



# **STUDY ON SPORTS AGENTS IN THE EUROPEAN UNION**

**A study commissioned by the European Commission  
(Directorate-General for Education and Culture)**

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## EXECUTIVE SUMMARY

### I. Overview of the study

In March 2007, the European Parliament invited the European Commission to assist football bodies and organisations in improving the regulations governing sports agents<sup>1</sup>. In July 2007, the European Commission indicated in its White Paper on Sport<sup>2</sup> that it would “*carry out an impact assessment to provide a clear overview of the activities of players’ agents in the EU and an evaluation of whether action at EU level is necessary, which will also analyse the different possible options*”. The European Commission’s terms of reference for this study confirm that the European Commission “*wants to have an analysis of the situation regarding sports agents in all the sports they deal with*”.

The aim of the study is therefore to examine the situation of sports agents in the European Union and to identify, analyse and describe the questions that their activities give rise to as well as the solutions that have already been provided by public and/or private actors, thus enabling the European Commission to assess – on the basis of the data collected, the problems identified and the analyses carried out – whether intervention is required and, if so, at what level and in what form.

The study develops, for the first time, a European outlook on the issue of sports agents. It covers the 27 Member States of the European Union and all the sports in which agents are currently active, while taking due account of the predominance of football.

The study is divided into four parts:

- Sports agents;
- The regulation of sports agents’ activities;
- Is there a need for a European regulatory framework?
- Summary and recommendations.

### II. Sports agents

Sports agents act, first and foremost, as intermediaries between sportspersons and sport clubs/organisers of sport events with a view to employing or hiring an athlete or sportsperson. They bring together the parties interested in concluding an agreement concerning the practice of a sport as a remunerated activity. Finding a job placement for a sportsperson is the central and specific role of sports agents. Sports agents may however engage in a broader range of activities, including the conclusion of different kinds of contracts on behalf of the sportsperson (image rights contracts, sponsoring contracts, advertising contracts, etc.) or managing the assets of the sportsperson. Sports agents have thus become essential partners of sportspersons and clubs/organisers of sport events, acting as a go-between and advisor for either side. The sports agent’s profession is inherent to the existing system for the employment and transfer of sportspersons, particularly in the case of team sports. Agents facilitate transactions between sport clubs/organisers of sport events and sportspersons. They are an integral part of the market: they enter into the equation of commercial success and of investments capable of leading to convincing results in sport.

The activities of sports agents are international, as regards both individual and team sports. This situation is strengthened by the internationalisation of professional sport, which has led to an increasing involvement of intermediaries, including foreign sports agents, in the recruitment of sportspersons.

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<sup>1</sup> Point 44 of the European Parliament’s Resolution of 29 March 2007 on the future of professional football in Europe (2006/2130(INI)).

<sup>2</sup> European Commission’s White Paper on Sport, 11 July 2007, COM(2007) 391 final.

The study has identified 32 sport disciplines in which sports agents are active. These are mainly disciplines with strong economic potential. Sports agents are active in at least 10 different sports in France, Germany, Italy, Spain, Sweden and the United Kingdom. As far as football is concerned, sports agents are active in all 27 Member States of the European Union.

Looking at the data collected, there are currently between 5,695 and 6,140 sports agents – including both official and unofficial agents in all the various sport disciplines considered in the study – operating on the territory of the European Union<sup>3</sup>. France, Germany, Italy, Spain and the United Kingdom account alone for close to 75% of the 3,600 officially listed agents in the EU. Football is by far the sport with the largest number of official sports agents, followed by rugby, basketball and athletics. These four sports account for 95% of the total number of official sports agents in Europe.

Furthermore, the number of candidates taking examinations to qualify as sports agents has generally increased in most sports where such examinations have been introduced. Depending on the sport and the EU Member State concerned, the examination pass rate among candidates for a sports agent licence ranges from 10% to 50%.

Sports agents are influential economic actors. The commissions earned by them on transfers of players in European football are estimated at EUR 200 million per year.

In general terms, it can be said that there are few representative bodies of sports agents and, furthermore, their degree of representativeness varies widely.

### **III. The regulation of sports agents' activities**

Looking at the overall picture, there are few legal texts designed specifically to regulate the activities of sports agents. Five EU countries (Bulgaria, France, Greece, Hungary and Portugal) and four international federations (FIBA, FIFA, IAAF and IRB) as well as a number of national federations have developed specific regulations for sports agents. The scope of these specific regulations varies considerably from one case to another.

On the other hand, most European countries have general regulations on private job placements, and these regulations also apply – in theory at least – to the placement of professional sportspersons or remunerated athletes and hence to the activities of sports agents. In most cases, these regulations provide for registration, licensing or authorisation procedures in order to be able to provide private placement services.

Certain general trends as well as differences can be discerned in the various regulations and types of regulation that govern the activities of sports agents (specific regulations, regulations on private placements, ordinary law, sport regulations). For example:

- While under certain regulations some form of permit is required to carry out sport placement activities (e.g. a licence, official recognition or simply registration), under other regulations such activities are not subject to any kind of permit. Furthermore, where a licence is required, exemptions are sometimes provided for.
- The requirements that must be fulfilled to obtain a permit (if needed) also vary considerably, ranging from simple registration to passing a licensing exam.
- The licence or permit is sometimes issued exclusively to natural persons and sometimes to legal persons as well as natural persons.

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<sup>3</sup> This is undoubtedly a conservative estimate, based as it is on an original exploratory study.

- The duration of the validity of the licence or permit also varies from one set of regulations to another, ranging from one year to an unlimited period of time.
- While most regulations stipulate that an agent may only act on behalf of one party to a transaction (prohibition against dual agency), they diverge with respect to assigning responsibility for paying the agent's commission.

Implementing any rules governing the activities of sports agents is a difficult proposition, not least because of the international nature of these activities, the diversity of national sporting and legislative cultures, the multiplicity of rules that may or may not apply, and the existence of different long-standing practices. Moreover, in the context of cross-border employment placement activities, sanctions are difficult or even impossible to monitor and enforce.

The activities of sports agents are therefore liable to give rise to ethical issues – or to find themselves at the centre of mechanisms that give rise to such issues. For example:

- Dual-agency or conflict-of-interests situations;
- The payment of secret commissions in connection with transfer deals;
- The economic exploitation of young footballers from third countries;
- Unregulated headhunting/recruitment among training clubs;
- Lack of transparency vis-à-vis the sportsperson during the negotiations between the sports agent and the club or the organiser of a sport event.

#### **IV. Is there a need for a European regulatory framework?**

The activities of sports agents are subject to the rules of the Treaty establishing the European Community (particularly as regards the freedom to provide services, the freedom of establishment, and competition) as well as to secondary legislation (including, in particular, the Directives on services<sup>4</sup> and recognition of professional qualifications<sup>5</sup>), especially where an agent wishes to work occasionally or establish himself or herself in a Member State other than that of which he is a national. As far as the international and Community dimension of sports agents' activities is concerned, a question arises as to whether or not the regulations applicable to sports agents constitute an obstacle to the exercise of their activities, particularly in their cross-border dimension.

In practice, the recognition of professional qualifications is not a decisive or problematic criterion for exercising the activities of a sports agent.

In the field of contract law, while it may be difficult to determine the legislation applicable to a sports agency contract when the contract includes "foreign origin elements", the laws of Member States and in some cases the Code of Sport-Related Arbitration will be sufficient to deal satisfactorily with the matters at issue.

In the field of competition, the Community judge<sup>6</sup> has ruled that the existence of private rules establishing the requirement of a licence to work as a sports agent may be compatible, under certain conditions, with the rules of Community competition law. Questions remain however concerning the

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<sup>4</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

<sup>5</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.

<sup>6</sup> CFI [Court of First Instance of the European Communities], 26 January 2005, Case T-193/02, *Piau v. Commission, FIFA*, judgment upheld by the ECJ, Order of the Court of 23 February 2006, Case C-171/05.

extent to which sport federations are legitimately entitled to regulate sports agents' activities in the absence of any instrument of empowerment or mandate granted by a public authority.

As regards the freedom to provide services and freedom of establishment of sports agents in the EU, as well as the freedom of movement of sports agents with employee status, it is apparent that national regulations requiring foreign sports agents to obtain a national licence do not constitute, in practice, an obstacle to the exercise of the profession in any of the countries concerned.

## **V. Main findings**

- There are significant differences between the regulations applicable to sports agents. On the other hand, however, it appears that exercising the profession does not entail any proven problems in terms of Community law.
- Steps should be taken to ensure that sport governance rules comply with competition law and are compatible with the freedom of establishment and the freedom to provide services.
- The absence of exemplary governance measures is a threat to the ethics and the reputation of sport.
- The sport movement, which has important self-regulatory powers, must establish credible and effective governance rules to protect fairness in sport, sportspersons and the ethics of sport.
- Any intervention aimed at regulating the activities of sports agents – and sport placement mechanisms in general – should be based on the following principles:
  - Complementarity (between the rules of sport federations and public policies).
  - Transparency (of financial flows in professional sport).
  - Simplicity (of the measures adopted).
  - Adaptability (to the peculiarities of each sport discipline).
  - Trust (in sports agents and actors of the sport movement).

## **VI. Main recommendations**

The rules adopted by sport federations are undoubtedly those which can best reflect the specificities of each sport, unlike government or Community regulations, which are necessarily more general in nature. The sport movement must continue to play the leading role in implementing the applicable regulations. It must, however, be supported in this role by public authorities, given the ethical and legal problems to which sport placement activities can give rise, particularly in their cross-border dimension. The European Union has a key role to play in changing behaviours, harmonising existing practices, promoting the best of them – and introducing regulations, if and when appropriate.

### 1. The role of governments: maintaining public order

Sport federations are not adequately equipped to combat and punish offences against public order. Therefore, governments must play a complementary role by supervising the measures implemented by national federations and imposing criminal penalties for offences against public order. This involves, for example, intensifying the audits and checks performed by tax, social welfare and labour inspectors in such areas as financial flows, work permits, social security registration, undeclared labour, working conditions, housing, etc.

## 2. The role of European institutions: structuring dialogue and coordinating action

The European Union has an important role to play in countering harmful trends, assisting and supporting actors in sport in their efforts to eradicate reprehensible practices, protecting sportspersons as well as sport events and competitions, ensuring fairness in sport, and preventing sport from losing its values and its social dimension.

European institutions can be instrumental in facilitating dialogue, for example by organising exchanges between national federations at European level, notably to promote the dissemination of good practices.

European institutions have a major role to play as coordinators and promoters, vis-à-vis the public authorities, the sport movement and sports agents, with a view to developing common standards and principles that can serve as a basis for the adoption of at least a minimum set of rules by sport federations and countries throughout Europe.

## 3. The role of actors of the sport movement: organising sport placement activities

In Europe, the regulation and organisation of sport is mainly left to the various sport federations. The European Council has recognised the role of sport bodies in organising and promoting their respective disciplines. This role is protected by all European Union institutions. The rules adopted by sport federations are no doubt those which can best take account of the specificities of each sport. The sport movement must continue to play the leading role in implementing regulations.

This study advocates a voluntary licensing system to join the profession, with an examination designed to ensure that successful candidates have the necessary knowledge of the legal, economic and social environment and the minimum qualifications required to practise the profession, provided that such a system does not hinder the free movement of sports agents within the European Union. Such a licensing system has the advantage that it creates a link between the bodies responsible for the organisation of sport at national level and the agents active in the sports concerned. It will institutionalise dialogue in this area.

Actors in sport at national, European and international levels have an essential role to play in organising sport placement activities in terms of dialogue, education and training, information, mutual help, establishment of ethical principles and control/enforcement of sanctions. To this end, actors in sport may, for example:

- Associate sports agents in drawing up the regulations governing their activities;
- Inform and advise sportspersons on the role of sports agents;
- Report any abuses and unlawful practices (as well as any sanctions imposed by sport bodies or public authorities) involving sportspersons, agents, clubs, organisers of sport events or federations;
- Establish binding codes of conduct drawn up jointly by sports agents, federations, clubs and sportsmen, particularly with the aim of preventing conflicts of interests;
- Establish a centralised financial system or “clearing house” for transfer deals (involving financial rewards or compensation) between two clubs or teams.

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## FOREWORD

The study on the situation of sports agents in Europe has been carried out for the European Commission (Directorate-General for Education and Culture). It is a première in Europe. Never before a state of play of the social, economic and legal situations of sports agents in Europe, neither of the questions that raise their activities, has been conducted. The objective of the study is to provide the European Commission with the necessary tools to judge the opportunity of an intervention concerning the question of sports agents and, if an intervention appears to be relevant, at what level and in what form it should take place.

The study has been originally written in French, and then translated into English.

The realisation of this study lasted 9 months from January to October 2009. It was conducted by KEA European Affairs, a Brussels based consultancy specialised in sport and creative industries. Its research department has carried out a wide range of national and European studies related to sport, creative industries, copyright, piracy or media.

To carry out this study, KEA has set up and led a consortium with the Centre de Droit et d'Economie du Sport (CDES) and the European Observatoire of Sport and Employment (EOSE). In addition Mr. Alexandre Husting assisted KEA in its tasks as an independent expert. At last, the European Olympic Committees EU Office contributed to the follow-up of the study and made the link with its members.

The CDES is a department of the Law and Economic Sciences Faculty of the University of Limoges. It is specialised in carrying out studies and research in sport law, economy and management, but also in providing legal advice and monitoring, as well as training and scientific publications.

EOSE is a European organisation based in Lyon. Specialised in European sport and employment policies, its objective is to serve as a source of knowledge in Europe in the fields of development, employment and qualifications in the sport sector. EOSE has been working in cooperation with the Laboratoire de Sociologie du Sport (LSS) based in Paris and related to the Institut National des Sports et de l'Education Physique (INSEP), Ms. Adriana Sekulovic, as well as with its European network.

The principal mission of the CDES was to describe the mechanisms regulating the sports agents' activity and the regulations adopted by the private and public actors, and to analyse the main questions related to the application of the existing regulations, competition and contract law.

The principal mission of EOSE was to establish a state of play of the sports agents' situation, socio-economic importance and representation in Europe, to collect data and information, and to analyse the main questions related to the protection of sportspersons and the recognition of professional qualifications.

The principal mission of KEA was to organise the whole research, the relations with the European Commission, the coordination with the members of the consortium, and finally to coordinate the various parts of the study. KEA was responsible for the drafting of the final report. Moreover, KEA analysed the main questions related to the transparency of financial flows and financial crime, the protection of minors, human trafficking, the freedom to provide services, the freedom of establishment in relation to sports agents within the European Union, and the freedom of movement of salaried sports agents. KEA also contributed to the analysis of the main questions related to the recognition of professional qualifications.

The various actors who have been consulted via questionnaire and/or interviews within the framework of this study are listed in appendix. We would like to thank them for their interest and their contributions, notably at international level.

Finally, we would like to thank the European Commission for having taken the initiative of this study which, for the first time, provides a state of play of the sports agents' situation in the European Union and of the questions raised by their activities.



## INTRODUCTION

This study focuses on the situation of sports agents in the European Union.

In March 2007, the European Parliament invited the European Commission to assist football bodies and organisations in improving the regulations governing sports agents<sup>7</sup>. In July 2007, the European Commission indicated in its White Paper on Sport<sup>8</sup> that it would “*carry out an impact assessment to provide a clear overview of the activities of players’ agents in the EU and an evaluation of whether action at EU level is necessary, which will also analyse the different possible options*”. The European Commission’s terms of reference for this study confirm that the European Commission “*wants to have an analysis of the situation regarding sports agents in all the sports they deal with*”.

The study’s terms of reference confirm that the European Commission “*wants to have an analysis of the situation regarding sports agents in all the sports they deal with*”.

Thus, the objective of this study is to propose an analysis of the situation regarding sports agents in the European Union and to identify, analyse and describe the problems posed by their activities, as well as the solutions already provided by public and/or private stakeholders, in order to enable the European Commission, on the basis of the data collected, the problems identified and the analyses conducted, to assess whether intervention is required, and if so, at what level and in what form.

The specific objectives of the study are as follows:

- To chart the current situation regarding sports agents in the European Union.
- To identify, analyse and describe the problems posed by sports agents’ activities.
- To identify the public and private stakeholders involved in regulating the activities of sports agents in the European Union.
- To identify the laws and regulations, whether public or private, applying to sports agents in the European Union.
- To assess the degree to which these laws and regulations, whether public or private, offer an adequate response to the problems posed by the activities of sports agents.

The study covers the 27 Member States of the European Union and all the sports in which agents are currently active, while taking due account of the predominance of football.

In the framework of this study, “sports agents” are defined as “*any natural or legal person occasionally or regularly engaging in one or more of the following activities in return for payment:*

- *Bringing together parties interested in concluding a contract relating to the performance of a sporting activity for remuneration;*
- *Concluding contracts such as image contracts, sponsorship contracts and advertising contracts for professional sportspersons;*
- *Managing a professional sportsperson’s assets”.*

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<sup>7</sup> Point 44 of the European Parliament’s Resolution of 29 March 2007 on the future of professional football in Europe (2006/2130(INI)).

<sup>8</sup> European Commission’s White Paper on Sport, 11 July 2007, COM(2007) 391 final.

The study is divided into four parts.

### **Part 1. Sports agents**

This part considers the sports agents' activities in socioeconomic terms. It provides insights into the presence of sports agents in Europe, their numbers and the volume of their economic activity. Lastly, it lists the sports agents' representative bodies in Europe.

### **Part 2. The regulation of sports agents' activities**

This part deals with the regulatory framework of the sports agents' activities in Europe provided by public authorities and sport federations. The reasons for regulating sports agents' activities are described in this part, which also portrays the different actors that have regulated the activity. The different types of applicable regulations are then described and synthesized, in particular according to their general trends and significant differences concerning the conditions of access and exercise of the activity. The different types of regulation are the following:

- The regulations enacted by international sport federations;
- State regulations;
- The regulations enacted by national sport federations.

Finally, the difficulty of implementing the regulatory framework for the activities of sports agents is analysed, in particular with regard to the ethical questions posed by these activities.

### **Part 3. Is there a need for a European regulatory framework?**

This part looks at whether a European legal framework is necessary for the activity of sports agents. After describing the current Community instruments which apply to the activities of sports agents, this part specifically analyses the extent to which regulations governing the activity of sports agents can constitute barriers to the agents' cross-border activity, in particular via an analysis of the problems that are posed with regard to the recognition of professional qualifications, contract law, competition, and the freedom to provide services, freedom of establishment and freedom of movement.

### **Part 4. Summary and recommendations**

Having made a synthesis of the main findings of the study, this part provides recommendations for possible measures to improve the functioning of the sports agents' activities and the system of sportspersons placement.

The research methodology and the analytical constraints it engenders are provided in appendix.

## **PART I. SPORTS AGENTS**

The sports agent's profession is generally not well-known. The media usually present sports agents as intermediaries brokering transfers of players between football clubs (for huge amounts of money, including substantial agents' fees) and sometimes involved in fraudulent practices in connection with such transfer deals. In addition to being often negative, this image of sports agents is reductive.

In this part of the study, as a means of conceptualising our object of analysis more clearly, we describe sports agents' activities qualitatively and quantitatively, examining various aspects such as the origin of the profession, the role of sport agents, the different kinds of sports agents that exist and the services provided by each. We also highlight the international aspect of sports agents' activities.

Furthermore, in order to gain a better understanding of the realities of the profession, we consider the socioeconomic weight of sports agents in Europe. Until now, no data had been gathered on the number of sports agents – broken down by country and sport – or on their business turnover, so that the socioeconomic weight of sports agents was unknown. This part provides insights into the presence of sports agents in the various sports/countries of the European Union, including their numbers and the socioeconomic importance of the profession.

Lastly, we conclude our overview of the practical dimension of the sports agent's profession by looking at sports agents' representative bodies.

### **CHAPTER 1. THE ACTIVITIES OF SPORTS AGENTS**

The emergence of the activities of sports agents is closely linked to the professionalisation of sport. Since their beginnings, these activities have expanded significantly: sports agents today have a variety of different social and professional profiles and offer a wide range of services. Thus, the definition of sports agent is fairly broad. Furthermore, because of the internationalisation of sport, sports agents' activities are often transnational in nature.

#### **I. Development of the activities of sports agents**

##### **1. Sports in the United States and the influence of sports agents**

The first modern sports agents<sup>9</sup> appeared in the United States. Already at the time of the Civil War (1861-1865), quasi-professional baseball tournaments were held across the country. These tournaments were organised by different kinds of intermediaries whose role was akin to that of modern sports agents. The presence of sports agents is closely linked to the progressive professionalisation of sport. At a time when the advocates of sporting amateurism still held sway in Europe, professional sports were occupying an increasingly prominent position in the United States. The major role of sports agents in the American sport landscape is basically explained by the fact that, in the United States, the

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<sup>9</sup> We use the term "modern" to highlight the historical discontinuity between the ancient, medieval and classical epochs, on the one hand, and the modern/contemporary world on the other. The first modern Olympic Games, held in 1896 under the auspices of Pierre de Coubertin, a strong believer in sporting amateurism, mark this break in the history of sport.

emergence and subsequent autonomisation and professionalisation of modern sports took place to a considerable extent independently of government.

As the various sport activities gradually became organised, the U.S. Government opted for not regarding sport as a State matter. Sport therefore was largely structured by the private sector. This situation enabled the various promoters and organisers of sport to enjoy very broad autonomy, which gave a number of individuals the opportunity to distinguish themselves by introducing what, for the times, were remarkable innovations. Albert G. Spalding was one such person<sup>10</sup>. A former baseball player turned promoter and then baseball agent, he organised, in 1888, the first world tour of an American all-stars baseball team. Thus, Spalding undoubtedly played a key role in the professionalisation of baseball. He convinced promising players to follow him around the world for a wage of 50 dollars a week (which was good money for amateur players who usually had to work for a living outside the baseball season).

Spalding also contributed to promoting baseball as a founding member of the National Baseball League. He helped to draw up the rules of the game. At the time, the participation of intermediaries in organising and managing sport competitions was not a contentious issue, given that, in the United States, the remuneration and hence the professionalisation of players was considered an effective tool to develop sports. In that period, sports agents did not represent players with a view to establishing a set of market rules, since the financial stakes were limited, but rather as part of a process of professionalisation which was to lead to recognition of sport as a form of work. The increasing inflow of financial capital, however, had the opposite effect. Yet it was not until the 1920s that agents started securing high revenues for their clients<sup>11</sup>.

Gradually, the nascent sport industry attracted all kinds of entrepreneurs who introduced, in the sport sector, negotiation strategies that had proved their usefulness in other sectors<sup>12</sup>. The increase in the financial inflows as a result of sponsorship and increased media coverage of sport partly explains the increase in the number of sports agents. The evolution of the legal status of athletes and players and of the regulations applicable to them also contributed to attracting different kinds of intermediaries to the sport sector. By making the transfer of players more flexible and recognising the need to professionalise sport, policymakers and sport authorities to some extent legitimised and endorsed the use of agents by sportspersons.

Nevertheless, the sporting community did not welcome the growing influence of sports agents<sup>13</sup>. Underlying the hostility shown by sport authorities and subsequently also by politicians was a rather complex reality. Apart from the confusion of roles which, according to sport authorities and

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<sup>10</sup> Lamster M., *Spalding's World Tour: The Epic Adventure That Took Baseball Around The Globe And Made It America's Game*, The Perseus Books Group, 2007.

<sup>11</sup> At the time, C.C. Pyle obtained 3,000 dollars per match from the Chicago Bears for his protégé Harold "Red" Grange, recently graduated from college. Tennis players Mary K. Brown and Suzanne Lenglen were also represented by Pyle. In 1926, Lenglen signed a contract worth 50,000 dollars with Pyle, thus becoming the first-ever female professional tennis player.

<sup>12</sup> Thus, for example, famous Hollywood producer and film agent J. William Hayes used the so-called "hold-out" technique to obtain, for players Don Drysdale and Sandy Koufax, a three-year contract with the Los Angeles Dodgers worth 167,000 dollars per year. The hold-out technique, still used frequently today, consists in stopping the player from playing for his/her team until an agreement has been reached between the negotiating parties. In order to have all the advantages on his side, Hayes had persuaded Drysdale and Koufax to sign an agreement with Paramount Pictures to act in a film in the event that the Dodgers failed to meet his demands concerning the two players' contracts.

<sup>13</sup> Already in the 1960s, some actors in sport were complaining about agents' activities. Don Klosterman, who at the time led the Houston Oilers, the first champions of the American Football League, stated in 1966: "*We spend 200,000 dollars a year to identify new talents, so why wait for ill-informed agents to tell us the worth of a player? They are just parasites looking for easy money.*"

policymakers, characterised the activities of sports agents, the conflicts opposing the two groups quickly became conflicts of interests. Sport authorities regarded the autonomy and the business dynamics enjoyed by agents as a threat to their own interests. These conflicts were not only financial but very soon also became ethical in nature, foreshadowing the typical tug-of-war between club managers and agents.

Legislative measures aimed at regulating the sports agent's profession were first introduced in the 1990s. Focusing mainly on protecting university athletes, these regulations generally establish that agents must be registered with a competent authority and have a licence issued by the same. At the beginning of 2000, fewer than 30 American States had introduced legislation regulating the activities of sports agents, but by August of that year the Uniform Athlete Agents Act – applicable to all the States of the Union – had been passed. The main aim of this law was to harmonise the regulations in force in different States, a move which – according to the federal legislator – would help to significantly limit abuses in this area.

European agents have tried to import into the sport markets in which they operate the strategies, tactics and techniques successfully applied by their American counterparts in the United States. This is particularly true in the case of certain professional sports, including tennis, football and basketball.

## **2. The professionalisation of sportspersons and sports agents**

The professionalisation of sport in Europe had its real beginnings in the second half of the 19<sup>th</sup> century. The first instances of professionalisation date back to 1876, in Sheffield, with J.J. Lang (The Wednesday) and Peter Andrews (Sheffield's Heeley Club). With the founding of the Football Association (FA) came the first strong opposition to professionalism. The FA hoped to stem the trend toward professionalism by making some concessions, including in particular the reimbursement of expenses for players taking part in FA Cup matches. In 1885, however, it finally decided to authorise professional football while at the same time underlining the need to define the new status of the game. Yet the FA decision was far from unanimous and the country found itself deeply divided: the North favoured professionalism, while the South, including London, wished to preserve the values of amateur sport. The North-South divide characterised British football for several decades<sup>14</sup>. Be this as it may, today the professionalisation of football in Europe is a "fait accompli".

Sports agents have been present in the world of football ever since the first competitions were organised and the first transfers of players took place. In the heyday of amateur football, agents had a fairly low profile and their role was limited to that of a good adviser who was asked to intervene in sensitive or difficult situations. In this context, we may speak of a process of professionalisation of the job of sports agent itself. The shift from a "job" to a "profession" implies a more rigorous definition and regulation of the role, duties and responsibilities of the individual doing the job in question. The role of sports agents became a "profession" at the same time as public authorities started considering this role as a specific set of activities. It was the social recognition of agents' activities which, in a sense, established the latter as a profession.

The usefulness of sports agents is based on the information asymmetry between individual clubs/organisers of sport events as well as between the latter and players/athletes. The emergence of sports agents is linked to the weaker position of players vis-à-vis clubs/organisers of sport events, given the latter's economic clout and tendency to maximise profitability. Agents were required to protect the

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<sup>14</sup> The clubs of the Midlands and the North created their own association, the Football League, mainly made up of professional clubs. In 1894, the southern clubs set up the Southern League, which brought together nine clubs, most of them amateur. A second division comprising seven clubs was also created.

interests of sportspersons. Furthermore, economic theory explains the existence of agents by the fact that clubs/organisers of sport events cannot readily gather all the information required to choose the right player, while – in the absence of agents – players would incur substantial information costs to determine the clubs/organisers of sport events who may wish to employ them and pay them for their services. The existence of sports agents thus goes hand in hand with the professionalisation of sport.

## **II. Different types of sports agents**

Based on their background and careers, we may distinguish five categories of sports agents<sup>15</sup>.

### **1. Agents who are former athletes or players**

The network of relations – as well as the experience and knowledge of the sport environment – which top sportspersons acquire by the end of their sporting career, are invaluable assets facilitating their transition to a new career as sports agents. The analysis of empirical data shows that the decision to become a sports agent is often linked to the end of someone's sporting career. Depending on how the latter comes to an end, a former sportsperson may decide to become a sports agent. Between the end of their sporting career and the beginning of a new job, sportspersons go through a transitional period during which they are particularly attentive to any employment opportunities that might arise, particularly through the network of connections they have built in the course of their career.

### **2. Agents who are influential and well-connected market participants**

Agents who are influential market participants are characterised primarily by the fact that they hold a more or less substantial share in the sport market. Because of their knowledge of the sport environment and their links with decision-makers in that environment, they are often essential participants in negotiations which might be difficult and which they can influence positively. Such sports agents are present in sports where the financial stakes are high and there are many challenges that need to be overcome, notably in tennis, football, boxing and motor sport. They rarely have a licence and they willingly describe themselves as “advisers” or “go-betweens”, in that their main role consists in putting in touch people who do not know each other personally but who may wish to enter into a contractual relations involving sportspersons. In general, influential market participants own a share in a segment of the sport market and this strengthens the legitimacy of their role, both in personal and professional terms. The empirical data show that this type of agent deals mainly with sponsorship or image-rights contracts and does not always receives a commission for the services rendered.

### **3. Casual agents**

The concept of “casual agent” refers to individuals who, without wishing to have a career as a sports agent, are occasionally led to play the role of an agent and are remunerated for this role. Casual agents seem to be present in most professional sports.

### **4. Agents who are coaches**

The “coach/agent” is a little-known category of agents. However, the empirical data show that, across all sports, there are many coaches who have played the role of a sports agent at one point or another, and

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<sup>15</sup> This typology has been derived from the interviews conducted and the responses to the questionnaires used in this study, as well as from the doctoral research carried out by Ms Adriana Sekulovic under the supervision of Jacques Defrance, at the Université Paris X Nanterre.

some have been remunerated for fulfilling this role. This type of sports agent is mainly present in football, boxing, athletics and so-called amateur Olympic sports, such as gymnastics and combat sports.

## **5. Agents who are relatives**

Most sport governing bodies that have regulated the sports agent's profession have allowed for the possibility of sportspersons calling on a member of their family to represent their interests. While it is true that this kind of mechanism was very widespread in professional sports in the past, today very few sportsperson choose to be represented by a sports agent with whom they have family ties.

Not all "professional" agents necessarily fall into one of the five categories described above. There are in fact individuals whose employment as sports agents is their only source of income and who are not former sportspersons or coaches. Others have chosen the profession as their sole livelihood without even setting up a network beforehand.

## **III. Services provided by sports agents**

Individual sports agents may fulfil a range of tasks and are in fact increasingly led to provide different kinds of services. It is therefore relatively difficult to provide a comprehensive list of activities or to precisely define the role of a sports agent as such. This role can include many different aspects (scouting for new talents, finding job placements for clients, analysing the market, assessing the value of sportspersons, etc.). We may nevertheless describe a range of typical services provided by sports agents in order to better grasp the nature of their profession.

### **1. Providing advice**

Agents who act as advisers or consultants seem to be present in all sports. Their main role is to guide the sportsperson in making the best choices at different stages in his/her career. Whether licensed or unlicensed, the "advisory agent" is knowledgeable about the world of sport and this is the basis of his legitimacy as an adviser in the eyes of the sportsperson. When he is not a sport executive or a relative, parent or coach of the sportsperson concerned, the advisory agent is often someone who has been recommended to the sportsperson by a fellow sportsperson. The sort of advice provided is mainly that required before signing a contract, when a sportsperson may have doubts about this or that aspect of the deal. Thus, many football players report that they rely on an adviser to "make the right decision". This kind of agent is also present in "tour-based" sports such as athletics, boxing, golf and tennis. Where the advisory agent is not the sportsperson's "official" agent, he provides the sportsperson with additional information which the "official" agent is unable to provide.

An advisory agent may also act on behalf of a club, for example to ensure that the lowest possible price is paid for a player.

### **2. Broking**

The concept of the agent as broker or go-between – i.e. the most frequent type of agent in professional sports – refers to the agent's role in the framework of a tripartite relationship (sportsperson-agent-club/organiser of a sport event). In this capacity, the agent acts as an intermediary between at least two contracting parties and represents the interests of one of them. The contract between the parties may

be in writing, in the form of an agency contract, or tacit, i.e. a contract the terms of which have been agreed essentially by spoken communication.

