do not refer to the application of the Commercial Code of Ukraine, which is also not used by the judicial bodies of the FFU when resolving disputes involving player's agents / intermediaries.

Important note about national legislation is that any agency activity aimed on earning profit (sports intermediary activity falls under such definition) is a type of commercial activity and requires the compliance with national rules, including corporate and tax regulations. In other words, the person undertaking intermediary activity in Ukraine shall not only adhere to the specific regulations of the FFU and/or FIFA, but also follow the mandatory provisions of the national law existing separately from the sporting rules, failure to which may lead to an administrative offence or even a criminal conviction. For the sake of example, the natural person may conduct the agency activity only if he or she is duly registered as self-employed person in the State registry or through an established company, and only provided that specific taxes are paid deriving from such activity. Therefore, a foreign player or a club working with Ukrainian intermediary is advised to check about his intermediary's legal status in Ukraine and insert into a representation contract the relevant provisions on the representations and warranties about the compliance of the intermediary's business to the Ukrainian legislation.

3. Principles

The main principles of the intermediary activity in Ukraine under the FFU Regulations are set forth mostly in article 2 of the FFU Regulations and correspond to the principles mentioned in article 2 of the FIFA Regulations with additions and peculiarities. Among them the most significant are the following:

- *Parties' autonomy*, enabling players and clubs to either engage the intermediary services or act by themselves on their own behalf.
- *Due diligence*, requiring a club or a player engaging intermediary services to ensure that intermediary signed the intermediary declaration, the representation agreement and obtained the relevant permit from the FFU.
- *Transaction registration*, requiring any transaction negotiated with involvement of an intermediary to be mandatory registered with the FFU.
- *Personal restriction*, forbidding FIFA officials (point 11 of the Definitions section of the FIFA Statutes) and football players to act as intermediary.
- *Freedom of choice*, forbidding anyone to condition the conclusion and/or validity of the transfer agreement or employment contract to the compulsory involvement of a particular intermediary in the transaction.
- *Disclosure*, requiring anyone within the scope of the FFU or FIFA who becomes aware of any violation of the FFU Regulations, including the involvement of intermediaries without permission from the FFU or failure to mention the actual amount of the transaction, to report such violation to the FFU, failure to which may lead to imposition of disciplinary sanctions.
- *Protection of minors*, forbidding intermediaries to receive commission arising from the transactions involving minors and restricting the representation agreement with a minor to one year only.
- *Publicity*, requiring the publication of all relevant information about intermediaries and transactions they are involved into on the FFU's website.

4. Definitions

As a matter of convenience, the FFU Regulations in its first chapter listed definitions and shortenings that are used across the regulations. Among general definitions like CAS, FFU, FIFA, football player, club, transfer and other basic terms that have common meaning in football realm around the world and conform to the definitions according to the FIFA Statutes and other regulations, the FFU Regulations contains specific terms.

"*Intermediary*" has almost identical meaning as in the FIFA Regulations,[2] additionally requiring that the representation of players and/or clubs must be in accordance with the FFU Regulations.

"*Transaction*" is a conclusion, amendment or renegotiation of the employment contract for a player or of the transfer agreement for a club with the involvement of an intermediary.

"*Registry of Intermediaries*" is an electronic database of persons who are permitted to conduct intermediary activity.

"*Certificate*" is a Permanent Intermediary Certificate (will be explained below).

"*Temporary permission*" is a permission to perform one-time intermediary activity (will be explained below).

5. Requirements and conditions

In order to be able to act as intermediary in Ukraine pursuant to the FFU Regulations certain mandatory conditions were implemented. However, they have significantly toughened the approach of a simple registration of the transactions created by FIFA by imposing additional requirements.

Article 3 of the FFU Regulations stipulates the exhaustive list of persons authorised to provide intermediary services:

- Natural persons who obtained the Permanent Intermediary Certificate ("PIC").
- Legal entities that obtained the PIC.
- Natural persons who obtained the Temporary Intermediary Permission ("TIP").
- Legal entities that obtained the TIP.
- Natural persons who act on behalf of the player exclusively if they are player's parents, siblings or spouse, on the basis of documents proving family connection.

Assignment of the right to provide intermediary services to any person is forbidden.

As it is prescribed by the FIFA Regulations, players and clubs shall act with "due diligence" while choosing an intermediary. This implies that they shall

[2] A natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement.

use reasonable endeavours to check the reputation of the person (or the relevant firm, company), to ensure the absence of possible conflict of interest, to be able conclude a valid and effective representation agreement and to make sure that intermediary has signed the intermediary declaration.[3]

Other important requirement concerns the representation agreement entered into between the intermediary and a player or a club. Besides essential terms and conditions that parties are obliged to insert into such agreement,[4] its duration may not exceed two years period that cannot be prolonged automatically and such agreement is subject to mandatory registration at the FFU. The representation agreement with a minor may not exceed one year, must be approved by one of the player's parents, may not be of an exclusive nature and should not provide for any intermediary commission. Furthermore, the intermediary is restricted directly or indirectly to offer the player or the club any reward (money, gifts) aimed on entering into the representation contract with him, preserving the principle of the freedom of choice and the parties' autonomy.

Additionally a person being within the scope of a football system and being under the jurisdiction of FIFA and/or the FFU, shall compulsory notify the FFU of the transaction, which is committed in violation of the FFU Regulations. In other words, if someone somehow learned that a club or a football player signed a contract with a participation of an intermediary (or person acting as intermediary), but have not registered such transaction at the FFU, or that the intermediary received money beyond the rules, such person is obliged to report such violation to the FFU. Otherwise, FFU Regulations provide for disciplinary sanctions for "concealment" of such information by any person.

6. Impeccable reputation and registration

FIFA's requirement that national associations shall make sure of impeccable reputation of the intermediary caused a lot of questions. In fact, to know about completed transaction with involvement of the intermediary (or a person actually acting as intermediary) the federation could only *post factum*, *i.e.* after it has been concluded. Cancelling the transaction only because intermediary, who was involved in it, was lacking of "ideal, impeccable" background, seemed too radical (and actually forbidden by the FIFA Regulations[5]). It is better to prevent a breach rather than to sanction for its commitment. Therefore, in order to ensure that the

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[3] The templates of the intermediary declaration for natural persons and legal entities are contained in Annexes 1 and 2 to the FFU Regulations.

[4] Most of the essential terms are taken from par. 2 article 5 of the FIFA Regulations, supplemented with other conditions like exclusivity/non-exclusivity of the agreement, dispute resolution clause, and obligation to register the transaction at the FFU, information about the PIC or TIP of the intermediary.

[5] Article 1 (4) of the FIFA Regulations: "*These regulations and potential additional provisions going beyond these minimum standards / requirements implemented by the associations shall not affect the validity of the relevant employment contract and/or transfer agreement".*

intermediary is *bona fide*, acts in good faith and can be trusted with the transaction, the FFU introduced the institution of a preliminary registration of intermediaries.

For this purpose, the FFU decided to keep the old system of controlling the access to intermediary activity simultaneously implementing the mandatory requirements from FIFA regarding the registration of transactions. As a result, the FFU Regulations, also supplemented with the FFU Orders, provide for a dual registration system: preliminary registration of intermediaries and registration of transactions. Therefore, in Ukraine a person for providing intermediary services shall not only register a transaction at the FFU, but also get a preliminary permission from FFU by submitting a set of documents, which confirms the presence of the "impeccable reputation" of such person. Unfortunately, such interpretation of the new regime is in compliance with the FIFA Regulations as national associations are free to establish more severe and detailed regulations.

It seems that the idea of registering only the Transactions without controlling the access to the agency activity is very new to the FFU and cannot be accepted and adopted. The FFU desperately wants to decide on who will be allowed to conduct intermediary activity in Ukraine, notwithstanding the fact that FIFA abandoned such approach. We can only guess on the motives of such attitude of the FFU.

6.1 Preliminary registration of intermediaries

The preliminary registration resembles the previous system of issuing licenses, but with a number of particularities. Instead of obtaining an agent's license to be allowed to conduct the intermediary activity as was in the past, from now on there would be two special regimes: regime of the Permanent Intermediary (person who obtains the Permanent Intermediary Certificate – PIC) and the Temporary Intermediary (person who obtains the Temporary permission for conducting intermediary activity or Temporary Intermediary Permission – TIP).

The idea behind this was to make a "preliminary verification" of the person entrusting him with the negotiation between the players and clubs. A failure to suit to the FFU standards was aimed on prevention of such persons from being involved in intermediary activity. Thus the Temporary Intermediary Permission granted to a person for a particular transaction and valid within a limited period was designed to fit such purpose. Additionally, for persons who conduct intermediary activity on a "daily basis" and mostly (or constantly) in Ukraine the "preliminary verification" was simplified: the candidate is able to pass special exam and receive the permanent permission, being released from an obligation to get a permission for every transaction he is intended to be involved in, but only once, following a more complicated procedure.

Initially the "preliminary versification" was supposed to be simplified and be less formalistic; however, by imposing additional requirements through the FFU Orders, the FFU made the system of intermediaries more complicated, demanding and difficult to comply with.

6.1.1 Permanent Intermediary Certificate

The FFU Regulations initially established that if a person wants to become a permanent intermediary, he should apply at the FFU within the established period (as a rule, June and December each year) and be certified by the FFU, resulting to obtaining of the PIC.

The advantages of the Permanent Intermediary Certificate are as follows:

- No need to get permission from FFU for each transaction when acting within Ukraine.
- One-time-only fee comparing to the TIP.
- Name of the holder is published on the FFU website.
- It is presumed that the holder has impeccable reputation.
- Constant possibility to resolve disputes at the FFU.

This status has no expiration. Nevertheless, the possession of the PIC does not exempt from a compulsory registration of each transaction at the FFU as also required by the FIFA Regulations.

Initially it was supposed that obtaining of the PIC would not be similar to the previous procedure of receiving an obsolete players' agent licence. FIFA's idea was to cease the regulation of the access to the activity, and the FFU Regulations implementing this regime logically should only enable the FFU to make sure of the impeccable reputation of the person willing to act as intermediary as required by par.1 art.4 of the FIFA Regulations. However, on 3 June 2015 in anticipation of the upcoming transfer period the FFU had rendered the FFU Order,[6] which stipulated the exact dates of the exams for candidates wishing to receive the PIC, deadlines for application to the exam and the requirements that candidate must conform to. The identical orders were issued afterwards in November 2015 and May 2016.

The requirements for the candidate under the FFU Order are more specific and stricter than under the FFU Regulations. As a result the candidate for PIC can be either (1) a citizen of Ukraine with impeccable reputation who lived in Ukraine for the last three years; or (2) a legal entity with a shareholder who has already obtained the PIC (only such natural person would be able to act on behalf of the legal entity and to sign the relevant documents in its name). Among the documents to apply for the PIC the FFU required a completed application form, an intermediary declaration, a short bio, certificate from the place of domicile, certificate on the criminal record (!) and recommendation letter (!) from the regional football federation (region of the candidate's domicile). The unreasonableness of requiring some of the documents from the list is obvious and does not require any further comment.

If the candidate is a legal entity, additionally the following documents are required: intermediary declarations for natural person and for legal entity, short

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[6] Text of the order may be accessed within the following link (in Ukrainian): www.ffu.org.ua/ukr/ffu/about/ffu_news/13909/.

information about legal entity, charter and other documents relating to the establishment of such legal entity. Before applying for exam the owner(s) of the legal entity must be interviewed.

Application fee for the exam is UAH 20'000 (around USD 800), which is considered as "donation", being a compulsory fee.

After all documents are submitted and accepted by the FFU, provided that the application fee is paid, the candidate takes exam composing of 15 questions held in Ukrainian language. Successful candidates with at least 12 correct answers will be granted the status of the Permanent Intermediary and obtain the relevant certificate.

As it is evident from the above, the Permanent Intermediary Certificate and the procedure of its obtaining is very similar (if not stricter) to the procedure of becoming the players' agent that existed in the past. In any event, it does not cancel the regulation of the access to the activity, and goes far beyond of making sure of the candidate's impeccable reputation only.

However, for persons who are citizens or Ukraine and who undertake constantly the intermediary business the obtaining of the PIC is a most appropriate solution to continue their activity within the FFU Regulations.

6.1.2 Temporary Intermediary Permission

Regarding the second regime, a person who does not want to take exams at the FFU (or are not allowed due to, for instance, nationality requirement) and/or who does not want to be a permanent intermediary but at some point wishes to assist the club or the player to negotiate a contract, is able to apply directly to the FFU to obtain a Temporary one-time permission for a particular transaction. This option is supposed to be especially useful for foreign intermediaries who may not know Ukrainian language, but who may represent foreign players in the transfers to Ukrainian clubs.

The FFU Regulations do not contain any specific requirements on how the procedure of issuing TIP is handled. Although since November 2015 in the FFU Orders it is written that procedure for temporary permissions had been adopted and will be published on the FFU's website, there is no additional order from the FFU yet addressing this issue as it was in relation to the PIC, leaving this procedure open to discussion and uncertainty.

According to the general provisions of the FFU Regulations, for a person to obtain the TIP he must be tested for his "impeccable reputation" and pay a fee to the FFU, the amount of which is still not officially defined and may be known by [!] phone. It is also possible that the FFU may impose additional requirements and documents necessary to submit to the FFU, making the process of obtaining TIP more complicated, time-consuming and even expensive.

The TIP is issued for a negotiation of a particular transaction, enabling a person to have simultaneously several TIPs for different transactions. It is also

limited in time, granting a person a deadline till the end of the pending transfer period to use his intermediary empowerment. In practice the TIP should be requested by a person once he is aware of the negotiated transaction and will know about the club and the player (or another club) whom he represents.

The limited scope of the TIP may lead to reasonable questions: what if a person has obtained the TIP and has paid the fee, but at the end was not able to negotiate the deal? The FFU Regulations are silent on such situation, leaving a room for the FFU to regulate the problem manually or through adoption of a separate order on the TIPs. As was unofficially reported by the FFU's representatives, it might be possible that the paid fee would be returned.

Advantages of bearing the TIP are its flexibility comparing to the PIC and possibility to be obtained by foreigners,[7] also granting a presumption of an "impeccable reputation" for its holder, possibility of publishing his name on the FFU's website and protecting its interests by spreading the jurisdiction of the FFU to resolve any disputes involving TIP's holder. However, a high fee for the TIP may be a serious obstacle and impediment for a person who considers it's obtaining: if, as a way of example only, the transaction where the foreign intermediary is intended to be involved does not provide for a high intermediary commission, the fee for the TIP might be even higher than the amount actually received by the intermediary, making detrimental such intermediary activity for a foreigner with Ukrainian club or player. What to choose for the foreign intermediary: to loose commission fee or even pay extra for assisting the player or the club, or simply to fail complying with still undefined regulations? For majority of the reasonable intermediaries the solution should be obvious.

In any event, the TIP can be the only instrument for the foreign intermediaries wishing to work on Ukrainian market to properly register the transaction with the FFU.

6.1.3 Preliminary verification or full control of the access to activity?

The implementation of the FFU Order and the fact that nothing has been published in relation to the TIPs so far (additional rules as to how the TIP may be obtained and its fee) raise reasonable questions as to whether the FFU actually followed the approach implemented by FIFA wishing to control only the transactions involving intermediaries. Strict requirements to the candidates, impossibility of the foreigners to obtain the PIC, presence of a formal exam for the PIC evidence that the FFU decided to maintain the previous system of the players' agents' registration with some modifications.

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[7] Hopefully there would be no requirements as to the candidate's nationality for obtaining the TIP. Otherwise, it would create the situation when only very limited number of persons might be allowed to undertake intermediary activity in Ukraine, raising the question of legality of such regulations.

In any event, the procedure of obtaining the PIC does not purported on the verification of the impeccable reputation only, but is a strong instrument to control the access to intermediary activity accepting the persons that only comply with a set of strict formal requirements, particularly the requirement of a candidate's nationality. More clarification on the TIPs and procedure of its obtaining, which is unsuccessfully expected from the FFU for the last 18 months, may shed the light on this issue and make the system more flexible. So far its complexity and restrictions, particularly for the foreigners, may lead to either unwillingness to work with Ukrainian market or creating side ways to register the deals through local intermediaries who hold the PIC (implying also sharing the profit with them[8]) or favouring the shadow market for such activity.

6.2 Registration of transaction

As was mentioned above, the FFU also implemented the system of registration of transactions, following the mandatory requirements of FIFA. According to article 4 of the FFU Regulations each transition (conclusion or prolongation of the employment contract or the transfer agreement) involving intermediary shall be duly registered at the FFU pursuant to the procedure provided for by the regulations.

The intermediary and the customer of his services (the player or the club) shall submit within 10 days after the transaction has been made the following documents:

- the representation agreement;
- the intermediary declaration;
- the copy of the relevant employment contract or the transfer agreement.

Intermediary shall submit additionally his permission (PIC or TIP). All documents shall be submitted only in Ukrainian or Russian language.

Even if the PIC was obtained by intermediary or the TIP for a particular transaction, still both player/club and intermediary must register each transaction with the FFU. The failure to register the transaction or lack of permission (TIP or PIC) to act as intermediary deem as serious violation of the FFU Regulations and lead to the imposition of disciplinary sanctions. Only a person mentioned as intermediary during the registration of transaction is entitled to be remunerated for his services, while the assignment of this right is forbidden.

7. Intermediary's obligations

Article 12 of the FFU Regulations imposes the following obligations on the intermediary:

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[8] This seems to be unreasonable and unfair when a person has negotiated the whole deal but could not obtain full compensation just because of the restrictions imposed by the FFU and lack of proper nationality or time to get the required permission.

- to comply with statutes, rules and regulations of the FFU, FIFA and UEFA, to obey the laws of Ukraine;
- to ensure the conformity of each transaction concluded as a result of his activity to the requirements of the rules and regulations of the FFU, FIFA and UEFA;
- to submit all documents required for registration of the transaction;
- to promptly sign the intermediary declaration and submit it to the FFU and to his client (football player or club);
- not provide intermediary activity without being previously granted the PIC or the TIP, provided that permission is required under the FFU Regulations;
- to provide its intermediary activity to the player and the club fairly, in good faith and in their best interest;
- not induce the player to terminate his employment contract with a club without just cause;
- to represent only one party avoiding conflict of interest (with exception that when all parties concerned consented thereto, the intermediary may represent both player and club);
- at the request of the FFU and/or FIFA to provide all necessary information and documents regarding the transaction and his activity;
- to ensure that his name (or title in case of a legal entity) and signature appear in the relevant contract being the result of the intermediary's involvement and services.

8. Remuneration

Unlike FIFA that has established the recommended amount of compensation to intermediaries in the amount of 3% of the contract amount, the FFU decided to establish a compulsory limit ("cap") for such remuneration / intermediary's commission. Now intermediaries cannot receive for their services more than 10% of the contract amount (calculated based on the gross income of the player during the whole period of the employment contract or the overall amount of transfer compensation agreed between the clubs under the transfer agreement). The parties may set a lower amount in the representation agreement, but anything agreed in excess of 10% will be considered invalid.

According to international experience in relation to remuneration for agency services, some agents sometimes abused their monopoly position with respect to certain players and clubs, and the amount of their fees sometimes even exceed the salaries of the players they dealt with or the amount of the transfer to be received by the club. Therefore, for a more transparent and fair regulation of such relations, in order to prevent the excessive enrichment of intermediaries the FFU set the maximum amount of intermediary's possible remuneration, considering it as a fair and reasonable "cap" for intermediary services.

As was mentioned above, intermediary activity of the Ukrainians or Ukrainian companies are subject to mandatory provisions of the legislation on corporate and tax issues. Particularly, every person obtaining income from his activity is considered to be as entrepreneur and his business should be registered in a particular way, while his income is subject to taxation. It is not common for intermediaries in Ukraine to regulate tax issues in the representation contract and, as a rule, the clients (players or clubs) are not burdened with an obligation to additionally cover intermediary's expenses related to conducting agency business. However, given that the FFU Regulations do not address this issue very deeply, the cap of 10% shall include possible taxes the intermediary is obliged to pay afterwards, but may not be charged extra.

An innovation for the Ukrainian football has become the provision of the FFU Regulations on late payments of the intermediary's commission. If the club or the player has not paid the intermediary's commission on time, for the period of delay until actual payment an interest at rate of 5% per annum will accrue. This regulation is aimed on "motivation" of clubs and players to pay intermediaries in a timely manner. Before the adoption of the FFU Regulations no interest applied, leading to the situation when the debt was not different as on the moment it occurred until the actual payment date, allowing some players or clubs to abuse the credibility of the player's agents and delay payments without any consequences.

Regarding minor players the FFU Regulations (like the FIFA Regulations) prohibits the payment of intermediary's commission as a result of transactions where minors are involved. Given that the process of obtaining the PIC or the TIP and registration of the transaction requires time and separate actions, it is likely that transactions involving minors will not be registered at the FFU at all.

9. Conflicts of Interests

Article 19 of the FFU Regulations establishes main provisions on the conflict of interest, whereby it is required that prior to engaging the services of an intermediary, players and/or clubs shall use reasonable endeavours to ensure that no conflicts of interest exist or are likely to exist either for the players and/or clubs or for the intermediaries. If the intermediary discloses in writing about any actual or potential conflict of interest he might have with one of the parties involved in the transaction, it is deemed that no conflict of interest exists, provided that all other parties involved grant express written consent thereto before negotiations are started.

It is possible that both club and player want employ the services of the same intermediary within the same transaction. In such event both must grant express written consent and determine which of the parties will pay the intermediary's commission. The parties shall inform the FFU of any such arrangement and accordingly submit all the aforementioned written documents within the registration process of transaction.