### **3. Organising and promoting sport competitions**

The “organising agent” is characterised by his involvement in the organisation of sport events or competitions. The sports agent is called upon to take part in the organisation of a sport event particularly when the agent in question has a wide network of connections. Some agents specialise in organising athletics meetings. Their privileged relations with top athletes enable them to set up major events. In boxing, the organising agent is not really responsible for the logistics of the matches. Rather, his role is to promote the event and ensure the boxers will be able to fight in the best possible conditions.

### **4. Managing the player's image and communication**

Agents acting as spokespersons for a player are akin to press officers. They basically manage the sportsperson’s image. In sports where no transfers take place, sports agents spend most of their time managing the sportsperson’s image. This role is also very common in sports in which transfers are more or less frequent.

### **5. Managing the player’s assets**

In addition to helping to manage the career of the sportsperson concerned, a sports agent sometimes manages the latter’s financial assets. Where trust is the basis of the relationship between the sportsperson and the agent, this kind of mechanism is possible. In general terms, the sportsperson asks the agent to assist him in preparing his retirement from sport and investing his assets wisely. Some sportspersons do not hesitate to enter into partnerships with their agents and to invest in deals suggested by the latter.

### **6. Providing legal advice**

Given that agent fees can be very steep, a sportsperson may prefer to hire the services of a lawyer to negotiate an employment contract. The use of lawyers to represent one’s interests is common in all sports. Some sportspersons report that they prefer to work with a lawyer, whose qualifications and skills provide a certain assurance of legitimacy. Sportspersons also stress the importance of the (according to them) strong ethical principles of lawyers who, unlike sports agents, are very infrequently exposed to situations in which they simultaneously represent the interest of the sportsperson and those of the club or organiser of the sport event.

In deciding to call on the services of a sports agent, sportspersons take into account the type of agent and type of services he provides.

For example, according to some sportspersons, entrusting the management of their career to a major sport management firm enables them to benefit from a wide range of services which a less influential, “independent” agent would be unable to provide. The expertise offered by those firms – particularly in terms of optimising the image of the sportsperson and negotiating sponsorship contracts – is apparently decisive in determining the choice made by some sportspersons, particularly when more than one-third of their income comes from advertising or sponsorship contracts (and hence it is important for them to “cultivate” their image, which can bring in substantial additional revenues).



In football and motor sports, other criteria applied by sportspersons in choosing their agent include “trust” and “reputation”. This applies in particular to football players who, according to their statements, select their agent on the basis of the trust that develops between the two sides and do not hesitate to sever all links with the agent as soon as trust is undermined or broken. This partly explains the relatively high proportion of football players – in comparison with other sports – who entrust the management of their career to a member of their family. The “reputation” of an agent seems to be just as decisive when choosing an agent and in most cases the sportsperson consults his fellow sportspersons before committing to an agent. As far as motor sports are concerned, drivers/riders generally wish to work with people who are strongly integrated in their sporting environment.

#### **IV. Defining sports agents**

As previously mentioned, defining sports agents’ activities poses some difficulties since, in practice, sports agents may act on behalf of different market participants to whom they provide different kinds of services. While they mostly act on behalf of sportspersons, in certain sports they may also offer their services to clubs, coaches and/or organisers of sport events.

The core of sports agents’ activities consists in finding employment for sportspersons with clubs (in the case of team sports) or organisers of sport events (in the case of individual sports). However, sports agents frequently offer other services, particularly when they work for sportspersons (e.g. management of image rights, asset management consultancy, legal and fiscal advice, etc.).

Furthermore, as detailed later on, the existing public and private regulations applicable to sports agents are far from providing comprehensive definitions of the sports agent’s profession.

Taking into account the above considerations, a sports agent may be defined as any natural or legal person occasionally or regularly engaging in one or more of the following activities in return for payment:

- Bringing together parties interested in concluding a contract relating to the performance of a sporting activity for remuneration;
- Negotiating and concluding different kinds of contracts on behalf of a professional sportsperson, such as image rights contracts, sponsoring contracts, advertising contracts, etc.;
- Managing the assets of a professional sportsperson.

Acting as an intermediary with a view to concluding a contract is the most typical role of a sports agent.

#### **V. An eminently international activity**

No information or data exist on the migratory flows of sports agents. However, the international mobility of professional sportspersons is an established fact. Furthermore, almost all professional sportspersons call on the services of an agent to find employment in clubs and sport events. Thus, the migratory flows of sports agents largely reflect the basic trends apparent in the mobility of sportspersons.

The notion of cross-border flows of sportspersons/players is particularly relevant to sports for which there is a player transfer market (football, rugby, basketball, etc.) but it also applies to individual sports where sports agents may have to travel from one country to another to broker and negotiate contracts for their clients with the organisers of sports events (athletics, golf, tennis etc.). Sports agents therefore frequently carry out their activities in other countries than their country of residence.

In the case of “tour-based” individual sports, the sportspersons regularly travel to many other countries in the course of the year in order to take part in sport competitions. Their agents find placements for

them in sport events in exchange for a commission. To mention one example of this kind of international mobility, in 2009 there were a total of 66 ATP World Tour tournaments<sup>16</sup> in which tennis professionals took part. Of these 66 tournaments, 26 were held on the territory of the EU in 10 different Member States (Austria, France, Germany, Italy, Netherlands, Portugal, Romania, Spain, Sweden and the United Kingdom). Agents may also secure sportspersons' participation in other tournaments held in different countries (for example, Wrocław, Athens or Sofia, where Challenger Series tournaments are held).

It is however in the case of team sports that the notion of “cross-border flows” of players is most relevant, in that players' transfers increasingly take place between sport clubs located in different countries. In the following two sections such migratory flows in football and rugby in particular are analysed.

### **1. Migratory flows of football players**

Played all over the world, football is characterised by a high media profile, huge financial stakes and a widespread wish, among professional players, to play for major European leagues and take part in major European championships. Football is therefore characterised by frequent transfers of players and substantial migratory flows.

A recent study by the Professional Football Players Observatory<sup>17</sup> (PFPO) showed that, of the 27 member countries of the European Union, only in four cases (Czech Republic, Finland, Ireland and Spain) does at least one team in the national league not employ an expatriate football player<sup>18</sup>. Conversely, the PFPO study indicates that in total “86 clubs have teams made up of a majority of expatriate players”. As regards, the countries of origin of these expatriate players, “Brazil is by far the country that exports the largest number of football players to Europe. Three other countries stand out: France, Argentina and Serbia. These four countries alone provide more than 30% of the total manpower imported by European clubs.”

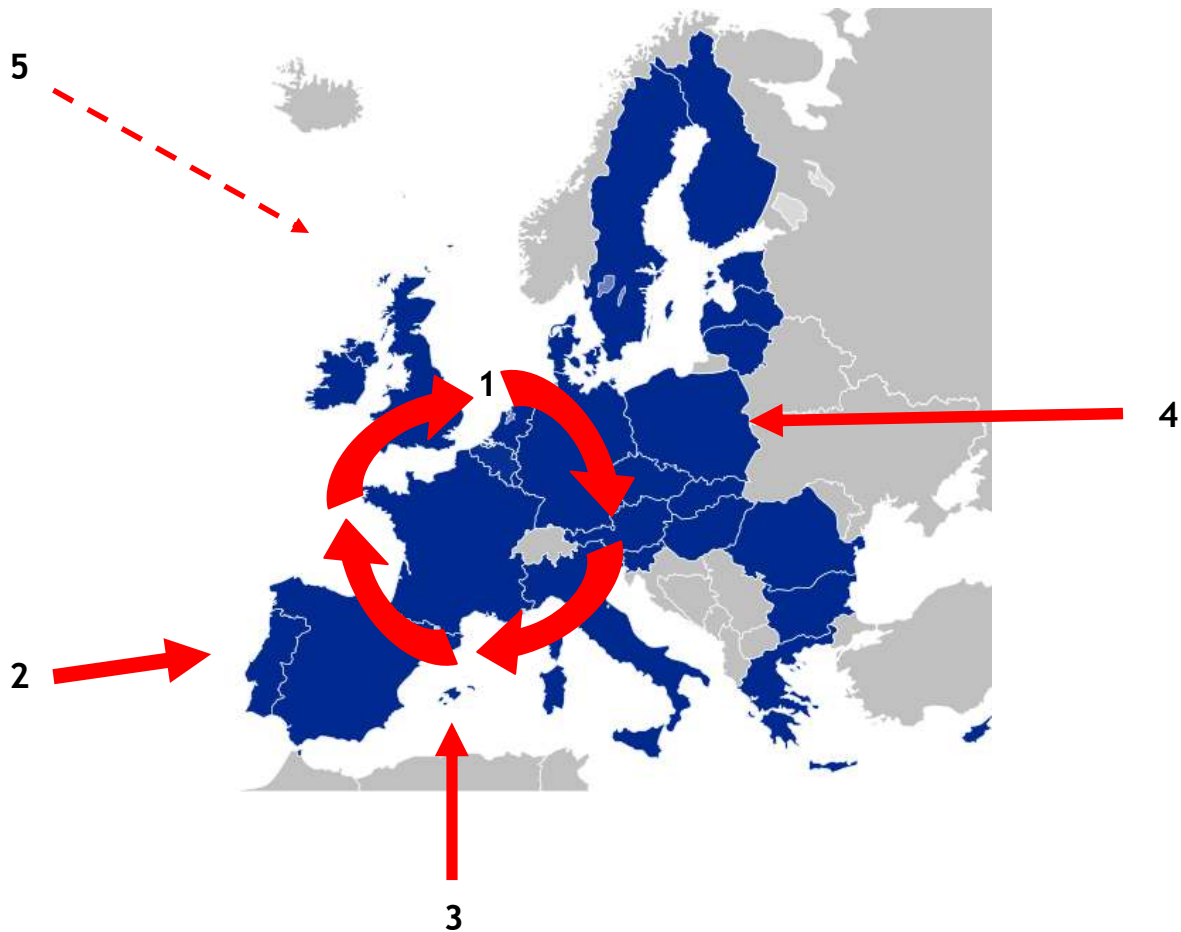
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<sup>16</sup> [www.atpworldtour.com](http://www.atpworldtour.com)

<sup>17</sup> *The Demographic Study: a close-up of European football*, The Professional Football Players Observatory, 2008.

<sup>18</sup> The term “expatriate” refers – in the above-mentioned survey – to football players playing outside the country where they grew up, which they left after being signed by an overseas club.

**Figure 1:** Main migratory flows of football players in Europe (Study on Sports Agents, 2009)



**1:** Inflow of players from within Europe. France is the largest European exporter of players (233), including 54 to Belgium and 44 to the UK. It is followed by Portugal (121), the Czech Republic (113), Sweden (94) and Germany (92).

**2:** Inflow of players from South America. This accounts for the largest number of expatriate football players in Europe, i.e. 808 professional players. Brazil alone accounts for 551 players and Argentina for 222.

**3:** Inflow of players from Africa. This adds up to 401 expatriate professional football players taking part in major European leagues. Nigeria is the most represented country, with 94 expatriate players, followed by Cameroon (87 players) and Ivory Coast (59 players). The African countries are almost exclusively sellers of players.

**4:** Inflow of players from Eastern European and Balkan countries outside the European Union. This adds up to 394 expatriate professional football players taking part in major European leagues, including 192 players of Serbian origin and 109 of Croatian origin.

**5:** The inflow of players from other countries (Australia, Canada, China, Japan, United States, etc.) accounts for only a small number of expatriate players (199 players)<sup>19</sup>.

<sup>19</sup> *The Demographic Study: a close-up of European football*, The Professional Football Players Observatory, 2008.

Apart from purely economic criteria, the migratory flows identified in Figure 1 can, undoubtedly, also be explained by the privileged relations that exist between the countries in question (in political, historical and linguistic terms). German clubs, for example, recruit many players from Eastern European border countries, while Italian and Spanish clubs recruit most of their foreign players in Latin America, and French clubs tend to recruit players from Africa.

## 2. Migratory flows of rugby players

Towards the end of the 20<sup>th</sup> century, South Africa, Australia and New Zealand emerged as the world's leading countries in rugby, thus replacing the European countries that had founded the sport. Today, a kind of hierarchical pyramid exists, with a group of countries that regularly lead the league (New Zealand, Australia, South Africa, France and the UK); a second group of countries that sometimes contend for the top places (Ireland, Scotland, Wales and Argentina); a third group, made up of "emerging rugby countries" (such as Italy, Samoa, Fiji and Tonga); and a fourth group of countries, which are lower in the pyramid (e.g. Canada, Japan, Romania and Georgia). Lastly, in many countries – such as Spain, Zimbabwe, the United States, Germany and the Czech Republic – rugby is very much a minority sport.

This hierarchical structure is also reflected in the geographical origin of sports talents. New Zealanders, Australians and South Africans are considered to be among the best players in the world. However, not all of the leading countries in rugby have top clubs. The top rugby nations are in the Southern Hemisphere (where nevertheless rugby is less important, in economic terms, than in Europe), but the top rugby clubs are found in the UK and France (which also have the most developed "rugby economies") – and as a result of this situation more and more rugby players are migrating north.

**Figure 2:** Main migratory flows of rugby players in Europe (Study on Sports Agents, 2009)



**1:** Inflow of players from within Europe. There is an internal flow of players within the five nations (today six) which historically have participated in the Five Nations Tournament, France and the UK being the main destinations. In recent years there has been a movement from the secondary or emerging countries (Italy, Romania) towards clubs in the “Five Nations”. A market is also developing in the direction of Italy.

**2:** Inflow of players from Argentina, whose top players have been arriving in France for some time now, while many other Argentinean players go to Italy for nationality reasons (there is in fact a huge community of Italian origin in Argentina).

**3:** Inflow of players from countries in the Southern Hemisphere, with the arrival in recent years of the best talents from South Africa, New Zealand, Australia and, more recently, Fiji.

Europe has gradually emerged as the core of the rugby economy, and this has led to increased migration of players within Europe itself and from other parts of the world to Europe. Rugby clubs are looking for talents abroad, while players are attracted by clubs promising higher financial rewards. The activities of sports agents are particularly relevant in this context.

Two types of agents operate in rugby: on the one hand, agents largely specialising in the internal markets of each country and, on the other hand, agents who have started positioning themselves in the international arena.

As far as Europe is concerned, agents are present in three transfer pathways:

- Within individual European countries;
- Between European countries (particularly towards countries participating in the Six Nations Tournament);
- Between, on the one hand, European countries (especially the “Six Nations”, including France and the UK in particular) and the Southern Hemisphere (the three leading “rugby countries”, plus Argentina and the islands).

**Main findings:**

- Sports agents’ activities are international, both in team sports and in individual sports.
- The main migratory flows in football are:
  - within Europe;
  - from South America;
  - from Africa;
  - from Eastern European and Balkan countries that are not members of the EU.
- The main migratory flows in rugby are:
  - within Europe;
  - from Argentina;
  - from countries in the Southern Hemisphere.

## CHAPTER 2. THE SOCIAL AND ECONOMIC WEIGHT OF SPORTS AGENTS

To define official agents on the basis of whether or not they hold a licence is only feasible in countries (and sport activities) where a licence system has been established. In the UK, for example, in view of the absence of government regulations or of a licence-issuing authority, tennis agents are not required to have a licence. However, they are registered as self-employed workers and declare their income, so their activities are known to, and recognised by, the government authorities.

To avoid a reductive definition, the category “official agents” – as used in this study – includes any agent who exercises the profession legally and in a recognised way, whether under a licence, permit or authorisation, or who is registered as a self-employed person (or as a business) and complies with all the relevant national laws and regulations. Conversely, the category “unofficial agents” comprises all sports agents who exercise the profession without any kind of licence or authorisation and who are not registered with, or known to, the national public authorities or sport authorities.

### Actors on the fringes of the profession

Some exceptions concerning various sports and countries complicate this distinction. In fact, certain regulations established by national sport federations – e.g. in the case of football – enable a lawyer or a member of the player’s family to act as an agent without however requiring a specific licence or recognition procedure. In other words, such persons act as sports agents but are very rarely mentioned in the data collected and therefore are not easily identifiable. As a result, arriving at accurate estimates is a tricky job.

Finally, two other factors further complicate the picture: the intervention of foreign or even of non-EU agents in specific job placement activities and the presence of agents’ collaborators, notably in football. These two types of situation are difficult to assess, given that there are no actors or institutions that have information available on this aspect. Thus, it has to be recognised that the size of the sports agent population is difficult to determine with any degree of precision. Thus the data obtained from federations and public institutions very often underestimate the real numbers.

The data provided in the following sections must therefore be viewed with caution. However, they do provide a broad picture of the extent of the activities of sports agents in Europe, enabling us to perform an initial estimate of the presence of sports agents – including their numbers and the economic weight of their activities – in different EU countries and sports.

### I. The presence of sports agents in Europe

In order to survey the situation as comprehensively as possible, moving beyond any limiting assumptions and not omitting any sport, we used the official sports list published by the International Olympic Committee (IOC)<sup>20</sup>. It includes all the summer and winter Olympic sports as well as non-Olympic sports that are recognised internationally.

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<sup>20</sup> A list of sports is available on the IOC website: [www.olympic.org](http://www.olympic.org) (June 2009).

**Table 1:** Presence of sports agents in different sports in the EU (Study on Sports Agents, 2009)

Sport Activities (IOC)		Presence of sports agents Yes = ✓ / No = X N/A = Data not available	“Official” sports agents *	“Unofficial” sports agents**
Summer Olympic Sports	Aquatics <sup>21</sup>	✓	✓	✓
	Archery	X		
	Athletics	✓	✓	✓
	Badminton <sup>22</sup>	✓	✓	✓
	Baseball	N/A		
	Basketball	✓	✓	✓
	Boxing	✓	✓	✓
	Canoeing/Kayaking <sup>23</sup>	✓		✓
	Cycling	✓	✓	✓
	Equestrian Activities	✓	N/A	N/A
	Fencing	✓		✓
	Football	✓	✓	✓
	Gymnastics	✓	✓	✓
	Handball	✓	✓	✓
	Hockey	✓	✓	✓
	Judo <sup>24</sup>	✓	N/A	✓
	Modern pentathlon	X		
	Rowing	✓	N/A	N/A
	Shooting	X		
	Softball	X		
	Table tennis	N/A		
	Taekwondo <sup>25</sup>	✓		✓
	Tennis	✓	✓	✓
Triathlon	✓		✓	
Sailing <sup>26</sup>	✓	✓	N/A	
Volleyball	✓	✓	✓	
Weightlifting	✓		✓	
Wrestling <sup>27</sup>	✓	N/A	✓	

<sup>21</sup> Aquatics includes swimming, springboard and platform diving, lifesaving, synchronised swimming and water polo.

<sup>22</sup> The European badminton federation (Badminton Europe) reports that there are no agents, whereas the German national federation mentions two agents.

<sup>23</sup> Several kayakists indicated that they used PR/communication agents after winning medals in the Olympic Games or major championships. The same applies to fencing and weightlifting.

<sup>24</sup> The International Judo Federation reports that there are no agents, but some interviewed judokas indicated that they did make use of an agent.

<sup>25</sup> Existence of unofficial agents who manage communication and image rights vis-à-vis corporate partners (in particular, they represent several Olympic champions).

<sup>26</sup> The International Sailing Federation reports that there are no agents but some national federations and interviewed sportspersons indicated that they did make use of agents.

<sup>27</sup> The International Wrestling Federation (FILA) reports that there are no agents but some interviewed fighters indicated that they did make use of an agent.

<b>Winter Olympic Sports</b>	Biathlon	N/A		
	Bobsleigh	X		
	Curling	X		
	Ice hockey	✓	✓	✓
	Luge	X		
	Skating	✓	✓	✓
	Skiing	✓	✓	✓
<b>Non-Olympic Sports (Internationally recognised)</b>	Aikido	X		
	Air sports	X		
	American Football	X		
	Bandy	X		
	Basque Pelota	✓		✓
	Bodybuilding	X		
	Bowling	X		
	Bowls/Pétanque	N/A		
	Bridge	X		
	Chess	X		
	Cricket	✓	✓	✓
	Cue sports (billiards)	X		
	Dance sport	X		
	Floorball	X		
	Golf	✓	✓	✓
	Karate	X		
	Korfball	X		
	Lifesaving	X		
	Motorboating	X		
	Motorcycling	✓	✓	✓
	Motor sport	✓	✓	✓
	Mountaineering and climbing	X		
	Netball	X		
	Orienteering	X		
	Polo	N/A		
	Racquetball	X		
	Real tennis (Jeu de paume)	X		
	Rollerskating	X		
	Rugby	✓	✓	✓
	Squash	N/A		
	Sumo	X		
	Surfing	✓	✓	✓
	Tug of war	X		
Underwater sports	X			
Water skiing	X			
Wushu	X			

\* “Official agents” exercise the profession legally and in a recognised way, whether under a licence, permit or authorisation or, where no licence system is in force, are registered as self-employed persons or as businesses and comply with all the relevant national laws and regulations.

\*\* “Unofficial agents” voluntarily exercise the profession without any kind of licence or authorisation and are not registered with, or known to, the national public authorities or sport authorities.



Sports agents are not present in all sport disciplines. They deal with 32 of the 71 sports considered<sup>28</sup>.

Sports agents in Europe exercise their profession mainly in sports with high economic potential, practised by professional sportspersons or which have a wide following. While they offer a variety of services and in some cases have very different professional profiles, sports agents in Europe – whether official or unofficial – deal mostly with the sports which generate the largest revenues (football, tennis, golf, basketball, athletics, boxing, motorsports, etc.) or which benefit from media coverage of the Olympic Games (of the 32 sports in which agents would operate, 25 are Olympic sports).

As regards the distinction between “official” and “unofficial” agents, both types are found in a large majority (21) of the sports with which agents deal (e.g. football, athletics, basketball, boxing, rugby, tennis, handball, etc.). Where official agents operate, unofficial agents almost invariably work in parallel with them, for reasons which are not necessarily fraudulent – for example, when the activity is still in the process of being regulated.

On the other hand, there are at least six sport disciplines which only unofficial agents deal with (canoeing/kayaking, fencing, weightlifting, taekwondo, triathlon and surfing). In most cases these are Olympic sports in which some athletes have a high media profile. With the exception of combat sports – where sometimes deals are concluded between different clubs, with agents actually playing the role of go-betweens – in most cases, as far as these sports are concerned, the term “agent” refers to a communication or image-management agent. Olympic champions, particularly if they are attractive to sponsors, soon require this type of agent to negotiate and manage different aspects relating to communication, as reported by several international sportspersons interviewed in the context of this study.

## **II. The presence of sports agents in the Member States of the European Union**

The extent to which sports agents are present in different EU Member States is partly determined by the economic and demographic situation in each of the latter (see Annexe 3). For a sport to develop as an economic activity, it is necessary to have a sizeable market in which to promote competition and interest in the sport. The size of a country plays an important role in this respect. But it is also necessary for the country to have a strong economy to finance sport events as entertainment. Thus, small countries often find it difficult to keep a sport alive. For example, despite having a high Gross Domestic Product (GDP), Luxembourg – owing to its relatively small population – has limited possibilities of developing a major professional championship in a team sport. The presence of sports agents is therefore closely linked to the existence of a sizeable market, as apparent from the following classification.

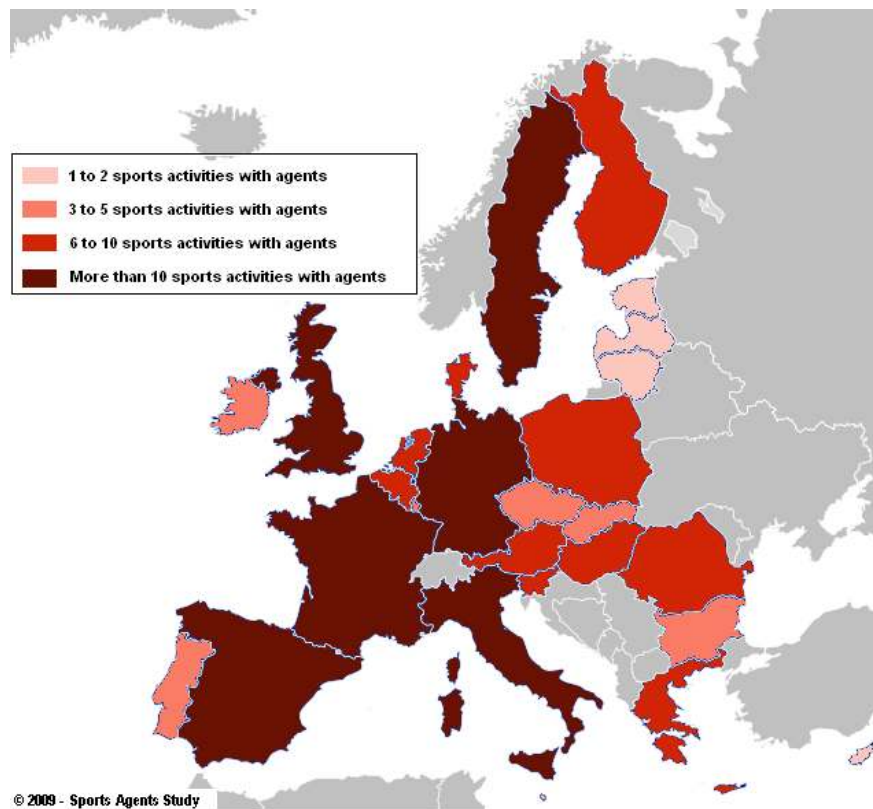
The Member States of the European Union can be classified into four groups (Figure 1):

- Member States where sports agents (whether official or unofficial) are present in **1 to 2 sport activities**. This category comprises 5 countries:
  - Cyprus (2)
  - Estonia (2)
  - Latvia (2)
  - Lithuania (2)
  - Malta (1)

<sup>28</sup> This finding must be qualified on the basis of the regulatory contexts and sport cultures found in different EU Member States. In 6 out of the 71 sports considered, no data were available to ascertain whether sports agents were present.

- Member States where sports agents (whether official or unofficial) are present in **3 to 5 sport activities**. This category comprises 6 countries:
  - Bulgaria (4)
  - Ireland (5)
  - Luxembourg (4)
  - Portugal (4)
  - Slovakia (5)
  
- Member States where sports agents (whether official or unofficial) are present in **6 to 10 sport activities**. This category comprises 10 countries:
  - Austria (8)
  - Belgium (6)
  - Denmark (6)
  - Finland (6)
  - Greece (7)
  - Hungary (6)
  - Netherlands (9)
  - Poland (6)
  - Romania (4)
  - Slovenia (6)
  
- Member States where sports agents (whether official or unofficial) are present in **more than 10 sport activities**. This category comprises 6 countries:
  - France (17)
  - Germany (16)
  - Italy (11)
  - Spain (14)
  - Sweden (11)
  - United Kingdom (13)

**Figure 3:** Map showing geographical density of sports in which sports agents operate in each of the 27 EU Member States



Tables 1 and 2 as well as Figure 3 highlight major differences between sports in terms of the presence of sports agents. Football is by far the most represented, since players' agents are active in all 27 EU Member States, with no exceptions. It is followed by athletics (21 countries), boxing and basketball (20 countries). A third group of sport activities comprises those (aquatics, cycling, handball, ice hockey, volleyball and tennis) for which sports agents are present in approximately one-fourth of EU Member States. Lastly, a fourth group of sport activities for which sports agents are present only in a small number of countries (6 or less) can be identified. In the case of cricket in the United Kingdom and hockey in the Netherlands, sports agents were only found in the two countries in question.

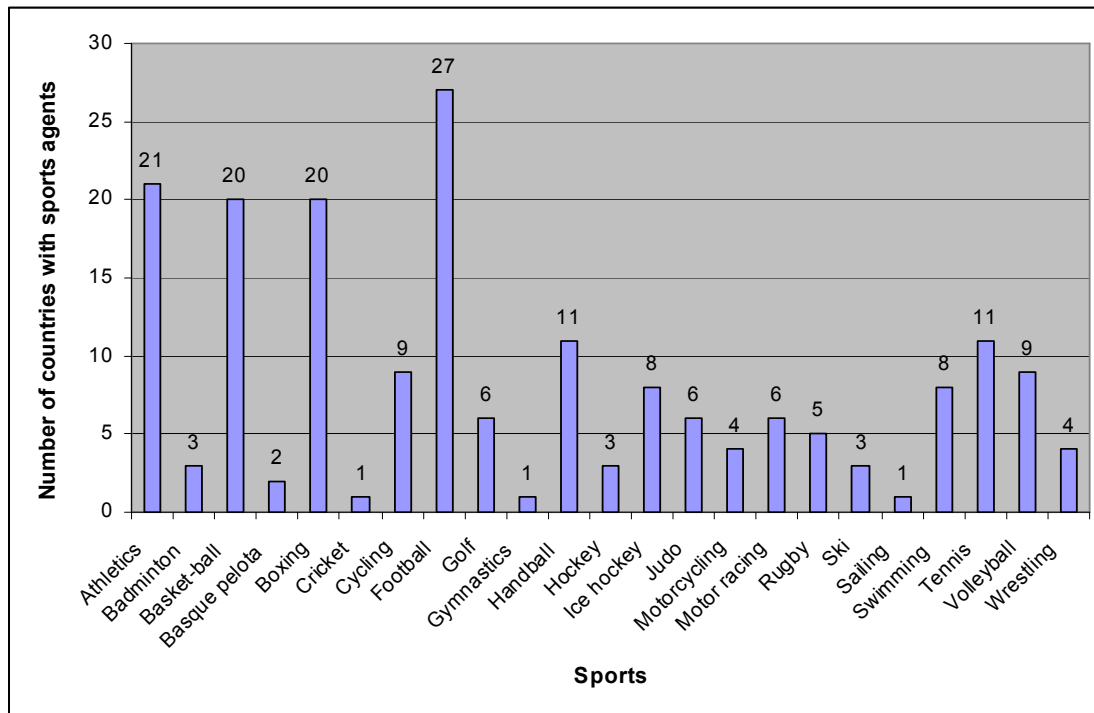
**Table 2:** Presence of sports agents in the 27 EU Member States (by sport) (Study on Sports Agents, 2009)<sup>29</sup>.

Sports	Aquatics	Equestrian sports*	Athletics	Rowing*	Badminton	Basketball	Boxing	Canoeing/Kayaking*	Cricket	Cycling	Fencing*	Football	Golf	Gymnastics	Weightlifting*	Handball	Hockey	Ice hockey	Judo	Wrestling	Motorcycling	Skating*	Basque pelota	Rugby	Skiing	Motor racing	Surfing*	Taekwondo*	Tennis	Triathlon*	Volleyball	Sailing	
Member States																																	
Austria																																	
Belgium																																	
Bulgaria																																	
Cyprus																																	
Czech Republic																																	
Denmark																																	
Estonia																																	
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Slovenia																																	
Spain																																	
Sweden																																	
United Kingdom																																	

\* The sportspersons interviewed in these disciplines indicated that they currently made use (or had made use in the past) of a communication agent to manage their image rights vis-à-vis corporate partners. It was not possible, however, to identify the countries concerned.

<sup>29</sup> The green-shaded boxes indicate that the presence of sports agents has been confirmed in the relevant sports and EU Member States. The blank boxes indicate that the information made available by partners has not made it possible to identify the countries where sports agents operate in the relevant sport. However, this does not imply that there are no sports agents in the countries concerned, but simply that no information was available on this aspect.

**Figure 4:** Number of EU Member States where sports agents operate (by sport) (Study on Sports Agents, 2009)



#### Main findings:

- Sports agents deal with 32 different sports, including 25 Olympic sports;
- These are mainly sports with high economic potential;
- In most of these 32 disciplines, both official and unofficial sports agents are present;
- There are at least 10 sports in which agents are present in Germany, Spain, France, Italy, the United Kingdom and Sweden;
- Football: sports agents operate in all EU Member States.

### III. Number of sports agents

The total number of official sports agents registered in EU countries (calculated on the basis of the information gathered from the data collection and the interviews) can be estimated at **approximately 3,600** (Table 3)<sup>30</sup>.

We also estimated the number of unofficial agents present in EU countries in order to obtain as accurate an estimate as possible of the actual number of agents, both official and unofficial, operating on the territory of the European Union. In fact, in view of the many unlicensed agents, as well as agents not listed by the federation, members of the family or lawyers acting as agents, etc., the estimated number of official agents undoubtedly falls short of reality.

<sup>30</sup> This number must be viewed with caution and is undoubtedly an underestimate since it only takes into account the recorded data available from the competent organisations.