The provisions are very similar to the provisions of article 8 of the FIFA Regulations.

10. Disciplinary powers and sanctions

The FFU Regulations implemented two levels of sanctions for all stakeholders: for direct users of the intermediary services (players and football clubs), and for intermediaries themselves. While the possibility to have disciplinary powers through its internal judicial bodies over the people being within the scope of the FIFA Statutes (*i.e.* players and clubs) is clear and justified, legality and jurisdiction of such judicial bodies to render decisions in respect of the persons who act as intermediary is rather questionable. Nevertheless, the FFU found the mechanism of influence on the intermediaries, foremost, being able to verify their "impeccable reputation", which may be not fully in compliance with the established standards when a person acted in violation of the FFU Regulations, and also having full control of access to the intermediary activity and being able to restrict it (not to grant the PIC or the TIP) when any breach was established.

In the event the player or the club engage the intermediary services of a person lacking the permission (the PIC or the TIP) or who is forbidden to undertake such activity at all (blacklisted), the competent judicial bodies of the FFU may take into account this fact when assessing the dispute deriving from the representation contract (any breach by intermediary of his obligations under such agreement or any other failure) and/or to impose the disciplinary sanctions on the player / the club (warning or fine).

Importantly, the FFU Regulations are silent on the sanctions when the player or the club failed to register the transaction, to register the representation contract at the FFU or to report the actual amount of the intermediary's commission. This loop might be cured by insertion of the relevant additional violations and sanctions in the Disciplinary Rules of the FFU, which have been amended soon, but its new edition is completely silent on any sanction for the clubs or the players in relation to the intermediary activity.

In relation to the intermediaries, the possible violations for which they may be sanctioned and the range of sanctions is wider. According to article 13 of the FFU Regulations, intermediary who abuses the powers granted under the representation contract or who violates any of obligations provided under the FFU Regulations, may be subject to the following sanctions:

- warning;
- fine;
- suspension of the PIC;
- cancelation of the PIC;
- ban on intermediary activity.

Additionally, to combat with "dishonest" intermediaries who have committed serious violations of procedural rules and who acted not in good faith a separate list shall be created with persons who are banned for a certain time to conduct intermediary activity. This list will be published on the FFU's website and all clubs and players will be able to "verify" a potential representative checking

information on the website. Transactions with involvement of such "forbidden" persons will be subject to disciplinary sanction.

The body empowered to impose disciplinary sanctions on the players or the clubs is the Control-Disciplinary Committee of the FFU ("FFU CDC"). The FFU Regulations also spread the jurisdiction of the FFU CDC to the intermediaries, though as was mentioned above, this is highly questionable and may be subject to interesting dispute. In any event, the FFU controlling the access to the intermediary activity has strong and efficient leverage to influence on the persons acting in violation of the rules, not even using the powers of the judicial bodies.

11. Implementation of the regulations

After more than 18 months since its implementation it may be fairly sustained that the system of intermediaries in Ukraine has failed. It seems that the FFU regulations are valid only "on paper", being unworkable and ignored on practice.

On 22 March 2016 the FFU has published on its website the list of intermediaries who obtained the PIC, being on that moment 28 intermediaries (3 of them – legal persons).[9] During summer period the amount of persons with the PIC increased for 5 persons, constituting as of today 33 persons who are officially allowed to conduct intermediary activity within Ukraine.

List of persons who obtained the TIP was not published. According to the sources from the FFU, since implementing a new system, none had ever received or even requested the temporary intermediary permission. This seems reasonable due to the requirements imposed by the FFU: foremost, there is still no official information or order on how the TIP may be obtained (persons may get information orally only by calling to the FFU); and, what is crucial, the FFU imposed quite high fees to be paid for each temporary permission, i.e. for each transaction that is sought to be registered (UAH 150'000 or around USD 6'000 if player goes to 1-tier club, and UAH 100'000 or around USD 4'000 for 2- and 3-tier club).

As was mentioned above, foreigners may not receive the permanent intermediary certificate, while the exams for PIC are only twice per year, and therefore the only option for foreigners and others who cannot wait few months to obtain the PIC is to apply for the TIP. However, due to unreasonably strict limitations it is rather easier to ignore the FFU Regulations than to pay excessive fees and to undergo bureaucratic procedure. An alternative actually proposed by the FFU for the foreign intermediaries who does not want to obtain the TIP is to cooperate with local intermediaries having the PIC who will register the Transaction, but in their names (obviously requiring to share the profit from the intermediary activity). At minimum such approach seems to be a circumvention of the Regulations when the name of real intermediary, who provided the services to the club or the player, may not be mentioned in the contract and in the documents only due to limitations

[9] www.ffu.org.ua/ukr/ffu/about/ffu_news/15372/.

imposed by the FFU. What is more, why on earth should person share his profit from the transaction with his "colleague" from Ukraine if all work was done by him? In any event, it would still rather against the FFU Regulations to omit mentioning the person who was actually involved in the Transaction.

It seems the control over intermediary activity for the FFU may become a business/commercial activity aimed on earning profit. This is definitely not something that the FIFA bear in mind when changing the system.

What is more interesting, publishing the list of intermediaries the FFU informed that during the whole period no Transaction was registered at the FFU and no documents for its registration were submitted by the players / clubs or intermediaries.[10] In other words, the FFU confirmed that within two transfer periods of the season 2015/2016 the intermediaries were not involved in any transaction at all.

According to the statistics at the 1- and 2-tier divisions of the Ukrainian football championships within two registration periods for season 2015/2016 had occurred over 400 transfers (excluding the number of employment contracts that were negotiated or renegotiated within this period). It may be the truth that majority of them involved "free agents". However, it is impossible to believe that within two transfer periods none had ever involved the services of the intermediary, meaning that they had disappeared.

Moreover, there is no information that anyone (player, club or intermediary/ third person) was investigated by the Control-Disciplinary Committee of the FFU for any violation of the FFU Regulations, particularly the concealment of the transfer agreement or employment contract negotiation involving intermediary or any third party. The FFU confirmed that no actions were taken so far against anyone. Nevertheless, social network accounts of the successful deals of the famous Ukrainian ex-agents and intermediaries with many pictures of their clients (football players) evidence completely the opposite statistics within that period.

The above considerations lead to the following conclusions:

- there is a blatant disregard to the new system of intermediaries in Ukraine;
- even persons who obtained PIC are not willing to register the Transactions;
- the Control-Disciplinary Committee of the FFU fails to investigate and sanction any violations of the FFU Regulations;
- due to the lack of any sanctions, the whole system of provision of agency services shifted to a "shadow market";
- nothing has changed since implementation of the new system: still the FFU concentrates on and regulates the access to the intermediary activity implementing the exams, and not on controlling the registration of Transactions as required by FIFA.

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[10] www.ffu.org.ua/ukr/ffu/about/ffu_news/15372/.

12. Conclusion

The adoption of the FIFA Regulations and consequent approval of the FFU Regulations led to many discussions. Different associations established different rules with various peculiar restrictions regarding preliminary registration of intermediary making the intermediary activity more oriented and limited to the local market only. The provision of intermediary services in football significantly involves an international activity and requires the relevant "international flexibility", which is substantially restricted and obstructed by various national rules. The FFU Regulations can be a good example of such restrictive regulations, particularly for the foreigners, clearly forbidding obtaining the Permanent Intermediary Certificate for non-Ukrainians and not regulating the process of obtaining the alternative temporary permission.

As was predicted previously and confirmed after 18 months of its implementation, the FFU Regulations and its additional requirements do not truly reflect the main aim of the FIFA's new regime. While the FIFA's approach was concentrated on the tighter control and supervision of the transactions relating to transfer of football players in order to enhance transparency, completely leaving aboard the regulation of the "access to the activity",[11] Ukrainian newly adopted system is controlling mostly access to the profession and the persons wishing to be involved in transactions, not even demanding from such persons to register the Transactions, not punishing all subjects involved in the transaction, of simply not being concerned about control over intermediaries.

As a result, conducting intermediary activity in Ukraine is difficult for some persons, while for others it is the same as the previous regime, only formally requiring to register the transactions, which is not controlled on practice. In theory, foreigners and others might have a chance to be involved in transactions without taking exams and without having a license, just receiving a temporary permit, but the requirements for obtaining the TIP are unreasonably strict forcing such persons to circumvent the Regulations. Nevertheless, intermediaries from foreign jurisdictions are required to engage experienced sports lawyers or local intermediaries with the PIC in order to understand the new system and to be assisted to fill in all required documents, declarations and to register the transaction properly.

Ukraine, like other jurisdictions, just adopted new regulations and problems about their practical implementation are clear now. Unfortunately, new regime with its complications and numerous requirements on national level, including Ukraine, seems now extend and facilitate the "shadow market", which was supposed to be combated by the newly adopted by FIFA system. There is a need either to change the system as such, being currently far from the ratio and idea of the FIFA's initial view, or to change the attitude of the FFU to the regulation and control of the intermediary activity. Hopefully, this will be happen within the nearest future.

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[11] See FIFA's position on the new regulations: www.fifa.com/governance/intermediaries/index.html.

THE IMPLEMENTATION OF THE FIFA REGULATION IN THE UNITED ARAB EMIRATES

by *Saleh Alobeidli*[*]

1. Introduction

The work of agents or intermediaries is an important aspect of doing business in the world of football due to their significant impact in the transfer market.[1] This gives any legal framework that will govern this profession an essential role in shaping the intermediary practice. Since FIFA enacted the new regulation of the "*Regulations on Working with Intermediaries"* (RWI)[2], all national associations are now currently working on how to adopt and implement this new regulation. In the new regulations, FIFA has set out the minimum standards for the national associations to comply with. Each association will adopt the best model of implementing the new rules to suit its own needs. This without any doubt will bring about various differences in implementation of the regulations in different nations. As a result of this, national associations should work together as a group in order to try to harmonize the situation among each other.

However, the situation was not towards harmonization specially in Asia, as most national associations were working independently to establish their own regulations. Accordingly, UAEFA has enacted a national regulation in order to implement the RWI at the national level (here after the "UAEFA Regulations". It is worth noting that UAEFA is one of the first associations in the Middle East that announced and released its regulation. The Board of the UAEFA issued the regulation by the General Assembly no. (3) on 30.06.2015.[3] The purpose of this section is to

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[1] Magee, J. (2002), *Shifting Balances of Power in the New Football Economy,* in Sugden, J. and Tomlinson, A. (ed), *Power Games*, London: Routledge.

[2] FIFA *Regulations on Working with Intermediaries* available at www.fifa.com/mm/document/affederation/footballgovernance/02/36/77/63/workingwithintermediariesenweb_neutral.pdf (22 September 2015).

[3] Preamble of the UAEFA Regulations.

provide an analysis of the Regulation on Working with Intermediaries as enacted by the United Arab Emirates Football Association (UAEFA).

2. *Principles and Definitions*

UAEFA has adopted a similar approach to the FIFA Regulation as to the scope of application as well as principle and definitions. To start with, players and clubs are entitled to engage the services of intermediaries when concluding an employment contract or transfer or loan agreements. However the engagement of officials, as defined in Article (1) of the Primary Statutes of the UAEFA, as intermediaries is prohibited.[4] Further, it has defined the intermediary as a natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer or loan agreement.[5] The scope of application of this new regulation is aimed at associations engaging the services of an intermediary by players and clubs to:

a. conclude an employment contract between a player and a club, or.
b. conclude a transfer or loan agreement between two clubs and a player.[6]

3. *Registration*

An intermediary shall be registered in accordance with the provisions of this Regulation. The UAEFA is developing an intermediary register in order to regulate the profession. To ensure transparency, all the relevant transactions that involve intermediaries shall be declared publically according to the provisions of this Regulation. In order to do so, clubs and players who engage the services of an intermediary shall submit the Intermediary Declaration and any other documents required by the UAEFA for every intermediary transaction to conclude employment contracts or transfer or loan agreement as per annexes (1) & (2) of the Regulation.[7]

4. *Requirements and conditions*

In order for an intermediary to be registered, the intermediary shall fulfill the following requirements and conditions:

a. Provide a valid Criminal Record Certificate;
b. Be licensed to act as intermediary and shall have a permanent address;
c. Be a UAE national, excluding foreign intermediaries registered with their associations in their countries;
d. Have experience of no less than five years in the sports field;

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[4] Article (3) of the UAEFA Regulations .
[5] Article (1) of the UAEFA Regulations.
[6] Article (2) of the UAEFA Regulations.
[7] Article (4) of the UAEFA Regulations.

e. Sign all required declarations and undertakings attached to this Regulation;
f. Have no contractual relationship with any national, continental or international football association, which may cause conflict of interests.[8]

Although the above mentioned requirements and conditions appear to be unchallenging, however there are couple of concerns that need to be addressed. The condition at point (b) above requires the intermediary to be licensed but there is no explanation as to what is meant by "license". The issue that arises is whether or not the regulation established a license system aside from the registration issue. The provision does not expand on "be licensed to act as intermediary". However, it is generally understood to mean that the intermediary has to be licensed first to conduct the intermediary activities which is a commercial license regulated by the relevant Government Economic Department in the relevant Emirate. For example, if the intermediary resides in the emirate of Dubai then he has to first get the license from the Dubai Economic Department. Therefore, this explanation has to be added in the regulation. The other issue here that such license will turn the individual intermediary to be a legal entity as per the license regulation which contradicts with the principle set at the beginning of the regulation which allows both natural and legal persons to act as an intermediary.

Second issue is related to point (c) above where the foreign intermediary has to prove that he or she is a registered intermediary at his or her national association. This may be seen as problematic as many national associations do not have registration systems. As a result, many foreign intermediaries may not be able to act as an intermediary in the UAE market.

In addition to the above mentioned requirements, an intermediary must pay the following registration fees:

1- AED20,000 annually for the licensing and annual renewal.

2- In addition, an intermediary who has an office registered with the relevant authorities must pay to UAEFA 5% of any amount made in every employment, transfer or loan transaction upon registering the player; whereas an intermediary who has no registered office in the UAE must pay 10% of the same amount.[9]

In light of the above, the regulation of the remuneration may need to be reconsidered and revised. To start with, the AED 20,000 annual fees is comparatively high compared to what other football associations charge. Secondly, the differentiation between an intermediary who has a registered office and an intermediary without a registered office is not clear. The distinction needs to be made more clear.

5. Impeccable reputation

In line with the FIFA Regulation, UAEFA has again taken the same approach as

[8] Article (5) of the UAEFA Regulations.
[9] Article (6) of the UAEFA Regulations.

FIFA to confirm the impeccable reputation by the intermediary. In order to ensure the impeccable reputation of the intermediaries, intermediaries are asked to sign an intermediary declaration where they must provide the following confirmations and warranties:[10]

1. To respect and comply with any mandatory provisions of applicable national and international laws, including in particular those relating to job placement when carrying out activities as an intermediary. To respect and be bound by the statutes and regulations of associations and confederations, as well as the Statutes and regulations of FIFA in the context of carrying out activities as an intermediary.
2. To declare that they currently hold no official position, as defined in Article (1) of the Statutes of the UAE Football Association, and that they are not intending to hold such position in the near future.
3. To declare that they have a good and impeccable reputation, and in particular to confirm that no criminal sentence has ever been imposed upon them for a financial or violent crime.
4. To declare that they have no contractual relationship with UAEFA, leagues, national associations, confederations or FIFA, that could lead to a potential conflict of interest. In case of uncertainty, any relevant contract shall be disclosed.
5. To declare, pursuant to Article 9, Paragraph 4 of this Regulation, that they shall not accept any payment to be made by one club to another club in connection with a transfer, such as transfer compensation, training compensation or solidarity contributions.
6. To declare, pursuant to article 9 paragraph 8 of this Regulation, that they shall not accept any payment from any party if the player concerned is a minor, as defined in the Definitions section of the Regulations on the Status and Transfer of Players within UAEFA.
7. To declare that they shall not take part in, either directly or indirectly, or otherwise be associated with, betting, gambling, lotteries and similar events or transactions connected with football matches. They must acknowledge that they do not have stakes, either actively or passively, in companies, concerns, organizations, etc. that promote, broker, arrange or conduct such events or transactions.
8. To consent, pursuant to article 8 paragraph 1 of this Regulations, to UAEFA obtaining full details of any payment of whatsoever nature made to them by a club or a player for their services as an intermediary.
9. To consent, pursuant to article 8 paragraph 1 of this Regulation, to the leagues, associations, confederations or FIFA obtaining, if necessary, for the purpose of their investigations, all contracts, agreements and records in connection with my activities as an intermediary. Equally, they consent to the aforementioned bodies also obtaining any other relevant documentation

[10] Annex No.1 of the UAEFA Regulations.

from any other party advising, facilitating or taking any active part in the negotiations for which they are responsible.

10. To consent, pursuant to article 8 paragraph 3 of this Regulation, to UAEFA holding and processing any data for the purpose of their publication.
11. To consent, pursuant to article 11 paragraph 2 of the Regulation, to the association concerned publishing details of any disciplinary sanctions taken against them and informing FIFA accordingly.
12. To consent that this declaration shall be made available to the members of the competent bodies of the association concerned.

6. Conflicts of Interests

Prior to engaging the services of an intermediary, players and/or clubs shall undertake to use reasonable endeavors to ensure that no conflicts of interest exist or are likely to exist either for the players and/or clubs or for the intermediaries. However, no conflict of interest would be deemed to exist if the intermediary discloses in writing any actual or potential conflict of interest he might have with one of the other parties and he obtains the express written consent of all the other parties involved prior to the start of the relevant negotiations. Further, if a player and a club wish to engage the services of the same intermediary within the scope of the same transaction, the player and the club concerned shall give their express written consent prior to the start of the relevant negotiations, and shall confirm in writing which party (player and/or club) will remunerate the intermediary. The parties shall inform the UAEFA association of any such agreement and accordingly submit all the aforementioned written documents within the registration process in accordance with the regulations.[11]

7. Remuneration

The UAEFA has made the FIFA recommendation of 3% remuneration mandatory and therefore parties are not allowed to exceed such remuneration. An intermediary acting on behalf of a club in any Transfer or Loan Agreement shall be paid an amount no more than (3%) of the total monthly income of the player for the entire duration of the contract. Clubs shall ensure that payments due to other clubs in relation to transfer or loan deals (transfer compensation, training compensation, and solidarity contribution) are not made to intermediaries. Further, after an Employment Contract has been signed between a player and a club, the club may, by mutual written agreement, pay to the intermediary on the player's behalf, pursuant to the payment terms agreed upon by the player and the intermediary. Importantly, if the player concerned is a minor, clubs are prohibited from making any payments to an intermediary.[12]

[11] Article (10) of the UAEFA Regulations.
[12] Article (9) of the UAEFA Regulations.

8. Representations Contract

In light with the FIFA regulation, the UAEFA has confirmed that players and clubs shall define, in writing, the nature of their legal relationship with intermediaries. The representation contract must contain the following minimum details: the names of the parties, the scope of services, the duration of the legal relationship, the remuneration due to the intermediary, the general terms of payment, the date of conclusion, the termination provisions and the signatures of the parties. Further, clubs and players must provide copy of the representation contract to the UAEFA upon registering the player.[13]

9. Disclosure

Disclosure is an important element of these new regulations. Players and clubs are required to disclose, to the federation, the full details of any and all agreed remunerations or payments of whatsoever nature that they have made or that are to be made to an intermediary. Moreover, upon request by the UAEFA, players and clubs shall disclose all contracts and agreements signed with intermediaries for investigation purposes. Further, an employment contract or transfer agreement shall contain the name and signature of any relevant intermediary and if no intermediary is used, the same shall be substantiated.

In light with FIFA regulations, the UAEFA shall declare at the end of May of every calendar year, through its official website, the names of all intermediaries it has registered as well as the single transactions in which they were involved. In addition, the UAEFA shall also publish the total amount of all remunerations or payments actually made to intermediaries by their registered players and by each of their affiliated clubs. The UAEFA may also make available to its registered players and affiliated clubs any information relating to transactions that have been found to be in breach of these provisions.[14]

10. Disciplinary powers and sanctions

By way of insuring the compliance with this regulation, the UAEFA has taken an aggressive approach in penalizing any intermediary in breach of this regulation. One or more of the following sanctions will be applied:

a. Written Warning;
b. A fine of no less than AED20,000 and no more than AED100,000;
c. Suspension of License;
d. Cancellation of License; and/or
e. Prohibition from practicing any activity related to football.

Those sanctions shall apply to every intermediary who commits any of

[13] Article (7) of the UAEFA Regulations.
[14] Article (8) of the UAEFA Regulations.

the following violations:

a. Provides inaccurate details and information in order to circumvent the provisions of this Regulation.
b. Violates contractual obligations.
c. Instigates a player to terminate or breach his Employment Contract.
d. Violates the provisions of this Regulation, the Statutes, and Regulations of the UAE Football Association or its ancillary circulars, or refrains from executing the resolutions of any relevant committee.[15]

Players and clubs violating the provisions of this Regulation shall be sanctioned as prescribed in the relevant regulations of the UAEFA namely the Disciplinary Regulation. The Disciplinary Committee is the competent body to decide violations and penalties pursuant to the provisions of this Regulation and the regulations of the UAE Football Association.

11. Jurisdiction

The FIFA RWI makes no reference to the issue of jurisdiction in the event there is a contractual dispute between an intermediary and a club or a player. Therefore, in national associations' territories, parties will be free to chose the competent body to hear their disputes either through arbitration or through a national court. In other words, the matter of jurisdiction will be chosen by the parties as a matter of freedom of contract.