**Table 3:** Estimated number of official sports agents in the EU (by sport) (Study on Sports Agents, 2009)<sup>31</sup>

EU Countries	Aquatics	Athletics	Badminton	Basketball	Boxing	Cricket	Cycling	Football	Golf	Gymnastics	Handball	Hockey	Ice hockey	Judo	Wrestling	Motorcycling	Basque pelota	Rugby	Skiing	Motor racing	Tennis	Volleyball	Sailing	TOTAL / COUNTRY
Austria		2					N/A	24			N/A		7			-	-	-	-		-	N/A	-	33
Belgium		1		2	N/A		N/A	59								-	-	-	-		-	-	-	62
Bulgaria				N/A	N/A			53						N/A	N/A	-	-	-	-		-	-	-	53
Cyprus				1				30								-	-	-	-		-	-	-	31
Czech Republic		4		3	N/A			29					N/A			-	-	-	-		-	-	-	36
Denmark		1	N/A		N/A			39			10		N/A			-	-	-	-		-	-	-	50
Estonia		3						1								-	-	-	-		-	-	-	4
Finland		2						7					31			-	-	-	N/A		-	5	-	45
France	N/A	13		71	1		9	253	8		10		N/A	N/A	N/A	1	N/A	53	-		15	3	3	440
Germany	N/A	13	2	10	N/A		N/A	259	N/A		19	N/A	N/A	N/A	N/A	-	-	-	-		N/A	N/A	-	303
Greece		N/A		23	N/A			56			N/A					-	-	-	-		3	N/A	-	82
Hungary	N/A	2		6	N/A			16			N/A			N/A		-	-	-	-		-	-	-	24
Ireland		2			N/A			20	N/A							-	-	8	-		-	-	-	30
Italy	N/A	6		22	N/A		5	563			N/A			N/A		N/A	-	12	-		4	6	-	618
Latvia				3				6								-	-	-	-		-	-	-	9
Lithuania				4				3								-	-	-	-		-	-	-	7
Luxembourg		1			N/A		N/A	20								-	-	-	-		-	-	-	21
Malta								4								-	-	-	-		-	-	-	4
Netherlands	N/A	12		7	N/A		N/A	111				N/A	N/A			-	-	-	-		-	N/A	-	130
Poland		1		4	N/A			53								N/A	-	-	-		-	-	-	58
Portugal		2		1	N/A			53								-	-	-	-		-	-	-	56
Romania				2	N/A			68			N/A					-	-	-	-		-	-	-	70
Slovakia		1		2	N/A			14								-	-	-	-		-	-	-	17
Slovenia		1		1	N/A			23			N/A					-	-	-	-		-	-	-	25
Spain	N/A	10		19	N/A		N/A	558	N/A		N/A	N/A				-	N/A	N/A	-		N/A	20	-	607
Sweden	N/A	5		1	N/A			31	N/A		N/A		29			N/A	-	-	-		-	3	-	69
United Kingdom	N/A	8	N/A	1	N/A	N/A	N/A	560	N/A	2						-	-	120	-		N/A	-	-	691
<b>TOTAL EU-27</b>	<b>0</b>	<b>90</b>	<b>2</b>	<b>183</b>	<b>1</b>	<b>0</b>	<b>14</b>	<b>2913</b>	<b>8</b>	<b>2</b>	<b>39</b>	<b>0</b>	<b>67</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>193</b>	<b>0</b>	<b>0</b>	<b>22</b>	<b>37</b>	<b>3</b>	<b>3575</b>

Explanatory note for Table 3:

N/A = presence of sports agents, but no data available

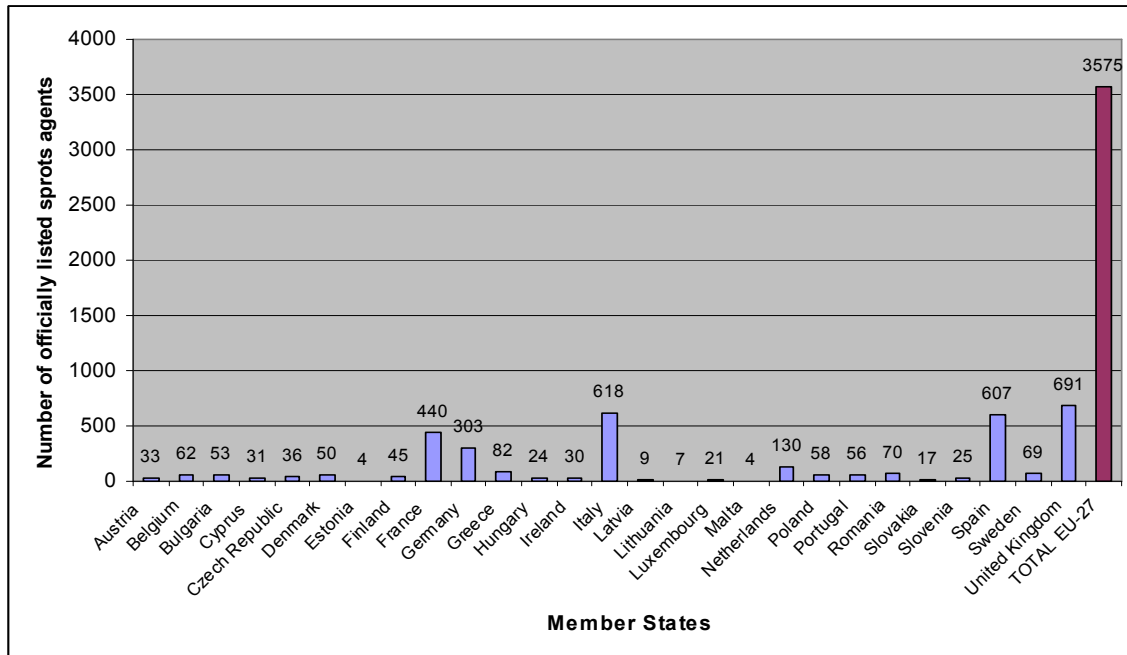
The blank boxes indicate that the information made available by partners has not made it possible to identify the countries where sports agents operate in the relevant sport. However, this does not imply that there are no sports agents in the countries concerned, but simply that no information was available on this aspect.

\* For the countries where the national sport federations did not provide any information we used the lists supplied by the relevant international federations (FIFA, IAAF, FIBA). Where discrepancies were found between the data provided by the international federations and the data provided by the national federations, we used the latter since they appeared to be updated more regularly.

<sup>31</sup> As explained for Table 2, the presence of sports agents in Europe in equestrian activities, rowing, canoeing/kayaking, fencing, weightlifting, skating, surfing, taekwondo and triathlon has been confirmed, but it proved impossible to determine the Member States and numbers involved. This is why the above-mentioned sports are not included in Table 3.

The number of officially listed sports agents varies very considerably from one sport to another and one country to another. The United Kingdom is the country with the largest number of official sports agents (691), followed by Italy (618), Spain (607), France (441) and Germany (303). These five countries alone account for close to 75% of the total number of listed sports agents in the European Union as a whole. Malta and Estonia are in the last place, with only four officially listed sports agents in each of the two Member States. This ranking broadly corresponds to the relative economic importance of football in the countries studied.

**Figure 5:** Number of officially listed sports agents in the 27 EU Member States (Study on Sports Agents, 2009)



The Member States of the European Union can be divided into four groups (Figure 6):

➤ Member States with **less than 10 officially listed sports agents**. This group comprises five countries:

- Malta (4)
- Estonia (4)
- Latvia (9)
- Lithuania (9)

➤ Member States with **10 to 50 officially listed sports agents**. This group comprises 10 countries:

- Slovakia (17)
- Luxembourg (21)
- Hungary (24)
- Slovenia (25)
- Ireland (30)
- Cyprus (31)
- Austria (33)
- Czech Republic (36)
- Finland (45)
- Denmark (50)

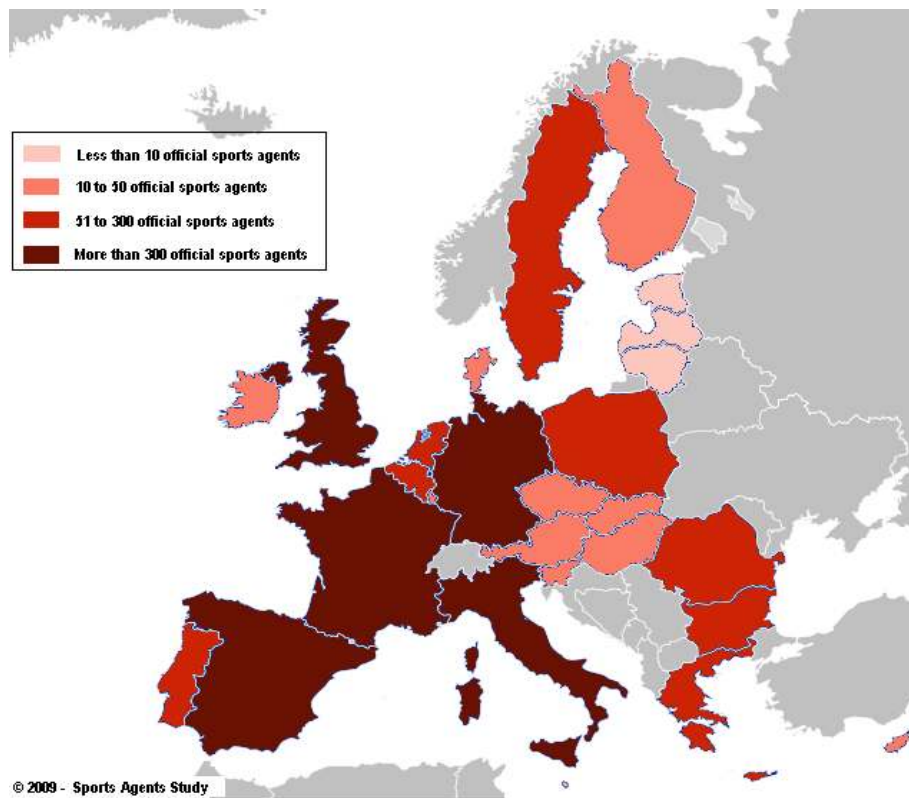
➤ Member States with **51 to 300 officially listed sports agents**. This group comprises eight countries:

- Bulgaria (53)
- Portugal (56)
- Poland (58)
- Belgium (62)
- Sweden (69)
- Romania (71)
- Greece (82)
- Netherlands (130)

➤ Member States with **more than 300 officially listed sports agents**. This group comprises five countries:

- Germany (303)
- France (440)
- Spain (607)
- Italy (618)
- United Kingdom (691)

**Figure 6:** Map showing geographical density of officially listed sports agents in each of the 27 EU Member States



**Main findings:**

- On the basis of the data collected, the total number of officially listed sports agents in the European Union, including all the sport disciplines considered, can be estimated at approximately 3,600.
- The United Kingdom (691), Italy (618), Spain (607), France (441) and Germany (303) alone account for almost 75% of the total number of listed sports agents in the European Union as a whole.

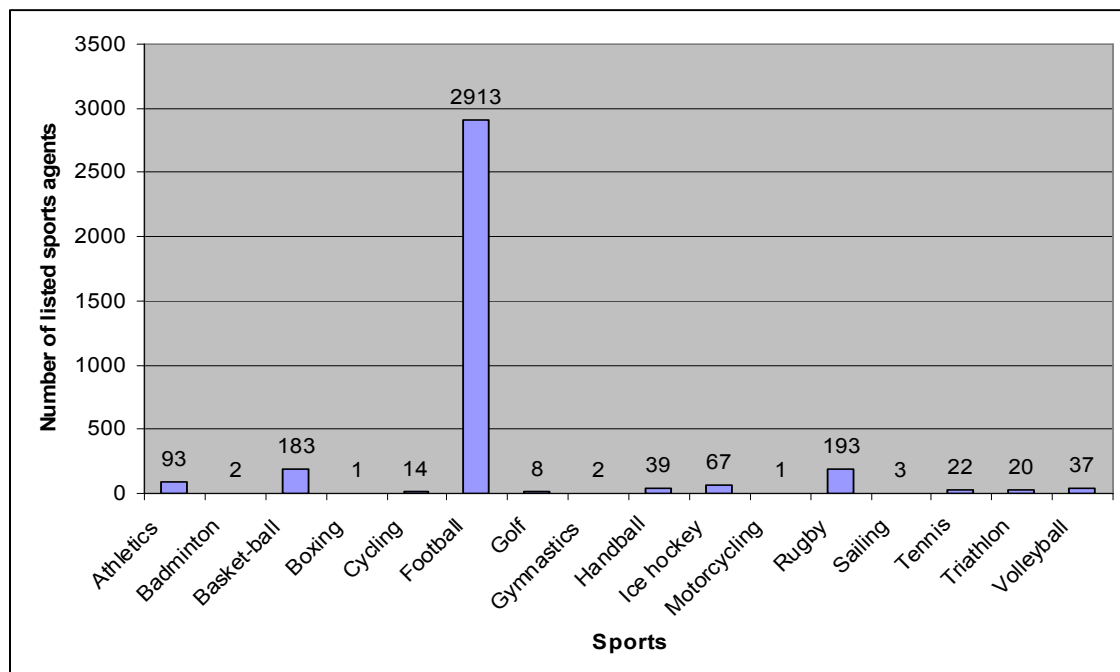
#### IV. Situation in each sport

Football is by far the sport with the highest number of official sports agents in Europe (2,913). Three other sports also stand out in this respect: rugby (193 agents), basketball (183) and athletics (93).

These four sport activities alone account for more than 95% of officially listed sports agents in the European Union as a whole. This finding is explained, among other reasons, by the fact that these four sports are, to date, the only ones for which specific regulations governing sports agents activities<sup>32</sup> have been established by their respective international federations, i.e. FIFA<sup>32</sup>, IRB<sup>33</sup>, FIBA<sup>34</sup> and IAAF<sup>35</sup>.

The leading group is followed by another group of four sports for which more than 20 official sports agents are registered in the European Union as a whole: ice hockey (67), handball (39), volleyball (37) and tennis (22).

**Figure 7:** Estimated number of official sports agents, by sport (Study on Sports Agents, 2009)<sup>36</sup>



<sup>32</sup> FIFA - International Federation of Association Football - <http://fr.fifa.com/>

<sup>33</sup> IRB - International Rugby Board - <http://www.irb.com/>

<sup>34</sup> FIBA - International Basketball Federation - <http://www.fiba.com/>

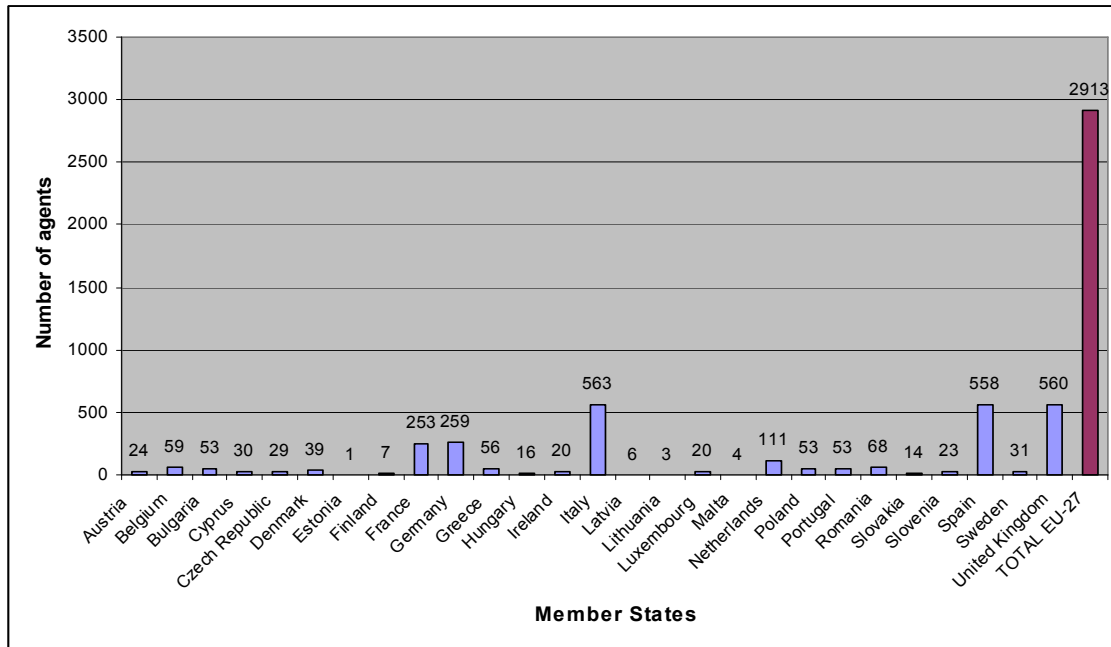
<sup>35</sup> IAAF - International Association of Athletics Federations - <http://www.iaaf.org/>

<sup>36</sup> As previously explained, the presence of sports agents in Europe in equestrian activities, rowing, canoeing/kayaking, fencing, weightlifting, skating, surfing, taekwondo and triathlon has been confirmed, but it proved impossible to determine the Member States and numbers involved. This is why the above-mentioned sports are not included in Figure 7.



## 1. Number of sports agents in football

**Figure 8:** Estimated number of sports agents in football by EU Member State (Study on Sports Agents, 2009)



Italy (563), the United Kingdom (560) and Spain (558) are the three countries with the highest number of licensed agents. This threesome is followed by Germany (259) and France (253). Given the importance of the championships held in these five countries, the latter are known as “the Big Five” and alone account for more than 75% of the total number of football players’ agents in Europe. If we look at the total football revenues in Europe – which added up to 14.6 billion Euros<sup>37</sup> in the 2007/2008 season – we find that these five major European championships represent more than half of the market, i.e. 7.7 billion Euros<sup>38</sup> (including 2.4 billion which are accounted for by the United Kingdom<sup>39</sup>). No doubt, this is one of the reasons why the number of sports agents is higher in these countries. The television audiences and the budgets of football clubs, as well as players’ salaries, the number of international players, the related commercial activities and the stadium occupancy rates are much higher in the case of the above-mentioned five championships in comparison with the rest of Europe.

As regards the EU candidate and potential candidate countries, we find a high number of licensed players’ agents in Serbia (117), Turkey (86), Bosnia-Herzegovina (83) and Croatia (42). For their part, South America and Africa have a total of 563 and 543 licensed players’ agents respectively.

It would appear that, in football, one international player transfer in four is carried out through an official agent<sup>40</sup>.

<sup>37</sup> Deloitte Annual Review of Football Finance, 18<sup>th</sup> edition, June 2009.

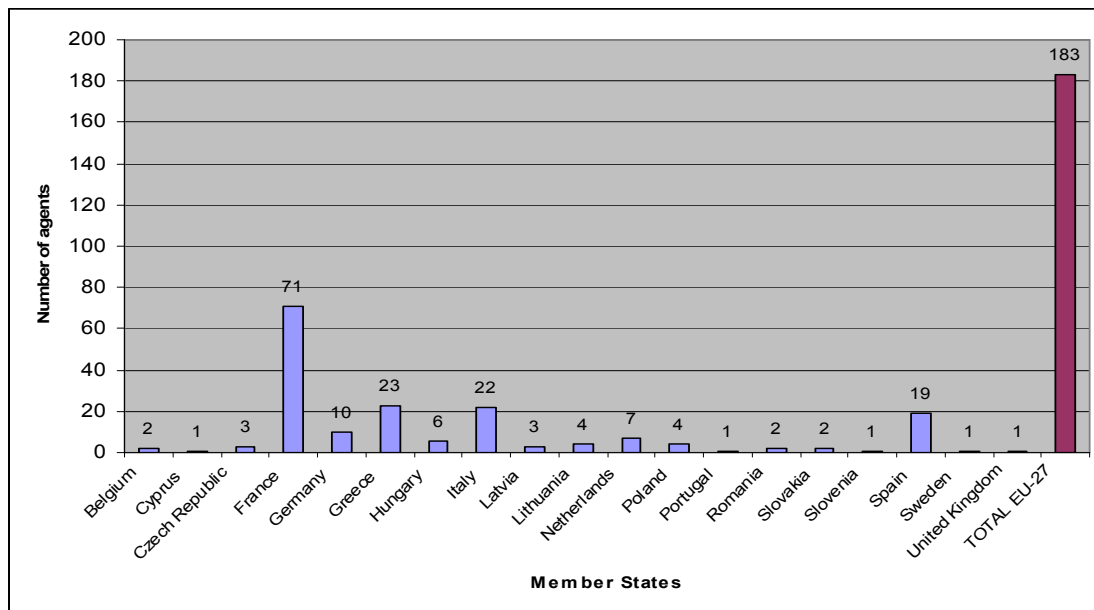
<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> “At the present time, we estimate only 25 to 30 per cent of all international transfers are conducted via licensed agents,” emphasised Marco Villiger, Director of the FIFA Legal Division, in a press release dated Wednesday, 15 July 2009 and entitled “FIFA acts to protect core values”.

## 2. Number of sports agents in basketball

**Figure 9:** Estimated number of sports agents in basketball, by EU Member State (Study on Sports Agents, 2009)

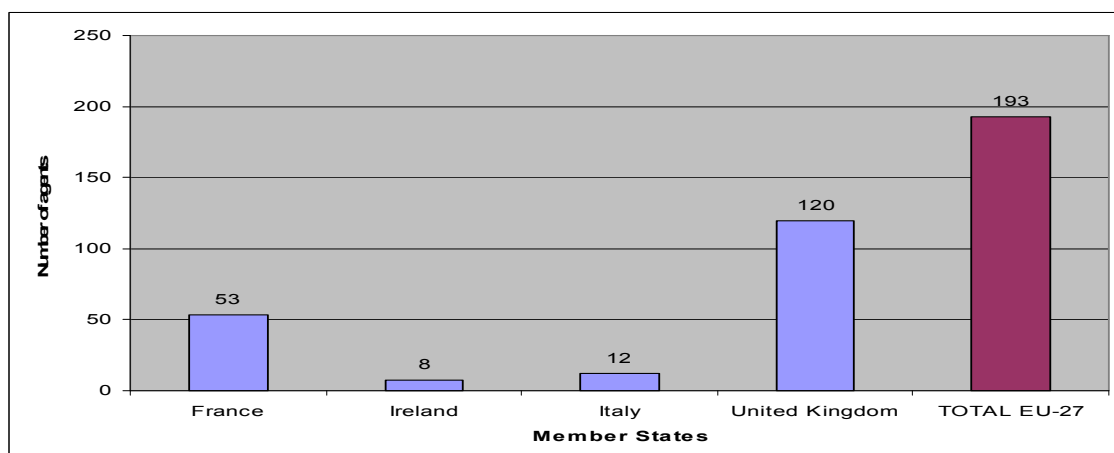


France is the European country with the highest number of players' agents who are officially listed, i.e. 71 or close to 40% of the total number of players' agents in European basketball. Three other countries also stand out, namely Greece (23 agents), Italy (22) and Spain (19). Germany is in fifth place, with 10 officially listed players' agents. These five countries account for more than 79% of the total number of official agents of basketball players in Europe.

Among the EU candidates and potential candidate countries, three countries deserve special mention: Croatia (9 agents), Turkey (9) and Serbia (8).

## 3. Number of sports agents in rugby

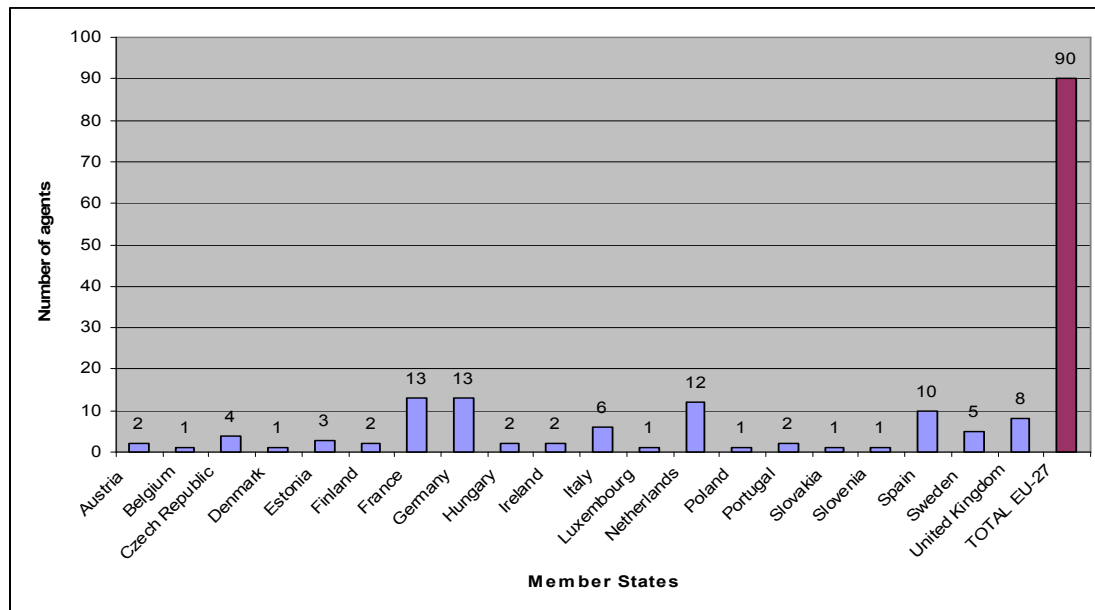
**Figure 10:** Estimated number of sports agents in rugby by EU Member State (Study on Sports Agents, 2009)



Professional rugby is not played in all EU countries but is mainly concentrated in the nations that take part in the Six Nation Tournament (England, Scotland, France, Ireland, Italy and Wales). The United Kingdom ranks first, with some 120 officially listed players' agents. France has 53 officially listed players' agents, Italy 12 and Ireland 8.

#### 4. Number of sports agents in athletics

**Figure 11:** Estimated number of sports agents in athletics by EU Member State (Study on Sports Agents, 2009)



As regards athletics, the picture is much less uneven than in the case of the three previously considered sports, in which certain EU countries are far ahead of the others in terms of the number of sports agents. France and Germany, with 13 official athletes' agents each, rank first. They are followed by the Netherlands with 12 officially listed athletes' representatives, Spain (10) and the United Kingdom (8). The 16 other countries where agents were identified have between 1 and 5 official athletes' representatives.

Regarding the numbers of candidates sitting for an examination to obtain a sports agent's licence, we find that they have generally been on a rising trend in recent years. In the case of football, for example, from 2006 to 2008 the number of candidates taking part in such examinations increased by 75% in Portugal, 30% in France, 28% in Germany and 16% in the Netherlands. Similarly, in France, the number of candidates increased by 60% in the case of golf and 48% in the case of rugby.

Exam success rates in 2008 ranged from 10% in France for football to 50%, also for football, in Lithuania and Denmark.

Lastly, it appears that sports agents may start operating in other sports in the coming years as a result of the increased popularity and economic importance of certain sports, combined with increased interest on the part of sponsors and a higher media profile (this is the case, for example, with surfing and sailing).

**Main findings:**

- Football is by far the sport with the highest number of official sports agents (2,913).
- It is followed by rugby (193), basketball (183) and athletics (93).
- These four sports account for 95% of the total number of official sports agents in Europe.
- Football: more than 75% of the total number of official agents of football players in Europe are found in the “Big Five” countries (Italy, United Kingdom, Spain, Germany, France).
- Basketball: France (71), Greece (23), Italy (22), Spain (19) and Germany (10) account for close to 75% of the total number of official agents of basketball players in Europe.
- General increase, in most sports, in the number of candidates sitting for an examination to obtain a sports agent’s licence.
- Depending on the sport and the EU Member State concerned, the success rate of candidates sitting for an examination to obtain a sports agent’s licence ranges from 10% to 50%.

**In Europe, sports agents operate mainly in five countries and one sport, namely football.**

## **V. Estimated number of sports agents in the European Union**

In view of the various problems involved in collecting data (e.g. data not updated, no response, difficulty of taking into account persons who ceased or started to work as sports agents in the course of the year, etc.), we estimate a loss of information in the region of 15%, which corresponds to some 540 official agents. We then arrive at a total figure of **4,140** official sports agents on the territory of the EU. This figure is most certainly an underestimate, but it is the closest to determine the actual number of official sports agents in the EU.

As regards the “hidden face” of the profession, the interviews we conducted with different actors in football and rugby suggest that unofficial agents may make up about 25% of the total number of sports agents, which give us **837** unofficial agents in football and **55** in rugby in the European Union as a whole.

In the case of basketball, the interviews we conducted appear to suggest that unofficial agents may constitute about 20% of the total number of agents, i.e. some **42** unofficial agents in the EU as a whole.

As far as athletics are concerned, the information collected through the interviews enables us to estimate the proportion of unofficial agents at 30% or a total of **32** unofficial agents in the EU as a whole.

In the case of sports whose international federations do not regulate the activities of sports agents, unofficial agents might account for a much larger proportion. If we look at golf, for example, and consider the 21 European professional players who take part in the PGA Tour<sup>41</sup>, it is surprising to find that no agents are officially listed, e.g. in England (6 participants in the PGA Tour) or in Sweden (8). In boxing, almost all agents are unofficial. Only one agent is officially listed, in France, whereas judging from the interviews, there are almost **300** agents operating in the EU.

While boxing is a rather special case, it can be estimated that in most other sports not included in the above list, the actual number of sports agents might be up to three times higher than the official figures obtained. Leaving boxing aside, we find that the highest percentage of unofficial agents – as a ratio in relation to official agents – is 300%. For its part, basketball shows the lowest ratio, with unofficial agents

<sup>41</sup> [www.pgatour.com](http://www.pgatour.com)

adding up to only 20% of the official agents' population. If we extrapolate these figures to sports as a whole, the number of unofficial agents would be somewhere between 296 (based on 20%) and 741 (based on 300%). This means that, in addition to the **247** official sports agents estimated for these sports, there might be between **296** and **741** unofficial agents in the EU.

Thus, for the territory of the European Union as a whole, we may estimate that the total number of official and unofficial sports agents operating in sports other than football is somewhere between 1,508 and 1,953.

Adding the data on football to those on other sports, we therefore find that the total number of official and unofficial sports agents operating on the territory of the European Union, in all sport activities as a whole, can be estimated at between 5,695 and 6,140.

**Table 4:** Estimated number of official and unofficial sports agents in the EU (Study on Sports Agents, 2009)

	OFFICIAL AGENTS			UNOFFICIAL AGENTS		TOTAL No. OF SPORTS AGENTS IN EUROPE
	Data collected	Information losses (15%)	Total No. of official agents	Estimated proportion	Total No. of unofficial agents	
Football	2,913	437	3,350	25%	837	<b>4187</b>
Rugby	193	29	222	25%	55	<b>277</b>
Basketball	183	27	210	20%	42	<b>252</b>
Athletics	90	14	104	30%	31	<b>135</b>
Boxing	1	0	1		300	<b>301</b>
Other Sport Activities	215	32	247	20% < p < 300%	296 < t < 741	<b>Between 543 and 988</b>
<b>TOTAL</b>	<b>3,595</b>	<b>538</b>	<b>4,133</b>	-	<b>Between 1,562 and 2,007</b>	<b>Between 5,695 and 6,140</b>

**Main findings:**

- The total number of official and unofficial sports agents operating on the territory of the European Union, in all sport activities as a whole, can be estimated at between 5,695 and 6,140<sup>42</sup>.
- Football ranks first, far ahead of other sports, with an estimated total of 4,187 official and unofficial agents in the EU.
- The total number of official sports agents in all sport activities as a whole can be estimated at 4,133.
- The total number of unofficial sports agents in all sport activities as a whole can be estimated at between 1,562 and 2,007.

<sup>42</sup> This is undoubtedly a conservative estimate, based as it is on an unpublished exploratory study.

## **VI. The economic weight of sports agents' activities**

Since the mid-1980s, many economists have attempted to assess the “economic weight” of the sport sector<sup>43</sup>. The common conclusion is that such an evaluation is a difficult task and that the calculation bases used by different economists are not always comparable. In the report on the VOCASPORT study<sup>44</sup>, it is estimated that the sector represents, on average, 1.6% of the Gross Domestic Product (GDP) of EU Member States and as much as 2.5% of GDP in some of them. A study presented in 2006 indicated that sports, in the broad meaning of the term, generated some 407 billion Euros of added value in 2004 or 3.7% of the EU's GDP<sup>45</sup>.

The transfers of players generate substantial financial flows but, given the complexity and opacity of certain transactions in which sports agents are involved, very few official data are available. Furthermore, these growing financial flows linked to the globalisation of the sector have spread the incidence of corruption, fraud and various forms of financial malpractice. Consequently, the financial flows relating to the commissions paid to sports agents are difficult to evaluate.

Given the absence of official statistics, we have analysed and estimated the economic weight of sports agents in the EU mainly on the basis of the direct sources developed for this study (interviews and questionnaires) as well as on the basis of the estimates included in documents produced by public authorities, sport authorities and a number of specialised bodies.

### **1. Heterogeneity of existing mechanisms for remunerating sports agents**

Analysis of the empirical data shows that, in general terms, the remuneration of sports agents is closely linked to the type of relationship they have with the sportspersons they represent. It is the nature of this relationship which largely determines the mechanisms for remunerating the sports agent concerned. Tables 5, 6 and 7 below illustrate these mechanisms by sport. Three main tendencies are apparent: agents paid by the player, agents paid by a club, and the mixed commission.

#### ***1.1 Agent paid by the player***

Although this kind of mechanism is found in several sports, it is not very widespread, quantitatively speaking (See Table 5 below). It is basically found in sports in which sports agents are not very numerous. A majority of sportspersons – and this applies especially to team sports, including football in particular – do not wish to remunerate their agent directly, believing as they do that this task should be the responsibility of the club acquiring the sportsperson. On the other hand, when we look at athletics, we find that agents are only remunerated by the athletes themselves (though, admittedly, agents may also organise meetings attended by athletes whom they represent, in which case the agent receives a double commission – one from the athlete and one from the organiser of the event).

<sup>43</sup> See, for example, Andreff W., *Economie du sport*, Paris, PUF, 1986.

<sup>44</sup> VOCASPORT – Vocational Education and Training in the field of Sport in the European Union: Situation, trend and outlook – DGEAC 2003-4463/001-001 - <http://www.eose.org/projects/completed-projects.html>

<sup>45</sup> D. Dimitrov / C. Helmenstein / A. Kleissner / B. Moser / J. Schindler: *Die makroökonomischen Effekte des Sports in Europa*; a study commissioned by the Department for Sports of the Austrian Chancellery, Vienna 2006.

**Table 5:** Prevalence of the “agent-paid-by-player” mechanism, by sport, in Europe (Study on Sports Agents, 2009)

Sport	Non-existent or very rare mechanism (< 20%)	Moderately prevalent mechanism (<70%)	Prevailing mechanism (>70%)
Aquatics			✓
Athletics			✓
Basketball		✓	
Cricket			✓
Cycling		✓	
Equestrian Activities		✓	
Football	✓		
Golf			✓
Handball		✓	
Ice hockey			✓
Motorcycling		✓	
Motor Racing		✓	
Rugby		✓	
Skiing			✓
Tennis			✓
Volleyball			✓

Note: The selected sports are those in which the market penetration rate for sports agents in Europe is between 40% (moderate penetration) and 100% (maximum penetration).

### 1.2 Agent paid by the club

This is the most widespread mechanism, particularly in sports with high financial stakes, such as football, basketball and motor sports.

**Table 6:** Prevalence of the “agent-paid-by-the-club” mechanism<sup>46</sup>, by sport, in Europe (Study on Sports Agents, 2009)

Sport	Non-existent or very rare mechanism (< 20%)	Moderately prevalent mechanism (<70%)	Prevailing mechanism (>70%)
Aquatics	✓		
Athletics	✓		
Basketball		✓	
Cricket	✓		
Cycling		✓	
Equestrian activities		✓	

<sup>46</sup> The term “club” is used here to refer to both a sport entity employing the sportsperson (sport club, racing car team, athletics meeting, cycling team, etc.) and a non-sport employer (various sponsors, equipment manufacturers, media concerns, etc.).

Football			✓
Golf	✓		
Handball		✓	
Ice hockey	✓		
Motorcycling		✓	
Motor Racing		✓	
Rugby		✓	
Skiing		✓	
Tennis	✓		
Volleyball		✓	

Note: The selected sports are those in which the market penetration rate for sports agents in Europe is between 40% (moderate penetration) and 100% (maximum penetration).

### 1.3 Mixed commission

Few data are available on this kind of mechanism, given the multiplicity of the participants in the transactions and the lack of traceability of the financial flows. Mixed commission involves many different practices, strategies and tactics aimed at fulfilling the financial expectations of the participants concerned.

Mixed commission always involves three main parties – namely a sportsperson, an agent and a club – but the actual number of individuals involved may be higher. Within the framework of these tripartite relations (sportsperson-agent-club), the term “club” always refers to the main payer in the transaction. Depending on the nature of the transaction, the identity of the payer varies. Table 7 below identifies the main forms and structures subsumed under the term “club”.

While – owing to the opacity of the financial transactions – it is impossible to quantify the share of mixed commissions or to provide a breakdown of the amounts involved among the different participants, we can nevertheless identify the “mixed commission mechanism” and evaluate its incidence in different sport activities.

The “mixed commission mechanism” illustrates both the complexity and the dynamics of existing mechanisms for remunerating sports agents. At the same time as they negotiate the remuneration of the sportspersons whom they represent, sports agents also put in place strategies and financial mechanisms to secure the payment of their own commissions. The interviewed sports agents mentioned the fact that they resort to complex remuneration mechanisms when one of the participants in the tripartite relationship does not fulfil the obligations stipulated in the original agency contract.

**Table 7:** Prevalence of the “mixed commission mechanism”, by sport, in Europe (Study on Sports Agents, 2009)

Sport	Non-existent or very rare mechanism (< 20%)	Moderately prevalent mechanism (<70%)	Prevailing mechanism (>70%)	Main club-type structures
Aquatics	✓			Sport equipment manufacturer, national federation, sport club, other sponsors, competition organiser
Athletics				Sport equipment manufacturer, national or



	✓			international sport federation, sport club, event organiser, other sponsors
Auto racing		✓		Sport equipment manufacturer, racing car team, sport organiser, other sponsors
Basketball		✓		Sport equipment manufacturer, national or international federation, sport club, sport organiser, other sponsors
Cricket	✓			Competition organiser, national federation
Cycling		✓		Sport equipment manufacturer, national or international federation, sport club, team of professional cyclist, competition organiser, other sponsors
Equestrian activities		✓		Sport club, national federation, other sponsors, horse owner, race organiser
Football			✓	Sport equipment manufacturer, national or international federation, sport club, competition organiser, other sponsors
Golf	✓			Sport equipment manufacturer, sport club, competition organiser, other sponsors
Handball		✓		Sport equipment manufacturer, national or international federation, sport club, sport organiser, other sponsors
Ice hockey	✓			Sport equipment manufacturer, sport club, other sponsors
Motorcycle racing		✓		Sport equipment manufacturer, motorcycle team, competition organiser, other sponsors
Rugby		✓		Sport equipment manufacturer, national or international federation, sport club, competition organiser, other sponsors
Skiing		✓		Sport equipment manufacturer, national or international federation, competition organiser, other sponsors
Tennis	✓			Sport equipment manufacturer, ATP, sport organiser, other sponsors
Volleyball		✓		Sport equipment manufacturer, national or international federation, sport club, other sponsors

Note: The selected sports are those in which the market penetration rate for sports agents in Europe is between 40% (moderate penetration) and 100% (maximum penetration).

Table 8 below highlights the correlation between the mechanisms for remunerating sports agents and the peculiarities of the sport concerned. Thus, in sports characterised by limited financial stakes (e.g. gymnastics, skiing and wrestling), sports agents are akin to press officers whose remuneration depends on the type and number of “missions” carried out on behalf of the sportsperson concerned (e.g. search for sponsors, conclusion of insurance agreement, etc.). In a sport like taekwondo, for example, the agent’s commission ranges from 5% to 33% of the value of the negotiated contract. For a contract concerning the practice of a sport as such (e.g. a taekwondo demonstration), the agent’s fee rarely exceeds 10% of the value of the contract. On the other hand, when the services rendered by the sportsperson have little to do with the world of sports, the agents commission may range from 15% to 33%.

**Table 8:** Prevailing and specific mechanisms for the remuneration of sports agents, by sport, in Europe (Study on Sports Agents, 2009)

<b>Sports in which sports agents are present</b>	<b>Prevailing remuneration mechanisms *</b>	<b>Specific remuneration mechanisms **</b>
Aquatics	5 to 10% of the sportsperson's income	
Athletics	10 to 20% of the athlete's annual income	The agent wishes to be remunerated on the basis of the athlete's gross income.
Auto racing	- 10 to 15% of the driver's annual income - 10 to 15% of each negotiated contract	Multitasking, i.e. the agent performs other tasks in auto racing in addition to his role as a sports agent.
Badminton	The commission is fixed when the agency contract is signed.	
Basketball	5 to 10% of the player's annual income	The commission is agreed before signing the agency contract.
Boxing	- 10 to 15% of the boxer's annual income. - The commission is fixed depending on the profits made by the boxer.	The agent functions as an organiser of the boxing match and fixes his commission without necessarily informing the boxer beforehand.
Cricket	10% of the player's annual income	
Cycling	- 5 to 10% of the cyclist's annual income - The commission is negotiated for each individual contract.	The agent forms part of the cyclist's team and is therefore paid by the latter.
Equestrian activities	10 to 20% of the profits made by the jockey or rider	Agent as "competition organiser", remunerated by the organisation in charge of the event.
Football	- 5 to 10% of the player's annual income - 5 to 10% of the negotiated contract - The commission is fixed in advance.	- The commission is shared among several intermediaries. - Part of the commission is reassigned to one or more third parties. - Sham fees
Golf	- 10 to 15% of the player's annual income - 10 to 15% of the negotiated contract	The agent carries out certain tasks typical of a press officer.
Gymnastics	5 to 10% of the total amount of each negotiated contract	Some agents work for free.
Handball	- 5 to 10% of the player's annual income - 5 to 10% of the negotiated contract	Payment of a commission agreed beforehand.
Hockey	5 to 10% of the player's net income	
Ice hockey	- 5 to 10% of the player's annual income - 10 to 15% of the negotiated contract	
Judo	5 to 10% of the judoka's annual income	The agent functions as a press officer.
Motorcycle racing	- 5 to 15% of the rider's annual income - 10 to 15% of each negotiated contract	The commission is negotiated with the organisers of the competition.
Rugby	- 5 to 10% of the player's annual income - 10 to 15% of each negotiated contract	
Skiing	The commission is agreed for each individual contract.	The agent carries out certain tasks typical of a press officer.
Table tennis	10 to 15% of the player's annual income	
Taekwondo	5 to 33% of the contract The commission is negotiated in advance.	The agent functions as a press officer.
Tennis	- 5 to 15% of the player's annual income - 10 to 20% of the negotiated contracts	

Sailing	The commission is negotiated for each individual contract.	
Volleyball	- 5 to 10% of the player's annual income - 10 to 15% of the negotiated contract	
Wrestling	The commission is negotiated in advance.	

\* "Prevailing remuneration mechanisms": Mechanisms established by legal bodies and/or sport authorities or which are in line with common practice as regards paying agents' fees.

\*\* "Specific remuneration mechanisms": Mechanisms resulting from the interaction between different actors involved in the negotiations.

#### Main findings:

- The mechanisms for remunerating sports agents in Europe are fairly heterogeneous (agent paid by the player, agent paid by the club, mixed commission);
- In terms of the number of sports agents concerned, the "agent-paid-by-club" mechanism is the most common, in Europe, in the case of sports where the financial stakes are high and which have a high media profile (football, basketball, rugby, etc.). In team sports in which agents operate in a tripartite environment (player-club-agent), the "agent-paid-by-club" mechanism is again the most common.
- The "agent-paid-by-player" mechanism – which only applies to very few sports agents – is most widespread in sports where the financial stakes are lower and which have a lower media profile (e.g. aquatics, skiing, ice hockey, etc.). As far as individual sports are concerned, the general tendency appears to be for agents to be paid by the sportsperson.

## 2. Assessment of agents' fees, based on the income of sportspersons in the EU

Although it is difficult to accurately assess the fees earned by agents on the basis of the sportsperson's income, an analysis of the latter enables us to outline the main trends and work out some rough estimates for the various sports concerned.

Table 9 below shows that, in the year 2008, only three sports were represented among the top 15 best paid sportspersons in Europe: football with nine players, motor sports with four drivers/riders, and tennis with two players. It should be noted that the term "income" includes salaries, all bonuses as well as all sponsorship contracts, image rights contracts, etc.

Looking now at how these sportspersons are represented, we find that three of them are represented by sport management agencies (including, notably, the International Management Group – IMG), four are represented by a member of their family, and six are represented by official agents. Rider Valentino Rossi no longer has an agent after falling out with long-standing agent Gibo Badioli following a recent back tax payment, while football player John Terry is represented by an unlicensed agent.

**Table 9:** Top 15 best paid sportspersons in Europe in 2008 (Study on Sports Agents, 2009)

	Player	Sport	Agent/Representative	Total revenues in 2008 <sup>47</sup> in millions of Euros (M€)
1	David Beckham*	Football	Simon Oliveira (19 Entertainment)	€32.8M
2	Kimi Räikkönen	Auto racing	Steve Robertson	€31.3M
3	Ronaldhino	Football	Roberto de Assis (player's brother)	€25.5M
4	Lionel Messi	Football	Jorge Messi (player's father) and Claudio Biancucchi (player's uncle)	€24.4M

<sup>47</sup> These amounts were originally in US dollars and were converted to Euros on the basis of €1 = USD 1.4688 (<http://www.ecb.int> – i.e. the exchange rate as of 01/01/2008).

5	Roger Federer	Tennis	Tony Godsick (IMG)	€23.9M
6	Fernando Alonso	Auto racing	Luis García Abad	€23.8M
7	Valentino Rossi	Motorcycle racing	-	€23.1M
8	Cristiano Ronaldo	Football	Jorge Mendes	€20.6M
9	Lewis Hamilton	Auto racing	Anthony Hamilton (father of the driver) and the McLaren-Mercedes Team Manager	€18.8M
10	Thierry Henry	Football	Jérôme Anderson	€17.8M
11	Maria Sharapova	Tennis	Max Eisenbud (IMG)	€14.8M
12	John Terry	Football	Aaron Lincoln (unlicensed agent)	€14.7M
13	Michael Ballack	Football	Michael Becker	€14.6M
14	Ronaldo	Football	Fabiano Farah	€14.2M
15	Kaká	Football	Bosco Leite (father of the player)	€13.7M

Note on the methodology used to draw up Table 9: The ranking is based on the data published by Sports Illustrated<sup>48</sup> as well as on information made available by several sports marketing agencies, agents, sports agents and other analysts of the sport economy. Furthermore, research was carried out to determine the identity of the representatives/agents of the ranked sportspersons.

\* David Beckham is under contract with the Los Angeles Galaxy club but we have kept him in this ranking since he was loaned for six months to Milan AC during the 2008-2009 season.

It appears that in individual sports (particularly in tennis and golf) players tend to call on major management groups (e.g. IMG and 19 Entertainment) to act as their agents. Judging from the interviews we carried out, the fees charged by these major groups vary between 7% and 15% of the sportsperson's total annual income.

There is sometimes a very significant difference between the initial value of some football players in terms of sporting performance and their market added value.

The annual salary of the top 50 best paid football players in Europe ranges from €4,600,000 to €9,000,000<sup>49</sup>. Looking at the top 50 in question, we find:

- 22 players taking part in the English league, 13 in the Spanish league, 10 in the Italian league, 4 in the German league and 1 in the French league.
- 16 clubs in the "Big Five" leagues, including: 6 English clubs (Arsenal, Chelsea, Liverpool, Newcastle, Manchester City and Manchester United), 4 Spanish clubs (Atlético de Madrid, Barcelona, Real Madrid and FC Seville), 4 Italian clubs (AC Milan, Inter Milan, Juventus and AS Roma), 1 German club (Bayern Munich) and 1 French club (Olympique Lyonnais).
- 15 nationalities: 12 British, 7 Spanish, 7 French, 5 Brazilians, 5 Italians, 3 Argentineans, 2 Portuguese, 2 Dutch, 1 Bulgarian, 1 Cameroonian, 1 Russian, 1 Ukrainian, 1 Swede, 1 Ivorian and 1 German.

Income from other sources than sport makes up a large fraction of players' assets. For example, non-sport income accounts for 80%, 70% and 66% of David Beckham's, Lionel Messi's and Ronaldinho's total income respectively. As we move down in the ranking of the best paid football players, the proportion of non-sport income remains high: 54% for Cristiano Ronaldo (4<sup>th</sup> place) and 51% for Thierry Henry (5<sup>th</sup> place).

<sup>48</sup> Information available on <http://sportsillustrated.cnn.com>.

<sup>49</sup> See attached table: Ranking of salaries of top 50 best paid football players in Europe in 2008.

**Table 10:** Ranking of the total income of the top 20 best paid football players in Europe, in 2008 (Source: France Football, ranking published on 31 March 2009, corrected and updated for the purposes of this study, taking into account the changes that took place between the end of March 2009 and 1<sup>st</sup> July 2009) \*

	Player	Club	Details of revenues (Salaries, Bonuses, Other)	Total annual revenues (M€)
1	David Beckham	LA Galaxy / AC Milan	Salary: € 5 M – Bonuses: €1.5M – Sponsors/Other: €26M	€32.5M
2	Lionel Messi	FC Barcelona	Salary: €8.5M – Bonuses: €0.1M – Sponsors/Other: €20M	€28.6M
3	Ronaldinho	AC Milan	Salary: €6.5M – Bonuses: €0.1M – Sponsors/Other: €13M	€19.6M
4	Cristiano Ronaldo	Manchester United	Salary: €7.3M – Bonuses: €1M – Sponsors/Other: €10M	€18.3M
5	Thierry Henry	FC Barcelona	Salary: €8M – Bonuses: €0.2M – Sponsors/Other: €8.8M	€17M
6	Kaká	AC Milan	Salary: €9M – Bonuses: €0.1M – Sponsors/Other: €6M	€15.1M
7	Z. Ibrahimovic	Inter Milan	Salary: €11M – Bonuses: €0.5M – Sponsors/Other: €2.5M	€14M
8	Wayne Rooney	Manchester United	Salary: €6M – Bonuses: €0.7M – Sponsors/Other: €6.8M	€13.5M
9	Frank Lampard	Chelsea	Salary: €8.2M – Bonuses: €0.3M – Sponsors/Other: €4.5M	€13M
10	John Terry	Chelsea	Salary: €8.4M – Bonuses: €0.3M – Sponsors/Other: €3M	€11.7M
11	Fabio Cannavaro	Real Madrid	Salary: €5.5M – Bonuses: €0.5M – Sponsors/Other: €5.5M	€11.5M
12	Robinho	Manchester City	Salary: €9M – Bonuses: €0.5M – Sponsors/Other: €1.9M	€11.4M
13	Michael Ballack	Chelsea	Salary: €7.9M – Bonuses: €0.4M – Sponsors/Other: €3M	€11.3M
14	Steven Gerrard	Liverpool	Salary: €6.5M – Bonuses: €0.3M – Sponsors/Other: €4.5M	€11.3M
15	Didier Drogba	Chelsea	Salary: €5.9M – Bonuses: €0.3M – Sponsors/Other: €4.5M	€10.7M
16	Gianluigi Buffon	Juventus	Salary: €5.5M – Bonuses: €0.4M – Sponsors/Other: €4.6M	€10.5M
17	A. Del Piero	Juventus	Salary: €4M – Bonuses: €0.4M – Sponsors/Other: €6M	€10.4M
18	Ikar Casillas	Real Madrid	Salary: €6M – Bonuses: €0.7M – Sponsors/Other: €3.5M	€10.2M
19	Cesc Fabregas	Arsenal	Salary: €5.2M – Bonuses: €0.6M – Sponsors/Other: €4.2M	€10M
20	Francesco Totti	Roma	Salary: €5.65M – Bonuses: €0.35M – Sponsors/Other: €3.9M	€9.9M

\* These figures are approximate and unofficial, vary depending on the exchange rate applied and may be subject to changes resulting from new contracts or the renewal of existing contracts.

Winning non-sport contracts is essential for some sportspersons. While it is difficult to accurately estimate agents' fees in the case of player transfer deals, it can be estimated – on the basis of the interviews conducted for this study – that agents receive between 5% and 10% of the total value of the

contract in the case of sponsorship contracts. The mechanisms for paying agents' commissions in the case of non-sport contracts are usually negotiated at the same time as the contracts. However, two main types of mechanism can be distinguished. In the first type of mechanism, the sponsoring company may pay the agent a fee which is agreed in advance and corresponds to a certain percentage of the total value of the sponsorship contract. Thus, the agent is paid as soon as the contract is signed. In the second type of mechanism, the agent is remunerated directly by the sportsperson on the basis of the latter's annual income from sponsorship contracts.

#### Main findings:

- With the exception of football, there are very few data available on the remuneration of sports agents in Europe.
- Three major market segments can be distinguished:
  - 1) Sports in which agents have a substantial presence (high financial stakes);
  - 2) Sports in which agents have a moderate presence (strong national and symbolic value);
  - 3) Sports in which agents have a limited presence or even no presence at all.
- Agents' fees can be high in sports with a high media profile, which implies large financial flows.
- As far as income is concerned, the top 15 best paid sportspersons in Europe are found in football (7), followed by motor sports (5), tennis (2) and golf (1).
- Non-sport income can account for a very substantial proportion of a sportsperson's total income.
- Presence of sports agents who represent coaches (e.g. in football).
- Presence of agents' organisations or of agents with large portfolios of players.

#### Concentration in the sports agent market

The sports agent market is becoming increasingly concentrated, with the emergence of several major organisations of agents. When attempting to determine the market share of different agents, we should keep in mind the difficulties involved in estimating the share of unlicensed agents. The ranking provided below (Table 11) only takes into account licensed agents, whose clients are officially known. Behind the name of certain concerns, a small number of agents may hold a substantial share of the market. This is the case, e.g. with Jorge Mendes, Franjo Vrankovic, Pierre Frelot and Jérôme Anderson. Therefore, in addition to providing something akin to a ranking of the existing organised structures, the table below illustrates the strong concentration found in the football market, to the extent that a very influential agent lies behind each of the concerns.

Table 11 below provides an overview of the main sport management agencies which hold substantial shares of the "football player market" in Europe. Although it is difficult to estimate the overall actual market value of the entire portfolio of football players represented by an agency, the estimates used in the ranking are based on the latest official value of each of the players represented by the agency.

**Table 11:** Ranking of the 10 top sport management agencies in football (ranking performed as part of the Study on Sports Agents 2009 on the basis of different direct and indirect sources)

	Name of agency	Licensed agents	Market value of the agency	Number of players	Main players/coaches
1	GESTIFUTE	Jorge Mendes	€435M	73	Jose Mourinho, Cristiano Ronaldo, Deco, Diego, Rafael Marquez
2	STELLAR FOOTBALL	David Manasseh,	€302M	218	Lothar Matthaus, Kolo

	LTD	Jonathan Barnett, Ertan Goksu			Touré, Ashley Cole, Louis Saha, Peter Crouch
3	WMG MANAGEMENT	Simon Bayliff, Jon Holmes, Chiel Dekker, Neil Fewings, Struan Marshall, Paul Martin, Tony Stephens	€271M	90	Steven Gerrard, Jamie Carragher, Michael Owen, Wes Brown, Robbie Keane, Ji-Sung Park
4	MSC MANAGEMENT	Marcelo Cuppari	€240M	105	Diego Milito, Ever Banegas, Germán Denis, Sebastian Battaglia, Damian Escudero
5	FIRSTELEVEN ISN	Franjo Vrankovic	€238M	72	Yaya Touré, Gael Clichy, Mamadou Niang, Stephane Sessegnon, Mathieu Bodmer, John Mensah
6	MONDIAL PROMOTION	Pierre Frelot	€234M	74	Didier Drogba, William Gallas, Florent Malouda, Steve Mandanda, Bakari Kone
7	STARS & FRIENDS GmbH	19 agents	€209M	220	Vedad Ibisevic, Martin Skrtel, Servat Cetin, Simon Rolfes
8	SEM GROUP PLC	Jerome Anderson	€179M	91	Thierry Henry, Rio Ferdinand, David Bentley, Micah Richards, Joseph Yobo
9	ROGON SPORTMANAGEMENT GmbH & Co. KG	Wolfgang Fahrian, Roger Wittmann, Bernd Cullmann, Christian Rapp, Robert Holzer, Friedrich Atze, Oliver Westerbeek, Adam Davis	€151M		Carlos Eduardo, Kevin Kuranyi, Grafite, Halil Altintop, Lincoln, Renato
10	MJF ADVERTISING AND PROMOTIONS LTD	Juan Figer Wagner Ribeiro	€149M	25	Robinho, Julio Baptista, Zé Roberto, Hulk, Alex

### 3. Estimate of sports agents' income in the EU

#### 200 million Euros per year in agents' fees for the transfer of football players in Europe

During the 2007-2008 season, the total aggregate turnover of the football industry in Europe was estimated at 14.6 billion Euros<sup>50</sup> or 0.1% of Europe's Gross National Product. This figure has been increasing in recent years: it amounted to 12 billion Euros in 2005-2006 and 13.6 billion Euros in 2006-2007<sup>51</sup>. It is estimated that two billion out of the 14.6 billion Euros of the 2007-2008 season originated directly from player transfers (in comparison with one billion in 2004)<sup>52</sup>. This is the equivalent of about

<sup>50</sup> Deloitte Annual Review of Football Finance, 18<sup>th</sup> edition, June 2009.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

14% of the total aggregate turnover. Assuming an average agent's commission of 10% of the total amount of the transfer fee<sup>53</sup>, football agents earned some 200 million Euros in 2007-2008.

In France, a report by the "Direction Nationale de Contrôle de Gestion" (DNCG), the body in charge of financial control of the French football league, indicated that the total aggregate turnover of the football industry in 2007-2008 amounted to 1.5 billion Euros, while the total amount invested in player transfers in the top two divisions was 439.5 million or 29%. Agent fees during the same period were estimated by the DNCG at 45.9 million Euros or approximately 10% of the total amount invested in transfers. In England, during the same season (2007/2008), out of a total aggregate turnover of 2.4 billion Euros, the value of player transfers was estimated at 840 million Euros, and agents' fees at 83.4 million Euros. As in the case of France, these figures indicate that the average fee amounted to 10%.

In the football industry, where agent fees are paid by the club in over 80% of cases, unlawful practices, including the payment of secret commissions, are still very frequent. It is because of the high prevalence of such practices that it is so difficult to estimate agents' economic weight with any degree of accuracy. This is particularly true since agent fees are paid in different kinds of contexts, including the negotiation of transfers, employment contracts and other forms of partnership. Given that the remuneration of sports agents is not limited only to commissions for the transfer of players, the ability of agents to win sponsorship contracts has a major impact on their levels of income.

Three different segments can be distinguished in the market where sports agents operate:

- Sports in which agents have a substantial presence and financial stakes are high (penetration rate above 70%): athletics, basketball, boxing, cricket, cycling, football, golf, ice hockey, motorcycle racing, auto racing and tennis. These sports also have a high media profile. Agent fees can be particularly high and competition is fierce. This is particularly true in the case of "tour-based" sports such as athletics, auto racing and tennis. However, athletics has the peculiarity of being the only sport in which the market penetration rate is very high (95%) while the economic weight is relatively limited, with an average income of €45,000. The annual income of agents in football ranges from €13,000 to €3,750,000.
- Sports in which agents have a moderate presence and the financial stakes are in the mid-range (penetration rate ranging from 30% to 70%): aquatics, equestrian activities, handball, rugby, skiing and volleyball. The emergence of agents in these sports is a relatively recent development. These are sports in which the professionalisation process has not yet been fully completed and has not been followed by a significant inflow of capital. However, in certain geographical areas the professional nature of some of these sports is an undisputed fact and media coverage is enough to generate substantial income (e.g. handball in Germany and volleyball in Italy). The yearly income of agents in this segment ranges from €10,000 (aquatics) to €585,000 (rugby).
- Sports in which agents have a limited presence or even no presence at all (penetration rate below 30%): air sports, aikido, rowing, badminton, bandy, biathlon, cue sports, bobsleigh, bowling, bridge, canoeing/kayaking, orienteering, curling, dance sport, chess, fencing, floorball, American football, gymnastics, real tennis, judo, weightlifting, karate, korfbal, luge, wrestling, climbing, motorboating, netball, skating, Basque pelota, modern pentathlon, bowls, polo, racquetball, rollerskating, lifesaving,

<sup>53</sup> The mechanisms for remunerating sports agents in the football industry depend, basically, on the nature of the tripartite relationship between the player, the agent and the club. Article 20 of the FIFA Regulations establishes certain rules for remunerating sports agents, i.e. mainly a set of conditions under which one of the contracting parties may request the international body to intervene in the event of a dispute. However, in reality we see very complex practices which are very difficult to understand for an outsider.



water skiing, softball, underwater sports, squash, sumo, surfing, taekwondo, table tennis, tug of war, shooting, archery, triathlon, sailing and wushu. Some sportspersons in these sport disciplines may have substantial financial assets – both from sports and non-sport activities – which require the services of an agent. This is the case with taekwondo and table tennis, two disciplines in which top sportspersons are in demand both for their skills and performances as sportspersons (taekwondo courses, table tennis exhibition matches) and for non-sport services (participation in television talk shows, photos, etc.).

Mobility between and within these different segments is very limited, especially owing to the costs involved in moving to a new activity. This requires a substantial investment, e.g. in order to build a network of influential contacts in the segment concerned. Furthermore, each segment is characterised by different and fairly specific procedures. Thus, agents tend to specialise and develop in a particular segment, and this makes it difficult, de facto, for outsiders to enter the segment concerned.

**Table 12:** Estimate of sports agents' income (by sport) (Study on Sports Agents, 2009)

Sports	Estimated proportion of sportsperson calling on the services of an agent	Yearly income range and average income of sports agents *
Aquatics	30%	€10,000 to €100,000 €35,000
Athletics	95%	From €6,000 to €250,000 Average revenues: €45,000
Auto racing	85%	€50,000 to €600,000 €110,000
Badminton	N/A	N/A
Basketball	Europe 65% United States 85%	European basketball €18,000 to €85,000 €35,000 NBA €120,000 to €700,000 €110,000
Basque pelota	N/A	N/A
Boxing	75%	Europe €16,000 to €350,000 €65,000 United States €45,000 to €2,000,000 €160,000
Cricket	60%	N/A
Cycling	70%	€18,000 to 350,000 €38,000
Equestrian activities	60%	N/A
Football	75%	€13,000 to €3,750,000 €27,000
Golf	90%	€30,000 to €650,000 €48,000
Gymnastics	15%	N/A
Handball	60%	€18,000 to €45,000 €30,000
Ice hockey	75%	€36,000 to €320,000 €45,000
Judo	20%	N/A

Motorcycle racing	70%	€35,000 to €180,000 €50,000
Rugby	60%	€15,000 to €585,000 €45,000
Sailing	10%	N/A
Skating	20%	N/A
Skiing	N/A	N/A
Surfing	25%	N/A
Table tennis	N/A	N/A
Taekwondo	15%	N/A
Tennis	95%	€45,000 to €300,000 €55,000
Triathlon	N/A	N/A
Volleyball	55%	€15,000 to €45,000 €24,000
Wrestling	15%	N/A

Note: The above table only takes account of the top professional sportspersons in each sport. The so-called “American” sports (baseball, cricket, ice hockey and American football) were included in the table in order to provide a more comprehensive picture of the global market.

\* These estimates are based on the information obtained from various actors and sources in the course of the study.

The disparities we find between the incomes of different sportspersons are mirrored by the very substantial differences between agents’ fees. While some agents receive commissions worth several million Euros for a single transfer or sport contract, the vast majority of sports agents are confronted by huge variations in their income. Many of the interviewed agents used the term “precarious” to describe their financial situation. This precariousness is explained – according to them – by the fragility of their professional relationship to the sportsperson and the fierce competition that characterises the sport market.

Although we only examined the economic dimension of sports agents on the basis of the fees they received for negotiating contracts, their actual economic weight goes far beyond their role as intermediaries. While confirming that a large proportion of agents’ income originates from commissions, the empirical data show that sports agents plough some of the income generated by sport back into the sport economy (communication, sport marketing, etc.). Their role as “economic regulators” and their interdependence with other actors enable sports agents to strengthen their influence within the sport economy and indeed to extend their influence into other economic sectors.

Sports agents account alone for 3% to 6% of the sport economy. However, a breakdown of their business turnover by sector from which the income originates is impossible due to the unavailability of official data. The sports agent’s profession requires skills that can be used in other sport segments which bear no relation to the agent’s main area of professional activity. Successful sports agents operate as flexible, mobile and pragmatic economic actors, capable of seizing new investment opportunities in sport. Six different sectors/areas in which sports agents have economic interests can be distinguished:

- Sport marketing: agents can own or be shareholders in companies specialising in sport marketing.
- Sport communication: consultants, shareholders or owners of various kinds of communication supports.
- Sport institutions: managers, shareholders or owners of sport organisations (clubs).
- Leisure sports: shareholders or owners of fitness centres.
- Not-for-profit sport sector: football schools, sport missions, organisation of sport events for humanitarian purposes.