However, the situation in the UAEFA is different as the jurisdiction is assigned to the Players' Status & Transfer Committee (PSTC) as per the Players' Status & Transfer Regulation (PSTR). Thus, if a contractual dispute arises between a registered intermediary and a player or a club then the dispute shall be referred to the PSTC. Article 4/1/c of PSTR gives the jurisdiction to such committee for any dispute related to intermediary.[16] This is considered to be favorable for the intermediary in the UAE market.

12. Conclusion

By abolishing the previous licensing system and establishing the minimum standard set out in the new regulation, the business of intermediaries will change dramatically. Previously licensed agents will no longer benefit from being part of the international football family with respect to international transfer. Further, they will need to be prepared to compete in an open market with millions of intermediaries.

However, with the new Regulations, FIFA attempts not to regulate access to the activity anymore, but instead to allow the National Associations to regulate intermediaries at a local level . Instead of monitoring the agents, the FIFA will monitor its members in implementing the minimum standards set out in the new

[15] Article (11) of the UAEFA Regulations .
[16] Article 4/1/c of the UAEFA Players' Status and Transfer Regulation.

regulation. Additionally FIFA wants to provide a better market for its main two stakeholders, the clubs and the players. Since 1st of April 2015, players and clubs can select any person as intermediary and replace the intermediary at any time. Also, the proposed remuneration of 3% of the player's total gross income is a big change in favor of both the players and the clubs. The UAE has made this remuneration mandatory. Further, UAEFA have established a registration system to allow natural or legal persons to register as an intermediary. But this might not be the case in many other football associations as FIFA has not establish such registration system.

Finally, football has become international in nature and shifting the control to a national level will pose difficulties and may affect the football market. Accordingly, all the stakeholders should ideally be working together to ensure the harmonization between the national associations and consequently to reach a global harmonization. Reaching the end of this paper, it can be concluded that the UAEFA Regulations consider the above and make amendments to the regulation. Also, the AFC (Asian Football Confederation) has an important role to assist in harmonizing the RWI among its members. Finally, the practical issues during the last transfer window and the next coming windows will assist in providing practical solutions to the current regulation.

THE IMPLEMENTATION OF THE FIFA REGULATION IN URUGUAY

by *Horacio González Mullin*[*] and *Felipe Vásquez Rivera*[**]

1. Introduction

As it is widely known, FIFA, through its circular letter No. 1417 dated 30th April 2014, approved the Regulations on Working with Intermediaries, which came into force on 1st April 2015, thus derogating the FIFA Players' Agents Regulations.

With the new regulations on the activity of the now called intermediaries, FIFA intends to achieve "*a new system with a clearer and simpler administration and execution*".[1]

Also and according to the Preamble of the Regulations on Working with Intermediaries (hereinafter, the FIFA Regulations) FIFA understood that "*In the light of these considerations, and with the aim of properly addressing the changing realities of modern day relations between players and clubs as well as to enable proper control and transparency of player transfers, FIFA has enacted these regulations*".[2]

On the other hand, the Uruguayan Football Association (hereinafter, the AUF), as a member of FIFA and, by virtue of the command given by the latter in

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[1] FIFA Circular letter number 1417 dated on 30th April 2014.

[2] Preamble of the Regulations on Working with Intermediaries.

different articles of the Regulations, enacted its Regulations (hereinafter, the AUF Regulations).

The AUF Regulations came into force on 1st June 2015 and has over 10 articles and 3 Annexes.

2. Uruguayan Relevant Regulations Applicable to Intermediaries

In Uruguay, the Intermediary's activity has no specific regulation, but its regulation is scattered across several rules from different branches of Law, such as the civil, administrative, tax and criminal law, among others.

Mainly, the Intermediary's activity is regulated in the Civil Code, in TITLE VI entitled "About lease contracts" (services contract) and in TITLE VII entitled "About power of attorney".

Furthermore, if the Intermediary's activity is covered by the legal definition of "supplier", consumer protection laws may be applied to him, especially, the Consumer Protection Law.

At tax level, the remuneration received by the intermediary is subject to the Individual Income Tax.

Finally, although it is not a rule regulating the intermediary's activity as such, we understand that it is important to make reference to Law No. 14996 of 18th March 1980 given that many times, the capacity of intermediary mingles with the capacity of investor in the same person (TPO). In this sense, our legal system, from the above mentioned law of year 1980, and according to the interpretation unanimously being made by our case law, prohibits that persons who are not "*institutions being members of the associations or federations officially accepted or any other institution with legal authority registered with the corresponding registry*",[3] be sports rights holders. Similar to, but not exactly the same as the current article 18 of the Regulations on the Status and Transfer of Players of FIFA.

That being said, within the private sector of FIFA, the AUF in its capacity as member, enacted its own Regulations on Working with Intermediaries, which came into force on 1st June, 2015.

3. Principles and Definitions of the AUF Regulations.

The AUF Regulations define the intermediary as any: "*Natural or legal person who, for a fee or free of charge, represents players and clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a (temporary or permanent) transfer agreement*."

Following the FIFA Regulations, the AUF Regulations accept the fact that a legal person may act in the capacity of intermediary, which, in the past, according to the FIFA Players' Agents Regulations, was not allowed, given that such capacity could only be held by natural persons.

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[3] Article 2 of Decree-law No. 14996.

The AUF Regulations contain essentially the same principles as the FIFA Regulations, which are regulated in article 2.

In that sense, the rights in relation to the engagement of the services of an intermediary by players and clubs to conclude an employment contract between a player and a club or to conclude a transfer agreement between two clubs are acknowledged.

Article 2.2 of the AUF Regulations - following the FIFA Regulations - establishes that in the selection and engaging process of intermediaries, players and clubs shall act with due diligence. This means that the person engaging the intermediary shall use reasonable endeavours to ensure that the intermediary is duly registered with AUF's registry and has signed the relevant intermediary declaration and the representation contract concluded between the parties.

Along that same line of reasoning, the AUF Regulations - like the FIFA Regulations - prohibit the engagement of officials by players and clubs, as defined in article 11 of the Definitions section of the FIFA Statutes, as intermediaries.

The above mentioned FIFA regulation defines officials as: "*every board member, committee member, referee and assistant referee, coach, trainer and any other person responsible for technical, medical and administrative matters in FIFA, a Confederation, Association, League or Club as well as all other persons obliged to comply with the FIFA Statutes (except Players)*".

The intermediary's character thus being defined, the AUF Regulations create a registration system for intermediaries.

4. Requirements for the Registration of Intermediaries

The AUF Regulations created a Registry of Intermediaries, where all natural or legal persons wishing to get involved as intermediaries in the transactions described in the article entitled "definitions" of the AUF Regulations, shall be registered.

In order to be eligible for the registration with the Registry of Intermediaries, the AUF Regulations establish that AUF has to be satisfied that the applicant for intermediary "has an impeccable reputation", and the following documents shall be submitted:

- In the case of a natural person, the corresponding identity card; if, on the contrary, it is a legal person, the articles of incorporation of the company (by-laws for the case of Corporations, articles of incorporation for the case of Limited Liability Companies, etc.) shall be submitted.

  For the legal persons, the AUF Regulations also demands that the natural person representing the legal person according to the by-laws, currently holds the position of intermediary. Furthermore, the AUF shall be informed who the shareholder or shareholders of such legal person are.

  Article 3.2. of the AUF Regulations also prohibits that the share of stock of a legal person intending to be registered with the Registry of Intermediaries, be owned by another legal person. In this case, when making reference only to

the share of stock to establish such prohibition, we understand that a small omission was made in the AUF Regulations, since there are other legal persons - such as Limited Liability Companies - which capital consists of membership interest units and not of shares.

- Affidávit where it appears that the intermediary has no contractual relationship whatsoever with FIFA or CONMEBOL.
- Subscription of the three annexes to the AUF Regulations.
- Ticket evidencing the payment of registration fees, a varying price for natural and legal persons, since if the applicant is a natural person, the registration fee is US$1,000, and if the applicant is a legal person, US$ 2,000.[4]

Once the above requirements have been met (in addition to be satisfied that the applicant for intermediary involved has an impeccable reputation), the AUF shall proceed to the registration, for which the AUF shall assign a registration number to the intermediary, which shall be personal and not transferable.

The effective term of the above mentioned registration is for one year from the day following the intermediary's registration, and in order to renew the registration with the AUF Registry, the intermediary must comply with the above mentioned procedure.

The AUF Regulations establish that in order to be registered with the Registry of Intermediaries or to renew the registration with such Registry, the interested party shall carry out the proceedings within one of the two registration periods established by the AUF which shall be published on the official web site[5] before 31st July each year.

Even though the AUF Regulations establish that intermediaries may be registered as such or have their registration renewed within two annual periods, it is also authorized that they be extraordinarily registered or their registration be renewed outside such annual periods, with the proviso that such registration or renewal shall have an additional cost equivalent to 50% of the payable amount.

We understand that although the AUF Regulations establish that such registration outside the two annual periods shall be extraordinary, it is not specified what is understood as extraordinary, and the only requirement demanded in the AUF Regulations is the payment of an extra amount equivalent to 50%. Therefore, in our opinion, the applicant for intermediary or the intermediary wishing to have his registration renewed shall have the sole condition (in addition to the aforementioned requirements and conditions) of paying an extra amount equivalent to 50%; once such payment is made, the AUF may not refuse to proceed to his registration or renewal of the registration.

[4] The Transitional Provisions of the AUF Regulations establish that the first registration with the Registry of Intermediaries for those FIFA agents having the agent registration in force, and intending to be registered as intermediaries, is free of charge.

[5] www.auf.org.uy.

5. Impeccable Reputation

The FIFA Regulations on Working with Intermediaries and, therefore, the AUF Regulations put special emphasis on the "Impeccable Reputation" of the applicant for intermediary, since the person wishing to be registered as an intermediary with the AUF shall sign a "Declaration", identified as Annex 1 (Declaration for natural persons) and Annex 2 (Declaration for legal persons).

Upon subscription of such "Declaration" the AUF shall understand that the requirement of impeccable reputation has been met, but, in our opinion, there should be a control related to the accuracy of the statements made in the "Declaration" by the applicant for intermediary or by the person applying for the renewal of the registration.

In such declaration, the applicant for intermediary, or the person applying for the renewal of the registration shall declare that:

- He will respect and comply with any mandatory provisions of applicable national and international laws; and that he agrees to be bound by the Statutes and Regulations of Associations and Confederations, as well as by the Statutes and Regulations of FIFA.
- He is currently not holding a position of official, nor will he hold such a position in the "foreseeable future".
- He has an impeccable reputation and that no criminal sentence has ever been imposed upon him for a financial or violent crime.
- He has no contractual relationship with leagues, associations, confederations or FIFA that could lead to a potential conflict of interest. In case of uncertainty, any relevant contract shall be disclosed and then it shall be assessed if that implies a contractual relationship with leagues, associations, confederations or FIFA.
- He shall not accept any payment from clubs in connection with a transfer, such as transfer compensation, training compensation or solidarity contributions.
- When negotiating an employment contract, he shall not accept any payment from any party if the player concerned is a minor.
- He shall not take part in, either directly or indirectly, or otherwise be associated with, betting, gambling, lotteries and similar events or transactions connected with football matches.
- He consents to the associations being FIFA members obtaining full details of any transaction of whatsoever nature related to his services as an intermediary, thus consenting to obtain, for the purpose of their investigations, all contracts, agreements and records in connection with his activities as an intermediary.
- He consents, that all the information connected with his activities as an intermediary is published.

Also, the applicant for intermediary shall sign a "Code of Ethics," attached as Annex 3, whereby the following obligations are undertaken:

- Intermediaries shall act with due diligence and conduct themselves in an appropriate and decent manner.

- They shall comply with statutes, regulations, circular letters and decisions made by the competent bodies of the AUF, Conmebol and FIFA.
- They shall stick to the truth, frankness and objectivity when dealing with their clients.
- They shall protect their client's interests.
- They shall respect the rights of their partners and third parties.
- They shall respect other intermediaries' contractual relationships.
- They shall keep minimum financial records, and control of their books in a diligent manner.
- They shall furnish, on demand, the books and records of operations.
- They shall issue and furnish an invoice in exchange for their remuneration as an intermediary.

6. Registry of Agreements Between Players and Clubs and Intermediaries

According to the provisions of article 4 of the AUF Regulations, the AUF shall keep a record of intermediaries.

In such registry, any specific transaction or operation where a registered intermediary has been involved shall be recorded. The AUF Regulations put the burden of such registration on the player or the club involved in the above mentioned specific transaction or operation.

For such purposes, clubs or players involved in such specific transaction or operation, are bound to submit, at the time of the registration of the employment contract or the transfer agreement, at least, the representation contract that the intermediary concludes with a player and/or a club, as well as the intermediary declaration (Annex 1 or Annex 2, as applicable).

7. Sports Representation Contract

Article 5 of the AUF Regulations regulates the minimum contents that a sports representation contract must have.

In this sense, the article establishes that the parties to the sports representation contract shall specify, as clearly as possible, the contents of the subject matter of the contract, and the rights and obligations undertaken by each party to the contract.

On the other hand, the AUF Regulations require that the sports representation contract contains, at least the following items: the names of the parties, the scope of services, the duration of the legal relationship,[6] the remuneration due to the intermediary and the general terms of payment, the jurisdiction in the event of conflict, the date of conclusion, the termination provisions and the signatures of the parties.

[6] The maximum term of the contract established in the FIFA players' agents statutes is eliminated.

Article 5 also establishes that, if the player is a minor, the player's legal guardian(s) shall also sign the sports representation contract in compliance with the national law in force in the Oriental Republic of Uruguay.[7]

The Transitional Provisions of the AUF Regulations establish that contracts executed and registered under the FIFA Agents regime shall be registered until their expiry date or termination.

8. Payment to Intermediaries

The amount of remuneration to be paid by clubs or players to intermediaries is regulated by article 7 of the AUF Regulations.

It is established that the remuneration shall be calculated only on the basis of a percentage of the player's monthly gross income for the entire duration of the contract entered into by and between the player and the new club.

The AUF Regulations state that, as a general rule, the player must directly pay the remuneration to the intermediary, unless he instructs the new club, in writing, to withhold from his income the corresponding percentage, and pay it, on behalf and at the expense of the player, directly to the intermediary.

In the event that the club engages the services of an intermediary, the club shall pay him the agreed remuneration prior to the conclusion of the relevant transaction, and the amount to be paid shall be defined by the payment of a lump sum.

Furthermore, the AUF Regulations establish, as a recommendation, that when intermediaries have been engaged to act on a player's behalf the remuneration shall not exceed 3% of the player's gross income and when intermediaries have been engaged to act on a club's behalf in order to conclude an employment contract with a player the remuneration shall not exceed 3% of the player's gross income and if intermediaries have been engaged to conclude a transfer agreement the remuneration shall not exceed 3% of the eventual transfer fee paid.

Please note that the percentage amounts were established simply as a recommendation, and in spite of the fact that the expression "*shall not exceed*" may cause confusion, the truth is that the AUF Regulations allow the parties to establish the remuneration percentages deemed convenient by them.[8]

Finally, the article under analysis, establishes a prohibition - like the FIFA Regulations - that catches our attention; indeed, players and/or clubs engaging the services of an intermediary when negotiating an employment contract and/or a transfer agreement are prohibited from making any payments to such intermediary if the player concerned is a minor.[9] We may then notice that both the AUF

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[7] Parents exercising the parental rights or guardians, as applicable.

[8] Therefore, the principle of freedom of choice by the parties is applicable.

[9] A minor meaning any player who is under 18 years old, according to the definition given in number 11 of the Definitions section of the FIFA Regulations on the Status and Transfer of Players.

Regulations and the FIFA Regulations create, on the basis of a regulatory rule, a representation contract mandatorily free when the involved player is a minor.

9. Conflict of Interest

Article 8 of the AUF Regulations establishes that prior to engaging the services of a registered intermediary, players and clubs shall use reasonable endeavours to ensure that no conflicts of interest exist or are likely to exist for the engaged intermediary.

The AUF Regulations, wisely, do not provide a definition of "conflict of interest". In our opinion this occurs when, for example, the intermediary is engaged by both parties (by the player and the club to conclude an employment contract, or by both clubs involved in the transaction to conclude a transfer agreement, etc.) or when the intermediary has a personal and direct interest in the negotiation of a contract which may be against his client's (player or club) interest.

That being said, the AUF Regulations do not define the conflict of interest concept. However, in number 2 of article 8 under study, it is established that no conflict of interest would be deemed to exist if the intermediary discloses to his client, in writing, any actual or potential conflict of interest he might have, and he obtains the express written consent of all the other parties involved prior to the start of the relevant negotiations.

The AUF Regulations thus create a fiction, since the fact that the intermediary discloses the actual or potential conflict of interest does not mean that the conflict disappears, but that such conflict of interest was informed and expressly accepted.

In turn, number 3 of article 8 establishes that, if a player and a club engage the services of the same intermediary to conclude an employment contract, the player and the club concerned shall give their express written consent prior to the start of the relevant negotiations, and shall confirm in writing which party will remunerate the intermediary. This written consent, as well as the agreement between the player and the club in relation to who will assume the obligation to pay the intermediary's remuneration, shall be notified to the AUF.

10. Sanctions

Article 9 of the AUF Regulations submits the enforcement of the AUF Regulations and the Code of Ethics by the registered intermediary, players and clubs, to the jurisdiction and venue of the competent body (Disciplinary Committee of the AUF).

In that sense, it is established that upon failure to comply with the AUF Regulations and/or the Code of Ethics by a registered intermediary, the Disciplinary Committee is empowered to impose the sanctions provided for in article 15 of the AUF Disciplinary Code. That is, just like clubs and players, intermediaries are under the AUF jurisdiction, which shall be empowered to apply the corresponding sanctions in the event of non-compliance with their statutory obligations.

On the other hand, article 15 of the AUF Disciplinary Code[10] establishes as sanctions: a) warning; b) reprimand, admonition or caution, c) fine,[11] d) match suspension imposed in terms of a specific number of matches or days or months, which may not exceed 24 matches or 24 months. e) ban on taking part in any football-related activity imposed in terms of a specific number of matches or days or months, f) return of awards, g) removal of licence, commission or permits.

11. Conclusions

We understand that the AUF Regulations, following the guidelines of the FIFA Regulations on Working with Intermediaries, create a series of obligations for clubs, players and intermediaries, where the intermediary is left unprotected against players and clubs, thus making more burdensome the practise of the intermediary's profession.

Indeed, from now on, the intermediary wishing to enforce his rights upon a non-compliance by his client (club or player), shall resort to the ordinary courts, with the well-known disadvantages that this implies, since FIFA's judicial bodies are no longer competent to hear on intermediaries' claims.

At the same time, bearing in mind that the intermediary's profession is practised around the world, the intermediary shall be registered with each association where his client is a member which undoubtedly causes a serious inconvenience. In case he does not choose that option, he should engage the services of an intermediary registered in the country where the transaction will take place, with the subsequent payment of fees for that service.

[10] www.auf.org.uy/Portal/DOWNLOADCENTER/35/.

[11] Fines may be combined with any other sanction; they will never be below 5 UR or over 50 UR, and in no case may the fine be used to reduce sanctions of a different nature specifically imposed.

THE IMPLEMENTATION OF THE FIFA REGULATION IN USA

by *Karen L. Jones, JD, MA*[*]

1. Introduction

In the United States, European football is known as soccer. The United States Soccer Federation (USSF)[1] is the national governing body for men's and women's amateur[2] and professional soccer in the United States. The team competes in the Confederation of North, Central American and Caribbean Association Football ("CONCACAF")[3]. As the national association member of the Federation Internationale de Football Association ("FIFA"), the USSF operates under the auspices of FIFA[4].

The new regulations on players' agents[5] (also referred to as "sports agents" in the USA) was long anticipated. In March 2015 the wait ended. The new FIFA Regulations on Working with Intermediaries ("FIFA Regulations")[6] was announced and then published with much consideration and some skepticism.

The FIFA Regulations replace the previous FIFA Players' Agents Regulations of 2008.[7] Under the previous FIFA regulation, agents were required

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[1] United States Soccer Federation (USSF), http://www.ussoccer.com.

[2] Collegiate sports in the USA are governed by the National Collegiate Athletic Association (NCAA).

[3] *See* www.concacaf.com.

[4] *See* www.fifa.com.

[5] In the USA "players' agents" are also referred to as "sports agents". The term "players' agents" is primarily used in reference to FIFA or international football. The term "sports agents" is primarily used in relation to USA national sports and national laws. These terms will be used interchangeably throughout this chapter.

[6] New FIFA Regulations on Working with Intermediaries, Circular 1417, Zurich 30 April, 2014.

[7] FIFA Players Agents Regulations 2008, available at: www.fifa.com/mm/document/affederation/administration/51/55/18/players_agents_regulations_2008.pdf.

to be licensed in order to serve as a player or club representative.[8] However, initially the USSF did not require that an agent be licensed in order to represent a player or club. Because FIFA forbid representation by unlicensed agents the international governing organization (FIFA) and the national organization (USSF) were at odds. In 2013, the USSF put into place a "voluntary application procedure" whereby successful completion of a set of procedures enabled agents to receive a license from the USSF stating that they had complied with the requirements for players' agent licensing under the FIFA regulations.[9]

The passage of the new FIFA Regulations did away with the licensing requirements[10] and instead replaced it with a registration requirement. So, sports agents would no longer be compelled to satisfy licensing requirements and examinations,[11] but instead in order to represent a player or club agents must register with the national federation (USSF).