- Games and sport betting: involvement of agents in bookmaking; agents can own or be shareholders in games halls or bookmaking concerns; agents as bookmakers.

**Main findings:**

- With the exception of football, very few data are available on the remuneration of sports agents.
- The economic weight of agents in the sport economy is difficult to assess.
- Major income disparities between sports agents operating in different segments as well as between agents operating in the same sport (e.g. football, where annual income ranges from €13,000 to €3,750,000).
- Sports agents may have large incomes in sports with a high media profile, which implies substantial financial flows.
- Sports agents are influential economic actors.

### CHAPTER 3. SPORTS AGENTS' REPRESENTATIVE BODIES

**Social dialogue**

According to the definition of the International Labour Organisation (ILO), “*social dialogue includes all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy.*”

According to the ILO, “*where workers are organised there are, as a rule, fewer violations of rights, improved working condition and better prospects for future development. Through collective bargaining and participation in social dialogue institutions, trade unions strive to protect and promote the interests and rights of the workers they represent, and, with their access to large numbers of workers have an essential role to play in social mobilisation efforts at the national, regional and international levels.*”

Social dialogue at national and European level can be defined as any action that promotes understanding between the different constituent elements of society. It seems capable of making a positive contribution to furthering the interests of the sport movement as a whole, including clubs, federations, sportspersons and agents.

Social dialogue involves bringing together recognised representatives of the social partners (employers and employees) to negotiate collective agreements (including such aspects as training, occupational health and safety, working hours, etc.). Social dialogue is in no case a Community obligation, but rather, a possibility offered to the social partners. The European Commission also considers that European social dialogue in the sport sector in general or in specific segments (football, for example) is a tool which would enable the social partners to actively contribute to shaping industrial relations and working conditions.

In several sport disciplines and several countries, the relevant clubs, leagues and sportspersons are already organised and therefore already have representative bodies. Conversely, sports agents' representative bodies – whether at national, European or international level – are conspicuous for their rarity.

## **I. Sports agents' representative bodies at global level**

Athletics is the sole sport discipline in which we find a representative international association of sports agents, namely the Association of Athletics Managers<sup>54</sup> (AAM), which was formed after the Athens Olympic Games and which brings together 32 international agents. Very little information is available on this organisation.

On the other hand, an International Association of Football Agents (IAFA) was founded in the late 1990s and subsequently recognised by FIFA. However, it no longer exists today and hardly any information is available on its degree of representativeness or the reasons for its disappearance.

## **II. Sports agents' representative bodies at European level**

To date, only two sports have a representative association of sports agents at European level: football and basketball.

As far as football is concerned, the agents' representative organisation at European level is the European Football Agents Association (EFAA)<sup>55</sup>. This is a not-for-profit organisation founded in 2007 on the initiative of the national football agents' associations in seven countries of the European Union: Netherlands, Portugal, Spain, Italy, the UK, France and Germany.

EFAA was created to maintain and ensure the professionalism, transparency and proper monitoring of football agents' activities. EFAA's main objectives are therefore, firstly, to bring together all the national associations of football players' agents who wish to take part in the debate; secondly, to represent these national associations and their members at European level; and, lastly, to encourage FIFA-licensed football agents to organise into a representative body at national level with a view to increasing its influence and membership.

EFAA strives to take part in the debate on the regulation of the activities of players' agents and to combat corruption and crime in the context of player transfers. Thus, the principal role of this organisation is to strive to regulate the activities of players' agents in cooperation with all the other actors in the football sector. According to EFAA, the involvement of sports agents' representatives in this debate is essential to prevent fraudulent practices and to bring about decisions that reflect the realities of the sector.

As far as basketball is concerned, the Association of European Basketball Agents<sup>56</sup> (AEBA) was set up in 1999 with the principal aim of bringing together and representing basketball agents in Europe and, additionally, ensuring the transparency of their activities. The association has some 120 members, most of whom have a FIBA licence. AEBA permanently strives to establish relations and partnerships with all stakeholders in the sector. It has close and regular contacts with FIBA. For example, it helped to finalise the specific regulations established by FIBA for basketball agents. FIBA has in fact sought close cooperation with agents in drafting the regulations governing their activities. This has facilitated their adherence to the regulations and promoted good relations between FIBA and basketball agents for the purposes of implementation.

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<sup>54</sup> Association of Athletics Managers – [www.athleticsmanagers.com](http://www.athleticsmanagers.com)

<sup>55</sup> European Football Agents Association – [www.europeanfootballagents.com](http://www.europeanfootballagents.com)

<sup>56</sup> Association of European Basketball Agents – <http://aeba-basketballagents.org>

### **III. Sports agents' representative bodies at national level**

There are two representative bodies of basketball agents at national level:

- The "Associazione Procuratori Pallacanestro" in Italy. The Italian association of basketball agents brings together about 60% of Italian licensed agents. Its principal aim is to uphold and protect the economic and professional interests of its members as well as to improve and gain recognition for their skills and expertise. This body is not officially recognised by the Italian basketball federation.
- The "Association Française des Agents de Basketball" (AFAB) in France. AFAB was set up in 2002 by a number of basketball agents at the time when the law on sports agents was enacted in France. It comprises some 20 licensed agents who operate in France, i.e. about 30% of the total number of official agents identified in France.

In football, there are eight national sports agents' associations<sup>57</sup>:

- Germany: Deutsche Fussballspieler Vermittler Vereinigung (DFVV)<sup>58</sup>
- England: The Football Agents Association
- Spain: Asociación Española de Agentes de Futbolistas (AEAF)<sup>59</sup>
- France: Union des Agents Sportifs du Football (UASF)
- Italy: Associazione Agenti Calciatori e Società (AIACS)<sup>60</sup>
- Netherlands: ProAgent<sup>61</sup>
- Portugal: Associação Nacional de Agentes de Futebol (ANAF)
- Sweden: Svenska Spelaragentföreningen

These eight national organisations are members of EFAA. They perform common tasks, including notably the following:

- Bring together sports agents operating in the football sector;
- Promote the interests of FIFA-licensed sports agents;
- Advise and assist sports agents, and answer any enquiries from them (concerning legal matters, organisational matters, etc.), thus facilitating their daily work;
- Promote the image of sports agents and combat the illegal practices which are often reported in the media and harm the image of the profession;
- Keep an updated list of all licensed sports agents in football and enable them to form part of a network, thus creating employment opportunities;
- Engage in a process of reflection with all the actors that have a role to play in the rationalisation of the legal and financial practices of professional football (social dialogue) and the regulation of sports agents' activities;
- Maintain constructive links with the national as well as with the European and international football federations (UEFA and FIFA);
- Organise seminars and round tables on a regular basis to enable practicing sports agents to update their skills and knowledge;
- Combat and prevent the activities of unlicensed sports agents and set up a transparent sanction system;
- Strive to settle any disputes that may arise between agents of players who are members of the national association;
- Provide better protection for young players who are minors;

<sup>57</sup> A representative body reportedly exists in Belgium, namely the "Federatie Arbeidsbemiddelaars voor Beroepsporters" (FAB). However, since its existence has not been confirmed by any reliable source, it has not been included in the analysis.

<sup>58</sup> DFVV - [www.spielervermittler-vereinigung.de](http://www.spielervermittler-vereinigung.de)

<sup>59</sup> AEAF - [www.agentesdefutbolistas.com](http://www.agentesdefutbolistas.com)

<sup>60</sup> AIACS - [www.agentialcio.com](http://www.agentialcio.com)

<sup>61</sup> ProAgent - [www.pro-agent.nl](http://www.pro-agent.nl)

- Develop communication campaigns to promote a positive image of sports agents' activities in the football sector.

**Table 13:** Proportion of professional football players' agents who are members of representative bodies (Study on Sports Agents, 2009)

Country	No. of licensed agents	Representative bodies	Number of members	% of licensed agents who are members
England	560	The Football Agents Association (AFA)	392	70%
France	253	Union des Agents Sportifs du Football (UASF)	N/A	N/A
Germany	259	Deutsche Fussballspieler Vermittler Vereinigung (DFVV)	50	19.31%
Italy	563	Associazione Agenti Calciatori e Società (AIACS)	500	88.8%
Netherlands	111	ProAgent	53	47.75%
Portugal	53	Associação Nacional de Agentes de Futebol (ANAF)	35	66%
Spain	558	Asociación Española de Agentes de Futbolistas (AEAF)	44	7.89%
Sweden	31	Svenska Spelaragentföreningen	N/A	N/A

The representativeness of these bodies varies considerably. 88% of licensed agents in Italy are members of AIACS, close to 70% of licensed agents in England are members of AFA, two-thirds of licensed agents in Portugal are members of ANAF, and almost half of licensed agents in the Netherlands are members of ProAgent.

However, sports agents do not spontaneously join this type of representative body. For example, the German association has 50 members and the Spanish association has 44, i.e. about 19% and 8% of licensed agents in Germany and Spain respectively. One problem that explains these low membership figures is the fact that many agents fear being sidelined if they join a union. Thus, some agents request that their membership of the association be not made public. Another explanation lies in the image of the role of these bodies. According to one official of a national football federation, agents' associations do not always do what they are supposed to do: *"They didn't take any action whatsoever against the rotten apples in their midst."* According to another interviewee, *"it is also up to agents' representatives to get their members to put their house in order"*. Some agents in fact expressed doubts about the ability of these bodies to effectively uphold deontological standards. Lastly, many agents say they are unaware of the existence of any bodies qualified to represent them.

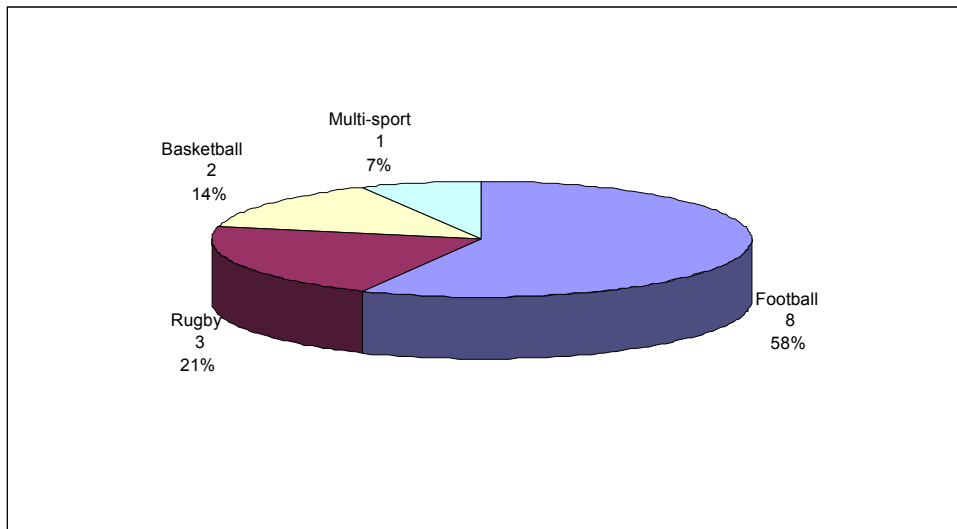
In rugby, we find agents' representative bodies in three countries: England, France and Italy.

In England, the rugby agents' association was actively involved – together with the clubs and players – in the consultation on the regulations established by the Rugby Football Union (RFU) for rugby agents. In order to avoid introducing rules that might be at odds with the realities of the sector, all stakeholders were invited to take part in the discussions and to contribute their views and experiences. This broad consultation aimed to reduce the risk of disputes and prevent the adoption of regulations that might be out of touch with the needs of the sector.

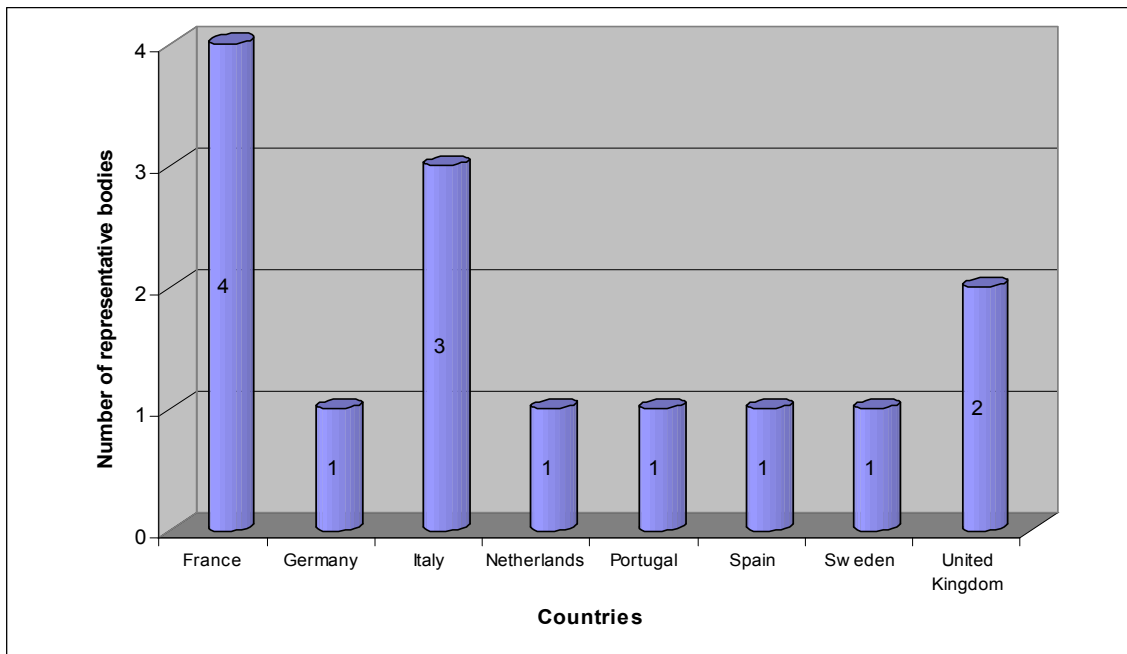
In addition to the associations that exist in basketball, football and rugby, a union bringing together agents active in different sports – namely the "Collectif Agents 2006" – was recently set up in France to

protect and promote the interests of sports agents. This organisation, which originally dealt only with sports agents operating in the football sector, recently decided to modify its statutes to allow agents in other sports to join the association. Following this change, sports agents in handball and athletics have become members of the association. Currently, the latter has some 25 members and shares the above-mentioned aims.

**Figure 12:** Breakdown of national representative bodies of sports agents in Europe, by sport (Study on Sports Agents, 2009)



**Figure 13:** Breakdown of national representative bodies of sports agents in Europe, by Member State (Study on Sports Agents, 2009)



There are relatively few representative bodies of sports agents in Europe and they are to be found mainly in football. In this sector, licensed agents are represented by one European-level structure and eight national structures – specific to football – in eight different Member States. As regards basketball agents, there is a European-level representative structure as well as two national associations (in Italy and France). Rugby for its part has no European-level representative body of players' agents but national structures exist in Italy, France and the UK. Lastly, there is one multi-sport national structure.

**Main findings:**

- In general, few representative bodies of sports agents.
- In general, these bodies are not very representative.
- In general, these bodies have few human and financial resources, reflecting the fact that collective action is difficult in a highly individualistic profession.
- At international level, one representative structure for agents in athletics.
- At European level, representative structures for sports agents in football and basketball (both have been set up recently – 2007 in the case of football).
- At national level, football predominates, given that eight different representative structures have been identified.
- There are three national representative bodies of agents in rugby and two in basketball, plus one multi-sport national representative body.
- Little or no information available on these representative structures.



## **PART 2. THE REGULATION OF SPORTS AGENTS' ACTIVITIES**

After quantifying and qualifying sports agents' activities, this Part looks at the extent to which these activities are regulated – if at all – in EU Member States, whether by public authorities or private governing bodies such as sport federations.

In general, it can be said that sports agents' activities are not regulated to any great extent by texts applying specifically to them. Only four international sport federations regulate these activities, while in the vast majority of EU Member States it is ordinary law – including the laws governing private job placements – that applies to the sports agent's profession.

In order the better to understand the regulations applicable to sports agents' activities, the reasons why different actors have regulated these activities as well as the different types of applicable regulations are described in this part.

General trends as well as significant differences are apparent from an examination of the different regulations and types of regulations governing the activities of sports agents (specific laws, laws on private job placements, ordinary law, sport regulations). These trends and differences will be analysed in this part of the study.

Lastly, it is apparent that current regulations applicable to sports agents' activities do not prevent from the persistence of a series of problems concerning the image, reputation and ethical integrity of sport. These problems – including in particular how sports agents relate to them – will be analysed while bearing in mind that sports agents form part of a system and therefore are not the only actors to play a role in said problems.

### **CHAPTER 1. REASONS FOR REGULATING SPORTS AGENTS' ACTIVITIES**

Currently, where sports agents' activities are subject to specific regulations, two types of actors are involved in the regulatory process, i.e. governments and (international and/or national) sport federations<sup>62</sup>. The reasons that have led these institutions to regulate the profession are diverse. Governments have aimed to legalise sports agents' activities and/or to establish a deontology for them. As regards the sport federations that have established regulations, their principal aim appears to have been to organise a professional activity which – though lying outside their direct area of responsibility – has a definite impact on their members (i.e. clubs, sportspersons and – in the case of international federations – the national federations) and hence on the proper functioning of competitions and on their image in the eyes of the public.

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<sup>62</sup> Even though, as highlighted above, there are a number of more-or-less representative associations and unions of sports agents at national or European level, none of them has embarked – to our knowledge – in a process of self-regulation, for example in the form of a deontological code. This does not prevent these groupings from taking part, in some cases, in the development of regulations applicable to sports agents.

## **I. The aim of providing sports agents' activities with a legal basis**

As indicated above, the main role of a sports agent consists in acting as a paid intermediary between contracting parties interested in concluding a sport contract (notably an employment contract). In legal terms, this can be defined as a private job placement activity carried out as a business activity for profit. In many EU Member States, job placement services were regarded, until recently, as the almost exclusive province of the State and as something that should be provided free of charge to jobseekers, pursuant to ILO Convention C96 on fee-charging employment agencies, signed on 1 July 1949. Under Convention C96, private employment agencies were simply not allowed to operate in the labour market, except by derogation granted by the signatory State for certain categories of workers that must be precisely defined by national regulations and for which the public services might prove inadequate. The Convention also required private employment agencies to be authorised to operate by the competent authorities by means of a renewable yearly licence, and also required the authorities to monitor the agencies' activities (Article 5). In the absence of derogation, the activities of sports agents could therefore be regarded as being unlawful.

Thus, in France, when for the first time the government adopted a specific regulation on sports agents in the framework of the Law of 13 July 1992 (amending the Law of 16 July 1984 on the organisation and promotion of physical and sporting activities), the aim was not so much to introduce a deontology for the sports agent's profession as to provide a legal basis for it. More specifically, the aim was to create an exception, by means of specific legislative provisions, to the monopoly on employment services that was accorded to the "Agence nationale pour l'emploi" (subsequently renamed "Pôles emploi") by the Labour Code. The legislator followed the lines of the existing derogating provisions on artists' agents, establishing the obligation for sports agents to declare their activities to the ministry responsible for sports<sup>63</sup>.

Adopted on 19 June 1997, ILO Convention C181 on private employment agencies recognises the need for some flexibility in the labour market and thus authorises private employment agencies to provide their services for a fee. However, Article 3.2 of Convention C181 obliges signatory States to determine, by means of a licence or recognition system, the conditions under which the agencies can lawfully carry out their activities, except where said conditions are already regulated in some other way by national legislation or established practices.

This explains why most of the EU Member States that are signatories to this international Convention have general regulations on private job placement activities which, generally speaking, make the exercise of these activities subject to a permit/authorisation system<sup>64</sup>. However, some States, including Germany and the Netherlands, decided to dispense with such a system, respectively in 2002 and 2003, on the grounds that it is too restrictive and, generally, an inefficient means of monitoring the activities of private employment agencies.

## **II. The aim of protecting the image and reputation of sport**

As we shall explain in further detail below, some EU Member States as well as four international sport federations (FIFA, FIBA, IRB and IAAF) have adopted specific regulations applicable to sports agents. The purported aim of these regulations was, essentially, to organise and control an activity which was

<sup>63</sup> The ministry's acknowledgement of receipt of the declaration acted as an official document authorising the agent to exercise his profession in France.

<sup>64</sup> By August 2009, 11 EU Member States had ratified this Convention: Belgium, Bulgaria, Czech Republic, Finland, Hungary, Italy, Lithuania, Netherlands, Poland, Portugal and Spain.

liable to run contrary to the ethics of sport and the interests of stakeholders in the sport concerned (especially sportspersons and clubs) and which might affect the proper functioning of sport competitions. Sports agents in fact play a central role in the organisation of sport events, particularly in their capacity as employment agents. As professional sports began to receive more and more media coverage in Europe, the aim was also to preserve the image of sport in general and prevent the multiplication of scandals associated with the activities of unscrupulous intermediaries. The regulations of sports agents' activities was seen as a response to the criticisms and problems brought about by the increasing professionalisation and media coverage of sport, particularly owing to the multiplication of football player transfers and the increasingly large amounts of money involved.

In Greece, for example, government regulations on sports agents (Law 2725/1999 and Ministerial Decision 23788 of 28 August 2002) basically originated from the accusation brought against sports agents that they had contributed to the financial duress or bankruptcy of certain professional clubs, particularly by pushing up players' salaries and transfer fees.

The aim of introducing a deontology into the sports agent's profession was also central to the reform of French legislation in 2000 (Law of 6 July 2000 amending the Law of 16 July 1984 on sport).

As regards the regulations established by sport federations along the lines of the FIFA Regulations, they are more broadly aimed at protecting sportspersons and clubs against possible malpractices associated with transactions in which sports agents may take part, sometimes fulfilling a major role (negotiation of employment contracts or transfer contracts). In this case, too, regulating the activities of sports agents was seen as a means of preventing malpractices associated with increasingly high financial stakes.

The FIBA and IAAF regulations on sports agents are somewhat of a special case in that, while also aiming to protect the interests of sportspersons, they reflect the determination, on the part of both federations, to actively involve sports agents in the management of the sports concerned, side by side with the sportspersons, coaches and organisers of competitions.

As we shall explain later in this report, there appear to be fairly few national sport federations that have taken the initiative of adopting specific rules for sports agents without being forced to do so by regulations established by their respective international federations or national governments. It should perhaps be stressed, however, that the establishment of such rules is often linked to the context and the economic maturity of the sport concerned. It is obvious that the higher the economic stakes involved in a sport, the higher the remuneration of the sportspersons who practise the sport professionally, and this inevitably contributes to increasing the number of agents operating in the sport concerned, which in turn makes it necessary to regulate and ensure the transparency of agents' fees. In football, for example, it became apparent that the payment of commissions by clubs to sports agents, particularly for player transfers was the linchpin of various types of fraudulent practices<sup>65</sup>.

In this connection, we may mention a representative of the Rugby Football Union (RFU) who explained that the recent adoption of a regulation on sports agents by the RFU could be basically explained by the increase in the number of agents operating in professional rugby in England as well as by the fact that the main national rugby federations (France, New Zealand, Australia, etc.) had introduced such regulations. The same considerations apply to the regulation adopted, with regard to sports agents, by the Finnish ice hockey federation.

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<sup>65</sup> Issues relating to the types of financial crime that can be associated with the activities of sports agents are dealt with in Chapter 4 of this Part.

Thus, the decision of certain sport federations to regulate the activities of sports agents essentially originates from the wish to protect the image and the ethics of their sport by adopting a deontology, even though regulation of sports agents' activities is not the only tool available to protect the image of sport. Regulation involves a number of measures, such as controlling access to the profession, introducing rules governing agents' fees, and taking steps to protect sportspersons and clubs as much as possible against the practices of rapacious intermediaries. Regulation is regarded as an effective means of improving the system's transparency to enable sport to sustain its reputation. However, as pointed out later in this report, a number of problems associated with the activities of sports agents still remain, including problems concerning the protection of sportspersons, financial malpractice, trafficking in human beings, and the protection of sportspersons who are minors – and this applies both to countries and/or sports where the sports agent's profession is regulated and countries/sports where it is not.

Before examining these different problems which are associated – albeit not exclusively – with sports agents' activities, it may be appropriate to look more closely at the actors, both public and private, that regulate sports agents' activities in Europe as well as at the nature of the relevant regulations, which can take different forms.

## CHAPTER 2. ACTORS AND REGULATIONS GOVERNING SPORTS AGENTS' ACTIVITIES IN EUROPE

This second chapter aims to provide a detailed overview of the different actors – both public and private – involved in regulating the activities of sports agents in the EU as well as to identify the different kinds of regulations applicable to the latter. Complementing this overview of the regulatory situation, we provide, attached as an annex to this report, a typological description of the various mechanisms regulating sports agents' activities in each of the 27 EU Member States.

**Table 14:** National public and private regulations governing the activities of sports agents in the EU<sup>66</sup>

EU Member States	National legislation		Regulations established by national federations/sport leagues													
	Sports agents	Private placement	Athletics	Basketball	Boxing	Cricknet	Cycling	Golf	Football	Handball	Ice hockey	Motorcycle racing	Rugby	Tennis	Sailing	Volleyball
Austria		✓							✓	✓						
Belgium		✓	✓						✓							
Bulgaria	✓	✓		✓					✓							
Cyprus		N/A							✓							
Czech Republic		✓							✓							
Denmark		X <sup>67</sup>							✓							

<sup>66</sup> These are regulations that have been identified as part of this study.

<sup>67</sup> The Law of 10 June 2003 on the active promotion of employment contains provisions on job placements but does not appear to regulate the activities of private employment agencies.

Estonia		N/A						✓							
Finland		N/A		✓				✓		✓					
France	✓	X <sup>68</sup>	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
Germany		✓						✓	✓						
Greece	✓	N/A	✓	✓				✓							
Hungary	✓	✓						✓							
Ireland		✓						✓				✓			
Italy		X <sup>69</sup>	✓	✓			✓	✓					✓		✓
Latvia		✓						✓							
Lithuania		✓	✓	✓				✓							
Luxembourg		N/A						✓							
Malta		✓						✓							
Netherlands		✓						✓							
Poland		✓	✓	✓				✓							
Portugal	✓	N/A						✓	✓						
Romania		✓						✓							
Slovakia		✓						✓							
Slovenia		✓		✓				✓							
Spain		✓	✓					✓							
Sweden		✓	✓					✓		✓					
United Kingdom		✓	✓			✓		✓				✓			

### **I. Regulations established by public authorities**

The regulation of sports agents' activities by governments (including regional authorities that are competent to do so) can take place in various ways. In the first place, there may be legislative and regulatory provisions which are specifically applicable to sports agents (this is the case, notably, in France, Greece and Portugal) and which may be more or less developed depending on the country concerned (some government regulations in fact are limited to stating that sports agents' activities are to be regulated by the sport federations). Secondly, general legislative and regulatory provisions governing private employment services may also apply (this is the case, e.g. in Germany, Austria, the Netherlands and the Czech Republic). Thirdly, in some cases only ordinary law may apply (contract law, commercial law) as, for example, in Denmark and Luxembourg.

Such different types of public regulation can exist side by side. In France, for example, the applicability of rules specific to sports agents' activities under the Code of Sport (Articles L. 222-5 to L. 222-11 and

<sup>68</sup> The French Labour Code includes a number of general provisions on private employment services (see Articles L. 5323-3), but in the case of sports agents these provisions are superseded by the specific regulations applicable to them.

<sup>69</sup> In Italy, Article 4 of Law 91/81 on relations between clubs and professional sportspersons stipulates that the provisions of Law 300 of 20 May 1970, prohibiting private job placement services, do not apply to the sport sector. This derogation thus enables sports agents to act as employment agents for professional sportspersons but does not in the least prevent Italian sport federations from deciding, fully independently, to adopt regulations concerning the activities of sports agents pursuant to the laws on the organisation of Italian sport (Law 426 of 16 February 1942 instituting the Italian National Olympic Committee [CONI] and the Law of 8 July 2002, which established the current organisation of sports in Italy). However, Italian sport federations are not obliged by law to adopt regulations on sports agents, as is the case in France, for example.

R. 222-1 to R. 222-22) is not incompatible with the simultaneous applicability of ordinary law, e.g. the provisions concerning agency contracts in the Code of Civil Procedure (Articles 1984 and ff.). Similarly, in Germany, the applicability of regulations governing private job placements under the Social Code (“Sozialgesetzbuch”, SGB III – Articles. 296 and ff.) is not incompatible with the simultaneous applicability of, e.g. regulations concerning brokerage contracts under the Code of Civil Procedure (“Bürgerliches Gesetzbuch”, BGB, Articles 652 and ff.).

## 1. Regulations concerning private job placement services

In most EU Member States, the activities of sports agents – which, as a reminder, consist essentially in acting as intermediaries between sportspersons and clubs with a view to concluding an employment contract – is impacted, in general terms, by the regulations concerning private job placements. It should be recalled in this connection that only in June 1997 did the ILO General Conference recognise – by means of Convention C181 – that profit-driven private employment agencies could legitimately operate in the labour market. As mentioned earlier, in many EU Member States, up until then, job placement services were almost the exclusive province of the public department of employment, pursuant to ILO Convention C96 on fee-charging employment agencies, signed on 1<sup>st</sup> July 1949<sup>70</sup>.

In the countries concerned, the activities of sports agents are regarded, essentially, as exceptions to the public monopoly on employment services, so that said activities are subject to the more or less stringent rules applicable to private employment agencies.

It is apparent, however, that these general regulations on private employment agencies are, in practice, difficult to apply to sports agents, particularly because of the difficulty of precisely defining the latter’s activities (given that sports agents also carry out other commercial activities apart from job placements in exchange for a fee) or, more simply, because often sports agents are completely unaware that such regulations apply to them.

It should also be noted that general provisions on private employment services may include – as is the case, notably, in Belgium – specific rules on the employment of professional sportspersons. Thus, in the different Belgian regions, sports agents are subject to the general regime applicable to private employment agencies, with however some peculiarities which are specific to commercial employment agencies dealing with professional or remunerated sportspersons. For the purposes of this study, however, these provisions will not be considered as public regulations specifically concerning sports agents, given that they are included in general regulations on private placement services.

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<sup>70</sup> The issue of the compatibility of public monopolies on job placement services with Community law has also been raised. In a judgment of 11 December 1997 (Case 55/96, “Job Centre II”), the Court of Justice of the European Communities considered that “public placement offices are subject to the prohibition contained in Article 86 of the EC Treaty, so long as application of that provision does not obstruct the performance of the particular task assigned to them. A Member State which prohibits any activity as an intermediary between supply and demand on the employment market, whether as an employment agency or as an employment business, unless carried on by those offices, is in breach of Article 90(1) of the EC Treaty (which subsequently became Article 86 §1, then Article 106 §1 of the Treaty on European Union, concerning the abuse of a dominant position) where it creates a situation in which those offices cannot avoid infringing Article 86 of the Treaty. That is the case, in particular, in the following circumstances:

- the public placement offices are manifestly unable to satisfy demand on the market for all types of activity; and
- the actual placement of employees by private companies is rendered impossible by the maintenance in force of statutory provisions under which such activities are prohibited and non-observance of that prohibition gives rise to penal and administrative sanctions; and
- the placement activities in question could extend to the nationals or to the territory of other Member States.”

## 2. Regulations specific to sports agents<sup>71</sup>

As mentioned earlier, some EU Member States have deemed it necessary to establish specific regulations on sports agents' activities. Others have limited themselves to mentioning sports agents in their national legislation, without thereby aiming to regulate sports agents' activities but leaving this task to the sport federations. The following table provides an overview of the situation in the five countries concerned as well as of the nature of the legislative texts in question.

**Table 15:** Nature of specific public regulations on sports agents

EU Member State	Legislative texts	Nature of the legislative texts	Additional remarks
Bulgaria	Law on sport and physical activities of 9 July 1996, latest update of 30 May 2008: Articles 35b, 35c and 35d.	The right to carry out athlete transfers belongs to the sport clubs (Article 13§2). Agents are limited to dealing with "competition rights" or "federation rights" (to the exclusion of transfer rights), i.e. the rights attached to the player's licence (which enables him to qualify). To act as intermediaries in this way, agents must be registered as "traders" (Article 35d).	
France	Code of Sport: Articles L.222-5 to L.222-11, R. 222-1 to R. 222-22 and A. 222-1 to A. 222-15.	Legislative regulations of sports agents' activities. Sport federations are authorised by the State to issue, on its behalf, a sports agent's licence for the sport concerned.	A bill aimed at regulating the sports agent's profession was adopted by the Senate in June 2008 and is currently being examined by the National Assembly (See box below).  Proposed decree modifying the articles of the regulatory part of the Code of Sport (i.e. the articles mentioned in column 1).
Greece	Law 2725/1999 on amateur and professional sport: Article 90§9 (amended by Law 3479/2006 so that Article 90§9 became Article 90§5). Ministerial decision 23788/2002.	Article 90§9 provides for the adoption of a ministerial decision aimed at regulating sports agents' activities. The ministerial decision of 2002 consists of a set of legislative regulations on sports agents' activities.	Based on the information available to us at this time, the body responsible for organising the tests and issuing a licence to sports agents (in accordance with the ministerial decision) has not yet been set up.
Hungary	Law on sport of 2000, completed and amended in 2004: Article 11.	This law stipulates that only commercial agents registered with a national or international sport federation and fulfilling the requirements set out in the regulations of the federation may conclude mediation contracts.	