The old regulations attempted to limit those who may become players' agents by establishing a players' agents licensing requirement and rules for who could become agents.[12] The new FIFA Regulations require registration with the national Federation, while establishing only a couple of very limited barriers to becoming a players' agent and imposing requirements that focus more on transparency and disclosure.[13]

The FIFA Regulations have been fully implemented by the USSF organization.[14] In fact, through an internal memorandum[15] the organization establishes the requirements and the process for achieving intermediary registration within the USSF and thereby satisfying the FIFA Regulation. However, in the USA there are other national laws at the state and federal level that are relevant to player representation and may further impose requirements on sports agents.

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[8] Parents or legal guardians of the player and lawyers were exempt from the licensing requirements in the USA.

[9] *Id,* available at: http://webcache.googleusercontent.com/search?q=cache:1UhrKI9lGCMJ:www.ussoccer.com/about/federation-services/~/media/0d39a6546e7647dd90294882 d2bafc3c.ashx+&cd=2&hl=en&ct=clnk&gl=us (USSF Attorney Gregory Fike memorandum explaining the agents licensing procedure, June 2013).

[10] In the USA there were actually several requirements for sports agents. In addition to the licensing requirement, the steps included the following: 1) complete an application; 2) submit to criminal background check; 3) pass a written examination; 4) obtain professional liability insurance; 5) sign the Code of Professional Conduct; and if rejected, 6) exercise rights to appeal.

[11] Although not required by FIFA, sports agents may still have to meet similar requirements under federal and/or state laws.

[12] FIFA Players' Agents Regulations 2008, available at www.fifa.com/mm/document/affederation/administration/51/55/18/players_agents_regulations_2008.pdf.

[13] US Soccer, Memorandum, FIFA Regulations on Working with Intermediaries March 2015, available at www.ussoccer.com/about/federation-services/intermediaries.

[14] *Id.*

[15] *Id.*

2. Definitions

Intermediaries are defined as, "…any natural or legal persons who, for a fee or free of charge, represent players and/or clubs in negotiations toward concluding an employment contract or transfer agreement".[16] The USSF utilizes this intermediaries' definition as provided by the FIFA Intermediaries regulation.[17]

Players' agent is defined as, "a natural person who, for a fee, introduces players to clubs with a view to negotiating or renegotiating an employment contract or introduces two clubs to one another with a view to concluding a transfer agreement, in compliance with the provisions set forth in these regulations".[18] This term is primarily used in international sports regulation.

An athlete agent is defined as "…someone who enters into a contract with a student-athlete, or directly or indirectly recruits or solicits a student-athlete to sign an agency contract".[19] This term is primarily used in USA national sports regulation.

A sports agent is defined as "a person who represents a professional athlete in financial and contractual matters".[20] This term is often used in the USA with reference to professional athletes. It is a more general term and as such encompasses the scope of the other definitions above.

In this chapter, unless making reference to a specific regulation, the term "sports agent" will be used generically to incorporate all of the above.

3. Relevant national law

Unlike some countries, in addition to FIFA guidance, in the USA there are other laws that impact on what players' agents must do and how they must behave in relation to their representation of athletes. In the USA there is currently quite a bit of guidance around players' agents. Sports law in the USA is primarily based on business or franchise law, with it's foundation in contracts and agency law, especially as it relates to the representation of players. Additionally, because of the various levels of sport in the USA – professional, amateur, collegiate – certain levels require special consideration.

The primary federal regulation that is applicable to players' agents in the USA is the Sports Agent Responsibility and Trust Act of 2004 ("SPARTA").[21] This federal law places responsibility and accountability on the sports agent when

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[16] US Soccer, Memorandum, FIFA Regulations on Working with Intermediaries March 2015, available at www.ussoccer.com/about/federation-services/intermediaries (explaining USSF implementation of the FIFA Intermediaries Regulation). *See* www.ussoccer.com.

[17] FIFA Intermediaries Regulations 2015, Annex 1 & 2 Intermediary Declaration.

[18] FIFA Players' Agents Regulations 2008, 4.

[19] *See* SPARTA *infra*; See also, UAAA *infra.*

[20] Available at https://en.oxforddictionaries.com/definition/sports_agent.

[21] 15 U.S.C. §7801-7807 Sports Agent Responsibility and Trust Act, available at http://uscode.house.gov/view.xhtml?path=/prelim@title15/chapter104&edition=prelim.

representing athletes. SPARTA also seeks to add certain protections around the representation of athletes, especially young athletes, and recognizes the fiduciary duty[22] of the sports agent towards the athlete.

Violations under SPARTA are considered to be deceptive trade practices under the Federal Trade Commission Act ("FTCA").[23] Thus, deceptive trade practices by a sports agent will automatically give rise to a FTCA claim.[24] In situations where a sports agent fails to perform his fiduciary duty or there is an agent contract dispute, indicating civil law matters relative to contracts or agency law, then state law action is indicated. These state law actions arising under contract or agency law will then be addressed in the state civil courts. SPARTA also allows for such state action under its provisions.[25]

Another applicable law that impacts player agents is The Uniform Athlete Agents Act ("UAAA").[26] The goal of the UAAA is "…to protect student athletes and the integrity of amateur sports from unscrupulous sports agents".[27] Similar to the SPARTA attempts to protect athletes against deceptive trade practices, the UAAA seeks to offer similar protections through state adoption of uniform practices and contract provisions afforded under the UAAA. By state adoption of the UAAA it clearly establishes the state jurisdiction for the resolution of matters arising from the wrongful acts of sports agents. The final provision in the SPARTA regulations encourages the use and adoption of the UAAA by the states.[28]

The UAAA sets out uniform registration, certification and criminal history requirements of prospective sports agents.[29] A uniform sports agents' agreement with provisions to be adopted by states is also established by the UAAA to encourage consistency and reduce the likelihood of fraudulent activities.[30] With its initial adoption in the year 2000, at present at least 43 states have adopted the UAAA.[31] However, many states have adopted non-uniform amendments to the UAAA, which has resulted in state specific provisions, mostly addressing improper activities of sports agents in relation to collegiate athletes.[32]

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[22] Fiduciary duty is defined as, "A person having duties involving good faith, trust, special confidence, and candor towards another". Black's Law Dictionary.

[23] 15 U.S.C. §§ 41-58, as amended Federal Trade Commission Act (FTCA), available at http://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title15-chapter2-s.

[24] *Id.*

[25] SPARTA, 15 U.S.C. §7801-7807.

[26] Uniform Athlete Agents Act (2000), available at www.uniformlaws.org/shared/docs/athlete_agents/uaaa_finalact_2000.pdf.

[27] *Id.*

[28] SPARTA, 15 U.S. Code § 7807 – Sense of Congress.

[29] www.uniformlaws.org/ActSummary.aspx?title=Athlete%20Agents%20Act.

[30] *Id.*

[31] Most recent State adoption of the UAAA include: Alabama, Washington, Idaho; Colorado introduced the bill – not yet adopted. *See*, www.uniformlaws.org/Legislation.aspx?title=Athlete%20Agents%20Act%20(2015).

[32] www.uniformlaws.org/Committee.aspx?title=Athlete%20Agents%20Act.

Finally, there is also the National Collegiate Athletic Association ("NCAA")[33] applicable to student athletes. Most of the NCAA requirements apply to the student and university relationship. However, the NCAA does include provisions around representation of young athletes.[34] The NCAA is a strong supporter of state adoption of the UAAA, its regulation of sports agents and the protection of student athletes.[35]

In addition to federal laws there are also some state specific laws that regulate sports. Many of the state regulations try to enhance the scope of the federal regulations (SPARTA and UAAA), for example to include athletes at the high school or even primary school age, or to enhance enforceability of sports agent contracts.[36]

Although all of these laws impact sports agents, many of the key provisions of SPARTA, UAAA and NCAA relative to sports agents, focuses on the protection of student athletes, or those who might be eligible for collegiate sport and thus might also be more susceptible to potential unscrupulous and irreparable activities by sports agents.[37]

Despite this seemingly comprehensive scheme around the regulation of sports agents in the USA, many feel that federal and state regulations do not do enough to protect all athletes from the wrongful practices of sports agents, nor fully address the enforcement of the sports agent and athlete relationship.[38] One criticism is that the key federal regulations focus mostly on protections for student athletes.[39] Some have gone further to argue that the federal regulation of sports agents is severely lacking and that there should be an oversight board[40] established for the sole purpose of regulating the conduct of agents.[41] Some states have engaged additional oversight for sports agents. In the past, there have been sports agents' associations established in an effort to increase the regulation of sports agents, but only with limited success.[42]

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[33] National Collegiate Athletic Association (NCAA), www.ncaa.org.

[34] *Id.*

[35] *Id.*

[36] Masteralexis, J., Masteralexis, L., Snyder, K., Enough is Enough: The Case for Federal Regulation of Sports Agents, Vol 20 Issue 1, 2013, Villanova Law School.

[37] Entering into a sports agent representation agreement by a student-athlete may cause them to lose eligibility for playing collegiate sports under the NCAA. *See*, www.ncaa.org.

[38] *Id*; See also, Heitner, Darren A., Duties of Sports Agents to Athletes and Statutory Regulation Thereof, Dartmouth Law Journal, Volume 7, Issue 3, 2009.

[39] Enough is Enough *supra*.

[40] In the article Enough is Enough *supra*, the author proposes the establishing of a sports agents oversight board, to be called *Sports Agents Accountability Board (SPAAB)*, at page 97.

[41] Masteralexis, J., Masteralexis, L., Snyder, K., Enough is Enough: The Case for Federal Regulation of Sports Agents, Vol 20 Issue 1, 2013, Villanova Law School.

[42] There are two (2) such associations to note: Association of Representatives of professional Athletes (ARPA), which is now defunct. The other, National Association of Sports Agents & Athlete Representatives (NASSAR).

4. Principles

Under SPARTA sports agents are restricted from signing student athletes to agency contracts. SPARTA imposes upon sports agents a duty:

- to be truthful,[43]
- of disclosure,[44]
- to refrain from buying an athlete.[45]

Under SPARTA a sports agent must provide the student athlete or their parents (if athlete is under the age of 18) with a disclosure statement.

In this way SPARTA is comparable to FIFA Regulations with reference to the provisions that address disclosure and publication,[46] Conflicts of Interest,[47] and Intermediary Declaration.[48] The main purpose of SPARTA is to protect athletes from unscrupulous agents.

In the United States common law principles of agency and contract law is the primary law applicable to sports agents. Agency law dictates the relationship between an agent and his/her subject. Essentially requiring that the agent perform in the client's best interest. Contracts law establishes the rules for entering into a binding agreement that serves as the basis for the representation provided by the Intermediary to the athlete.

The key principles of agency and contract law are represented in the FIFA Regulations specifically in relation to disclosure requirements and conflicts of interest. The UAAA codifies these requirements of agency and contract law by creating a uniform act for agents that includes requirements around disclosure, certification and also incorporates the contractual language that seeks to provide protections to the athlete.[49]

The UAAA also has a requirement for registration with the Secretary of State.[50] Because the UAAA is applicable to all sports agents not just FIFA (or soccer) related sports agents, it is not clear how the potential of double registration has been addressed. In the case of US soccer player representation, is the sports agent required to register once with the FIFA national Federation – USSF and the Secretary of State, if the State has adopted the UAAA? Or is a single registration sufficient?

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[43] SPARTA, *§7802(a)(1)(A) and §7802(a)(3). §7802(a)(1)(A).*
[44] SPARTA, *§7802(a)(2).*
[45] SPARTA, *§7802(a)(1)(B).*
[46] FIFA Regulations on Working with Intermediaries 2015, 6 Disclosure and Publication.
[47] *Id* at 7 Conflicts of Interest.
[48] *Id* at Annex 1 & 2 Intermediary Declaration.
[49] Uniform Athlete Agents Act (2000).
[50] *Id* at Section 5 (a).

5. Requirements and conditions

As part of the registration process the USSF requires a background check to be completed before the registration can be completed. Persons cannot register as an intermediary if they have been convicted of a financial or violent crime.[51] In general, a financial crime involves theft or a taking of money or property that does not belong to them. Financial crimes include: bribery, money-laundering, fraud, identify theft, forgery, tax evasion, extortion and others. If after registration an Intermediary is convicted of a financial or violent crime they are required to immediately notify the USSF.

6. Registration

In accordance with the FIFA Regulations, the USSF requires that all intermediaries register with the USSF. The intermediary must complete a declaration as a natural person or legal person. A registration form must also be completed by the Intermediary. These documents must be completed, signed and sent to the United States Soccer Federation for filing.

Those who are registering for the first time will also have to undergo a background check before registration is accomplished. The background check is conducted by an independent investigation firm.

The USSF current fee for registration is $400 USD.[52] Intermediaries who have registered within the previous 5 years, are allowed to pre-register starting January 1 of each year by submitting the Intermediary Registration Form and paying the $50 registration fee. An annual fee of $50 USD is required each year to maintain registration.[53]

Registration is completed when a representation contract between the intermediary and the player or club is entered and the intermediary is involved in the execution of an employment contract or transfer agreement.[54]

Once registration is completed, as required under the FIFA Regulations, the names of the registered intermediaries is posted to the USSF website.

7. Under existing laws

In the USA several laws work together with the goal of creating comprehensive coverage in the area of sports agent representation that includes intermediaries. These laws work together both at the state and federal levels. State laws relative to contracts and agency relationships apply in determining a sports agents'

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[51] *Id.*

[52] Attorney Gregory Fike Memorandum, FIFA Regulations on Working with Intermediaries, March 2015, Registration of Intermediaries. *See* www.ussoccer.com.

[53] *Id*.

[54] *Id.*

relationship and responsibilities towards an athlete. Federal laws such as SPARTA, regulations under NCAA and UAAA along with the FIFA Regulations, provides the scope of existing laws addressing sports agents in the USA.

Although there are still some areas of the athlete and agent relationship that are not completely resolved by the current laws and regulations in the USA, there are many areas that are covered. Additionally, there are several areas of overlap in laws and regulations that address the athlete agent relationship and at times require some degree of coordination or at minimum determination as to which law or regulation is applicable.

The table below identifies and provides an overview of key aspects of USA laws relative to sports agents:

	FIFA IR (via USSF)	SPARTA	UAAA	NCAA
Professional	*	*	*	
Amateur	*		*	
Collegiate				*
Disclosure	*	*	*	*
Conflict of Interest	*	*	*	*
Impeccable Reputation	* (USSF background check)		*	
Background Check	* (USSF background check)		*	
Federal		*	*	
State			* (State adoption)	*
National	* (USSF)			*
International	* (FIFA)			

8. Impeccable reputation

FIFA requirements for Impeccable Reputation is one of the few barriers to becoming an Intermediary. In the USA the USSF uses the definition of "Impeccable Reputation" that aligns with the description as provided by FIFA and included in the Intermediaries Declaration:

"3. I declare that I have an impeccable reputation and in particular confirm that no criminal sentence has ever been imposed upon me for a financial or violent crime".[55]

[55] FIFA Regulations on Working with Intermediaries 2015, Annex 1, 3.

In addition to the declaration of impeccable reputation, the USSF also requires that the sports agent undergo a background check (discussed above). This was also a requirement under the old regulations and is an ongoing requirement by the USSF.

9. Conflicts of Interests

The other potential barrier to becoming an Intermediary is "Conflicts of Interests". In the USA a common legal definition of conflict of interest is:
"a real or seeming incompatibility between one's private interests and one's public or fiduciary duties."

According to FIFA regulations, Conflicts of Interests do not exist "…if the intermediary discloses in writing any actual or potential conflict of interest he might have with one of the other parties involved in the matter, in relation to a transaction, representation contract or shared interests, and if he obtains the express written consent of all the other parties involved prior to the start of the relevant negotiations."[56]

The USSF utilizes this definition as contained in the FIFA Intermediaries Regulation which primarily requires "disclosure" and "consent". The sports agent is required to list all possible conflicts of interest. Additionally, the sports agent must present written consent to the representation of the player from all of the other parties involved. Therefore, the conflict is not required to be removed the FIFA Regulation is only requiring that the conflict be disclosed and transparent to the parties involved.

10. Agent's obligations

In the USA, along with the application of the FIFA Regulations agency law also applies. Whenever there is an individual acting on behalf of another agency law applies. Under USA Agency law an agent has certain obligations to their clients. The main obligation is that of fiduciary duty and a basic duty of care.

11. Remuneration

FIFA Regulations recommend a cap of 3% for the remuneration for Intermediaries. Under USA contract law the potential is there for that amount to be higher. Since the FIFA Regulations are only minimum requirements, USA can allow for a higher remuneration. However, the USSF maintains the guidelines for remuneration as established by the FIFA Regulations.[57]

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[56] *Id* at 8 Conflicts of Interest.
[57] FIFA Regulations on Working with Intermediaries 2015.

12. Disciplinary powers and sanctions

As a governing body, the USSF maintains certain powers to discipline its members.[58] However, these powers appear to extend specifically to the members of the USSF as defined in Bylaw 202.[59] Although the FIFA Regulations require that Intermediaries register as Intermediaries with the national Federation, the Bylaws do not include a category specific to Intermediaries, suggesting that Intermediaries are not considered members of the USSF and therefore are not covered under the Bylaws of the Federation.

Further, under the Bylaws of the USSF[60] there is a process for addressing grievances and disputes.[61]laws or the policies[62] of the USSF whether Intermediaries can also address grievances or disputes within the USSF governing structure and under the bylaws and policies of the USSF.

In the USA, because sports agents' relationship to players has its foundation in agency law and contracts law, these are civil actions that can be addressed in civil court. Under the USSF Bylaws and Policies, section on Litigation makes clear that "organization member, official, league, club, team, player, coach, administrator or referee..." must first exhaust remedies available through the Federation before seeking remedies that may be available in the United States or a State court. make reference to mandatory arbitration via the American Arbitration Association (AAA).[63] Perhaps in accordance with USSF policy or under the contract between Intermediary and the player, arbitration may be required to resolve disputes. However, the handling of disputes between the agent and player is an area that is not clear.

FIFA Intermediary rules require that sanctions be imposed on any party that violates the FIFA Intermediaries rule.[64] There is also a requirement that the national Federations "publish" this information and "inform" FIFA of disciplinary sanctions imposed on Intermediaries.[65]

Regardless of any internal Federation process that may or may not be available under the bylaws and policies of the Federation, civil law redress of violations and certainly breach of contract or breach of any duty on the part of the agent or player could be brought in civil court.

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[58] *See*, 2016-2017 Bylaws of the United States Soccer Federation, Bylaw 241, Suspensions, Fines, Terminations.

[59] 2016-2017 Bylaws of the United States Soccer Federation, Bylaw 202 Member Categories names the types of membership categories covered by the Federation. These include (A) Associate, (B) Disabled Service Organization, (C) Indoor Professional League, (D) National Affiliate, (E) National Association, (F) National Member, (G) Other Affiliate, (H) Professional League, (I) State Association.

[60] Bylaws and Policies, 2016-2017 Bylaws of the United States Soccer Federation, *see* www.ussoccer.com.

[61] 2016-2017 Bylaws of the United States Soccer Federation, Bylaw 701.

[62] *See,* 2016-17 United States Soccer Federation, Inc. Policy Manual; 2016 Policy Amendments.

[63] *See,* https://www.adr.org/aaa/faces/home.

[64] FIFA Intermediaries Regulation, 9 Sanctions, §1.

[65] *Id* at 9 Sanctions, §2.

At the federal level, under *SPARTA*, if a sports agent is found to be in violation of this federal regulation, they may be punished up to $11,000 USD for a deceptive trade practice or act under the *FTCA*.[66] This sanction is view by many as being insufficient to actually produce a deterrent effect.

Under the *UAAA*, violations are punishable with civil, criminal or administrative penalties and fine that can be up to $25,000 USD.[67] Colleges and universities are granted a private right of action for damages caused by agents.[68]

13. Conclusion

The USSF follows closely with the FIFA Regulations. Where they differ with the requirements under FIFA Regulations is that the USSF requires Intermediaries to undergo a background check. The background check was a requirement under the previous FIFA Players' Agents Licensing rules and has been retained by the USSF under the new FIFA Intermediaries Regulations practices.

Under the previous FIFA Players' Agent Licensing rules, agents were required to complete an application, submit criminal background check, additionally, pass a written exam, obtain professional liability insurance, and sign a code of professional conduct. Under the new "de-regulation" requirements agents must register with local federations, but licensing is no longer a requirement. Likewise, there is no written examination and liability insurance is not required. Signing a specified code of professional conduct is not required however, "impeccable reputation" is a requirement under the new FIFA Intermediaries Regulation.

FIFA Intermediaries Regulation specifically address the services "the engagement of the services of an intermediary by players and clubs to:

a) conclude an employment contract between a player and a club; or
b) conclude a transfer agreement between two clubs".[69]

In the USA representation of a player may go beyond the items identified under the FIFA Intermediaries Regulation. Sports agents in the USA help manage the legal and business affairs of the athlete. This often includes negotiating contracts, endorsement deals, brand promotion, as well as helping the athlete manage his/her money. Sports agents in the USA act in the best interest of their clients and have a fiduciary responsibility to their clients.

FIFA Intermediaries requires players and clubs to "...act with due diligence"[70] interpreted to mean "...use reasonable endeavors to ensure... intermediaries sign…Intermediary Declaration and the representation contract..."[71]

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[66] 15 U.S.C. §§ 41-58, as amended.
[67] *See* Uniform Athlete Agents Act (2000) at §§ 15-17 (describing criminal, civil, and administrative penalties for noncompliance with UAAA).
[68] *Id.*
[69] FIFA Regulations on Working with Intermediaries, *§1 Scope.*
[70] FIFA Regulations on Working with Intermediaries, *§2 General Principles, 2.*
[71] *Id.*

Although not a requirement under the new FIFA Intermediaries regulations, in the USA sports agents are required to undergo a background check. This is carried forward from the previous FIFA Players Agents requirements. It also goes further than the criminal background disclosure requirements under the UAAA.

Because of the different laws that apply to sports agents in the USA, and the potential for differing definitions and application, there is perhaps some additional work that can be done to ensure that the laws are all fully aligned. At present, sports agents are required to satisfy the registration requirements under FIFA Regulations. Further, they are cautioned that they are also required to adhere to any other State or Federal laws. The registration requirements under the UAAA and the FIFA Regulations that require registration with the Federation is an area that could be further aligned and clarified.

Since the FIFA Regulations are still relatively new, it is yet to be determined whether better governance and greater transparency is being achieved. One argument can be made that the previous guidance was more limiting and therefore stricter with regards to providing access to sports agents or Intermediaries for entering into the area of player representation. The current registration requirements are less strict, but because there are no exceptions to the registration, one could argue that there is greater transparency.

SECTION III

COMPARATIVE ANALYSIS

FIFA REGULATIONS ON WORKING WITH INTERMEDIARIES AN UPDATED COMPARATIVE ANALYSIS

by *Michele Colucci*[*]

1. Introduction

Twenty months after the entry into force of the FIFA regulations on working with the intermediaries on 1 April 2015, at least one intermediary was involved in 21% of all international transfers of players carried out in 2016.[1]

According to the International Transfer Matching System (ITMS)[2] the intermediaries were 1680 just before the entry into force of the regulations. They rose to 2221 until 31 March 2016 and from that day until October 2016 they were already 1700.

Worldwide, the clubs spent a total of 368 Million USD in commission to intermediaries in 2016, while 274 were spent in 2015 and 238 in 2014.[3]

The above figures clearly show that the entry into force of the regulations determined a significant transparency increase in getting the real figures of intermediaries involved in international transfers and the amount of their turnover. In fact comparing the 2015-2016 figures with those of the first seven months of the term 2016-2017, the observer can easily verify the positive outcome of the mandatory registration established by the FIFA regulations and implemented – although in a quite fragmentary way – by the member associations.

The FIFA Regulations' goal to better protect the integrity of football as well as the interests of its stakeholders has been met and – in this way – they contribute to fulfill their financial responsibilities.

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[1] K. Morris, presentation on FIFA TMS and FIFA Regulations on working with intermediaries., Players Contracts, London, 21 October 2016. The FIFA TMS website is available on www.fifatms.com.

[2] The ITMS is the online platform containing all data related to international transfers of players (employment and transfer agreements, reference to other agreements, TPO declarations, Intermediaries declaration) that introduced standardisation and enhanced transparency based on FIFA's Regulations on the Status and Transfer of Players.

[3] FIFA TMS, Intermediaries in International Transfers, 2016, https://www.fifatms.com/wp-content/uploads/dlm_uploads/2016/11/Intermediaries-2016.pdf (visited on 25 November 2016).

FIFA has deeply revised its regulatory strategy passing the governance responsibilities on to the member associations which must implement some minimum standards.

Moreover FIFA addresses itself directly to players and clubs in order to upgrade the safeguard of their rights and entitlements rather than governing the legal and organisational aspects of the category of intermediaries, who are traditionally not considered as parties of the international football community.

This revolutionary change of approach looks like a cautious retreat within the more familiar regulatory scope covering the traditional stakeholders.

In doing so, FIFA offers a new definition of intermediary covering also legal persons. It requires associations to set up a new registration system of the intermediaries and their activities (Art. 3 FIFA regulations), and virtually opens the profession to anyone with a "self-certified" impeccable reputation, meaning that he has not been sentenced with a financial or criminal offence during the last years.

Of greater significance is that FIFA has actually shifted the focus from managing the agents' profession to monitoring the obligations of players and clubs while working with the intermediaries. They must act with due diligence when choosing an intermediary and they are responsible for the obligations concerning the signing and submission to the national association of the relevant requested documents, *in primis* the representation contract and the intermediary declaration (Art. 2 FIFA regulations).

On this basis, the main target of the FIFA reform is to provide maximum transparency to players' employment and transfer negotiations, so as to comply with both legal and ethical requirements as it is solemnly stated in the FIFA regulations' preamble.

In order to achieve this, FIFA rules set some minimum standards to be implemented by the 211 national associations, which remain free to adopt stricter criteria, subject to the ordinary laws applicable to the associations (Art. 1, paragraphs 2 and 3).

In this regard, although in some countries (**Argentina, Belgium, Cyprus, Czech Republic, England**) intermediaries in football are not explicitly regulated, they do not fall completely outside the scope of ordinary law.

Indeed, the relevant ordinary law provisions dealing with matters such as employment and social security law, tax law, and so on, duly apply to their activities.

The legal framework can be even more complicated in federal states like **Belgium, Switzerland** and **UAE** where multiple regional laws apply.

In **France**, the strict ordinary rules governing the profession of intermediaries prevail in principle over the FIFA rules.

The same principle applies in those countries where public order law protects the political, social, or economic organisations and interests and it is preeminent over any other source of law.

Therefore, devolution in favour of the national associations rather than de-regulation, seems to be a more appropriate definition of the new FIFA policy. Indeed, FIFA has willingly limited the scope of its own intervention in this field.

By relinquishing a detailed regulatory perspective, FIFA has privileged a "functionalist" approach: the intermediary is not recognised as a registered professional but he acquires relevance only when carrying out activities linked to the negotiations leading to a transfer or employment contract of a player.

Out of these activities, the profession of intermediary has a limited or no relevance to FIFA. If the profession of agent/intermediary still survives, the compliance with quality standards is exclusively up to the national associations to deal with. They are bound to create mechanisms that ensure the intermediaries' compliance with high standards of professionalism, expertise and competence.

The agents are definitively doomed for the international federation of football. FIFA's intervention in relation to intermediaries is limited to extending at international level the scope of those national sanctions concerning intermediaries' malpractices.

2. Access to the profession

FIFA receded from any attempt to regulate the access to the profession of intermediaries at global level.

They are neither required to pass a selection anymore nor do they need to have a professional liability insurance nor provide a bank guarantee. However, the FIFA aloofness can live smoothly with the more regulatory approach of some national associations. In fact, the access to the profession of intermediary has been regulated in different ways at national level.

Some federations have kept the condition to pass an exam (**China, Czech Republic, Denmark** (only for the optional category of *"certified intermediaries"*), **France** and **Ukraine** (in the latter, only for the so-called *"permanent intermediaries"*), or an interview (**Argentina, Slovak Republic** and **Spain**), or both an exam and an interview (**Mexico**).

China waives the exam condition for foreign intermediaries who can provide their services after having given a bank guarantee.

With regard to the interview, we share the concern and the perplexity expressed by some authors about its subjectivity's pitfalls. However we believe that a final judgment must be made in due course, when we will be able to count on a congruous number of relevant cases to review and identify possible trends.

Several other associations have maintained the prerequisite to have a professional liability insurance (**Argentina, Brazil, Czech Republic, Mexico, Paraguay, Portugal**), or a proof of tax compliance (**Belgium, Mexico, Portugal, Slovak Republic**) and social security obligations (**Belgium** and **Portugal**).

Some associations require foreigners to have residence in their country (**Argentina, Paraguay, Turkey**), to have a work permit (**Mexico**) or to submit a bank guarantee (**China**).

In **France**, intermediaries, both French and foreign, need to have a licence issued by the Federation after having passed an exam. Furthermore, foreign intermediaries, including EU citizens, need a special licence after showing an adequate knowledge of the French language and proof of their professional experience in the field. Otherwise the non-EU nationals are obliged to work in partnership with an agent holding the French licence.

Yet **Switzerland** stands out because of its own institutional situation. Intermediaries need an authorisation from the cantonal employment office in which they reside or have their seat, if legal persons. They also need to get an authorisation from the *Economy State Secretariat* in order to place a Swiss player abroad or a foreigner in Switzerland. Moreover, non-resident foreign intermediaries cannot be registered with the Swiss registry of commerce and therefore they are obliged to co-operate with a Swiss intermediary. This means, that unlike in France, the foreign intermediary has no other choice than to go for partnership with a local agent.

In the **UAE**, the national federation requires intermediaries to be "licensed" by the government via the economic department in the relevant emirate.

Finally, quite surprisingly, in **Azerbaijan** and **Serbia** foreigners are not allowed to register with the national association.

3. More transparency

Transparency is meant to be achieved through several means, namely:

1) a new registration procedure,
2) a declaration on intermediaries,
3) a detailed representation contract,
4) a disclosure of all relevant documents to the national association. The noteworthy point for more transparency is provided by the last paragraph of Article 6 of the new regulations.

In fact, clubs and players are obliged to disclose to the competent bodies of the leagues, associations, confederations and FIFA via TMS, all contracts, agreements and records with intermediaries in connection with their activities. In this regard, players and clubs have to agree with the intermediaries on eliminating all hindrances to fully disclose the above-mentioned information and documents. Moreover, such documents *"shall be attached to the transfer agreement or the employment contract, for the purpose of registration of the player"*.

Any omission of showing the above documents shall lead to sanctions on clubs and players without rendering null and void the registration or the transfer of the player.

In any case, the "faulty parties" are subject to sanction which may vary from association to association thanks to their autonomy in implementing the FIFA rules.

The paradoxical outcome will be that the same omission could be treated as an infringement by a national federation while another one might ignore it or just consider it as a misdemeanour and, therefore, not sanction it. The question

remains whether such contradictory decisions taken by the national associations are compatible with the legal certainty and uniformity the international sports stakeholders look for.

Unique in the reviewed national regulations are the FFU rules (**Ukraine**). In fact, everybody under the FIFA and/or the FFU jurisdiction, who is aware of any transfer or employment transaction which infringes the FFU Regulations, shall notify the FFU accordingly. In that regard, any omission of such reporting shall be subject to disciplinary sanctions.

This provision is of substantial relevance for promoting whistleblowing and, therefore, to guarantee transparency in football.

It is up to the other football associations to adopt a similar rule as best practice to further FIFA's political objective of more transparency.

3.1 The registration process

According to article 3 of the FIFA regulations, every time the intermediaries are involved in a specific transaction leading to the transfer or an employment of a player, they must register with the relevant national association.

They must do so, irrespective of the fact that they have already been registered with the association of their own country or with any other association.

The responsibility for the registration of intermediaries lies not with the intermediaries themselves but rather with the players and clubs engaging their services.

Furthermore, the national association bears the responsibility to keep track of and monitor each intermediary's activity as well as each transaction they have made.

In this regard, depending on the relevant national rules, the legal proceedings for registering with a national association may greatly vary.

In some countries (**Austria, Croatia, Cyprus, Greece, Russia, Serbia**) the registration is required for each transaction while some others (**Bulgaria, England, Mexico, The Netherlands, Paraguay, Poland, Qatar, Romania**) demand a yearly registration or only one registration after having fulfilled all eligibility criteria **(Czech Republic).** Both measures lift the burden of the intermediary to go through the same process for each transaction.

In other countries, such as **Argentina, Colombia, Denmark, Italy, Japan, Saudi Arabia, Spain, Switzerland, Turkey** and **Ukraine**, the federation requires a dual registration: one for the intermediaries (both natural or legal persons) and another one for each transaction.

It is interesting to note that the first version of the Italian regulations recognized foreign intermediaries as duly registered only on the basis of reciprocal agreements between associations. Then, the federation amended the procedure so that foreigners can co-operate with Italian intermediaries or work autonomously after having duly submitted a proof of registration with a foreign association *"whose regulations fully comply with the FIFA minimum standards".*

The contradiction between FIFA's liberal approach and the associations' administrative, detailed implementation may imply that an intermediary not registered with any foreign association could risk to be barred from the professional activities when acting in the territory of the above mentioned countries.

Therefore we wonder if the still excessively regulated access to the activity of intermediary at national level may cause inextricable problems for foreign intermediaries.

In **Portugal**, the intermediary is obliged to register both with the Federation and the League in case the relevant club(s) participate in the first or second League divisions. He may register in two alternative ways: a) per each transaction, or b) per sports season.

In the **Czech Republic**, the national report draws our attention to a really extraordinary and probably unique situation.

In fact only EU, EEA and Swiss citizens, can apply for registration as intermediaries. Therefore, non-EU intermediaries cannot provide their services there.

Moreover a foreign intermediary who is registered with a national organization that is a member of the European Football Agents Association (EFAA) may register as intermediary in the Czech Republic. However, many national intermediary associations are not EFAA members.

Such protectionist restrictions should be considered not compatible with the FIFA regulations which apply to all 211 association members. Therefore they should be banned. It seems to us that a federation should not be allowed to exclude intermediaries working already with other federations.

In **Switzerland** an intermediary needs to be registered with the national federation but only if the relevant transaction is successfully concluded.

In **Germany**, intermediaries can also "pre-register" for an entire season, meaning that they need to produce all necessary documents but do not need to provide proof of good conduct or proof of the payment of the registration fee for each transaction. Nevertheless the pre-registration does not entirely replace the registration. In fact, the intermediaries still need to be registered for each transaction by submitting the representation contract and the intermediary declaration separately but a pre-registration speeds up the definitive registration process.

In **Denmark**, the federation rules label intermediaries as "certified intermediaries", if they successfully pass a written multiple choice test about their knowledge of the relevant legislation and have a liability insurance.

In **Ukraine** intermediaries get the possibility to be registered as *"Temporary Intermediaries"* for a specific transaction or as *"Permanent Intermediaries".*

In order to qualify as "Permanent Intermediaries", they need to successfully pass a test and meet the FIFA minimum requirements. They are then able to provide their services on a permanent basis (but they still need to submit all relevant documentation for each transaction they carry out) or as temporary for a specific transaction.

In **France**, an intermediary needs both a licence issued after an exam and an insurance policy. Such a licence is for an unlimited period.

In **Bulgaria**, **Qatar** and **Saudi Arabia** the federations require a bachelor's degree.

In **Belgium**, **Bulgaria** and **Switzerland** the applicant must prove a solid legal background and some years of professional experience.

In **Argentina**, **Paraguay** and **Turkey** intermediaries are required to be formally resident in these countries in order to be legally operative.

Finally each federation establishes the registration fees per intermediary and/or per each transaction carried out. The amount varies considerably from zero in **Croatia, France, Mexico** (where applicants must nevertheless pay a fee before the exam and before every yearly renewal), **Russia, Serbia** and **Switzerland** to 5812 Euros for each transaction in **Ukraine** and approximately 5000 Euros per intermediary every year in the **UAE** (see the enclosed comparative table).

This extraordinary variety of national implementations may have a negative impact on the overall coherence and consistency in the application of the FIFA rules.

Moreover, intermediaries may experience difficulties having to apply different national implementations of the same FIFA regulations.

Indeed, they are supposed to be aware of the provisions of the Association's regulations where they operate in a language that they do not necessarily master. In practice, it will be the responsibility of clubs and players to make sure that the intermediary's registration process is carried out in full compliance with the national association rules in order to avoid disciplinary sanctions.

Of course, intermediaries may refer either to local lawyers or to colleague intermediaries or to the relevant clubs.

3.2 The intermediary declaration

As part of the registration process, the intermediaries are required to complete the "intermediary declaration", which the players or clubs have to submit to the member association. Such a declaration constitutes an essential element of the new FIFA regulations. In fact, this declaration is a sort of formal pledge of the intermediary in considering and applying the relevant provisions of the statutes and regulations of FIFA and those of the member association when carrying out his activities, thriving to keep his impeccable reputation and ensuring his compliance with disclosure requirements.

In the intermediary declaration, reference is made to "an impeccable reputation".

Such a concept is not elaborated further, but is instead left to the federations or associations to define in detail. The minimum standard is that they have not been convicted of economic or violent crimes.

In **Croatia,** the applicant needs to produce a certificate, not older than three months, issued by the relevant State court, attesting that there are no criminal proceedings against him. If the intermediary is a legal person, than the certificate is needed for the legal person as such and for the legal representative(s) of that entity.

In **the Netherlands** the certificate is reporting those crimes committed during the previous four years.

In **Italy**, in order to meet the standard of "impeccable reputation" it is enough for the applicant to declare that he has not been condemned for a criminal offence.

In light of the basic standards given by FIFA, the registration of the intermediary for every transaction concerns essentially the association and players/clubs. The logic of such legal approach is obvious. The most important act is the transaction stipulated between players and clubs and deposited, monitored and finally accepted by the association.

Aside from this substantial act, the intermediary actions are clearly of a secondary level of importance, a sort of accessory activity for the sake of players/clubs. The association will be responsible for verifying the reality of the facts brought in by the intermediary's declaration and it will take appropriate measures against the intermediary in case of wrong or false declarations.

The national associations have produced a great variety of registration procedures, which often go far beyond FIFA's minimum standards and perhaps its manifest targets.

In **Portugal** the "Intermediaries Commission" can issue binding opinions, on its own initiative or upon request of any interested party, about the reputation of the aspirant intermediaries as well as registered intermediaries, and may refuse or cancel, respectively, the intermediaries registration.

In **Colombia**, two renowned personalities from the football world have to certify the honourability of the applicant in a declaration to the federation.

The **English FA** takes very seriously the impeccable reputation requirement. Therefore, it imposes upon the intermediary an obligation to fill in an online application to solemnly state that he meets the requirements of "The FA's Test of Good Character and Reputation for Intermediaries (the 'Test')". The Test is significantly more detailed than the FIFA requirement. Indeed, the applicant has to declare that he or she is not subject to a Disqualifying Condition.[4] The lack of such a declaration prevents the registration of the intermediary.

[4] Disqualifying Conditions are (with reference to the time at which the intermediary goes through the registration process): (a) currently having an unspent conviction for any offence anywhere in the world that The FA considers falls within the category of a violent and/or financial and/or dishonest crime; (b) currently being prohibited by law from being a company director; (c) currently being subject to a suspension or ban from involvement in the administration of a sport or participation in a sport for a duration of at least 6 months, or being subject to a prohibition from working as a sports agent/intermediary, in each case where such suspension or prohibition has been handed down by any ruling body of a sport that is registered with UK Sport and/or Sport England,

The FA declaration form requires further information than the FIFA suggested example of an intermediary Declaration. FA obliges the applicant to make a number of additional "Declarations, Acknowledgements and Consents".

The FA rules provide a complete set of coherent conditions to identify the impeccable reputation. These rules should be taken as best practice by the other FIFA member associations.

France does not offer a definition of "impeccable reputation". Nevertheless the person responsible for "acts giving rise to a criminal conviction that are contrary to the honour, probity or rules of morality" cannot have access to the profession of intermediary.

The **German DFB** requests an "extended proof of good conduct" as evidence for impeccable reputation. It clearly goes beyond the FIFA minimum standard because such proof covers not only criminal convictions for a financial or violent crime but also any other sentences/final rulings ending procedures related to administrative, civil or tax law infringements. In this regard it is interesting to note that the Frankfurt Regional Court issued a preliminary injunction in April 2015 ruling on a case opposing an intermediary company and the DFB.

The Frankfurt Court ruled that the DFB cannot oblige intermediaries to submit themselves to the jurisdiction of FIFA, UEFA or DFB with regard to a transaction. The DFB amended its rules accordingly.

Similarly, in **Spain** a controversial point of the declaration is the intermediary's consent to the National Association, Leagues, Confederations to investigate and obtain any kind of information even from third parties.

This kind of constrained consent is a clear attempt against the principle of professional confidentiality, one of the basic principles of a lawyer's activity. In fact, in application of the national regulations, the association's bodies could request an intermediary's lawyer to disclose any information he got from his client.

In general in this respect, an interesting issue from the clubs' perspective concerns the case of non-submission of the Intermediary Declaration, since the clubs and the players bear the responsibility to submit it to the association as well as any additional documentation required by the association (Art. 3, paragraphs 3 and 4 FIFA regulations).

What happens then if the Intermediary Declaration is not submitted? As mentioned above, the onus lies on the clubs (or players) who must submit the Declaration duly filled in and signed by the Intermediary. Thus, should the form not be submitted, there will be simply no registration because the Declaration is a mandatory requirement and possible sanctions could be imposed on clubs and players.

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or any equivalent national or international association; (d) currently being subject to various bankruptcy orders or arrangements; (e) currently being subject to any form of suspension, disqualification or striking-off by a professional body (such as the Law Society or equivalent professional regulatory bodies in other jurisdictions); or (f) currently being required by law to notify personal information to the police as a result of previous sexual offences.

3.3 The Representation contract

Pursuant to Art. 3, paragraphs 3 and 4 FIFA regulations, players and clubs have the obligation to submit to the association at least the "Intermediary Declaration" and any other documentation required by the Association.

Once signed by the intermediary and player/club, the representation contract must be deposited with the relevant association (Art. 4, paragraph 5 FIFA regulations) when "the registration of the intermediary takes place".

The registration process of an intermediary is composed of two elements:

1. the deposit of the intermediary declaration,
2. the deposit of the representation contract.

While the first action is clearly conferred upon the clubs and players' shoulders, the second remains open also to the intermediaries when their registrations take place pursuant to Art. 4, paragraph 5.

In practice, since an intermediary represents and acts on behalf of clubs/players, it is very likely that "following the conclusion of the relevant transaction", he may also proceed to the registration of all relevant acts.