<sup>71</sup> In this report, national legal or regulatory provisions are considered public regulations "specific to sports agents" when they specifically concern sports agents or the mediation and/or brokerage activities carried out by these intermediaries. General regulations on private job placement services are not considered "specific to sports agents" in this report even though they contain provisions on the employment of professional sportspersons (as in the case of Belgium).

Portugal	Law 28/98 of 26 June 1998 on sports contracts: Chapter IV, Articles 22 to 25. Law n°5/2007 of 16 January 2007 on physical activities and sport: Article 37.	These laws specifically cover certain aspects of sports agents' activities (definition, remuneration, incompatibilities, etc.), while leaving the task of officially accrediting agents to the sport federations.	
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### Current legislative projects in Austria and France

- In Austria, a draft bill on professional sport includes, in its Article No. 10, a number of provisions on sports agents. In particular, said article establishes that sports agents may only exercise their profession in accordance with a set of regulations established for this purpose by a sport federation. The text also provides a definition of sports agents in addition to laying down some requirements for mediation contracts between agents and sportspersons (duration, method for calculating fees, etc.).
- In France, a draft bill aimed at regulating the sports agent's profession and amending the Code of Sport is currently being examined by the National Assembly. The bill sets out to supplement the legislative provisions applicable to the sports agent's profession which are already included in the Code of Sport and, to this end, puts forward proposals to more effectively regulate access to the profession as well as the performance and monitoring of sports agents' activities.

Some aspects of these proposed laws will be examined in more detail later in this report.

At any rate, the existence even of this small number of specific public regulations contributes to complicating the legal situation of sports agents, given that some of those regulations can create further constraints in addition to those imposed by ordinary law and the regulations issued by sport federations. Furthermore, these public regulations are general in scope and are therefore applicable to all sports, even though very often they were introduced in response to problems that arose, for the most part, in professional football. Certain sports are thus subject – particularly in France – to the same regulatory constraints as football, although the activities of sports agents in these sports has not necessarily given rise to any problems up until now. Finally, as we shall see later on, these specific regulations strengthen the differences between the situations of sports agents depending on their country of establishment, with some of them benefiting from a lightly regulated environment while others are subject to a more or less restrictive regime.

### 3. Ordinary law

Lastly, in all EU Member States sports agents' activities are affected by contract law (general law of obligations) in that the mediation or agency service provided by a sports agent with a view to recruiting a sportsperson are usually formalised in a contract whose legal nature may vary depending on the role and tasks entrusted to the agent (power of attorney, broking, etc.).

### Terminological clarifications

The legal terminology relating to contracts varies significantly in some respects from one Member State to another (contracts granting a power of attorney, brokerage contracts, job placement contracts, commission contracts, etc.). It is therefore advisable to explain the meaning of the terms used throughout this report.



The terms “**mediation contract**” and “**sports agency contract**” are used indifferently as generic terms which subsume the two types of contract which are usually concluded with sports agents and which can be defined as follows:

- 1) **Mandate contract**: This is a contract whereby a person, i.e. the “principal” or “mandator” (in our case a sportsperson, club or competition organiser), gives another person, i.e. the “authorised agent” or “mandatory” (sports agent), the powers and the task to act in the name and on behalf of the principal in one or more legal matters (for example, signing an employment contract or carrying out a business transaction on behalf of a sportsperson).
- 2) **Brokerage contract**: This is a contract whereby an intermediary (in our case, the sports agent) brings two contracting parties together (e.g. a player and a club) in order to enable them to conclude an agreement (e.g. an employment contract). Unlike a mandate contract, a brokerage contract does not authorise the agent to act in the name and on behalf of the client in a legal matter, but only to carry out material actions (establishing contact, arranging a meeting, etc.).

In practice, the contracts handled by sports agents are mostly brokerage contracts, even though the term “mandate” is sometimes used to describe this type of contract.

“(Job) placement contracts”, to which certain public regulations refer, can be assimilated to brokerage contracts.

## **II. Regulations established by sport federations**

Sports agents’ activities are also subject to specific regulations issued by certain international and/or national sport federations. While we find sports agents present more or less systematically in many sports<sup>72</sup>, to date only four international sport federations have adopted regulations on sports agents’ activities, namely the international federations of football (FIFA), basketball (FIBA), rugby (IRB) and athletics (IAAF). The regulations of the International Handball Federation (IHF) also refer to sports agents but merely indicate that “*continental federations are entitled to include points ruling the definition, the rights and the duties of so-called player agents in their supplementary rules for transfer procedures*”<sup>73</sup>. To our knowledge, however, the European Handball Federation (EHF) has not established any such provisions, unlike the German, Austrian, French and Portuguese national federations.

The regulations issued by international sport federations have universal scope since they are meant to be transposed into the regulations of national federations, so that, in principle, they are to be applied to all actors in the sport concerned (agents, sportspersons, clubs, etc.), whatever their country of residence, provided that even just a fairly tenuous legal link (membership, licence) exists between them and the national federation.

Furthermore, the regulations issued by international sport federations make it possible to take into account the peculiarities of each sport, which is not the case with public regulations which are applicable to all sports. Certain rules governing sports agents’ activities in team sports are not necessarily appropriate to govern their activities in individual sports. Similarly, certain rules that are deemed necessary to govern sports agents’ activities in sports with high economic potential, such as

<sup>72</sup> Some explanations concerning this aspect have been provided in Part 1 of this report.

<sup>73</sup> Chapter IV, Regulations on transfers between federations, § 24, September 2007.

football, may be unnecessary to regulate those activities in professional sports that are economically less developed<sup>74</sup>.

As in the case of legislative regulations established by governments, the rules issued by international sport federations are very heterogeneous<sup>75</sup>. Thus, for example, there is nothing in common between the FIFA Regulations on players' agents, which is extremely detailed, and the IRB Regulations, which merely set out some general principles for the attention of national federations.

**Table 16:** Regulations governing sports agents' activities, issued by international sport federations

Sports	International federations	Regulations
Athletics	International Association of Athletics Federations (IAAF)	IAAF Regulations Concerning Federation/Athletes Representatives Competition Rules 2009: Rule 7 (Athletes Representatives)
Basketball	International Basketball Federation (FIBA)	Internal Regulations 2008: Rules H governing players, coaches, support officials, and players' agents – Rule H.5 Players' agents
Football	International Federation of Association Football (FIFA)	Regulations Governing Players' Agents (2008)
Rugby	International Rugby Board (IRB)	International Regulations: Regulation 5 – Agents

## 1. FIFA regulations

In order to put an end to certain practices which were harmful to football players and clubs and which were repeatedly brought to its attention, in 1994 FIFA adopted a regulation governing players' agents activities, whereby any person wishing to exercise the profession must previously obtain a licence issued by FIFA, subject to certain conditions, such as passing an interview with FIFA officials and paying a deposit guarantee.

Believing that this regulation ran contrary to the provisions of the EC Treaty in respect of competition, in that it introduced excessive, opaque and discriminatory requirements restricting access to the profession, an applicant for the FIFA licence, Mr Piau, lodged a complaint with the European Commission. After proceedings on grounds of possible breaches of competition law were instituted by the European Commission, FIFA agreed to modify the organisation of the activities of players' agents and, in December 2000, adopted a new regulation governing said activities. Since then, players' agents are no longer licensed directly by FIFA, but rather, by each national federation under the supervision of FIFA<sup>76</sup>.

The 2000 FIFA Regulations, which came into force on 1<sup>st</sup> January 2001, were subsequently modified in 2008 through the adoption of a new set of regulations, which are still in force today. One of the novelties introduced in the new regulations is the fact that the licence of a players' agent is now renewable as opposed to being issued for an indefinite period of time. FIFA's aim was to ensure that agents have

<sup>74</sup> Thus, we can well understand the wish to regulate the remuneration of agents in a sport like professional football, where the value of transactions (salaries, transfer fees) is often very high. Regulation seems rather less justifiable in professional sports that generate much smaller financial flows.

<sup>75</sup> A detailed description of the contents of the regulations established by the various above-mentioned international federations for sports agents is annexed to this report.

<sup>76</sup> The various changes introduced in the 2000 FIFA Regulations as well as an analysis of the Piau case are dealt with later in this report.

updated knowledge of the various regulations applicable to their profession<sup>77</sup>. The disciplinary measures that can be taken against agents who infringe the regulations were also strengthened.

FIFA has recently announced its intention to review the system for regulating sports agents' activities. FIFA advocates putting in place measures to check the transfers between clubs more systematically, monitoring the actions rather than the actors involved. The adoption of these new rules – scheduled for May 2010 – would mean that the term “agents” would be dropped in favour of “intermediaries”, who would be able to operate in the football sector without formal qualifications and without the prior authorisation of a national football federation, though FIFA would establish a set of requirements and obligations that players and clubs alike would have to fulfil in order to carry out a transfer<sup>78</sup>.

## 2. FIBA regulations

In 1997 FIBA raised the question of how best to regulate the activities of basketball agents so as to integrate them into the “basketball family”<sup>79</sup>. Following a number of meetings with agents active in the basketball sector, FIBA realised that agents themselves were in favour of regulating certain aspects of their profession. However, it was only on 1<sup>st</sup> September 2006 that an amended version of FIBA's Internal Regulations, including provisions on players' agents (Regulation H.5), came into force.

FIBA established these regulations in cooperation with sports agents, who were involved in the process of elaboration from the beginning.

The provisions of these regulations are fairly similar to those in the FIFA Regulations. The aim is to regulate only the activities of players' agents “*who undertake to bring about or assist in the international transfer of players or coaches*” (Regulations 2008, Regulation H.5.1).

As far as national transfers are concerned, the Regulations indicate that “*any national member federation which deems it necessary may establish its own regulations governing players' agents...*” (Regulation H.5.2).

Thus, according to these regulations, national basketball federations have no obligation to establish specific regulations applicable to sports agents.

## 3. IRB regulations

In response to the increasing professionalisation of rugby (which officially became a professional sport in 1995), the IRB set up a “Game Regulations Working Party” responsible for consulting all IRB member federations with a view to submitting a report to the IRB leadership with proposals to amend the existing regulations. Following the conclusions of the Working Party, the IRB issued a new set of regulations, which were more closely suited to professional rugby and which for the first time included a regulation on rugby players' agents.

The current IRB regulation on agents (Regulation 5) stipulates that each federation “*is responsible for the authorisation and regulation of agents acting on behalf of its members (or persons within its jurisdiction) and agents operating under that union's jurisdiction*”. The text also lays down that each

<sup>77</sup> As we shall explain in the third Part of this study, this system for renewing a sports agent's licence is currently being called into question as part of the proceedings instituted by several sports agents in the Court of First Instance of Liège (Belgium).

<sup>78</sup> A more detailed analysis of this FIFA project will be provided later in this report.

<sup>79</sup> “Player Agents in FIBA structure. Interview with FIBA Secretary General Patrick Baumann”, *FIBA Assist Magazine*, No. 30, March 2008, p.34.

federation “shall establish appropriate regulations to govern and authorise the activity of agents. Such regulations shall be registered with the [IRB] Board.” It is explained, furthermore, that such regulations “must contain the general principles set out in Regulation 5.1.1 to 5.1.10” of the IRB Regulations. IRB national member federations therefore have an obligation, in principle, to adopt regulations governing the activities of sports agents operating in the rugby sector, though the contents of such regulations – with the exception of some general recommendations issued by the IRB – are left to their discretion.

#### 4. IAAF regulations

To date, IAAF is the only international individual sport federation to have issued regulations on sports agents. It was at its 37<sup>th</sup> Congress, held in Barcelona in September 1989, that IAAF first decided to recognise and regulate athletes’ agents or “managers”, subsequently called “athletes’ representatives”. In 1992, the IAAF Council approved an “Information Note” for the attention of IAAF members, which in 1993 became a set of statutory “Regulations”. These “IAAF Regulations Concerning Federation/Athletes’ Representatives” – subsequently amended in November 1994, March 1997 and May 1997 – are complemented by Rule 7 of the IAAF Competition Rules 2009, which has also been modified, recently, on the occasion of the 47<sup>th</sup> IAAF Congress, held in Berlin on 12 August 2009<sup>80</sup>. The definitive version of these changes will be included in the new 2010-2011 edition of the IAAF Competition Rules, which came into force on 1<sup>st</sup> November 2009.

In its current (as well as in its new) version, Rule 7 (point 2) establishes that national federations are responsible for “authorising” athletes’ representatives. The national federations have “*jurisdiction over athletes’ representatives acting on behalf of their athletes and over athletes’ representatives acting within their country or territory or over athletes’ representatives who are nationals of their country*”.

The IAAF Regulations on athletes’ representatives, including the provisions annexed to them and, in particular, the above-mentioned authorisation procedure, aim to help member federations to establish regulations governing the activities of athletes’ representatives. They set out a number of mandatory provisions that must be included in the regulations of each member organisation. Two such mandatory provisions concern a standard contract for athletes’ representatives and a standard application form to register with an IAAF member federation as an authorised athletes’ representative<sup>81</sup>.

#### 5. The regulations issued by national sport federations

The national sport federations that have been identified as having regulations applicable to sports agents are basically the football federations (in all EU member countries, as required by FIFA)<sup>82</sup> and, to a lesser extent, the athletics and basketball federations (9 and 8 countries respectively). It should be noted that, in athletics, the national regulations in most cases consist of a simple transposition of the IAAF regulations. Furthermore, a handful of national rugby federations (France, England, Wales and Ireland)<sup>83</sup> have issued regulations on sports agents.

<sup>80</sup> The main decision concerning athletes’ representatives that was made at the 47<sup>th</sup> Congress of IAAF was the introduction, by 2010, of a test to obtain a permit to operate as an athletes’ representative.

<sup>81</sup> It should be noted that Rule 7 (Point 5), as amended in 2009, stipulates in principle that “*it is a condition of membership [of IAAF] that each member includes a provision in its constitution, that all agreements between an athlete and an athletes’ representative should comply with the rules and regulations governing athletes’ representatives.*”

<sup>82</sup> Subject to any adaptations required by the national regulatory environment.

<sup>83</sup> The regulations of the English Rugby Football Union are very recent and were expected to come into force in September 2009. For their part, the regulations of the Irish Rugby Football Union merely transpose the IRB Regulations which, as we have seen, only lay down some general principles.

As mentioned previously, there are few national sport federations that have issued specific regulations on sports agents on their own initiative, i.e. without being required to do so by the regulations of their relevant international federation or, as in the case of France, by government regulations. Examples of such proactive national federations are the Austrian, German and Portuguese handball federations<sup>84</sup>, the Finnish ice hockey federation<sup>85</sup>, and the England and Wales Cricket Board<sup>86</sup>. We have also already mentioned the fact that such initiatives – which are so rare on the part of national sport federations – are often linked to the degree of economic maturity of certain sports in certain countries and to the attendant risk of dubious practices emerging within the sport concerned.

With the exception of athletics and the special cases of France and Italy, sports agents' activities appear to be regulated only by team sport federations. Hence the existence of regulations concerning sports agents' activities seems to be correlated with the existence of player/athlete transfer deals between clubs.

There are also plans to establish regulations governing sports agents' activities in swimming in the United Kingdom. The proposed regulations – drawn up by “British Swimming” to protect sportspersons and coaches in the context of the growing economic importance of swimming – aim to set up a voluntary, non-compulsory licensing system for agents.

## **6. Questions concerning the legal validity of the power of sport federations to regulate access to the sports agent's profession**

Before considering the numerous differences which are apparent between the various regulations governing the sports agent's profession (and which result from the above-mentioned multiplicity of sources of regulation), we may examine the point raised by some observers, namely, that because of the limited competence of sport federations and their legal status as private entities, the legal validity of the regulations independently issued by them with regard to sports agents is rather uncertain.

This question was raised, among others, by the authors of a study carried out in July 2000 by the University of Bourgogne at the request of the French Ministry of Sports<sup>87</sup>. Although the legal arguments put forward by the authors are mainly based on French legislation, they are nevertheless of some interest to us. Without calling into question the legitimacy of sport federations' regulations concerning sports agents – which reflect the need to develop a professional ethics, as highlighted above – the authors remark that the aim and the effect of such regulations is to make the validity of the contracts concluded between agents and their clients conditional upon compliance with provisions that have been issued unilaterally by the federations, which are not parties to the contracts. According to the authors of the study, such interference in contractual relations can only come – at least “*in most cases*” – from a public authority. As an essentially private-law entity, the sport movement may not regulate a profession (including the terms and conditions for access to it) on its own authority, that is, without being expressly authorised to do so by the legislator, i.e. by the State<sup>88</sup>.

Therefore, according to this analysis, given that international sport federations are devoid of any international authority in this area, there might be legal grounds to call into question the various

<sup>84</sup> In the latter case, the regulations consist of an ethical code.

<sup>85</sup> It should be noted that the Swedish ice hockey players' union (SICO) also adopted, on its own initiative, an ethical code for all its members and their agents.

<sup>86</sup> In the latter case, as indicated by the name, the regulations only apply to England and Wales, rather than to the UK as a whole.

<sup>87</sup> “Statut de l'intermédiaire sportif en Europe: étude comparée et propositions d'unification”, a study conducted in July 2000 by the University of Bourgogne under the supervision of Professor Gérald SIMON.

<sup>88</sup> According to French law, the FIFA Regulations on sports agents have no public regulatory force.

obligations set out in their respective regulations on sports agents. It should be noted, however, that no national case law has been found that expressly calls into question the legal validity of sport federations' powers to regulate sports agents' activities.

Nevertheless, in the only example of European case law dealing specifically with a sports agent (namely the Piau judgment)<sup>89</sup>, the Court of First Instance of the European Communities (CFI) also expressed doubts as to how legitimately an international sport federation such as FIFA could issue regulations which might affect economic activities outside sport as such, i.e. the activities of a sports agent. According to the Court, *“the very principle of regulation of an economic activity concerning neither the specific nature of sport nor the freedom of internal organisation of sport 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.”*

Hence the question of whether or not a private-law body (such as a sport federation) is legally entitled to regulate access to a profession (such as the sports agent's profession) through a system including certain requirements (for example, holding a licence) does not seem to have been definitively settled. It was however important to raise this question before looking more closely at the existing regulations.

#### **A private initiative: The European Sport Certification System (ESC)**

European Sport Certification (ESC) is a private project aimed at applying ISO/IEC standards to sports agents' activities.

The system provides for the following:

- A set of reference standards which are to be applied to the profession and which have been specifically developed for the ESC system on the basis of a range of texts, laws and regulations.
- Certification to be obtained subject to compliance with the standards. Adherence to the system enables the person concerned to win certification. The agent complies – and pledges henceforth to comply – with the procedures and obligations relating to the reference standards. Certification indicates to the entire professional environment that the agent's qualifications and integrity have been recognised and verified.
- Regular monitoring of operations (e.g. the agency contract and any transfer operations resulting from it are submitted for examination to the certifying body). All financial flows and all the contracts and clauses pertaining to the transfer are audited to ensure compliance with the laws and regulations and to prevent any irregularities.
- Supervision to ensure that all the various standards are observed by the certified persons.
- The provision of support, for example through consultative forums to exchange information or update all the relevant texts, laws and case law relating to the profession.
- A protection system, i.e. a system to lodge complaints and appeal against decisions.
- Re-certification of the certificate holder at the end of specified periods of activity in order to testify to the competence shown by the certificate holder during the relevant period.

<sup>89</sup> CFI, 26 January 2005, Case T-193/02, *Piau v. Commission, FIFA*, judgment confirmed by the CJEC, Order of 23 February 2006, Case C-171/05 P. As a reminder, a more detailed analysis of this judgment will be provided in the third Part of this report.

## **The regulation of sports agents' activities in professional sports in the United States**

### **The role of sports agents in the United States**

The four main team sports in the U.S.A. are American football, basketball, ice hockey and baseball. Each of these sports is represented, at professional level, by a major league, i.e. the NFL, NBA, NHL and MLB respectively. These leagues have established internal systems of regulation which are fairly heterogeneous and very interventionist, also in relation to sports agents' activities<sup>90</sup>.

The main problem associated with sports agents in the U.S.A. occurs when players complete their university studies and move on from the NCAA to the professional leagues<sup>91</sup>.

Sports agents in the United States are genuine representatives, rather than merely initiators of transfers. Generally speaking, their aim is not the costly purchase of contracts, but rather, the strategic exchange of contracts or signing players at the end of their current contract. Furthermore, clubs are not allowed to use the services of a sports agent; they must do their own "scouting". Thus, sports agents' potential clients are only natural persons, i.e. players, coaches or franchise owners.

Some specialists point out that, because of the market rigidities, players can negotiate their contracts without the help of an agent (e.g. Ray Allen, a major NBA player who does not have an agent). Hence sports agents provide other services and since the 1980s there has been a trend towards growing ownership concentration in the agent market, with the emergence of groups that offer their clients a comprehensive range of career-management services (personalised help with daily tasks, logistic support, etc.). As a result of this process of concentration and the development of sports agency groups that hold substantial portfolios, there is an increasing risk of conflicts of interests.

While the commissions received by sports agents on the sport contracts they negotiate are usually capped by players' unions to prevent excessive amounts being charged, the fees for other services offered by agents are negotiated individually between the contracting parties. However, they are often calculated on the basis of the other agency services provided:

- Sponsorship contract: from 5% to 20% of the value of the contract.
- Tax, accounting and financial consultancy: from USD150 to USD400 per hour.

### **The different sources of regulation of the profession**

#### Regulation by ordinary law

The contract concluded between a player and a sports agent establishes a fiduciary relationship, which means that the agent assumes certain obligations under contract law: diligence, good faith, trustworthiness, proper record-keeping, etc.

<sup>90</sup> Each of the American professional leagues concludes a Collective Bargaining Agreement (CBA) with its affiliated players' union for a specified period of time. The CBA establishes, among other aspects, the terms and conditions for sharing income between the franchise holders and the players. Aimed at protecting the interests of the players, the CBA creates some rigidity in the employment market, e.g. by fixing a minimum wage and salary scales depending on the players' experience in the league. The CBA may also fix a maximum limit for the remuneration of sports agents, but this only applies to the NFL (3%) and the NBA (4%). The remuneration of sports agents comprises a gross salary, bonuses and other incentives. Historically, players' agents have helped players' unions to push up salaries in the collective bargaining process.

<sup>91</sup> The NCAA (National Collegiate Athletic Association) is the institution which organises the main college sports championships in the United States. The participating universities are affiliated to NCAA and the players are college students. NCAA promotes and protects the amateur status of the members and teams taking part in the competitions it organises. This means that college athletes earn no income from sport during their university studies. Players are "eligible" for four years in NCAA championships, after which they are no longer allowed to take part in the championships. At the end of each year, student-athletes may decide to enter a professional league's "draft", thus forfeiting their NCAA eligibility.

Ordinary law has recognised the existence of a contractual relationship between a student and his university, with the consequence that the university can take legal action against the sports agent. However, for PR reasons, universities are not usually interested in taking action against sports agents. The penalties provided for under civil law are usually financial or administrative in nature. Therefore they have little deterrent effect on sports agents, considering the huge profits the latter can make from their activities.

Mismanagement of players' assets is a frequently mentioned problem. In fact, financial consultancy lies outside the scope of regulation of sports agents' activities. It is noteworthy that the Securities and Exchange Commission (SEC) prosecuted an agent for mismanagement of a player's portfolio. But this type of action is not automatic.

#### Attempts at public regulation

The sole instance of federal intervention took place in 2004 with the Sport Agent Responsibility and Trust Act (SPARTA). The aim was to protect the universities and the students in their relations with sports agents. For the most part, the Act is a compilation of rules that were already in force in some States.

Regulation of sports agents' activities is mainly the responsibility of the State governments. Currently, two-thirds of the States of the Union have regulations concerning agents. These regulations are based on the Uniform Athlete Agents Act (UAAA), adopted on 3 August 2000 and which is today applicable in 38 States.

Before the UAAA, some States had already introduced regulations on sports agents, but sanctions were not applied, given that the possible offences were not well-defined and agents could play on the differences between the regulations applicable in different States.

The UAAA is the first step towards a uniform regulation with the aim of "*protecting the interests of the players and the universities by regulating the activities of sports agents*". It was drafted, at the request of the NCAA and the universities, by the National Conference of Commissioners of Uniform State Laws (NCCSUL), an institution whose aim is to standardise local laws. However, individual States may implement the UAAA by adapting it to their own existing laws, and this may have led to regulatory differences. The UAAA focuses primarily on the recruitment of players, leaving the question of supervision to the players' associations.

#### Private initiatives

##### - The NCAA

This institution established rules applicable to the players/sports agent relationship. The main bone of contention is the money offered or promised by agents to students to persuade the latter to sign an agency agreement. The NCAA states that in no case a student-athlete may "*agree (orally or in writing) to be represented by an agent*". Furthermore, neither the student-athlete nor any of his relatives or friends may receive any kind of advantage (financial, material, etc.). However, the NCAA has no powers to monitor or sanction sports agents themselves.

##### - Players' associations

Players' associations/unions are fully entitled to establish players' working conditions but they have delegated to sports agents the power to negotiate the salaries paid to individual players as well as to finalise the contract.



Players' associations were at the origin of the development of standard employment contracts in the four professional leagues, and the National Football League Players' Association (NFLPA) has established a mandatory standard representation contract. Sports agents must register with players' associations to be certified. However, there are differences between the requirements established by the four associations to obtain certification (concerning the test that has to be passed, the required experience, qualifications, etc.). The sanctions applicable to sports agents range from a formal warning to withdrawal of certification, along the lines of the sanctions established by FIFA for football agents. For its part, NFLPA, the most active and interventionist players' association, has created a parallel qualification for financial advisers who, subject to certain conditions, can attend training seminars to obtain an NFLPA "label".

In 2007 there were 350 agents registered with the National Basketball Players' Association (NBPA) (for 400 players) and 1,200 agents registered with the NFLPA, including 800 agents who had no clients.

## CHAPTER 3. ANALYSIS OF THE VARIOUS SOURCES OF REGULATION OF SPORTS AGENTS' ACTIVITIES

In this chapter we shall look at the main regulatory trends as well as at the differences resulting from the heterogeneity of the direct or indirect sources of regulation of sports agents' activities. These trends and differences concern not only the legal status of sports agents, but also various aspects relating to access to – and the exercise of – the sports agent's profession, the nature and calculation of sports agents' fees, and the penalties that can be applied to sports agents who infringe the regulations. As a reminder, the aspects presented in the following sections can be supplemented by a typological description – on a country by country basis – of the mechanisms regulating sports agents' activities in the 27 Member States of the EU, as well as by detailed descriptions of the content of the regulations issued specifically for sports agents by the four international sport federations concerned. Both types of document are annexed to this report.

### I. The legal status of sports agents

In broad terms, a legal status can be defined as the set of all the provisions regulating the situation – including the rights and obligations – of a group of individuals. Defining the legal status of sports agents is a complex task, given the multiplicity of provisions that may apply to them.

#### **1. The definition of sports agents in regulations**

The multifarious nature of sports agents' activities, as highlighted in the first Part of this study, makes it difficult to provide a comprehensive definition of the profession in the framework of regulations, be they public or private.

##### ***1.1 Sports agents are basically defined by the job placement services they provide***

Currently, the few existing specific regulations (public or private) on sports agents define the latter's activities almost exclusively in terms of providing employment services in exchange for a fee<sup>92</sup>. As a

<sup>92</sup> That is to say, in the framework of a brokerage contract which, as a reminder, aims to bring two parties together with a view to concluding a contract concerning the practice of a sport as a remunerated activity.

matter of fact, it is mainly this activity which can give rise to problems (particularly in the case of player transfers) and which would seem to justify the introduction of specific regulations.

Thus, current French legislation defines a sports agent as someone who “*whether habitually or on an occasional basis carries out, in exchange for remuneration, an activity consisting in putting in touch contracting parties interested in concluding an agreement concerning the practice of a sport as a remunerated activity*”. The proposed new law currently under examination is expected to adopt this definition and extend it to include the employment of coaches and transfer contracts<sup>93</sup>.

In Greece, a sports agent is a person that acts as an intermediary in the negotiation of sport contracts concluded “*between coaches and professional or remunerated players, and sport public limited companies or remunerated athletes’ associations*” (Law 2725/1999, Article 90§5 and Ministerial Decision No. 23788 of 28 August 2002)<sup>94</sup>.

In Austria, the bill on professional sport currently in preparation defines a sports agent as “*any natural or legal person who, in exchange for remuneration, puts in touch professional sportspersons with sport partners with a view to establishing a relation in professional sport*” (Article 10).

Similarly, the FIFA regulations concerning players’ agents state that sports agents’ activities consist in “*bringing into contact a player and a club in order to conclude an employment contract or two clubs in order to conclude a transfer contract, within a single member association or from one member association to another*” (Article 1.1). This regulation does not apply, on the other hand, to the services that an agent may provide to other parties, such as managers and coaches, since these activities fall within the scope of application of the legislation in force in the country of each association (Article 1.3).

In an Explanatory Note it published, the English Football Association provides a non-comprehensive list of services that may be provided by a sports agent, including all kinds of representation, negotiation and consultancy activities carried out on behalf of a player or club, in relation to a transfer operation or the conclusion of an employment contract<sup>95</sup>.

As regards the FIBA Regulations, they do not precisely define the activities of sports agents, but refer to them as the activities of those who “*undertake to bring about or assist in the international transfer of players or coaches*” (Regulation H.5.1).

<sup>93</sup> The French Court of Cassation has already recognised that, as things stand on the basis of the existing texts, transfer deals fall within the scope of implementation of the law (cf. Cass. 1<sup>st</sup> civil – 18 July 2000, *Bismuth v. Association l’Avenir sportif La Marsa, SA Olympique de Marseille*, Appeal No.° 98-19.602). In this case, the Court ruled that the agent who had acted as a go-between for the transfer of a Tunisian player from a Tunisian club to a French club should be considered to be “interested” in the successful conclusion of the employment contract between the player and the French club, even though he had not actually taken part in the contract negotiations).

<sup>94</sup> It should also be noted that in Greece there are three categories of sportspersons: amateur sportspersons, remunerated sportspersons and professional sportspersons. According to Article 90 of Law 2725/1999, sports agents may only represent remunerated or professional sportspersons. They may also represent coaches to negotiate their recruitment by sport public limited companies or remunerated athletes’ associations. In practice, however, it appears that agents also work for amateur sportspersons who receive hidden payments (in the form of reimbursement of expenses), thus flouting the law. Cf. Siekmann R., Parrish R., Branco Martins R., Soek J. (edit.), *Players’ Agents Worldwide*, Cambridge University Press, November 2007, p.252.

<sup>95</sup> The Explanatory Note furthermore indicates that scouting (i.e. the “*identification, monitoring and assessment of player talent*” on behalf of a club without bringing the parties into contact) “*is a specific service and is different from agency activity*”. However the FA, reserves the right to examine the services supplied in order to determine “*whether or not they constitute agency activity and should therefore be subject to the requirements of the Regulations*”.

As suggested by their name, general regulations on private employment services only govern the job placement services provided by sports agents in exchange for a fee, while any related commercial activities are subject, if appropriate, to the requirements of other national regulations (e.g. contract law, commercial law, regulations concerning legal advice, etc.). Article 1 of ILO Convention C181 on private employment agencies defines a private employment agency as “*any natural or legal person, independent of the public authorities*”, which provides – among other labour market services – “*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*”.

### **1.2 Broader definitions of “sports agent”**

Most of the existing regulations define sports agents’ activities solely in terms of the employment market and (in some cases) player transfers (particularly in the football sector). Thus, bearing in mind the aim of protecting the interests of sportspersons, the question arises of whether broader definitions exist which include, among other aspects, the agent’s possible role as an intermediary between a sportsperson and a company with a view to concluding an image-rights contract or sponsorship contract.

To our knowledge, only two regulations (namely Article 37 of Portuguese Law 5/2007 on physical activities and sports, and IAAF Regulation 7.1) include, in the definition of sports agents’ activities, the negotiation of contracts concerning a sportsperson’s image rights, although in practice many sports agents provide this kind of service, particularly in individual sports<sup>96</sup>.