FIFA regulations do not contain any specific provision in case the relevant party does not deposit the representation contract and, again like for the Intermediary Declaration, there will be simply no registration. Equally they do not specify the consequences for the omission of deposit in terms of sanctions for clubs, players and intermediaries.

Moreover, in any representation contract concluded with an intermediary, clubs and players shall detail at least certain minimum information, such as the scope of the service to be provided, and the nature of the legal relationship they have with the intermediaries.

The new FIFA rules focus on individual intermediaries' activities for a specific transaction and emphasise the transaction related activities.

The limitation of two years under the previous Agents' regulations has been repealed and now the duration of the contract depends exclusively on the parties' will, provided that they comply with the time limits that national federations may still impose.

Coming to the national reports, the federations of **Brazil, Croatia, Cyprus, England, Italy, The Netherlands, Portugal, Russia, Spain, Slovak Republic, Turkey** and **Ukraine** establish that a representation contract cannot exceed two years.

In **Spain,** there is the limit of two years but there is no provision about the renewal of a representation contract; in **Slovak Republic** the parties can renew their contract only once.

In **Bulgaria** and **Czech Republic** the representation contract may have a term up to three years.

In case of an international transaction, whose parties are a foreign player/club and an intermediary who have stipulated a representation contract of a duration

longer than the limit applicable in a given association, the contract could be declared as null and void or the duration could be shortened resulting in a reduction of the agreed remuneration.

In some countries like **Paraguay,** the representation contract needs to be formalized through a notary deed, while in some others like **Switzerland,** it must make an explicit reference to the ability of either party to freely terminate their agreement at any time, in case there is no trust in the other party any more.

Like the previous ones, the new FIFA regulations do not require exclusivity in favour of only one intermediary. By freeing a player from an exclusive contract for a given period of time, his bargaining power position when engaging the services of an intermediary is likely to increase.

In **Germany**, ordinary employment law applies: exclusivity is prohibited, in particular in order to better protect the interest of players.

On the contrary, in the **Czech Republic** and in **Italy** the intermediaries cannot conclude a representation contract with a player who is already represented by another intermediary.

The **English FA** does not expressly prohibit an intermediary approaching a player who is under contract with another intermediary. For the sake of more transparency in case of conflict of interests, under some conditions such as the prior written consent of the parties FIFA has foreseen the possibility of a "**dual representation**" in accordance with Art. 8, paragraph 2 FIFA regulations.

Notwithstanding this provision, in **Bulgaria, China, France** (by ordinary law), **Japan, Paraguay, Portugal** and **Russia**, dual representation is still forbidden.

On the contrary, **Argentina, Austria, Colombia, Croatia, Cyprus, the English FA, Germany, Greece, Italy, the Netherlands, Romania, Serbia, South Africa, the Slovak Republic**, follow the FIFA rules' change.

Finally, it is interesting to note that for the validity of dual representation, in **England** and **Romania**, the intermediary still has to obtain not only the prior written consent of all parties involved but he also needs to (i) inform all parties of the full details of the proposed arrangements, (ii) to give them a reasonable opportunity to take independent legal advice, and (iii) to obtain their final consent to the intermediary entering into a representation contract with the other party/ies.

4. Remuneration

The implementation of article 7 of the FIFA regulations may stir a major debate among stakeholders and lawyers.

This provision recommends a limit on the remuneration payable to intermediaries, namely 3% of the agreed player's basic gross income for the entire duration of the relevant employment contract or 3% of the transfer compensation in case of conclusion of a transfer agreement.

The recommendation aims at avoiding disproportionate payments to intermediaries while ensuring a more favourable market for clubs and players.

In fact, capping intermediaries' fees would prevent clubs from overspending and jeopardizing their financial sustainability over the long term. Moreover the cap benefits the players in case of a transfer.

The comparative analysis shows that many national associations, namely **Austria, Belgium, Brazil, Colombia, Denmark, England, Greece, Italy, Japan, Poland, Qatar, Romania, Slovak Republic, South Africa, Turkey, Uruguay, USA**, recommend the payment of 3% of the total gross amount of the contract or of the transfer fee.

On the contrary, only 7 federations out of 32, namely **China, Cyprus, Paraguay, Russia, Saudi Arabia** and **the UAE**, impose the limit of 3% of the total gross amount of the contract or of the transfer fee as a mandatory cap.

Between these two major groups of countries, we find other associations setting different limits:

In **Germany**, the intermediaries are entitled to get up to **14%** of the first basic gross salary of the player if they have a player as a client, while there are no strict limitations if they have the club as a client.

France (by ordinary law), **South Africa** and **Ukraine** fix the cap at **10% and Serbia at 8%** of the player's basic gross income for the entire duration of the relevant employment contract **or 8%** of the transfer value. **Switzerland** and **Bulgaria** set a cap respectively at **5**% and **7**% of the first year basic gross salary if player as a client, no limits if club as client.

In **Argentina, Czech Republic, the Netherlands** and **Portugal** (in this last country, if there is no specific reference in the contract the remuneration cap is fixed at 5%) there are no limits to the remuneration to intermediaries. Of course, the cap, recommended or mandatory, could be taken as a benchmark especially in those cases where the agreed commission for intermediaries is not proportionate to the relevant transfer.

Finally, in **Spain** and **Croatia** the association's rules are just silent on the remuneration issue.

Notwithstanding the FIFA efforts aimed to balance the interests of the various stakeholders in capping the intermediaries' fees, the variety and sometime the discrepancy of the national implementing rules may negatively affect the FIFA expectations.

4.1 Minors' transfers

FIFA also prohibits any kind of remuneration to intermediaries in case of transfer of minors, or those under the age of 18 (Art. 7, paragraph 8).

Such a provision has been fully implemented in the following countries: **Argentina, Austria, Brazil, Croatia, Cyprus, Denmark, England, the Netherlands, Paraguay, Qatar, Russia, Saudi Arabia, Serbia, Spain, Qatar, UAE, Ukraine,** and **Uruguay**.

England has adopted even stricter rules. In fact, in order to enter into a representation contract with a minor, or with a club in respect of a minor, an intermediary must obtain an additional authorization from the FA to deal with minors. The FA requires that an applicant provides an Enhanced Certificate from the Disclosure and Barring Service (formally a CRB check) and the FA will undertake an "Assessment", considering whether the individual should be permitted to conduct Intermediary Activity in relation to minors based on the content of that criminal record check.

On the contrary, the rules of two federations are in flagrant breach of the FIFA rules. In fact, in **Czech Republic** intermediaries can be remunerated for those transfers where minors are older than 16 years.

In the same way, **Slovak Republic** also expressly waives the FIFA regulations by allowing remuneration to intermediaries for working with minors between the ages of 15 and 18.

In **Italy,** the federation is silent on the remuneration to intermediaries in case of transfer of minors. Nevertheless intermediaries cannot be remunerated for services provided to amateur players who often are minors, category in which most minor players fall.

With regard to **Germany,** the national federation rules do not allow remuneration in transfers of minors. Nevertheless after the intervention of an ordinary tribunal, namely the Court of Frankfurt, intermediaries are entitled to remuneration if the minor is party of a Licensed Player contract (Bundesliga 1 and 2).

Finally, it is interesting to note that **Portugal** and **Japan,** do not only provide a ban on remuneration in transfers of minors but they also prohibit intermediaries from representing minors.

Though some associations have enacted national rules, others have omitted to implement such interdiction of remuneration. Therefore, only strict monitoring by FIFA and the national associations will guarantee an effective protection of minors.

5. Disclosure and Publication of data

In order to increase transparency in football, players and/or clubs are required to disclose to their respective association the full details of any and all agreed remunerations or payments of whatsoever nature they have made or will make to an intermediary (Art. 6, paragraph 1, of the FIFA regulations).

They are also required to disclose, upon request, to the competent bodies of the leagues, associations, confederations and FIFA, all contracts, agreements and records with intermediaries in connection with activities in relation to a transfer or employment agreement for the purpose of their investigations.

In this regard, FIFA clearly counts on the players' and clubs' will to ensure that nothing may obstruct the disclosure of the above-mentioned information and documents.

Argentina, Austria, Brazil, Croatia, Germany, Italy, Mexico, the Netherlands, Portugal, Romania, Russia, Saudi Arabia, Slovak Republic, Spain, Turkey, Ukraine, UAE and **Uruguay** have fully transposed the FIFA provisions on disclosure.

In fact, by signing the Intermediary Declaration, intermediaries agree to provide the relevant association with all the information about any payments, of whatever nature, made to them by a club for their work.

However, in practice, it might be difficult for players and clubs to acquire the agreement of intermediaries, especially the most influential ones, with regard to the disclosure of the requested information if they do not want to.

In **Poland**, it is the intermediary's obligation to disclose the requested documents.

Serbia has not implemented Art. 6, paragraph 2, according to which when an intermediary has not been engaged for the purposes of the transaction, the club and/or Player shall disclose that fact to the football association.

Some federations, namely **Argentina** and **Spain**, go beyond the scope of the FIFA regulations, by obliging clubs and players to disclose all payments made to an intermediary not strictly related to the transfer of the player such as, but not specifically, the negotiation of image rights.

The services of intermediaries in football may not always be related to the conclusion of an employment contract or a transfer agreement, i.e. not all services provided by an intermediary are services performed for concluding that transaction. One may wonder whether intermediaries that are remunerated for services other than that transaction are really and legally obliged to inform the federations.

Maybe on this point, the compatibility of this kind of association's rules with the general ordinary law rules, protecting privacy and interests of professionals, should be assessed.

Despite the rule's binding nature, there is no specific provision which indicates the disciplinary consequences and the responsibilities of the parties which have to notify the national association, if they do not comply with it.

Nevertheless the non co-operation may lead to sanctions pursuant to the relevant provisions of the FIFA Disciplinary Code which of course also apply to clubs and players when relying on the services of intermediaries.

According to art. 6, paragraph 3 of FIFA regulations, associations shall make publicly available at the end of March of every calendar year, for example on their official website:

1. the names of all intermediaries they have registered,
2. the single transactions in which they were involved,
3. the total amount of all remunerations or payments actually made to intermediaries by their registered players and by each of their affiliated clubs.

The ones to be published are the consolidated total figure for all players and the clubs.

Argentina, Austria, Brazil, Croatia, Cyprus, England, Greece, Italy, Mexico, the Netherlands, Portugal, Russia, Saudi Arabia, Serbia, Slovak Republic, Spain, Switzerland, Turkey, Ukraine, UAE and **Uruguay** have transposed the above FIFA provision on publication.

On the contrary, in **Romania** the federation has committed to publishing only the names and registration numbers of all intermediaries but it reserved its right to publish intermediaries' performed transactions, received payments and rule violations committed by the intermediaries.

In **Azerbaijan** the association reserves the right to publish such a data and considers such a publishing a faculty and not an obligation to do it finally.

Art. 6, paragraph 4 FIFA regulations state that Associations may also make available to their registered players and affiliated clubs any information relating to transactions that have been found to infringe these provisions. Such a provision has not been retained in **Croatia** but it has been duly implemented by **Cyprus, Czech Republic, Portugal,** and **Saudi Arabia**.

Particularly significant is the provision in **Ukraine**, which obliges anyone under the jurisdiction of FIFA and/or the national federation, to notify the latter about any transaction concluded in violation of its rules. Moreover the names of sanctioned intermediaries will be published on the association website.

Rather than making public all the information on the financial transactions of the intermediary, it would be better forwarding that information to a supervisory authority composed of specialized and experienced persons who satisfy high levels of morality, impartiality and confidentiality with the task of monitoring the conformity with the relevant rules.

Twenty months after the entry into force of the FIFA regulations, the general perception is that the new system guarantee more transparency. Nevertheless the number of federations that have published data concerning transactions involving intermediaries is still too limited, and, in the majority of cases, not all requested data have been provided and made public.

In fact, out of 211 member associations reviewed, only **37** published an intermediary' report, and, only **15** out of these latter, included the mandatory remuneration report.[5]

This is quite regrettable because publishing the relevant documents would certainly help the associations in spotting cases of conflict of interest and prevent corruption, money laundering, and tax fraud. At the same time, the publication could also have a positive impact on the professional image of the intermediaries themselves. Moreover it may be that not all transactions are registered because of the existence of a mandatory 3 per cent cap to the remuneration of the intermediary in some countries.

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[5] K. Morris, presentation on FIFA TMS and FIFA Regulations on working with intermediaries., Players Contracts, London, 21 October 2016. The FIFA TMS website is available on www.fifatms.com.

It is precisely, in order to bypass the cap rule, that maybe the intermediaries prefer avoiding the transactions' registration so that they can omit to disclose documents and information concerning their remuneration.

In some other cases, they might prefer to have their commission as part of the remuneration paid to the players.

If this aberrant background is duly considered, no one is surprised that in **Cyprus** only 21 transactions have been registered regarding 15 players but only one club during the sports season 2015/2016 for a total of only 80871 euros.

As a new expanding trend, it is observed that in order to avoid complying with the FIFA obligations especially with regard to the ban on Third Party Ownership, intermediaries are becoming more and more clubs' owners in some countries – especially in Africa and South America – where it is relatively easy to buy a club in order to have a number of players to transfer worldwide and, in this way, to maximise their profit for the investment made.

All national member associations should now make sure that all transactions involving intermediaries' activities are duly reported and, above all, monitored.

In that regard, member associations could have a look to the practice enacted by the Italian FIGC. This federation obliges clubs and players to inform each year about any amount of money paid to intermediary. It would be useful, to make progress in this area, that FIGC may publish yearly the monitoring's results of the implementation of that obligation.

Pursuant to Circular no. 1519 of 11 January 2016, FIFA imposed on member associations the application of article 6 of the Intermediary Regulations - yearly reporting to the international federation - in view of enhancing transparency. Since only few of the member associations have implemented correctly that provision, FIFA is expected to react to this extended and systematic infringement of FIFA regulations.

Moreover FIFA should guarantee a proper follow up of monitoring the implementation of those minimum standards /requirements by the associations in conformity to the relevant provisions of art. 10, paragraphs 1 and 2 of the same regulations.

The content of art.10. paragraph 2 is very clear and, therefore, it is nearly impossible to avoid its cogent force: the FIFA Disciplinary Committee is competent to deal with those associations that do not comply with the intermediary regulations and may take all "appropriate measures" in compliance with art. 10, paragraph 1.

In the light of the above, the observer might wonder how and when the FIFA Disciplinary Committee will take the occasion to deal with the above cases. It could be upon the initiative of one or two member associations, which are correctly applying the regulations and therefore are unhappy that other associations are not complying with those same rules. Or, maybe, FIFA shall collect the amplest evidence against certain associations before starting the relevant disciplinary procedures.

6. Disciplinary Sanctions

Art. 9, paragraph 1, FIFA regulations, sets forth that "Associations are responsible for the imposition of sanctions on any party under their jurisdiction that violates the provisions of these regulations, their statutes or regulations".

FIFA has relinquished disciplinary authority over intermediaries. This responsibility is shifted to the national federations, which have to dictate the relevant rules, design the sanctions spectrum and monitor the measures' application.

Therefore, the national associations autonomously make decisions on the content of the measures, about enacting and administering their sanctioning system and adopting the relevant monitoring policies.

"The national associations are obliged to publish and to inform FIFA of any disciplinary sanctions taken against the intermediary" (Art. 9, paragraph 2). FIFA will then decide whether to extend the sanction on a worldwide basis in accordance with its Disciplinary Code.

The first question is whether intermediaries may be considered "parties under the jurisdiction" of the national associations.

The reply to this question may be positive since the intermediary becomes assimilated to the association's members through the registration act.

So, following their registration, the intermediaries are subject to the jurisdiction of the associations with which they register the transactions. In fact, by signing the Intermediary Declaration, the intermediary agrees to be bound by the Statutes and Regulations of the Associations and Confederations, as well as the Statutes and Regulations of FIFA.

The national associations shall have jurisdiction over issuing sanctions for any violation of its internal regulations or statutes.

The second question concerns the objective difficulty of intermediaries becoming aware, if not experts, of every national statute to comply with. Obviously, such a thorough knowledge is indispensable in order to correctly apply those rules to avoid any infringements, even the *bona fide* ones. But the reality is that, in most cases, the intermediaries are not familiar with the national associations' rules.

However, it shall be noted that, as the competence to impose sanctions lies on national associations even for international transactions, FIFA will have no control, nor be able to suggest any uniform practice or procedure, being only entitled to extend the sanctions on a worldwide basis.

In this matter, of great relevance is the scope and impact of art.1, paragraph 4 of FIFA regulations, which provides, as a matter of principle, a safeguard clause in favour of the validity of the acts carried on with the intermediaries' assistance.

Indeed, in line with this provision, the main transfer and employment agreements remain fully valid, notwithstanding any breach of the implementing national rules, governing the accessory, contractual relationship of the players/clubs and intermediaries as well as the prescribed administrative acts concerning the deposits of the declaration and the representation contract.

Such a safeguard of the main transaction is of paramount significance in order to clearly and definitely determine the limits of the national associations' sanctioning power, when they monitor the intermediaries' accessory activities.

Art.1, paragraph 4, refers only to violations committed by the intermediaries and makes no mention of those who interact with them (i.e. clubs and players).

In fact, clubs and players are subject to the national disciplinary bodies whenever they infringe the relevant regulations.

In some countries, like **Italy**, the intermediary is subject to the special commission for intermediaries set up by the national federation, though he remains an outsider of the Italian sport system.

For clubs, players and intermediaries, **Argentina, Brazil, Bulgaria, Colombia, Cyprus, Czech Republic, Denmark, England, France, Germany, Japan, Mexico, Poland, Qatar, Romania, Russia, Saudi Arabia, Ukraine, Uruguay** and **UAE**, make a general reference to sanctions, namely warning, fine, reprimand, suspension, revocation of the registration.

In **Denmark**, sanctions can be quite stark, since players can be banned from a match, clubs can be temporary banned from concluding and extending players' contracts, making national and international transfers, and they can also be excluded from national and international tournaments. **Austria** chooses a similar strict way by imposing detailed provisions in its disciplinary regulations, which should apply to breaches of its regulations regarding intermediaries.

Colombia, Croatia, Germany, Greece, Italy, Serbia, Slovak Republic, Switzerland and **Turkey** make a general reference to the disciplinary code of the federation, and the violations are sanctioned as a "misconduct" or as "unsporting behaviour". On the contrary, **Portugal** provides very detailed provisions on infringements and the relevant sanctions.

Sanctions only against intermediaries are issued in **Poland**.

In **Spain**, intermediaries can have their "license" cancelled in case of non-fulfilment of their obligations under the national associations' regulations, and, even if as of today there are not disciplinary rules regarding intermediaries, it is established that there can be sanctions.

In **Cyprus** the national dispute resolution chamber has also the authority to award compensation to the damaged party.

At first sight, it would seem that intermediaries would not face any sanctions in these events, as from the wording of the FIFA provisions it seems that the responsibilities lie only on clubs and players.

FIFA manifestly intended to avoid confusion among players and clubs in case of incorrect or improper use of the relevant rules both at national and international level.

FIFA therefore keeps safe and valid the relevant agreements, so the substantial interests of the stakeholders are not at risk of vanishing or being jeopardised while any other sanction remains available to national associations to

punish the intermediaries or other stakeholders' wrongdoings. Nevertheless, despite the FIFA provision, in **Croatia** an irregularity in the registration of the intermediaries can lead to the invalidation of the contract of employment of the player.

As a general remark, in order to gain credibility, the national associations and their disciplinary bodies should aim to a somewhat juridical uniformity getting some common minimum standards in order to sanction intermediaries, clubs and players in the same way for the same kind of offence. The fact that FIFA no longer legislates in this matter, should not exclude the stringent need for a more effective coordination of the national associations on the monitoring and sanctioning the intermediaries' activities. Maybe, promoted by FIFA, the member associations might draft and negotiate a proposal of convention to dictate those common minimum standards in order to deal with intermediaries, clubs and player' sanctions.

7. Dispute Resolution

The new FIFA rules do not carve out any specific role or simple function for any of its jurisdictional bodies in disputes settlements concerning economic aspects of the intermediaries' job. Again, the national associations have the entire responsibility to enact their own dispute resolution system in accordance with the relevant, ordinary, national legislation.

In **Belgium, Denmark, France, Germany, Greece, Mexico** ordinary labour courts are competent over intermediaries' employment related disputes while ordinary civil courts have jurisdiction on civil and commercial issues. In **Portugal**, civil courts are also competent on contract of intermediaries related to their services. Nevertheless, in all these countries, the parties may agree to wave off those courts in order to defer a dispute to an Arbitration Body.

On the contrary, **Croatia** bars the national Court of Arbitration for Sport from dealing with economic disputes between clubs/players and intermediaries.

In **Argentina, Cyprus, Italy** and **Japan** the parties shall submit their complaints either to the sports relevant bodies or to ordinary courts.

In the **English FA**, disputes on intermediaries' activities can be brought before an FA arbitral tribunal. However, apart from these arbitral proceedings, the parties are submitted to the exclusive jurisdiction of the ordinary courts for any matter that does not fall within the arbitral tribunal's jurisdiction.

In **Brazil, Bulgaria, Colombia, Mexico, The Netherlands, Poland, Romania, Saudi Arabia, Slovak Republic, Turkey** and **UAE**, each federal arbitration body or internal dispute resolution committee is competent to judge also on economic and contractual matters.

In **Russia**, intermediaries' disputes do not fall under the jurisdiction of the federal dispute resolution chamber. They are obliged to go before the sports arbitration court as established by the Olympic Committee in order to settle their disputes.

Switzerland refers the relevant parties directly to the Court of Arbitration for Sport for any contractual matter.