## **2. The uncertain legal nature of sports agency contracts**

Be this as it may, it is the role of sports agents – regardless of the scope of their activities – to negotiate and conclude contracts for the benefit of a sportsperson, club or organiser of sport events. Contract law (and one of its principles, namely contractual freedom) is therefore at the heart of their activities, which are governed by the provisions of ordinary law or specific regulations, given the obvious need to protect the other parties to the contract.

As previously underlined, sports agents are intermediaries who, vested with the power to act on behalf of other persons, carry out – first and foremost – material actions for the benefit of their contractual partners (contacts, procedures, interventions, advice), while at the same time occasionally performing legal acts, for example when the agent takes part in the contract concluded between a sportsperson and a club or between two clubs. The agent then acts first as a “broker” in various contexts and then as a proxy.

The contractual nature of the relationship between a sports agent and the principal that makes use of his services varies depending on the nature of the tasks entrusted to him. On the (currently most probable) assumption that no specific public regulations apply to sports as a whole in EU Member States and that no regulations issued by an international sport federation apply either, the nature of the services provided by sports agents must be determined on the basis of the contents of each contract concluded. It is therefore difficult to determine which legal regime sports agents are subject to and what are their legal rights and obligations.

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<sup>96</sup> This issue was discussed within the framework of the current reform of French legislation on sports agents. Some sport federations insisted on the fact that the management of a sportsperson’s image rights could be the main activity of a sports agent in some cases, particularly in individual sports. Furthermore, it transpired that some agents concluded, with sportspersons, representation contracts for a variety of services (the contracts often being described as “career management” contracts) with the aim of circumventing certain legal obligations, particularly as regards the capping of agency fees (which, in the case of contracts concerning the remuneration of a sport activity, are limited by law to a maximum of 10% of the value of the contract). The proposed law did not finally opt for this approach.

Generally speaking, the FIBA, IRB and IAAF regulations concerning sports agents provide no indications on this point. The closest they get to clarification is to state that sports agents are intermediaries. On the other hand, French and Portuguese legislation as well as the FIFA Regulations are more explicit about the nature of the contracts that can be concluded through the services of sports agents<sup>97</sup>.

## **II. Accessing and practicing the sports agent's profession**

The conditions to access and exercise the sports agent's profession vary significantly from one country and one sport to another.

### **1. The obligation to obtain a licence or authorisation to work as a sports agent**

The first major difference concerns the requirements for accessing the sports agent's profession. While some regulations establish the need for some sort of authorisation to carry out sports agents' activities (be it a licence, official recognition or simply registration with the authorities), other regulations do not provide for any kind of permit or authorisation whatsoever. Furthermore, where a licence is required, exemptions are sometimes provided for, and this can be problematic in some cases.

#### **1.1 The principle of a licence or authorisation**

Some EU Member States have introduced legislation on sports agents or on private employment agencies which makes the exercise of sports agents' activities subject to requirements such as obtaining a licence, authorisation or official recognition, or registering beforehand with the competent authorities. To our knowledge, the countries concerned are Austria, Belgium, Bulgaria, Czech Republic, France, Greece, Hungary, Ireland, Malta, Poland, Portugal, Slovenia and Spain<sup>98</sup>.

In most of these countries, it is private employment agencies (and hence sports agents acting in the capacity of employment agents) that are required to hold a permit. Thus, for example, in Belgium, the regulations established by the various federal entities (Flemish Community, German-Speaking Community, Walloon Region, Brussels-Capital Region) make the exercise of private job placement activities subject to official authorisation, which is issued by each regional government (in the Walloon Region, authorisation consists of a registration procedure). Furthermore, the authorisation obtained in one region does not entitle the holder of the authorisation to exercise the profession in another Belgian region (barring exceptions). In Austria, private employment agencies also require official authorisation to operate.

In other Member States, sports agents are targeted directly by the obligation to obtain authorisation. In France, it is up to the sport federations – acting on behalf of the State – to issue a licence enabling the sports agent to operate in the relevant sport. In Portugal, the law states that only persons “*duly authorised*” by the competent sport authorities may perform sports agents' activities. In Greece, Ministerial Decision 23788 of August 2002 stipulates that only the holders of a licence issued by the

<sup>97</sup> See the Annexe entitled “Legal framework of a sports agency contract”.

<sup>98</sup> As a reminder, ILO Convention C181 on private employment agencies, signed on 19 June 1997, stipulates that all countries which have ratified the Convention “*shall 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*”. The Convention also establishes that a signatory country may, after consulting the relevant social partners, “*exclude, under specific circumstances, workers in certain branches of economic activity, or parts thereof, from the scope of the Convention or from certain of its provisions, provided that adequate protection is otherwise assured for the workers concerned.*” (Article 2.4). However, only 11 EU Member States have ratified the Convention.

General Secretariat for Sport may operate as sports agents<sup>99</sup>. In Italy, the authorisation system varies from one sport federation to another. Thus, for example, the football federation issues a licence, the cycling federation provides accreditation, and the volleyball federation has established a registration procedure.

In other EU countries (Germany, Netherlands, the United Kingdom, etc.), on the contrary, access to the sports agent's profession is not subject – under existing regulations – to any requirement in terms of a licence, authorisation or prior registration<sup>100</sup>.

The sport federations that regulate sports agents' activities are similarly divided concerning the need for a licence/authorisation. Of the four international federations that have introduced such regulations, only FIFA and FIBA require sports agents to have a licence (in FIBA's case, only for international transfers). The other two international federations leave it to their member federations to authorise access to the sports agent's profession. In actual fact, very few national sport federations have established provisions to control access to the profession in their respective sports through a licence or registration system.

## 1.2 Exemptions

Some sport regulations which require sports agents to hold a licence exempt certain categories of persons from this obligation. This is the case with the FIFA Regulations, which state that the parents, brothers, sisters and spouses of a player need not hold a licence to represent the latter in negotiations on the conclusion or renewal of an employment contract. This exemption, which is usually transposed into the regulations of national federations, also applies to lawyers who are legally authorised to practise law in their country of residence (Regulation 4)<sup>101</sup>. The FIBA Regulations also stipulate that the prohibition preventing players and clubs from using the services of an unlicensed agent "*does not apply if an Agent is licensed to practise law in the country of his permanent residence*" (Regulation H.5.3.4).

Exemptions are also provided for in the regulations of some national sport federations which are not subject to regulations issued by an international federation. This is the case, for example, with the German and Austrian handball federations, which have established an exemption for the parents, brothers/sisters and spouse of a player as well as for lawyers who are legally authorised to practise law in their country of residence. For its part, the Finnish ice hockey federation allows players to be represented by a spouse or "close relative"<sup>102</sup>.

These exemptions have at least two consequences. The first is that the persons benefiting from the exemptions escape the jurisdiction of the sport governing bodies concerned and hence their supervisory and sanctioning powers. The second consequence is that these exemptions may run counter to certain national laws which require agents to hold a licence or authorisation in all cases without distinctions.

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<sup>99</sup> According to our information, no licences have as yet been issued since the structures required for this purpose have not yet been set up.

<sup>100</sup> The licensing system for private employment agencies was abolished in Germany in 2002 (abolition of Article 291 of the SGB III) and in the Netherlands in 2003 (amendment of the "WAADI" Law – "Wet Allocatie Arbeidskrachten door Intermediairs").

<sup>101</sup> According to the English FA Regulations, the persons who are exempted from holding a licence (close relatives and lawyers of the player) under the FIFA Regulations must nevertheless be registered with the FA to operate as sports agents in the FA's jurisdiction. The same applies to licensed agents who are members of a foreign federation (FA Regulations, Appendix III).

<sup>102</sup> Article 6.1 ("*Close relatives*") of the regulations on players' agents.

## 2. Procedures for obtaining a licence or authorisation to work as a sports agent

To the differences concerning the requirement for a licence to operate as a sports agent must be added the differences between the procedures established to issue such a licence when provided for by the regulation.

### 2.1 Requirements

The first difference concerns the requirements to obtain a licence/authorisation to operate as a sports agent (disqualifying factors, incompatibilities, qualifying examination, diploma, professional liability insurance, etc.).

#### 2.1.1 Disqualifying factors and incompatibilities

While general regulations on private employment services establish certain disqualifying factors, they do not usually establish incompatibilities relating specifically to positions that a sports agent might hold in a sport institution. Thus, in most EU Member States, and without prejudice to the requirement established in this respect by the regulations of some sport federations, there appear to be no legal obstacles to a person operating as a sports agent while at the same time holding a position in a professional club or a structure that organises sport events.

On the other hand, some public and/or private regulations specific to sports agents establish a (more or less comprehensive) set of disqualifying factors and incompatibilities with the sports agent's profession. The aim is not only to ensure the good standing and integrity of agents but also to prevent the emergence of conflicts of interests, given that these conditions apply not only to applicants for an agent's licence/authorisation but also to authorised agents throughout their career as agents.

The FIFA Regulations indicate that a natural person applying for a licence must have "*an impeccable reputation*" i.e. never have been convicted for a financial offence or a violent crime. Furthermore, the applicant is not allowed to hold any position whatsoever (director, officer, employee, etc.) either in FIFA or in any confederation, association, league, club or organisation linked to the latter. The Regulations also specify that these conditions must be fulfilled at all times and for as long as the person operates as an agent (Regulation 6).

However, some national federations decided to go further than FIFA in establishing disqualifying factors and incompatibilities. A case in point is the English Football Association which in its "Football Agents Regulations" specifies that any applicant for an agent's licence issued by the FA "*must satisfy the Association of his good character and reputation*" and that this will include consideration of the applicant's "*eligibility under a 'fit and proper person' test*"<sup>103</sup>. Furthermore, an authorised agent may not have any kind of "interest"<sup>104</sup> in a football club.

For its part, FIBA stipulates that a licence application may be rejected "*if the candidate is not in good standing, in particular if he has a criminal record or does not have a good reputation*" (Regulation

<sup>103</sup> Appendix II of the FA's Football Agents Regulations, Article 1.2.

<sup>104</sup> In Regulation H.8 of the FA's Football Agents Regulations, an "interest in a club" is defined as "*a) beneficial ownership of more than 5% of any entity, firm or company through which the activities of the Club are conducted; and/or b) being in a position or having any association that may enable the exercise of a material financial, commercial, administrative, managerial or any other influence over the affairs of the Club whether directly or indirectly and whether formally or informally*".

H.5.4.4)<sup>105</sup>. The incompatibilities provided for are similar in nature to those established in the FIFA Regulations.

The IAAF Regulations Concerning Federation/Athletes' Representatives lay down that member federations must take into account at least the following aspects when evaluating the suitability of an applicant for an agent's licence: "*education, training and experience in athletics, convictions for criminal offences or bankruptcy, involvement with known drug-users or suppliers, physical and mental health*" (Article 4.2).

In France, the Code of Sport establishes that nobody may obtain or hold a sports agent's licence if he has been convicted for a crime or serious offence including sexual assault, drug trafficking, pimping and similar offences, extortion, fraud, breach of confidence, doping offences and tax fraud. Among the incompatibilities, Article L 222-7 states that a licence may not be issued to, or held by, a person who "*fulfils, whether directly or indirectly, legally or de facto, on a voluntary or paid basis, any executive or leadership functions in sport, whether in an association or company that employs sportspersons in exchange for remuneration or which organises sport events, or in a sport federation or body set up by a sport federation, or who has fulfilled such a function in the course of the preceding year*"<sup>106</sup>.

In Greece, applicants for an agent's licence must have no convictions for serious offences nor be indicted for a serious offence at the time of application. They must also declare that they are not athletes or coaches in a professional team or members of a players' or coaches' union, or members of an association of professional clubs, a sport federation or the leadership of a professional team. Furthermore, they must declare that they have no current tax debts (Ministerial Decision 23788 of 28 August 2002).

In Portugal, the law prohibits the exercise of sports agents' activities on the part of sport associations, sport clubs and sport executives, members of the leading bodies of sport associations, coaches, players, referees, sport medical doctors and physiotherapists (Law 28/98 of 26 June 1998, Article 25).

### 2.1.2 Other specific provisions

The issuing of a licence or authorisation may be subject to a test of the prospective sports agent's skills or simply to certain declaration formalities.

None of the existing general regulations on private employment services make the issuing of an authorisation conditional upon the successful passing of a test.

The FIFA Regulations provide for a written examination organised by each of the national federations (Article 8). The French Code of Sport also provides for a written examination, which is the responsibility

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<sup>105</sup> This kind of incompatibility is also found, e.g. in the "agents regulations" of the German and Austrian handball federation (Article 4 in both cases). Similarly, the Finnish ice hockey federation in its "agents regulations" states that applicants for registration are not allowed to hold positions that might compromise their independence as agents (Article 1.1).

<sup>106</sup> The bill currently under discussion in Parliament sets out to broaden the range of incompatibilities, considered by some observers to be too restrictive. It is thus proposed to extend the prohibition to access the sports agent's profession (and *a fortiori* to practise it) to various additional categories of persons including the following: shareholders of companies that employ paid sportspersons or organise sport events; persons who have incurred a disciplinary sanction at least equivalent to suspension – and imposed by the officially recognised federation – for an infringement of the ethical or deontological rules of sport; members of staff of an association or company that employs paid sportspersons or organises sport events; members of staff of a sport federation or a body created by the latter; and lawyers. It is also proposed to introduce "symmetry" in the incompatibilities in the sense that an agent would only be allowed to take up any of the above-mentioned positions after at least one year has elapsed since he or she ceased to operate as an agent.

of the sport federations acting on behalf of the State (Article R. 222-1). For their part, the FIBA Regulations require candidates to pass “*a personal interview and a test*” (Regulation H.5.4.6). In Greece, current legislation also provides for an examination, although apparently the competent body responsible for organising it has not yet been set up<sup>107</sup>. The regulations in force in Belgium’s Flemish Community establish a set of general requirements to obtain authorisation as well as specific requirements concerning the candidate’s professional skills<sup>108</sup>.

The IAAF Regulations Concerning Federation/Athletes’ Representatives lay down that member federations must ensure that all candidates complete a form and guarantee a set of minimum terms and conditions of operation and conduct in the shape of a written contract or agreement. Furthermore, they may be required to become members of the federation or a body affiliated to the federation (Articles 3.6 and 4.1). While until recently candidates were not required to pass an examination, there are plans to introduce one in 2010<sup>109</sup>.

Depending on the country and/or sport concerned, obtaining a sports agent’s licence or authorisation – particularly when the granting of the licence is subject to passing an examination – may prove to be a real constraint or, conversely, just an administrative formality<sup>110</sup>. No provision are in place to control how the national federations organise such examinations, so that significant differences may exist between countries in terms of the requirements that need to be fulfilled to obtain an agent’s licence in one particular sport or another.

Furthermore, while many believe that the exercise of the profession of sports agent requires at least some legal skills and a good knowledge of sport regulations, it is apparent from the opinions expressed by some interviewees that checking candidates’ prior knowledge is neither guarantee that they will be successful agents nor a guarantee of good practice. Many agents who have obtained the FIFA players’ agent’s licence do not actually practise as agents because they lack the necessary privileged contacts and relations in the world of football.

It should also be noted that very few regulations require licensed or authorised sports agents to update their knowledge and skills on a regular basis<sup>111</sup>.

## **2.2 Natural persons or legal persons**

Depending on the regulations, a licence or authorisation may be issued only to natural persons or to both natural and legal persons.

The regulations issued by FIFA (Regulation 3), FIBA (Regulation H.5.4.3) and IAAF (Regulation 2.1) stipulate that sports agents’ activities may only be carried out by natural persons. The same applies to

<sup>107</sup> See Table 15 on the nature of the public regulations specific to sports agents.

<sup>108</sup> Order of the Flemish Government of 8 June 2000, implementing the Decree of 13 April 1999 on private employment services in the Flemish Region, Article 6§2.

<sup>109</sup> Following the amendments adopted at the 47<sup>th</sup> Congress of IAAF, held in Berlin on 12 August 2009, Rule 7.6 of the IAAF Competition Rules 2009 states that “*the Athletes’ Representative shall have integrity and good reputation.*” Furthermore, “*he shall demonstrate sufficient education and knowledge for the activity of Athletes’ Representative by successfully completing an Athletes’ Representative examination established and organised in accordance with the [IAAF] Regulations.*”

<sup>110</sup> According to Mr Zoran Radovic, FIBA Development Director responsible for matters concerning agents, since the first exam was held in March 2007 no candidate has ever failed. In fact, FIBA does not wish to impose, on prospective agents, legal requirements which are too stringent, since its aim is to establish an atmosphere of trust with agents rather than rigorously control access to the profession.

<sup>111</sup> For example, the FIBA Regulations establish that an agent must attend every two years – counted from the end of the year when the licence was issued to him – a seminar organised by FIBA with the aim of informing agents of developments in the profession and checking that agents still fulfil the requirements for holding a licence (Regulation H.5.5.1).



the regulations established by most national sport federations that decided to regulate sports agents' activities without being obliged to do so by their respective international federations or by national legislation. This is the case, e.g. with the regulations of the German and Austrian handball federations (Article 3.1), the Finnish ice hockey federation (Article 1.1) and the English Cricket Board (Article 1).

It should however be noted that the fact that an agent's licence may only be granted to a natural person does not prevent the latter from organising his activity in the form of a company<sup>112</sup>.

For their part, public regulations specific to sports agents tend to allow legal persons to carry out sports agents' activities, as is the case, e.g. in France<sup>113</sup> and Portugal. The same applies to most EU countries in which sports agents' activities are governed by general regulations on private job placement services.

### 3. Period of validity of an agent's licence

The period of validity of an agent's licence/authorisation also varies from one case to another. Thus, while in 2008 the FIFA Regulations on players' agents established that a licence expires five years after its date of issue (Article 17.1)<sup>114</sup>, in certain countries the licence (or authorisation) is valid indefinitely (Austria, Portugal, etc.) or for a different period of time (for example, three years in France<sup>115</sup> and one renewable year in Greece). As for the IAAF Regulations, they lay down that the period of validity of the authorisation granted to athletes' representatives by member federations, as well as the term of the written contract that the parties must conclude, may not exceed one year and must expire in any case on 31<sup>st</sup> December of the current year (Articles 2.3 and 6.2).

### 4. The status of agents' collaborators

In the countries and/or sports that have regulated access to the sports agent's profession, the status and rights of agents' collaborators are almost never specified. Yet, it is not rare for a sport agent to make use of collaborators (either as employees or as service providers) to carry out a variety of tasks. While, in theory, collaborators are only allowed to carry out administrative tasks (unless they hold a licence or authorisation), this is not always the case in practice. Taking advantage of this regulatory loophole relating to the status of collaborators, some individuals acting (or pretending to act) on behalf of "official" agents carry out activities that fall within the competence of licensed/authorised agents, such as bringing together the parties interested in concluding a sport contract<sup>116</sup>.

<sup>112</sup> See, e.g. FIFA Regulation 3.2 or FIBA Regulation H.5.4.3.

<sup>113</sup> The bill currently under discussion in the French Parliament aims to reverse this provision on the grounds that the issuing of a licence to legal persons might unduly complicate the tasks of the sport federations responsible for controlling the activity on behalf of the State, in that it would promote the intervention of unlicensed persons (assistants, employees, etc.) acting or claiming to act on behalf of the legal person.

<sup>114</sup> As we shall highlight later in this report, the Court of First Instance of Liège (Belgium) is currently dealing with proceedings instituted by several football agents against this provision in the FIFA Regulations which limits the period of validity of the licence to five years and obliges the holder to pass a test again to obtain its renewal. In fact, some actors in the sport sector are calling into question the compatibility of this provision with the fundamental principle of freedom of employment, which is recognised – sometimes at constitutional level – by most national legislations. For example, Article 12 of the German Constitution states that "All Germans have the right to freely choose their occupation, their employment and their training and educational institutions. The exercise of a profession may be regulated by law or pursuant to a law". Article 17 of the FIFA Regulations, concerning the renewal of licenses, is therefore at the heart of the current discussions between the German football association and the German federation of football players' agents (*Deutsche Fußballspieler-vermittler Vereinigung*) in the framework of the reform of the regulations of the latter organisation. The new regulations are expected to come into force in January 2010.

<sup>115</sup> However, the bill currently under discussion provides for the sports agent's licence to have an unlimited period of validity.

<sup>116</sup> In several countries (UK, France, etc.) the federations have reported unlawful practices involving unlicensed individuals (often former players) who worked in clubs on behalf – and under the cover – of a licensed or authorised agent (a lawyer, for

At present, only the FIFA Regulations – to our knowledge – specify that “a players’ agent may organise his occupation as a business as long as his employees’ work is restricted to administrative duties” and that “only the players’ agent himself is entitled to represent and promote the interests of players and/or clubs in connection with other players and/or clubs” (Article 3). For their part the FIBA Regulations state that where a licensed agent exercises his activity in the framework of a company, he shall be solely accountable to FIBA (Article H.5.4.3).

## 5. The situation of lawyers

Sports agents’ activities very often include negotiation or legal consultancy services which fall within the traditional area of competence of lawyers. In practice, many sports agents subcontract the “contractual negotiation/legal advice” part of their work to a lawyer, either because they are not legally allowed to perform the activities in question or because they feel they are not qualified to do so, or for both reasons at once.

German legislation, for example, establishes that legal advice may only be provided by legally qualified persons (lawyers, notaries, etc.). Sports agents are not in this category and thus their activity in principle must be limited to the role of an intermediary. Moreover, the concept of legal advice is interpreted rather broadly in case law and may include, in particular, the negotiation of a contract with third parties. Theoretically, therefore, sports agents operating in Germany are not allowed to negotiate the content of an employment contract with a club, which is far from being the case in practice, given that the law on legal advice (RBerG) is largely ignored by the parties concerned.

However, there is no clear-cut borderline between brokerage services, which consist solely in bringing a sportsperson and his future employer into contact, and a mandate, which often involves negotiating the employment contract that will be concluded between the two parties. This is basically why, in their respective regulations, FIFA and FIBA decided to exempt lawyers from the requirement for a licence.

While it is true that where the role of the sports agent is performed by a lawyer this can be an assurance of competence and contribute to establishing ethical principles in the profession, establishing such an exemption can nevertheless be problematic. This is so, firstly, because in spite of being linked to each other, brokerage services (which mainly characterise sports agents’ activities) and the performance of a mandate concern distinct areas of activity, as previously highlighted. Secondly, the exemption enjoyed by lawyers in both the FIFA’s and the FIBA’s regulations may seem discriminatory against agents, who are required to obtain a licence and to take a test whose results are, by the very nature of a test, uncertain. Lastly, such an exemption has the consequence that (possibly many) lawyers will escape the supervisory and sanctioning powers of the sport governing bodies concerned.

Furthermore, so far there has been no harmonisation between the regulations of different EU Member States on this issue. While some countries, such as France, prohibit lawyers from carrying out any kind of commercial activity and hence from acting as sports agents<sup>117</sup>, other countries, such as Portugal, oblige lawyers to hold a licence, just like anyone else who wishes to join the profession.

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example). The mandate contracts concluded with players or clubs as well as the invoices for fees were drawn up, in some cases, by lawyers in order to give the transactions a semblance of legality.

<sup>117</sup> According to Article 111 of Decree 91-1197 of 27 November 1991, the legal profession is incompatible “with any commercial activities, whether performed directly or through intermediaries”. Article 115 of the same decree states that “the legal profession is incompatible with the exercise of any other profession, unless authorised by special legislative or regulatory provisions”. On the current incompatibility between the legal profession and the sports agent’s profession, see in particular Marmayou J.-M., *L’avocat peut-il être agent sportif?*, Dalloz 2007, Chron. p. 746 and ff.

Therefore, three different situations are currently possible in Europe, as far as lawyers are concerned:

- A prohibition to practice as sports agents, given that this is incompatible with the legal profession;
- Performing sports agents' activities, subject to the requirement for a licence or authorisation, pursuant to certain national legislations;
- The most common situation: Performing sports agents' activities without a licence in the absence of any regulations establishing such a requirement or pursuant to regulations which exempt lawyers from the requirement for a licence.

Where lawyers are required to hold a licence, another question arises, namely that of the compatibility between the specific rules governing the practice and control of the legal profession (confidentiality, professional secrecy, disciplinary powers of governing bodies, etc.) and the specific rules governing the practice and control of the sports agent's profession. Thus, for example, the fact that a lawyer who has committed a fault in his capacity as a sports agent may be subject to the disciplinary powers of the competent sport federation while at the same time being subject to the disciplinary powers of the legal profession may give rise to uncertainties. Similarly, the fact that a lawyer may be obliged to notify the competent sport federation of any agency contracts signed with players or clubs may run counter to the ethical rules that lawyers must observe, particularly as regards confidentiality.

#### **Conflicts between sport regulations and public regulations**

The coexistence of private-law regulations issued by sport federations and public regulations may be problematic in that the various actors in the sport concerned may find themselves confronted by two different regulatory sources whose provisions may conflict with each other. For example, the International Athletics Association Federation only allows natural persons to represent athletes, while the French athletics federation also allows legal persons. This regulatory pluralism may result in a certain indeterminateness and legal insecurity for the actors concerned (sport federations, clubs, sportspersons, sports agents, etc.) and hence give rise to disputes<sup>118</sup>.

It is precisely to avoid this risk that Article 1.5 of the FIFA Players' Agents Regulations makes it clear that the national associations have an obligation to draw up their own regulations, which must reflect the principles established in the FIFA Regulations, with however the possibility of derogating from any rule that runs counter to the legislation in force on the territory of the association. Furthermore, Article 2 of the FIFA Regulations states that, "*in authorising the activity of players' agents, these regulations do not release a player's agent from his obligation to comply with the laws applicable in the territory of the association*". In other words, the regulations issued by the various national football federations on players' agents may depart from the FIFA Regulations to take into account restrictions specific to national legislation.

<sup>118</sup> It should be noted that, in the event of a dispute, the courts naturally give precedence to national legislation over sport regulations. Thus, for example, it is apparent from the case law of the French Council of State that the regulations issued by an international sport federation have no direct effect on national law (V. Council of State of 8 November 2006, *Maati*, req. No. 289702; in this case, a candidate in the examination to obtain a sports agent's licence contested the decision of the French Football Federation to hold only one examination in the course of 2006 whereas the FIFA Players' Agents Regulations establishes that the national associations are to hold written examinations twice a year. The Council of State considered that the decision of the French federation was not illegal, given that no national regulation obliged the federation to hold more than one examination per year and, furthermore, in view of the absence of any direct effect of the regulations of international sport federations on national law, the FIFA Regulations had no impact on the legality of the contested decision).

### **III. The remuneration of sports agents**

The question of the remuneration of sports agents is particularly important in that remuneration is an essential component of brokerage or mandate contracts. For any payment to be due, it must be owed for a service rendered by the agent<sup>119</sup>. It is up to the latter to establish that he has played an active role in the mission entrusted to him under the contract; otherwise he will not be entitled to payment. If an agent has not fulfilled the tasks specified in the contract, the sportsperson or club no longer has an obligation to pay the agent.

Apart from these general considerations, it appears that, as regards the remuneration of sports agents, debate is focusing on two main questions: Who must pay the agent? And how should this be done?

#### **1. Responsibility for paying the agent**

To avoid conflicts of interests, most regulations provide for agents to act only on behalf of one party to a transaction (rule against double representation). However, they differ when it comes to establishing who should pay the agent's fees upon completion of the transaction.

The FIFA Players' Agents Regulations stipulate that, in the absence of a national regulation establishing who is responsible for paying the agent, payment shall be made exclusively by the client (club or player) to the agent. The representation contract must explicitly state in what manner the agent will be paid (Article 19.4). The regulations however qualify this principle by allowing a player – even when he is acting as the principal – to authorise the recruiting club to pay the agent<sup>120</sup>. The English Football Association recently reversed its position that the agent should be paid by the sportsperson, the reason for the change being that social security contributions are higher in this case.

The FIBA Regulations stipulate that a licensed agent has an obligation “*to accept payment only from or on behalf of the player/club with whom/which he is contractually linked*” (Article 5.6.2.1, f). As for the IRB, it considers that an agent may only receive a fee or some other form of remuneration from the principal that is employing him (Regulation 5, Article 5.2). The IAAF regulations for their part contain no provisions on the remuneration of agents<sup>121</sup>.

French legislation also establishes that an agent may only be paid by the party that has given him a mandate to act on its behalf<sup>122</sup>. In Portugal, agents must be paid by the party (i.e. the club or player) which they represent. In Germany, too, it is up to the sportsperson to pay his agent, but if the sportsperson is actually recruited by an employer, the latter may pay part of the agent's fees.

On the other hand, in countries where sports agents' activities are governed by general regulations on private job placements, the established principle is that an employment agency may not, barring

<sup>119</sup> Notably the Court of Arbitration of Sport (for example, CAS of 16 April 2008, *B. Heiderscheid v. F. Ribéry*, judgment 2007/0/1310) and the French Court of Cassation (Court of Cassation, 1<sup>st</sup> Civil Court, 8 February 2005, Appeal No. 02-12.859) confirmed this principle, which in fact is based on general contract theory.

<sup>120</sup> However, to prevent conflicts of interests resulting from double representation, the player may only authorise payment once the employment contract has been signed.

<sup>121</sup> In fact we were informed that IAAF “*does not have, in its capacity as an international sport federation, the necessary authority to establish rules on this issue which is central to the economic activity of athletes' representatives*” (IAAF response to questionnaire sent to it as part of this study).

<sup>122</sup> However, the bill currently under discussion lays down that, by mutual agreement between the contracting parties, the sports agent may be paid, either wholly or in part, by the employer of the sportsperson. In other terms, when the agent represents a player, the agent, the player and the club may agree that the agent's fee will be paid by the club instead of the player.

exceptions, accept or request any kind of payment from a job-seeker. This principle is in fact enshrined in ILO Convention C181 of 19 June 1997 on private employment agencies<sup>123</sup>.

### **The debate on who should pay the agent**

Whatever the provisions contained in the various regulations, it should be stressed that, in practice, the agents are often paid by the clubs, even when the principal represented by the agent is the player. This practice – which can be explained by reasons relating to social security contributions and taxation – raises the question of whether it is best for the sportsperson (for his own sake) or for the club (on behalf of the sportsperson) to pay the agent.

The question of who should pay the agent is therefore a hotly debated issue within the sport movement. In football, for example, the players' representative organisation, namely FIFPro, wants agents to be paid exclusively by the principal (player or club), even though it appears that players themselves prefer not to be responsible for paying the agent, and clubs do not seem to have a common position on this issue<sup>124</sup>. Each of these arrangements (remuneration paid by the sportsperson or by the club) has its own advantages, which are described in the following.

#### Advantages of the agent being paid by the sportsperson

- A contractual logic geared to protecting the interests of sportspersons. Agents are supposed to further the interests of the sportsperson whom they represent. If, ultimately, they are paid by the club, agents place themselves in a position which may prevent them from acting exclusively in the interests of the sportsperson, while the club may gain more bargaining power. The logic of the contract therefore dictates that the agent be paid by the sportsperson when it is the latter who hires him, thus enabling the agent to act, without any constraints, in the best interests of the sportsperson.
- Reducing the risk of fraud, including the payment of secret commissions. In fact, this type of fraud is easier when the club is responsible for paying the agent. The club may be interested in paying part of the agent's commission unofficially to sportspersons (or other third parties) in order to circumvent social welfare and tax legislation.
- A more responsible attitude on the part of sportspersons. Sportspersons can be expected to have a more responsible attitude when they pay the agent themselves. They will then pay more attention to the amount of the agent's commission as well as to compliance, on the agent's part, with contractual obligations.
- More stable sport squads. Payment of the agent by the player may have the indirect consequence of reducing the player's mobility. Agents may be financially interested in a situation where the players represented by them move to a different club frequently. Payment of the agent by the club, instead of the player, tends to encourage this kind of situation.

<sup>123</sup> Article 7 of the Convention states in fact that "private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers". The text however adds that "In the interest of the workers concerned, (...) the competent authority may authorise exceptions [to the prohibition] in respect of certain categories of workers, as well as specified types of services provided by private employment agencies". As a reminder, only 11 EU Member States have ratified this Convention.

<sup>124</sup> At least, this is what could be concluded from a meeting with certain member clubs of the European Clubs Association (ECA).