In **Serbia** and **Uruguay**, ordinary courts are the only competent body to settle intermediaries, players, and clubs' disputes.

In **Spain**, the Jurisdictional Committee of the national association (RFEF) is the body in charge of hearing exclusively on economic issues. Any other contractual related matter shall be submitted to Ordinary Courts.

Qatar confers the competence on any contractual disputes, including those affecting the intermediaries to any judicial body established or recognised by the Association.

In light of the above inconsistent scenario, it is very likely that in principle, intermediaries, involved in international transactions, shall try to avoid bringing cases before any national arbitration body or ordinary court. Instead, they might well prefer to bring disputes before the international Court of Arbitration for Sport (CAS) but also before another agreed ad hoc arbitration panel, thanks to the jurisdiction clauses, bilaterally agreed and inserted by the parties in the relevant contract. Though, it ought to be reminded here, the enforcement of the arbitration awards still remains problematic in some countries.

8. Conclusion

Though most associations have implemented the FIFA rules quite fairly, the review shows some discrepancies and a lax interpretation as well as application at national level.

Progress has been certainly made in terms of transparency but there are still many non-registered intermediaries and transactions' fees.

The transfer of the bulk of the administrative burden from FIFA to the national associations raises problems in terms of governance due to the variable capacity of each national association to handle the regulations' implementation and monitoring challenges.

Moreover, FIFA set its standards at a minimum level in order to give the possibility to all national associations to easily implement them.

Naturally, such a variety in conjunction with the lack of a unique, internationally agreed and recognized forum for the settlement of contractual disputes, surely complicate the international transactions and the sensitive tasks of the intermediaries and the FIFA stakeholders.

Under this new, multi-national regulatory system, intermediaries acting at global level are now obliged to apply for different modalities of registration, often in a language which they do not understand, and to pay fees for each jurisdiction they pass through, and as it was already the case in the past under the previous regime, they must follow national rules that they do not master.

They all should rely on good, local lawyers, who know the relevant national sports rules.

Moreover, in some countries like **Azerbaijan**, **Czech Republic** (for non EU citizens), **Mexico** and **Turkey**, the foreign intermediaries are not entitled to

be registered since the national associations have enacted *de facto* discriminatory rules, by obliging them to take the domicile in the host country or to call for the services of a local intermediary.

The concept of impeccable reputation is too vague. It is grossly interpreted and the declarations are not systematically checked.

Intermediaries are no longer required to pass an exam (in **China** and in **France** is still requested) or to have an insurance policy, at least in most of the FIFA member associations.

Such a radical change compared to the previous regime has been severely criticised by the intermediaries' representatives because the cancellation of the exam would put at risk the credibility of the category. Moreover it does not provide any guarantee of professionalism for those aspirant intermediaries who may have the ambition but not the qualifications to carry out the highly complex transactions concerning players.

At the same time, it is also true that they are in the position to rectify this by self-regulating their profession.

In **the Netherlands**, there is an on-going debate on the opportunity to certify the association of intermediaries rather than each individual intermediary. This means creating a sort of corporation of professional intermediaries, which would be in charge of the rules to access to the profession and to redress the credibility issue.

The comparative analysis has also highlighted some best practices in **Denmark** where intermediaries are "certified" upon having met some professional requirements or in **Turkey** and in **China** where they are obliged to attend some seminars and training courses.

As already mentioned, the new regime has also increased the commitments and liability of both clubs and players. In fact, they are responsible for submitting the *Intermediary Declaration*. They have the onus to disclose any kind of remunerations given to intermediaries as well as to avoid that parts of transfer fees paid to intermediaries he burden to ensure that parts of payments to another club for a transfer are not paid to intermediaries. In other words, either the clubs take care also of the duties of the players or the latter are obliged to learn fast about how to correctly secure their rights, if they want to avoid overlooking binding rules and getting undesired sanctions.

However, the new multinational legal obligations put too much weight on the players and clubs, which operate in an international market and therefore are charged with too many administrative and contractual requirements. The situation for them may become so complicated that they may find unclear, ambiguous and therefore difficult to execute the relevant sports rules.

For instance, among other liabilities, players and clubs have to act with due diligence when engaging the intermediary. In other words, they have to make sure that the intermediary has signed a declaration that should prove his impeccable reputation, the absence of any conflict of interest and, more important, should

oblige him to accept the jurisdiction of the national association. In fact, they bear the legal consequences and they owe to guarantee the veracity of the intermediary declarations in order to meet the above pre-conditions.

There will be important challenges for clubs' and players' representative associations in terms of information and education of their members in order to get them acquainted with the FIFA and national regulations and contribute to their smooth and effective application.

After twenty months from the entry into force of the new regulations, there is growing consensus among the football stakeholders for further measures as suggested n the previous paragraphs.

The football industry is a highly globalised sector where legal issues should be more harmonised to give at least a minimum of overall consistency to the entire system for the sake of the players' and clubs' rights and expectations.

In this context the regional confederations and national associations should play a vital and active role in trying to harmonise not only the relevant rules but also the effective monitoring of proceedings and sanctions.

Notwithstanding the above, it is undeniable that the new system has met, at least partially, FIFA's foremost objective of increasing the level of transparency in the football world by targeting the number of transactions which still remain unregistered.

The adequate and timely enforcement of the FIFA regulations as well as the monitoring of the currently patchy application of these regulations by the national associations shall hopefully add more consistency and effectiveness to the new legal international framework as envisaged by FIFA itself.

SECTION IV

ANNEXES

ANNEXE I

THE FIFA REGULATIONS ON WORKING WITH INTERMEDIARIES

Definition of an intermediary

A natural or legal person who, for a fee or free of charge, represents players and/ or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement.

NB: Terms referring to natural persons are applicable to both genders as well as to legal persons. Any term in the singular applies to the plural and vice-versa.

Preamble

FIFA bears the responsibility to constantly improve the game of football and to safeguard its worldwide integrity. In this context, one of FIFA's key objectives is to promote and safeguard considerably high ethical standards in the relations between clubs, players and third parties, and thus to live up to the requirements of good governance and financial responsibility principles.
More specifically, FIFA considers it essential to protect players and clubs from being involved in unethical and/or illegal practices and circumstances in the context of concluding employment contracts between players and clubs and of concluding transfer agreements. In the light of these considerations, and with the aim of properly addressing the changing realities of modernday relations between players and clubs as well as to enable proper control and transparency of player transfers, FIFA has enacted these regulations in accordance with article 4 of the Regulations Governing the Application of the FIFA Statutes. These regulations shall serve as minimum standards/ requirements that must be implemented by each association at national level, the latter having the possibility of further adding thereto.

1 Scope

1. These provisions are aimed at associations in relation to the engagement of the services of an intermediary by players and clubs to:

a) conclude an employment contract between a player and a club, or
b) conclude a transfer agreement between two clubs.

2. Associations are required to implement and enforce at least these minimum standards/requirements in accordance with the duties assigned in these regulations, subject to the mandatory laws and any other mandatory national legislative norms applicable to the associations. Associations shall draw up regulations that shall incorporate the principles established in these provisions.

3. The right of associations to go beyond these minimum standards/requirements is preserved.

4. These regulations and potential additional provisions going beyond these minimum standards/requirements implemented by the associations shall not affect the validity of the relevant employment contract and/or transfer agreement.

2 General principles

1. Players and clubs are entitled to engage the services of intermediaries when concluding an employment contract and/or a transfer agreement.

2. In the selection and engaging process of intermediaries, players and clubs shall act with due diligence. In this context, due diligence means that players and clubs shall use reasonable endeavours to ensure that the intermediaries sign the relevant Intermediary Declaration and the representation contract concluded between the parties.

3. Whenever an intermediary is involved in a transaction, he shall be registered pursuant to article 3 below.

4. The engagement of officials, as defined in point 11 of the Definitions section of the FIFA Statutes, as intermediaries by players and clubs is prohibited.

3 Registration of intermediaries

1. For the sake of transparency, each association is required to implement a registration system for intermediaries that has to be publicised in accordance with article 6 paragraph 3 below. Intermediaries must be registered in the relevant registration system every time they are individually involved in a specific transaction (cf. paragraphs 2 and 3 below).

2. Within the scope of the above-mentioned registration system, associations must require clubs and players who engage the services of an intermediary to submit at

least the Intermediary Declaration in accordance with annexes 1 and 2 of these regulations. Associations may request further information and/or documentation.

3. Following the conclusion of the relevant transaction, a player engaging the services of an intermediary within the scope of article 1 paragraph 1a) above must submit to the association of the club with which he signed his employment contract at least the Intermediary Declaration and any other documentation required by the association. In case of renegotiation of an employment contract, a player engaging the services of an intermediary must also provide the association of his current club with the same documentation.

4. Following the conclusion of the relevant transaction, a club engaging the services of an intermediary within the scope of article 1 paragraph 1b) above must submit to the association of the club with which the player in question is to be registered at least the Intermediary Declaration and any other documentation required by the association. If the releasing club engaged the services of an intermediary, that club shall also submit a copy of the Intermediary Declaration to its association.

5. The aforementioned notification by players and clubs must be made each time any activity within the scope of article 1 paragraph 1 of these regulations takes place.

4 Requisites for registration

1. In addition to the information provided to the relevant association by the player or the club under article 3 above, and before the relevant intermediary can be registered, the association concerned will at least have to be satisfied that the intermediary involved has an impeccable reputation.

2. If the intermediary concerned is a legal person, the association responsible for registering the transaction will also have to be satisfied that the individuals representing the legal entity within the scope of the transaction in question have an impeccable reputation.

3. Associations must also be satisfied that in carrying out his activities, the intermediary contracted by a club and/or a player has no contractual relationship with leagues, associations, confederations or FIFA that could lead to a potential conflict of interest. Intermediaries are precluded from implying, directly or indirectly, that such a contractual relationship with leagues, associations, confederations or FIFA exists in connection with their activities.

4. Associations are considered to have complied with their obligations under paragraphs 1 to 3 above if they obtained a duly signed Intermediary Declaration as per annexes 1 or 2 of these Regulations from the intermediary concerned.

5. The representation contract that the intermediary concludes with a player and/or a club (cf. article 5 below) must be deposited with the association when the registration of the intermediary takes place.

5 Representation contract

1. For the sake of clarity, clubs and players shall specify in the relevant representation contract the nature of the legal relationship they have with their intermediaries, for example, whether the intermediary's activities constitute a service, a consultancy within the scope of article 1 paragraph 1 of these regulations, a job placement or any other legal relationship.

2. The main points of the legal relationship entered into between a player and/or club and an intermediary shall be recorded in writing prior to the intermediary commencing his activities. The representation contract must contain the following minimum details: the names of the parties, the scope of services, the duration of the legal relationship, the remuneration due to the intermediary, the general terms of payment, the date of conclusion, the termination provisions and the signatures of the parties. If the player is a minor, the player's legal guardian(s) shall also sign the representation contract in compliance with the national law of the country in which the player is domiciled.

6 Disclosure and publication

1. Players and/or clubs are required to disclose to their respective association (cf. article 3 paragraphs 2 and 3) the full details of any and all agreed remunerations or payments of whatsoever nature that they have made or that are to be made to an intermediary. In addition, players and/or clubs shall, upon request, with the exception of the representation contract, the disclosure of which is mandatory under article 4 paragraph 5 above, disclose to the competent bodies of the leagues, associations, confederations and FIFA, all contracts, agreements and records with intermediaries in connection with activities in relation to these provisions, for the purpose of their investigations. Players and/or clubs shall in particular reach agreements with the intermediaries to ensure that there are no obstacles to the disclosure of the above-mentioned information and documents.

2. All above-mentioned contracts shall be attached to the transfer agreement or the employment contract, as the case may be, for the purpose of registration of the player. Clubs or players shall ensure that any transfer agreement or employment contract concluded with the services of an intermediary bears the name and signature of such intermediary. In the event that a player and/or a club have not used the services of an intermediary in their negotiations, the pertinent documentation lodged within the scope of the respective transaction shall contain a specific disclosure of this fact.

3. Associations shall make publicly available at the end of March of every calendar year, for example on their official website, the names of all intermediaries they have registered as well as the single transactions in which they were involved. In addition, associations shall also publish the total amount of all remunerations or payments actually made to intermediaries by their registered players and by each of their affiliated clubs. The figures to be published are the consolidated total figure for all players and the individual clubs' consolidated total figure.

4. Associations may also make available to their registered players and affiliated clubs any information relating to transactions that have been found to be in breach of these provisions that is of relevance for the pertinent irregularities.

7 Payments to intermediaries

1. The amount of remuneration due to an intermediary who has been engaged to act on a player's behalf shall be calculated on the basis of the player's basic gross income for the entire duration of the contract.

2. Clubs that engage the services of an intermediary shall remunerate him by payment of a lump sum agreed prior to the conclusion of the relevant transaction. If agreed, such a payment may be made in instalments.

3. While taking into account the relevant national regulations and any mandatory provisions of national and international laws, and as a recommendation, players and clubs may adopt the following benchmarks:
a) The total amount of remuneration per transaction due to intermediaries who have been engaged to act on a player's behalf should not exceed three per cent (3%) of the player's basic gross income for the entire duration of the relevant employment contract.
b) The total amount of remuneration per transaction due to intermediaries who have been engaged to act on a club's behalf in order to conclude an employment contract with a player should not exceed three per cent (3%) of the player's eventual basic gross income for the entire duration of the relevant employment contract.
c) The total amount of remuneration per transaction due to intermediaries who have been engaged to act on a club's behalf in order to conclude a transfer agreement should not exceed three per cent (3%) of the eventual transfer fee paid in connection with the relevant transfer of the player.

4. Clubs shall ensure that payments to be made by one club to another club in connection with a transfer, such as transfer compensation, training compensation or solidarity contributions, are not paid to intermediaries and that the payment is not made by intermediaries. This includes, but is not limited to, owning any interest

in any transfer compensation or future transfer value of a player. The assignment of claims is also prohibited.

5. Subject to article 7 paragraph 6 and article 8 below, any payment for the services of an intermediary shall be made exclusively by the client of the intermediary to the intermediary.

6. After the conclusion of the relevant transaction and subject to the club's agreement, the player may give his written consent for the club to pay the intermediary on his behalf. The payment made on behalf of the player shall be in accordance with the terms of payment agreed between the player and the intermediary.

7. Officials, as defined in point 11 of the Definitions section of the FIFA Statutes, are prohibited from receiving any payment from an intermediary of all or part of the fees paid to that intermediary in a transaction. Any official who contravenes the above shall be subject to disciplinary sanctions.

8. Players and/or clubs that engage the services of an intermediary when negotiating an employment contract and/or a transfer agreement are prohibited from making any payments to such intermediary if the player concerned is a minor, as defined in point 11 of the Definitions section of the Regulations on the Status and Transfer of Players.

8 Conflicts of interest

1. Prior to engaging the services of an intermediary, players and/or clubs shall use reasonable endeavours to ensure that no conflicts of interest exist or are likely to exist either for the players and/or clubs or for the intermediaries.

2. No conflict of interest would be deemed to exist if the intermediary discloses in writing any actual or potential conflict of interest he might have with one of the other parties involved in the matter, in relation to a transaction, representation contract or shared interests, and if he obtains the express written consent of all the other parties involved prior to the start of the relevant negotiations.

3. If a player and a club wish to engage the services of the same intermediary within the scope of the same transaction under the conditions established in paragraph 2 above, the player and the club concerned shall give their express written consent prior to the start of the relevant negotiations, and shall confirm in writing which party (player and/or club) will remunerate the intermediary. The parties shall inform the relevant association of any such agreement and accordingly submit all the aforementioned written documents within the registration process (cf. articles 3 and 4 above).

9 Sanctions

1. Associations are responsible for the imposition of sanctions on any party under their jurisdiction that violates the provisions of these Regulations, their statutes or regulations.

2. Associations are obliged to publish accordingly and to inform FIFA of any disciplinary sanctions taken against any intermediary. The FIFA Disciplinary Committee will then decide on the extension of the sanction to have worldwide effect in accordance with the FIFA Disciplinary Code.

10 Enforcement of associations' obligations

1. FIFA shall monitor the proper implementation of these minimum standards/ requirements by the associations and may take appropriate measures if the relevant principles are not complied with.

2. The FIFA Disciplinary Committee shall be competent to deal with such matters in accordance with the FIFA Disciplinary Code.

11 Transitional measures

1. These provisions, which were approved by the FIFA Executive Committee on 21 March 2014, supersede the Players' Agents Regulations last amended on 29 October 2007 and come into force on 1 April 2015.

2. With the coming into force of these provisions, the previous licensing system shall be abandoned and all existing licences will lose validity with immediate effect and shall be returned to the associations that issued them.

Zurich, 21 March 2014

For the FIFA Executive Committee

President:	Secretary General:
Joseph S. Blatter	Jérôme Valcke

Annexe 1 - Intermediary Declaration for natural persons

First name(s):
Surname(s):
Date of birth:
Nationality/nationalities:
Full permanent address (incl. phone/fax and e-mail):

I,

_____

(First name(s), surnames(s) of intermediary)

HEREBY DECLARE THE FOLLOWING:

1. I pledge to respect and comply with any mandatory provisions of applicable national and international laws, including in particular those relating to job placement when carrying out my activities as an intermediary. In addition, I agree to be bound by the statutes and regulations of associations and confederations, as well as by the Statutes and regulations of FIFA in the context of carrying out my activities as an intermediary.

2. I declare that I am currently not holding a position of official, as defined in point 11 of the Definitions section of the FIFA Statutes, nor will I hold such a position in the foreseeable future.

3. I declare that I have an impeccable reputation and in particular confirm that no criminal sentence has ever been imposed upon me for a financial or violent crime.

4. I declare that I have no contractual relationship with leagues, associations, confederations or FIFA that could lead to a potential conflict of interest.
In case of uncertainty, any relevant contract shall be disclosed. I also acknowledge that I am precluded from implying, directly or indirectly, that such a contractual relationship with leagues, associations, confederations or FIFA exists in connection with my activities as an intermediary.

5. I declare, pursuant to article 7 paragraph 4 of the FIFA Regulations on Working with Intermediaries, that I shall not accept any payment to be made by one club to another club in connection with a transfer, such as transfer compensation, training compensation or solidarity contributions.

6. I declare, pursuant to article 7 paragraph 8 of the FIFA Regulations on Working with Intermediaries, that I shall not accept any payment from any party if the player concerned is a minor, as defined in point 11 of the Definitions section of the Regulations on the Status and Transfer of Players.

7. I declare that I shall not take part in, either directly or indirectly, or otherwise be associated with, betting, gambling, lotteries and similar events or transactions connected with football matches. I acknowledge that I am forbidden from having stakes, either actively or passively, in companies, concerns, organisations, etc. that promote, broker, arrange or conduct such events or transactions.

8. I consent, pursuant to article 6 paragraph 1 of the FIFA Regulations on Working with Intermediaries, to the association obtaining full details of any payment of whatsoever nature made to me by a club or a player for my services as an intermediary.

9. I consent, pursuant to article 6 paragraph 1 of the FIFA Regulations on Working with Intermediaries, to the leagues, associations, confederations or FIFA obtaining, if necessary, for the purpose of their investigations, all contracts, agreements and records in connection with my activities as an intermediary. Equally, I consent to the aforementioned bodies also obtaining any other relevant documentation from any other party advising, facilitating or taking any active part in the negotiations for which I am responsible.

10. I consent, pursuant to article 6 paragraph 3 of the FIFA Regulations on Working with Intermediaries, to the association concerned holding and processing any data for the purpose of their publication.

11. I consent, pursuant to article 9 paragraph 2 of the FIFA Regulations on Working with Intermediaries, to the association concerned publishing details of any disciplinary sanctions taken against me and informing FIFA accordingly.

12. I am fully aware and agree that this declaration shall be made available to the members of the competent bodies of the association concerned.

13. Remarks and observations which may be of potential relevance:

_____

I make this declaration in good faith, the truth of which is based on the information and materials currently available to me, and agree that the association concerned shall be entitled to undertake such checks as may be necessary to verify the information contained in this declaration. I also acknowledge that, having submitted this declaration, in the event that any of the above-mentioned information changes, I must notify the association concerned immediately.

_____ _____

(Place and date) (Signature)

Annexe 2 - Intermediary Declaration for legal persons

Name of company (legal person/entity):
Address of company (incl. phone/fax, e-mail and website):

Hereinafter referred to as "the company"

First name(s) and surname(s) of the individual duly authorised to represent the aforementioned company (legal person/entity):

(NB: each individual acting on behalf of the company has to fill in a separate Intermediary Declaration)

I,

_____

(First name(s), surnames(s) of the individual representing the legal person/entity)

duly authorised to represent the company

HEREBY DECLARE THE FOLLOWING:

1. I declare that both the company I represent and that I myself shall respect any mandatory provisions of applicable national and international laws, including in particular those relating to job placement when carrying out activities as an intermediary. In addition, I declare that both the company I represent and that I myself agree to be bound by the statutes and regulations of associations and confederations, as well as by the Statutes and regulations of FIFA in the context of carrying out activities as an intermediary.

2. I declare that I am currently not holding a position of official, as defined in point 11 of the Definitions section of the FIFA Statutes, nor will I hold such a position in the foreseeable future.

3. I declare that I have an impeccable reputation and in particular confirm that no criminal sentence has ever been imposed upon me for a financial or violent crime.

4. I declare that neither the company I represent nor I myself have any contractual relationship with leagues, associations, confederations or FIFA that could lead to a potential conflict of interest. In case of uncertainty, any relevant contract shall be disclosed. I also acknowledge that the relevant company is precluded from implying, directly or indirectly, that such a contractual relationship with leagues, associations, confederations or FIFA exists in connection with its activities as intermediary.

5. I declare, pursuant to article 7 paragraph 4 of the FIFA Regulations on Working with Intermediaries, that neither the company I represent nor I shall accept any payment to be made by one club to another club in connection with a transfer, such as transfer compensation, training compensation or solidarity contributions.

6. I declare, pursuant to article 7 paragraph 8 of the FIFA Regulations on Working with Intermediaries, that neither the company I represent nor I shall accept any payment from any party if the player concerned is a minor, as defined in point 11 of the Definitions section of the Regulations on the Status and Transfer of Players.

7. I declare that neither the company I represent nor I shall take part in, either directly or indirectly, or otherwise be associated with, betting, gambling, lotteries and similar events or transactions connected with football matches. I acknowledge that both the company I represent and I myself are forbidden from having stakes, either actively or passively, in companies, concerns, organisations, etc. that promote, broker, arrange or conduct such events or transactions.

8. On behalf of the company I represent, I consent, pursuant to article 6 paragraph 1 of the FIFA Regulations on Working with Intermediaries, to the associations obtaining full details of any payment of whatsoever nature made to the company by a club or a player for its services as an intermediary.

9. On behalf of the company I represent, I consent, pursuant to article 6 paragraph 1 of the FIFA Regulations on Working with Intermediaries, to the leagues, associations, confederations or FIFA obtaining, if necessary, for the purpose of their investigations, all contracts, agreements and records in connection with the activities as an intermediary of the company. Equally, I consent to the aforementioned bodies also obtaining any other relevant documentation from any other party advising, facilitating or taking any active part in the negotiations for which the company I represent is responsible.

10. On behalf of the company I represent, I consent, pursuant to article 6 paragraph 3 of the FIFA Regulations on Working with Intermediaries, to the association concerned holding and processing any data for the purpose of their publication.

11. On behalf of the company I represent, I consent, pursuant to article 9 paragraph 2 of the FIFA Regulations on Working with Intermediaries, to the association concerned publishing and informing FIFA of any disciplinary sanctions taken against the company I represent.

12. I am fully aware and agree that this declaration shall be made available to the members of the competent bodies of the association concerned.

13. Remarks and observations which may be of potential relevance:

_____

I make this declaration in good faith, the truth of which is based on the information and materials currently available to me, and agree that the association concerned shall be entitled to undertake such checks as may be necessary to verify the information contained in this declaration. I also acknowledge that, having submitted this declaration, in the event that any of the above-mentioned information changes, I must notify the association concerned immediately.

_____ _____

(Place and date) (Signature)

ANNEXE II

FIFA CIRCULAR N° 1519 OF 11 JANUARY 2016

TO THE MEMBERS OF FIFA

Circular no. 1519

Zurich, 11 January 2016

Delegation of monitoring to FIFA TMS GmbH

Re.: FIFA Regulations on Working with Intermediaries - minimum standards for member associations

Dear Sir or Madam,

As you are aware, the FIFA Regulations on Working with Intermediaries came into force on 1 April 2015. As described in FIFA circular 1417, the Regulations on Working with Intermediaries (the "Intermediary Regulations"), require associations, among other things, to implement a registration system for intermediaries, requiring intermediaries to be registered by the member association for every individual transaction in which they are involved in (articles 3 and 4 of the Intermediary Regulations).

In accordance with article 6 of the Intermediary Regulations, and to enhance transparency, each member association is required to make publicly available on an annual basis (at the end March of every calendar year) the names of all intermediaries they have registered. The consolidated total figure of remuneration paid to intermediaries by all players registered within a member association and, separately, by each of its affiliated clubs must be published by each member association.

This Intermediary Report is first required to be published by 30 March 2016.

In accordance with article 10.1 of the Intermediary Regulations, FIFA shall monitor the proper implementation of these minimum standards/requirements by the associations and may take appropriate measures if the relevant principles are not complied with. Article 10.2 of the Intermediary Regulations stipulates that

the FIFA Disciplinary Committee ("the Committee") shall be competent to deal with such matters in accordance with the FIFA Disciplinary Code.

In order to perform its task, the Committee has analysed how to ensure a proper and efficient monitoring system.

In this context, the Committee recalled that the FIFA TMS GmbH has been monitoring transfer activity, including the involvement of intermediaries in the international transfer market, since 2010.

Each time an intermediary is involved in an international transfer, the club intermediary's name and commission and the player intermediary's name must be declared in the International Transfer Matching System, in accordance with article 4.2 of annexe 3 of the Regulations on the Status and Transfer of Players (the "Transfer Regulations").

In accordance with article 18.1 of the Transfer Regulations, if an intermediary is involved in the negotiation of a contract, he/she must be named in that contract. Both the employment contract and the transfer agreement established for the international transfer of a player must be uploaded into the International Transfer Matching System in accordance with article 8.2.1 of annexe 3 of the Transfer Regulations.

Taking into consideration all the foregoing, the FIFA Disciplinary Committee considers it appropriate to delegate its obligation in accordance with article 10 of the Intermediary Regulations with respect to monitoring of the minimum standards of member associations to the FIFA TMS GmbH Integrity and Compliance Department.

Consequently, the FIFA Disciplinary Committee tasks FIFA TMS Integrity and Compliance with monitoring the proper implementation of the minimum standard requirement by the associations in line with the Regulations on Working with Intermediaries and with providing detailed reports of the results of all the steps undertaken. The Committee will subsequently analyse the reports submitted and decide on any next steps to be taken in accordance with the FIFA Disciplinary Code.

Finally, the FIFA Disciplinary Committee urges all member associations to fully comply with all requests for information or documentation from FIFA TMS Integrity and Compliance.

Thank you for your close attention to the above.

Yours faithfully,

FEDERATION INTERNATIONALE
DE FOOTBALL ASSOCIATION

Markus Kattner
Acting Secretary General

cc: - FIFA Executive Committee
- Confederations

ANNEXE III

COMPARATIVE TABLE ON IMPLEMENTING MEASURES

Country	Registration	Remuneration from Club (C) or Player (P)	Remuneration Minors	Dispute settlement bodies	Dual representation
Argentina	Double registration: - per year USD 500 USD 1000 (first registration) - per transaction (no fee)	Freely agreed among the parties	No	The envisaged AFA Dispute Resolution Body has not been yet established. In any case, it is not competent whenever the parties go to ordinary courts.	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent
Austria	Registration per transaction No registration fee	Recommended 3% of the player's basic gross income for the contract's duration Recommended 3% of the transfer fee.	No	The ÖFB Committee for Intermediaries assigns disciplinary disputes to the responsible Supervisory Committee	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent
Azerbaijan	Registration - only for citizens of Azerbaijan - yearly license fee 1000 AZN (545 euros) - extension of license 500AZN	As for the P: 3% mandatory cap of the player's gross income for the contract's duration As for the C: 3% mandatory cap of gross income for the contract's duration or 3% of the transfer fee	No	AFFA Disciplinary Committee in first instance Disciplinary Chamber of the Arbitrator Tribunal of Appeals in second instance	
Belgium	Yearly registration fee: 500 euros	No cap, but recommended 3% of the total gross salary and transfer fee for the Flemish, Walloon, and Brussels Regions.	No	Belgian Court of Arbitration for Sport upon agreement among the parties Ordinary labour courts for employment related disputes Ordinary civil courts for civil and commercial issues	Yes

Country	Registration	Remuneration from Club (C) or Player (P)	Remuneration Minors	Dispute settlement bodies	Dual representation
Brazil	Yearly registration Fee: 500 euros	Recommended 3% of the player's basic gross income for the contract's duration Recommended 3% of the transfer fee. Lump sum admitted	No, if the minor is not a professional	CBF Dispute Resolutions Committee	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent
Bulgaria	Registration per year 250 BGN (approx. 127 euros)	As for the P: mandatory 7% cap of the gross yearly salary or the transfer fee. As for the C: No cap.	No	BFU Commission of football intermediaries in first instance Court of Arbitration at the Bulgarian Football Union in appeal	No
China	Yearly registration Fee: 500RMB (approx.70 euros) Bank guarantee: 200,000RMB for a Chinese applicant; 30,000 USD for a foreign applicant.	As for the P: 3% mandatory cap of the player's basic gross income for the contract's duration As for the C: 3% **mandatory** cap of the player's basic gross salary for the contract's duration or 3% of the transfer fee	Yes, but only if a player is between 16 to 18 years of age and he makes a living mainly from his football activities	CFA Arbitration Committee	No
Colombia	Double registration: A. For natural persons: five minimum salaries for the 2015 period. (986 euros) B. For legal entities: seven minimum wage salaries for the 2015 period (1380 euros)	- Recommended 3% of the player's basic gross income for the contract's duration -Recommended 3% of the transfer fee	No	Players' Status Committee of the Colombian Football	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent

Country	Registration	Remuneration from Club (C) or Player (P)	Remuneration Minors	Dispute settlement bodies	Dual representation
Croatia	Registration per transaction No fee	No specific provision on cap	No	CFF Committee for Working with Intermediaries for any dispute related to technical or procedural matters CFF Court of Arbitration has no jurisdiction on Intermediaries	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent
Cyprus	Registration per transaction Fee:100 euros per transaction	Mandatory cap of **3%** of the basic and total gross salary **3%** of the transfer fee	No	National Dispute Resolution Chamber or Civil Court	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent
Czech Republic	Registration per year 100,000 CZK (approx. 3700 EUR).	As for the P: No cap. Percentage of salary As of C: No cap, lump sum	Yes, if the minor is older than 16 years	FA Arbitration Body	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent
Denmark	Dual registration: First registration fee: 670 Euro (5.000 DKK)-Renewal fee each year: 402 Euro (3.000 DKK) Registration of representation contract: 201 Euro (1.500 DKK)	- Recommended 3% of the player's basic gross income for contract's duration - Recommended 3% of the transfer fee	No	DBU disciplinary bodies for disciplinary disputes Arbitration (upon agreement of the parties) for contractual disputes, otherwise jurisdiction of ordinary courts	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent

Country	Registration	Remuneration from Club (C) or Player (P)	Remuneration Minors	Dispute settlement bodies	Dual representation
England	Registration per year Fee: £500 + VAT Renewal fee: £250 (+ VAT)	As for the P: recommended 3% of the player's basic gross income for the contract's duration As for the C: recommended 3% of the player's basic gross income for the contract's duration or 3% of the transfer fee	No	Disputes involving intermediaries shall be resolved by arbitration Subject to the aforesaid arbitration stipulation, the parties are required to submit to the exclusive jurisdiction of the courts of England and Wales any matter which is not reserved to arbitration under the Rules of The FA.	Yes, if parties: - are informed of the full details of the proposed arrangements - are given a reasonable opportunity to take independent legal advice - have given their written consent
France	*License* for unlimited period Fee: 400 Euro *"License free establishment*" for EU/EEA citizens for unlimited period Fee: 200 Euro *"License free exercise"* for EU/EEA citizens For 1 year. No fee *Non-EU nationals : no license but only "convention de presentation"* [presentation agreement] with an agent holding the French licence	**10%** cap (shared if several agents) of the basic and total gross salary as established in the employment agreement **10%** cap (shared if several agents) of the transfer fee	No	A. Disciplinary disputes: First instance before the federal commission on sports agents. Appeals undergo a conciliation procedure before the CNOSF. Only afterwards they can be lodged before the Administrative Court. B. Employment and Economic Disputes: 1. Ordinary judge or 2. Sports or Ordinary Arbitration Panel, or Sole Arbitrator.	No, prohibited by ordinary law (Code du Sport)

Country	Registration	Remuneration from Club (C) or Player (P)	Remuneration Minors	Dispute settlement bodies	Dual representation
Germany	Dual registration: - Per year and -Per transaction Registration Fee is EUR 500	As for the P: **14%** cap of the first year's gross base salary As for the C: No cap	No, unless the P has a Licensed Player contract (Bundesliga 1 and 2)	A. Disciplinary disputes: DFB bodies. B. Contractual disputes: Civil courts or arbitration bodies upon the parties' agreement	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent
Greece	Registration per transaction	A maximum of 3% could be charged with an indication that the National Federation will raise it to around 10%.		No specific provisions. Civil courts or Arbitration bodies upon agreement of the parties	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent
Italy	Double registration: - per year (500 euros) - per transaction (150 euros)	Recommended 3% of the basic and total gross salary Recommended 3% of the transfer fee	No specific provision	1. Sports or Ordinary Arbitration Panels, or Sole Arbitrator, or 2. Ordinary Judge	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent
Japan	Double registration: - First registration 100,000 JPY (770 euros) - Annual Fee: 30, 000 JPY (230 euros) No Fee per individual transaction	Recommended 3% of the player's basic gross income for the entire contract's duration Recommended 3% of the transfer fee	No. It is even prohibited both to represent and to contact minors	1. Disciplinary matters: JFA Disciplinary Committee 2. Contractual matters: JFA Arbitration Committee, or Ordinary Court	No, even with written consent of the parties
Mexico	Per intermediary No registration fee, but exam fee	Recommended 3% of the annual gross income of the player or recommended 3% of the transfer fee.	No	1. Conciliation and Resolution Chamber of the FMF, or 2. Ordinary Judge	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent

Country	Registration	Remuneration from Club (C) or Player (P)	Remuneration Minors	Dispute settlement bodies	Dual representation
The Netherlands	Yearly Registration per intermediary. Fee: 450 euros, excl. 21% VAT)	As for the P: No cap: percentage on agreed basic gross annual salary (bonus excluded) As for the C: No cap: fixed amount upon agreement of the parties. If no agreement: annual fee, for the full term of the player contract, of **3%** of the basic gross annual salary	No	KNVB Arbitration Committee for contractual issues to the exclusion of civil courts KNVB disciplinary Committee for disciplinary issues	Yes, subject to conditions. P & C must give advanced written permission and specify who pays the fee. They also need to submit all the relevant documentation to the Federation.
Paraguay	Yearly registration per intermediary Fee: USD 2000 (1838 euros)	Mandatory 3% cap of transfer fee or gross annual salary although ordinary law sets the limit to 10 % for intermediaries in general.	No	Ordinary judges or Arbitration Panels	No, prohibited by ordinary law.
Poland	Yearly registration	Consistent with the FIFA regulations, recommended 3% of transfer fee or gross annual salary		PZPN Football Arbitration Court	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent
Portugal	Registration with the Federation and the League if club in league 1 and 2 Registration per transaction or alternatively per sports season Registration fee (per transaction or per season): 1,000 euros	Unless otherwise agreed among P & C, 5 % cap on player's gross income for the contract's duration or 5% of the transfer fee	No representation is allowed. Therefore no Remuneration	Conflict with P or C a) Arbitration if set contractually (voluntary arbitration), or b) Ordinary Judge. Conflict with PFF: After using up all available remedies within PFF, Portuguese Court of Arbitration for Sport (necessary arbitration)	No

Country	Registration	Remuneration from Club (C) or Player (P)	Remuneration Minors	Dispute settlement bodies	Dual representation
Qatar	Yearly registration Fee: QAR 5,000 (1260 EUR) per natural persons QAR 10,000 (2520 EUR) per legal entities	As for P & C: Recommended 3% of the Player's basic gross income for the contract's duration and 3 % of transfer fee	No	QFA established or recognized judicial bodies	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent
Romania	Yearly registration per intermediary Fee: 1,500 euros	Recommended 3% of the basic and total gross salary and 3% of the transfer value	No	FRF National Chamber of Litigation Settlement	Yes, if parties: - are informed of the full details of the proposed arrangements - are given a reasonable opportunity to take independent legal advice - have given their written consent
Russia	Per transaction No fee	3% mandatory Cap of transfer fee and gross salary of the employment contract	No	Sports Arbitration Court established by the "Sports Arbitration Chamber" (Russia) No appeal possible	No
Saudi Arabia	Dual registration: - Per intermediary, and per transaction - Annual fee 10,000 SAR (2450 euros)	A. As for the P: 3% Cap of the total monthly income of the contract's duration. B. As for the C: 3% cap of the total income of the player for the contract's duration	No	SAAF Dispute Resolution Chamber	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent

Country	Registration	Remuneration from Club (C) or Player (P)	Remuneration Minors	Dispute settlement bodies	Dual representation
Serbia	No registration fee	As for the P & C: 8% of the player's basic gross income for the contract's duration and 8 % of the transfer fee	No remuneration	Ordinary Courts.	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent
Slovak Republic	Registration per year Fee: 100 euros	3% recommended CAP of the gross basic remuneration of the player for the entire contract's duration 3% of the transfer fee	Remuneration is allowed if player is aged between 15 and 18 years	SFA Dispute Resolution Chamber	Yes, if: - conflict of interest is disclosed in advance, and - parties' written consent is obtained in advance
South Africa	Registration per transaction	Remuneration up to 10% of the Player's contract if upon agreement among the parties. Otherwise 3 % would apply.	No	SAFA Arbitration bodies according to disciplinary code	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent
Spain	Dual registration: - Per year Fee: 860 euros - per transaction	No specific provision on cap	No	Jurisdictional Committee only for economic-disputes	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent
Switzerland	Per transaction No fee	As for the P: 5% of the first year's gross base salary As for the C: No cap both in employment agreements and transfer agreements	No	Disciplinary matters: ASF Commission of Control and Discipline Contractual matters: Court of Arbitration for Sport – CAS	Yes, (although not specified in the ASF regulations) if both parties were fully aware of the intermediary's dual representation.
Turkey	Double registration: Per year and per transaction	Recommended 3% cap but parties can decide otherwise in accordance with ordinary law.	No. Explicit prohibition to sign a contract with a player under 15.	National Dispute Resolution Committee	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent

Country	Registration	Remuneration from Club (C) or Player (P)	Remuneration Minors	Dispute settlement bodies	Dual representation
Ukraine	Double registration -per transaction -per year: - *Permanent Intermediary* (no limitation in time) Exam fee: UAH 20.000 (720 euros) - *Temporary Intermediary* (only for a specific transaction) Fees vary from 1800 euros to 5400 euros depending on the category of the relevant Club	10% cap of the basic and total gross salary; 10% cap of the transfer value.	No	1.FFU Disciplinary Committee, FFU Appeal Committee, CAS (third instance); or 2. Direct reference to CAS (within ordinary arbitration proceedings) If intermediary has failed to register a transaction at the FFU or to obtain the relevant permission from the FFU, he is not able to refer any disputes to the FFU.	Yes, provided that the consent of both parties is given in advance and in writing
UAE	Double registration: Per year and per transaction Annual fee: 20, 000 AED (5000 euros)	Mandatory 3% cap of the basic and total gross salary Mandatory 3% cap of the transfer fee	No	UAEFA Players' Status & Transfer Committee (PSTC)	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent
Uruguay	Yearly registration Fee 1000 USD per natural person 2000 USD per legal entity	Recommended 3% of the player's basic gross income for the contract's duration Recommended 3% of the transfer fee	No	Ordinary judge	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent
USA	Initial registration fee of $400 USD, then an annual fee of $50 USD.	Consistent with the FIFA Regulations: recommended 3% cap	No	Mandatory arbitration by American Arbitration Association (AAA).	Yes, if: - conflict of interest is disclosed in advance, and - upon the parties' written consent

ANNEXE IV

LINKS TO THE NATIONAL REGULATIONS (visited on 30 November 2016)

Argentina	http://www.afa.org.ar/upload/reglamento/Bolet%C3%ADn%20Especial%205047%20-%20Reglamento%20sobre%20las%20Relaciones%20con%20los%20Intermediarios%20(4).pdf
Austria	http://www.oefb.at/_uploads/_elements/47896_OEFB-Reglement%20zur%20Arbeit%20mit%20Spielervermittlern%20gueltig%20ab%201.7.2016%20EF.pdf
Azerbaijan	http://www.affa.az/uploads/files/dir17415/dir870/dir43/dir2/8_0.php
Belgium	http://www.belgianfootball.be/fr/reglements (*French version*) http://www.belgianfootball.be/nl/bondsreglement (*Dutch version*)
Brazil	http://cdn.cbf.com.br/content/201603/20160314131514_0.pdf
Bulgaria	http://bfunion.bg/uploads/2016-04-22/Rules_on_the_Activity_of_Football_Agents.pdf
China	http://images.sport.org.cn/File/2016/06/17/0930462471.pdf
Colombia	http://fcf.com.co/index.php/la-federacion-inferior/intermediarios/187-reglamento-relaciones-con-intermediarios-2
Croatia	http://hns-cff.hr/files/documents/8872/Pravilnik%20o%20radu%20s%20posrednicima%20HNS.pdf
Cyprus	*Not published on the Federation's website.* *Available only on paper or in digital format only upon request to the Federation.*
Czech Republic	https://facr.fotbal.cz/uredni-deska-predpisy/63?category=1
Denmark	http://www.dbu.dk/~/media/files/dbu_broendby/turneringer/cirkulaerer/cirkulaere%20nr%20105_eng.pdf
England	http://www.thefa.com/football-rules-governance/policies/intermediaries/agent-regulations
France	https://www.fff.fr/common/bib_res/ressources/450000/5000/160719135241_reglement_des_agents_sportifs,_saison_2016-2017.pdf
Germany	http://www.dfb.de/verbandsservice/pinnwand/spielervermittlung/reglements
Greece	http://www.epo.gr/media/files/KATASTATIKO_KANONISMOI/KANONISMOI_JUNE_2016/Kanonismos_diamesolabiton_June_2016.pdf
Italy	http://www.figc.it/it/104/3818/Norme.shtml

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