**Advantages of the agent being paid by the club**

- Increased certainty, for agents, that they will be paid. Several interviewees reported that agents sometimes find it difficult to collect the money they are owed by sportspersons. There are many sportspersons who do not wish to pay their agents. In football especially, players are accustomed to think in terms of “net income after tax”.
- Economic logic dictates that the agents be paid by the clubs. From a purely financial point of view, this arrangement is best for all the actors concerned: sportspersons do not have to deduct the agent’s fee from their own earnings; clubs pay lower social security contributions than if they had to pay extra money to the sportspersons for the latter in turn to be able to pay the agents (the services rendered to the club by the agent are subject to VAT and hence less costly than money paid in the form of a salary); and, finally, agents can rely on the solvency of clubs.
- Legalising a widespread practice. Laws are relatively ineffectual in opposing the economic logic that underlies the payment of the agent’s fee by the club. The agency contracts concluded by agents and sportspersons are often hidden or even tacit, and agents can be paid by clubs on the basis of an (often bogus) mandate. The authorities’ inability to control these practices encourages the actors to flout the law and take risks. The “legal” payment of agents’ fees by the clubs would enable greater transparency and better supervision of the activities of sports agents and the commissions they receive.

**2. Arrangements for paying the agent**

In most public and private regulations, no specific restrictions are provided as regards calculating the sports agent’s commission. The principle of contractual freedom and independent free choice by the parties is thus applied<sup>125</sup>.

Provided that no specific law or regulation stipulates otherwise, the amount of the agent’s fee is fixed exclusively by mutual agreement (i.e. a contract) between the agent and the sportsperson/club. It may consist of a lump sum or fixed percentage or be proportional to the scope of the sports agent’s activities<sup>126</sup>. The situation becomes more complex when the arrangements for paying the agent are governed by regulations, which may result in significant disparities.

Under the FIFA Regulations, the remuneration of an agent engaged to act on a player’s behalf is calculated on the basis of the player’s “*annual basic gross income*”, including any signing-on fee that the agent has negotiated for him in the employment contract but excluding the player’s other benefits “*such as a car, a flat, point premiums and/or any kind of bonus or privilege which is not guaranteed*”. The player’s agent and the player decide in advance, by mutual agreement, whether the player shall

<sup>125</sup> It should be noted, furthermore, that by not requiring sports agents to stagger receipt of their commission over the term of the sportsperson’s contract, these regulations contribute to the instability of the contractual relationship (usually, a fixed-term employment contract) between the sportsperson and the club. Many examples show that, in this kind of context, sports agents have no reason not to incite players to terminate the contract before expiry and sign a new contract with a different club, which will result in the agent earning a further commission. To avoid such reprehensible practices, the French National Olympic and Sport Committee (CNOSF) has proposed that the current reform of legislation concerning sports agents include a rule that sports agents’ fees should depend on the duration of the actual period of implementation of the player’s employment contract rather than on the theoretical term of the contract (*Ensemble pour un sport européen*, contribution by CNOSF on professional sport, CNOSF 2008, p.144).

<sup>126</sup> We can well imagine, however, that a judge might wish to verify, for reasons of contractual fairness, that the stipulated agent’s fee is not disproportionate in relation to the service provided. Judges are vested with such discretionary powers under several national codes of civil procedure.

remunerate the agent by payment of a lump sum at the start of the employment contract (which the agent has negotiated for the player) or whether the player shall pay annual instalments at the end of each contractual year. In the latter case, the player's agent is entitled to annual remuneration even after expiry of the representation contract. If the player's agent and the player cannot reach agreement on the amount of remuneration to be paid or if the representation contract does not provide for this aspect, the player's agent is entitled to payment of compensation amounting to 3% of the gross income which the player is due to receive from the employment contract negotiated or renegotiated by the player's agent on his behalf (Article 20). It should be noted however that, in such an event, some national football federations have set the agent's maximum remuneration at 5% of the player's basic income (this is notably the case in the regulations of the Finnish, Dutch, Romanian and Slovenian federations).

Where the agent has been engaged to act on behalf of a club, the FIFA Regulations specify that he must be remunerated by payment of a single lump sum<sup>127</sup>.

All the regulations that specifically target sports agents or govern their main activity (i.e. job placement) are not however as precise as the FIFA Regulations. For example, the IRB Regulations on agents merely state that *"the basis on which any such remuneration is to be calculated must be reasonable"* (Article 5.2). In many regulations there are no provisions stipulating how the remuneration of sports agents is to be paid. In fact, most regulations merely establish a maximum amount for the remuneration, without specifying its constituent elements.

Thus, in France, the law establishes that the agent's remuneration may not exceed 10% of the value of the contract signed (Code of Sport, Article L. 222-10), without however specifying whether this applies to both the employment contract and the transfer contract. As far as the employment contract is concerned, neither the existing laws nor their implementing regulations specify the constituents of the sportsperson's income that must be taken into account to calculate the agent's fee (gross or net income, only the fixed income or also the variable part, etc.). Moreover, nothing in the law indicates whether the agent's commission must be based on the originally agreed term of the employment contract or rather on the actual duration of the period of implementation. Similarly, the law does not specify whether the agent is entitled to claim an additional fee in the event that the employment contract is renewed by the club without the assistance of the agent. Finally, in its current form, the French law does not prohibit several different agents from being remunerated (each within the 10% limit) for one and the same transaction.

In Portugal, Law 28/98 of 28 June 1998 establishes – also rather cryptically – that, unless agreed otherwise by the parties, the remuneration of the agent shall be 5% of the total value of the contract (Article 24). In Germany, as far as the employment of professional sportspersons is concerned, the agent's remuneration is capped at 14% of the sportsperson's agreed salary (*"Order on the payment of agents"*, §2)<sup>128</sup>. In Belgium's Flemish and Walloon Regions, current regulations lay down that the employment agency's commission for professional or remunerated sportspersons is to be agreed by contract between the agency and the principal. It can take the form of a percentage of the sportsperson's total gross income or, alternatively, a lump sum (in the Flemish Region, the commission may not exceed 7% of the sportsperson's gross annual income).

<sup>127</sup> The FIFA Regulations specify that *"no compensation payment, including transfer compensation, training compensation or solidarity contribution, that is payable in connection with a player's transfer between clubs, may be paid in full or part, by the debtor (club) to the players' agent, not even to clear an amount owed to the players' agent by the club by which he was engaged in its capacity as a creditor"*. The regulations add that, within the scope of a player's transfer, agents are forbidden from receiving any remuneration other than in the cases provided in Article 20 (Article 29).

<sup>128</sup> This provision is also included in the regulations on sports agents of the German Handball Federation.

**It is apparent from the existing regulations that:**

- With few exceptions (FIFA, English Football Association, German legislation, etc.), an agent may be remunerated only by the party that engaged him;
- ILO Convention C181 of 19 June 1997 on private employment agencies stipulates that employment agencies (sports agents) may not – except in special cases – charge any fees or costs to workers (sportspersons);
- FIFA, FIBA and the IRB avoid curtailing contractual liberty and do not set a maximum level for agents' fees (as a proportion of the player's basic income) except as a non-mandatory provision;
- All of these international regulations agree that the agent's remuneration should be calculated on the basis of the net<sup>129</sup> or gross<sup>130</sup> basic income of the sportsperson when the agent is engaged to act on behalf of the latter<sup>131</sup> or of a club, while at the same underlining that the basis for calculation must be "reasonable"<sup>132</sup> or that "the agent's fee shall be compensation for all the services to be provided by the agent according to [the] contract."<sup>133</sup>;
- IAAF has no provisions on the remuneration of agents in its regulations;
- Almost all of the national sport federations transcribe the regulations of their respective international federations (with some minor adaptations) or give full rein to contractual freedom;
- Some national public regulations appear to reflect a certain distrust of any contractual provision whereby the amount of the remuneration does not depend solely on the will of the sports agent and the sportsperson/club/organiser of sport events concerned. Even though precise limits may be fixed for the agent's remuneration (which vary from one set of regulations to another), these constraints are sometimes circumvented owing to the regulations' vagueness about the constituent elements of the remuneration.

**IV. Sanctions applicable to sports agents**

Where no regulations specifically target sports agents, the sanctions applicable to the latter are those established by ordinary law and enforced by the public authorities. Conversely, where the activities of sports agents are specifically regulated, the public authorities and sport governing bodies have naturally provided for disciplinary actions against agents who fail to comply with the regulations. As a deterrent against non-compliance, some public regulations include provisions which expressly invalidate any agency contract that does not conform to requirements.

**1. Disciplinary sanctions**

The existing regulations are fairly detailed in describing the sanctionable persons, the applicable disciplinary sanctions and the competent disciplinary body. Nevertheless, some of the provisions contained in the regulations can be problematic.

<sup>129</sup> Article 3 of Annexe 1 to the FIBA Regulations.

<sup>130</sup> Article 20.1 of the FIFA Regulations.

<sup>131</sup> In fact, Article 20.1 of the FIFA Regulations only concerns the remuneration of an agent engaged to act on a player's behalf. Where a player's agent has been contracted by a club, Article 20.5 stipulates that the agent shall be remunerated for his services "by payment of a lump sum that has been agreed upon in advance".

<sup>132</sup> Article 5.2 of the IRB Regulations.

<sup>133</sup> Article 3 of Annexe 1 to the FIBA Regulations.



## 1.1 Sanctionable persons

The most detailed texts in this respect are those of FIFA, FIBA and the IRB and, to a lesser extent, the French Code of Sport. The former are applicable by the relevant international sport federations to international transactions and by national federations to national transactions<sup>134</sup>. The latter provisions are intended for all French sport federations, which implement them by transposing them into the internal disciplinary regulations of each federation.

As regards the FIFA and FIBA Regulations, all actors (including sports agents, sportspersons and clubs that are parties to sports agency contracts) are liable to sanctions in the event of an infringement of the regulations<sup>135</sup>. The IAAF Regulations lay down that an athlete who uses the services of an unauthorised agent may be sanctioned (Article 19, point 5) and requests national federations to provide for the possibility of withdrawing the authorisation of an authorised agent who infringes the regulations<sup>136</sup>. As for the IRB Regulations, they only target sports agents and clubs<sup>137</sup>. However, though not expressly stated in the regulations, it is obvious that the disciplinary bodies of a rugby federation may also take disciplinary measures against players who are legally linked to it. Similarly, the French national federations have the power to sanction a sportsperson who holds a licence issued by them or a club affiliated to them, even though only sports agents are mentioned in the disciplinary procedures described in the French Code of Sport.

The biggest difficulty, however, comes from the regulations issued by international sport federations (and transposed into the regulations of the national federations) which allow close relatives of sportspersons and members of the legal profession to perform sports agents' activities without holding an agent's licence. As previously explained, the activities of such persons – and particularly the contractual transactions that they carry out with sportspersons and clubs – escape the supervision and disciplinary powers of the sport governing bodies concerned.

## 1.2 Scope of the sanctions

In the area of sanctions, the regulations of the international sport federations<sup>138</sup> have taken an effective approach. By differentiating the sanctions according to the roles of the various sanctionable actors, they have a positive deterrent effect. Furthermore, by differentiating the range of sanctions, these regulations enable the disciplinary bodies to impose sanctions proportional to the seriousness of the violations committed. These principles have also been adopted by several national sport federations (e.g. in Italy) affiliated to international federations that have not drawn up specific regulations on sports agents.

## 1.3 Disciplinary bodies of international federations

Article 5.1.10 of the IRB Regulations is a good example of the distribution of disciplinary powers between the national and international sport federations where the latter have put in place mandatory provisions concerning sports agents' activities, particularly with regard to the existence and content of the agreements to which agents are parties. The above-mentioned article states: *“Each Union shall procure jurisdiction for the IRB to adjudicate on cases arising out of international transactions and/or a breach of Agent Regulation which is of an international nature...”* For their part, the FIFA Regulations

<sup>134</sup> However, Article 1.5 of the FIFA Players' Agents Regulations stipulates that national associations *“shall draw up their own regulations which shall incorporate the principles established in these regulations and may only deviate from these regulations where the provisions of the latter do not comply with the laws applicable in the territory of the association”*.

<sup>135</sup> Articles 33 to 35 of the FIFA Regulations; Articles H.5.6.3, H.5.7.1 and H.5.8.2 of the FIBA Regulations.

<sup>136</sup> Article 8.1 of the IAAF Regulations Concerning Federation/Athletes' Representatives.

<sup>137</sup> Article 5.1.10 of the IRB Regulations.

<sup>138</sup> Regulations of FIFA (Articles 33 to 35), FIBA (Articles H.5.6.3.3, H.5.7.2.1 and H.5.8.2.1) and the IRB (Article 5.1.10).

add that, in national transactions, the federation with which the player's agent is registered has jurisdiction to impose sanctions.

In fact, in the international sport federations, as in the national legal systems, in the absence – in most cases – of specific textual guidelines, the disciplinary bodies hear and determine a case before taking any disciplinary action.

As for which is the competent disciplinary body, the answer varies from one case to another. This role may be assigned to a joint disciplinary committee of the federation, to a committee of sports agents affiliated to the federation, to the federation's management board or again to the latter at the request of a committee of sports agents.

## **2. Civil sanctions**

If an agency contract that was concluded in contravention of regulatory requirements is declared null and void or if it is found to contain inappropriate conditions, this is a serious threat to recalcitrant or undisciplined sports agents. The agent will no longer be entitled to claim the agreed remuneration and may even be forced to reimburse any fees that have already been paid to him. In some cases the agent will only be able, at best, to claim some money for the services actually rendered. Some public regulations (Portugal, France) have established this kind of sanction with, in the case of the French regulations, a particularly severe provision: the contract concerned may be considered to be null and void.

## **CHAPTER 4. THE DIFFICULTY OF IMPLEMENTING A REGULATORY FRAMEWORK**

As previously mentioned, some States and federations justify the adoption of regulations on sports agents mainly in terms of the need to structure and supervise an activity which could undermine the ethics of sport and run counter to the interests of all stakeholders (including sportspersons and clubs in particular). It is apparent, however, that this regulatory framework is difficult to implement, and this is so for several reasons. The activities of sports agents as major players in the sport sector, who handle huge financial operations, are liable to give rise to problems – or to find themselves at the centre of mechanisms that give rise to problems – in various areas, including the protection of sportspersons, financial crime, trafficking in sportspersons and the protection of minors.

### **I. Why regulating sports agents' activities is a difficult task**

To begin with, there is the fact that sports agents existed long before any regulations were issued by public authorities or sport governing bodies with the aim of controlling access to – or the exercise of – their profession. Certain longstanding practices and traditions simply continued, despite being in contravention of regulatory provisions.

The fact that the sports agent's profession has itself evolved in the past twenty years, at the same time as professional sport has become an increasingly important sector of the economy, is another reason why regulating sports agents' activities is no easy task, as apparent from the many amendments that FIFA and IAAF have introduced in their regulations on sports agents over this period. At any rate, the

approach followed by FIBA, which closely involved agents in the process of drafting the regulations applicable to them, appears to be an example of good practice.

Furthermore, as previously indicated, the regulation of sports agents' activities is characterised by a multiplicity of public and private rules and provisions, with the result that in some cases agents are confronted by a legal void and in other cases by a variety of sources of regulation which may include mutually conflicting provisions. These contradictions may cause a certain amount of legal uncertainty, which inevitably complicates the implementation of the existing regulations.

A significant gap is therefore apparent between the provisions laid down in the regulations and what actually happens in practice. Frequently, provisions concerning certain aspects of sports agents' activities are called into question by the actors of the sector, and some widespread practices take no account of existing regulations or are actually designed to circumvent them.

Furthermore, it is obvious that there is currently no consensus between the various stakeholders on a number of issues concerning sports agents. While some believe that lawyers are the best qualified to carry out sports agents' activities, others will argue that they should be prohibited from doing so. While some believe that establishing requirements for accessing the profession is essential, others will affirm that sportspersons should be able to choose freely the persons who are to represent them. While some believe that agents should be paid by the person engaging them, others do not object to agents being paid by another party to the transaction. On almost every aspect covered by this study there are diverging opinions, not only between different types of actors or different sports but also within the same sport or same group of actors.

The main problem posed by the regulation of sports agents' activities is that of supervision, or rather, the relative effectiveness or ineffectiveness of supervision<sup>139</sup>. Several factors can explain this kind of shortcoming in the regulations in question – whether they are specific to sports agents or are provisions of ordinary law. Such factors include:

- The international dimension of sport and of the employment of sportspersons. Sport – or at least sports with which sports agents deal – is highly globalised and hence sports agents' activities are eminently transnational. Unless they are harmonised to a sufficient degree, national regulations – whether public or private – are inadequate to control an activity that takes place in several different countries.
- The difficulty of controlling access to an activity which is often based on personal connections. Sportspersons are more likely to turn for help and advice to a close relative, friend or former player – even though the latter may be outside the regulations – than to an authorised person who is a perfect stranger to them.
- The impossibility for international and national federations alike to control and, above all, to impose disciplinary sanctions on unlicensed sports agents, since no legal ties exist between the latter and the federations. Thus, unlicensed agents can only be sanctioned under civil or criminal law. This, however, is a relatively lengthy process and, moreover, the law does not always provide for suitable sanctions.
- The fact that most sport federations lack the means to conduct investigations. Federations can put in place certain means of control (monitoring of agency contracts and employment contracts, checking

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<sup>139</sup> The most visible symptom of this problem is the relatively large number of agents who practise the profession without a licence or authorisation (See the first part of this study).

information against the accounting records of clubs, testimonies, etc.) but they obviously do not have the instruments and legal powers available to public authorities to control professional activities.

- The unwillingness of some federations to sanction clubs or draw the media's attention to certain problems.
- The lack of political will, on the part of some public and private actors, to put in place efficient control and sanctioning systems targeting sports agents' activities and, more generally, the mechanisms to recruit/employ sportspersons. There are dysfunctions and they are well-known, but the steps taken to solve them are insufficient.
- The fact that some actors of the sector are unfamiliar with the sanctions provided for in the sport federations' regulations, which sometimes lack visibility;
- The lack of involvement of sportspersons' unions in monitoring relations between sportspersons and agents.
- The general lack of cooperation between the various bodies or departments of sport federations, on the one hand, and the public administrations or bodies responsible for, e.g. combating corruption or enforcing immigration policy, on the other.
- The fact that the wish for profit may run counter to observance of the ethical rules of sport, giving rise to conflicts of interests.

One sign of the difficulty of developing an effective system to regulate sports agents' activities is FIFA's recent announcement that it intends to review the regulation of football agents.

#### **Towards a change in FIFA's regulations on sports agents**

The following factors are leading FIFA to review its regulations concerning football agents:

- The current licensing system is ineffectual since only 25% to 30% of international transfers are arranged through licensed agents.
- Managing a licensing system at international level is difficult without perfect collaboration at national level. This collaboration is not always possible, given that the necessary human and financial resources may not be available.
- There is a regulatory conflict between the FIFA Regulations and certain national laws – particularly those of some Member States (e.g. Germany, the United Kingdom and the Netherlands) – on employment services (whereby employment/job placement services may not be made subject to the requirement for a licence, authorisation or registration).
- It is apparent that parallel mechanisms exist, enabling unlicensed agents to operate with impunity.
- FIFA cannot exercise any control on persons who are exempt from the requirement for a sports agent's licence (player's parents, lawyers, etc.).
- There is some confusion surrounding the role of clubs' and players' agents as well as on who is responsible for paying their fees (the player or the club).

In view of the above, FIFA considers that a move in the following direction is required:

- Cease regulating access to sports agents' activities (by means of a licence), but rather, control the activities as such.
- Cease regulating the activities of individuals who are not registered with FIFA (unlicensed agents) to monitor the transactions between players and clubs that depend directly on FIFA.

### **Plans for new FIFA Regulations**

A working party of representatives of football clubs and players (FIFPro) was set up to propose and finalise a new system. Thus, in June 2009, FIFA's 59<sup>th</sup> Congress approved an in-depth reform of the players' agents system through a new approach based on the concept of "intermediaries". The aim is to abolish the current licensing system for players' agents – set up and managed by FIFA – and to concentrate instead on monitoring the contracts. Anybody will be able to act as an intermediary between a player and a club, as long as certain criteria are fulfilled (absence of conflicts of interests, transparency, etc.).

FIFA is currently preparing a set of regulations which will apply mandatorily to all contracts signed between players and clubs. The aim is no longer to regulate access to the sports agent's profession. The contracts covered by the regulations will include not only the contracts concluded between players and clubs, but also agency contracts.

FIFA will focus on monitoring the compatibility of transfer contracts with the new rules. All such contracts will be registered in a "Transfer Matching System" (TMS)<sup>140</sup>. Transfers between two clubs in the same country will be checked by the football association of the country concerned. International transfers will be controlled directly by FIFA, through the TMS.

The new system is expected to come into force in mid-2010.

## **II. The protection of professional sportspersons**

In this part of the study we shall consider the question of the protection of professional sportspersons inasmuch as sports agents have a bearing on it, given that sports agents are our object of analysis. Clearly, however, not all the activities of sports agents raise issues about the protection of professional sportspersons, nor is it only sports agents' activities that raise this kind of issues.

When it is used in the context of sport, the term "protection" refers basically to the provisions established by public authorities or sport governing bodies to uphold the ethics of sport as well as the interests of sportspersons. To examine the issue of the protection of sportspersons in the context of the contractual relations into which they enter as sportspersons requires us to place the concept of protection in the framework of the tripartite relationship between the sportsperson, the agent and the club<sup>141</sup>.

A mandate contract requires the agent to protect the interests of the principal that has engaged his services – in our case, the sportsperson – so as to further the latter's professional career. However, the empirical data show certain opacity in the transmission of information from the agent to the sportsperson, and this inevitably raises the question of the protection of the sportsperson.

### **1. Provisions established by sport governing bodies to protect professional sportspersons**

The few existing regulations issued by sport governing bodies specifically to deal with sports agents' activities usually include provisions to protect professional sportspersons in the event of disputes with

<sup>140</sup> The nature and aims of the TMS are described later in this report.

<sup>141</sup> The term "club" is used here to refer to a sport entity acting as an employer (club, auto racing team, athletics meeting, cycling team, etc.) as well as to a non-sport employer (various sponsors, equipment manufacturers, media concerns, etc.).

agents. However, we chose to focus on the FIFA Regulations, in that football exemplifies the various problems that can arise in relation to the protection of professional sportspersons.

Article 30 of the FIFA Regulations on sports agents sets out the general provisions concerning disputes in connection with the activities of players' agents. In particular, Article 30 stipulates that the national associations shall, as a last resort, refer any dispute arising from or relating to national players' agents regulations to an independent, duly constituted and impartial court of arbitration, while taking into account the FIFA Statutes and the laws applicable in the territory of the association (Article 30.1). In the case of international disputes, a request for arbitration proceedings may be lodged with the FIFA Players' Status Committee (Article 30.2).

If there is reason to believe that a case raises a disciplinary issue, the Players' Status Committee or single judge (as the case may be) shall submit the file to the FIFA Disciplinary Committee (Article 30.3). However, the Players' Status Committee or single judge may not hear any case subject to the FIFA Regulations on players' agents if more than two years have elapsed from the event giving rise to the dispute or more than six months have elapsed since the players' agent concerned has terminated his activity (Article 30.4)<sup>142</sup>.

Section VIII of the FIFA Regulations on players' agents (Articles 31 to 36) provides for sanctions against any players' agent, player, club or association that violates the regulations, their annexes or the statutes or other regulations of FIFA, the confederations or the associations.

Article 32 of the regulations concerns the competence, limitation and amount of the sanctions that can be imposed. In domestic transactions, the association that issued the players' agent licence is responsible for imposing sanctions. For its part, the Disciplinary Committee of FIFA has competence to impose sanctions on a players' agent involved in a domestic transfer within an association other than the one that issued his players' agent licence, as well as to impose sanctions in international transactions<sup>143</sup>.

Furthermore, the national associations must ensure that after every channel at association level has been exhausted, parties sanctioned on the grounds of the FIFA Regulations have the opportunity to lodge an appeal with an independent, duly constituted and impartial court of arbitration (Article 32.4). In general, the court in question is the Court of Arbitration for Sport (CAS). If, however, the decision of the CAS is contested, the Swiss Supreme Court may be invited to pronounce on the matter. Thus, for example, with its ruling of 17 September 2008, the Swiss Supreme Court confirmed the judgment of the CAS, which had considered that football player Frank Ribéry had terminated his contract with agent Bruno Heiderscheid on legitimate grounds<sup>144</sup>.

Players' agents who violate the FIFA Regulations applicable to them make themselves liable to sanctions which may be imposed separately or in combination, and which range from a reprimand to fines, to suspension or withdrawal of the licence or even to a ban on taking part in any football-related activity (Article 33.1). Furthermore, the Regulations state that *"the licence shall be withdrawn if the*

<sup>142</sup> The detailed procedures for the resolution of disputes in connection with the activity of players' agents are further outlined in the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber.

<sup>143</sup> The Disciplinary Committee of FIFA also has competence to decide who is responsible for imposing sanctions in the event of any uncertainty or dispute regarding competence.

<sup>144</sup> See CAS judgment 2007/0/1310, of 16 April 2008, *Heiderscheid v. Ribéry*. The football player notified his agent, by registered letter, that he wished to terminate the agency contract before expiry of the term. The agent lodged a complaint with the sport authorities for breach of contract, but the agency contract was rendered null and void on grounds of a previous conviction against the agent. Following on from this case, French legislation was amended to prohibit any person who has been convicted for an offence from acting as a sports agent.

players' agent repeatedly or seriously infringes the statutes and regulations of FIFA, the confederations or the associations"<sup>145</sup>.

As will become apparent from the empirical data provided below, very few football players turn to the sport governing bodies to resolve disputes with their agents. Thus, the protection of professional sportspersons is often "bypassed" by unwritten financial arrangements between the actors concerned<sup>146</sup>. Existing provisions often lack visibility and transparency, which explains why many professional sportspersons are simply unaware of their existence. Furthermore, the lack of cooperation between the various sport governing bodies on the issue of control of sports agents' activities leads to a certain "loss of information" which is generally harmful to the interests of professional sportspersons. The latter therefore are exposed to breaches of trust and are not always able to protect themselves against this eventuality.

## 2. Protection seen from the point of view of the sportsperson

As part of this study, 138 professional sportspersons were consulted by means of a questionnaire designed to enable us to gain a better understanding of how they view the issue of their own protection in the event of a dispute with their agent. The term "professional sportsperson" was broadened to include coaches, given that the latter also use the services of sports agents.

**Table 17:** Composition of respondents' population, by sport

Athletics	14
Auto racing	1
Basketball	8
Cycling	3
Football	72
Golf	2
Handball	16
Motorcycle racing	2
Rugby	5
Taekwondo	1
Tennis	3
Volleyball	11
TOTAL	138

Football players make up a substantial proportion of the sample, a fact which can be explained by the high degree of professionalisation of football.

The sample comprised 130 men and 8 women of 21 different nationalities. The average age of respondents was 27.8.

**Table 18:** Details of questions asked to professional sportspersons

Question	Number of responses	Yes	No
1. Are you aware of any incidents or problems resulting from practices that involve sports agents and that are considered unlawful or contrary to ethical principles?	138 responses	130 94.2%	8 5.8%
2. If yes, please describe the incident(s) in question.	128 responses		
3. Do you know the appropriate body or person to approach, as a rule, in the event of a dispute or incident of this kind involving a sports agent?	136 responses	71 52.2%	65 47.8%
4. Do you have or have you had specific problems with your current agent or an agent formerly engaged by you? If yes,	135 responses	82 60.7%	53 39.3%

<sup>145</sup> Article 33.2 of FIFA Players' Agents Regulations 2008.

<sup>146</sup> It should be noted that, in sports where no specific regulations exist applicable to sports agents, disputes between the latter and the sportspersons they represent are usually settled under the provisions of ordinary law.

please describe the reasons for the problem.			
5. Can you suggest any measures that could be taken to protect your interests more effectively in the event of disputes with your sports agent?	130 responses		

All respondents answered the question whether they were aware of any incidents or problems resulting from unlawful or unethical practices involving sports agents. The eight people who answered in the negative practise sports where there are no regulations specific to sports agents' activities.

On the basis of responses to the second question, the incidents involving sports agents can be ranked into five categories, according to how often a particular type of problem was mentioned by respondents.

**Table 19:** Ranking of disputes involving sports agents, by frequency of type of problem mentioned

Type of problem mentioned	Specific situations
1. Dual agency	The agent represents the interests of both the sportsperson and the club. The sportsperson is unaware of this dual agency. Conflict of interests.
2. Irregularities in procedure	The agent conceals important information from the sportsperson, who might have made a different decision if he had been aware of it.
3. Non-compliance with contractual obligations by the agent once his fees have been paid	The agent “vanishes” after signing the contract and receiving his commission.
4. Involvement of sports agent in fraud	The agent does not communicate the amount of his commission or for what service/transaction he has charged it.
5. Sports agent is responsible for problems concerning the movement of sportspersons	The agent encourages the sportsperson to leave his country of origin without guaranteeing a job for him, and then abandons him in the host country.

**Table 20:** Distribution of responses by type of problem mentioned

Problem mentioned	Number of respondents who mentioned the problem
1. Dual agency	129
2. Irregularities in procedure	46
3. Non-compliance with contractual obligations by the agent once his fees have been paid	78
4. Involvement of sports agent in fraud	50
5. Sports agent is responsible for problems concerning the movement of sportspersons	118

The most frequently mentioned problems were those associated with a dual agency. 129 respondents mentioned problems associated with conflicts of interests in the three-way relationship between player, agent and club. Many sportspersons did not use the terms “dual agency” or “conflict of interests”, but they effectively described these kinds of situations. It is only by examining the specific situation that “hidden problems” can be identified or, conversely, apparent conflicts of interests can be seen in perspective. In sports where a mandate is not mandatory, sportspersons also mention conflicts of interests as a possible cause of disputes with agents.

The second type of problem, namely “irregularities in procedure”, was mentioned by 46 sportspersons, including 43 football players. In most cases, these irregularities occur before the signature of the contract by the sportsperson concerned and they often result from a dual agency situation. The “hidden



problem” may take the form of lack of information, which the sportsperson was not aware of at the time when he signed the contract. As may be expected, this kind of problem is particularly difficult to identify. Many respondents explained that, when they finally became aware of the problem, they felt it was too late to take legal action. Sportspersons rarely approach the competent bodies to find out about the existing possibilities for redress.

The third type of problem, non-compliance with contractual obligations, was mentioned by 78 respondents and seems to occur in two specific kinds of situation. The first is where a sportsperson finds himself in the position of a permanent reserve player in his team in spite of the fact that when the contract was signed the agent assured him that he would be a regular player. Although it is obviously difficult to expect agents to guarantee the status of a regular player for their clients, non-compliance with the terms of the contract is apparent in situations where the player has been initially misled and, at the time when the contract was signed, the club had no intention of guaranteeing the position in question for him. Several testimonies, including the following, illustrate this kind of situation:

Mr X is a football player of French origin who signs a two-year contract with a top English Premier League club. At the time when the contract is signed, he is represented by a French agent who works together with a British colleague registered with the English Football Association. The two men share a commission of £600,000, although the contract signed by the player makes no mention of an agent acting on behalf of the player. The player’s French agent has promised to pay the player £80,000 out of his £300,000 share and, moreover, has assured the player that he will be signed as a regular player. However, not only does the player never receive his £80,000 but he is given no opportunity to play during the whole season. He therefore dismisses the agent in question and wishes to take legal action against him. However, lacking sufficient information on the procedure he should follow, he finally gives up.

Secondly, non-compliance with contractual obligations is mentioned in connection with situations where the player wishes to terminate an existing agency contract which is still in force. Even when they already have a binding agreement with an agent, many sportspersons are frequently contacted by other agents promising better career opportunities – which, incidentally, is prohibited by the federations’ regulations in the case of players who are under an exclusive representation contract<sup>147</sup>.

Generally speaking, sportspersons wish to work with the agent who offers them the best career prospects. The hiring of a new agent is often determined by dissatisfaction with the services provided by the current agent. Thus, when a sportsperson is bound by an agency contract which he wishes to terminate, he usually notifies the agent concerned by registered letter, invoking breach of contract as the grounds for termination. Most of the sportspersons questioned on this point stated that this procedure was suggested to them by their new agent.

The mechanisms involved in the fourth type of problem, i.e. fraud associated with sports agents’ activities, are analysed in detail in the part devoted to financial flows and financial crime. The professional sportspersons questioned by us on this point said that these illegal practices were a real problem, particularly because they were very widespread (e.g. 45 of the 50 sportspersons who mentioned this problem were directly affected by it). It is often the case, moreover, that sportspersons are persuaded to engage in this kind of practice when part of the fraudulently appropriated sums is intended for them. This is therefore a sensitive issue. Sportspersons prefer not to give responses that might incriminate them.

<sup>147</sup> See, in particular, Article 22.1 of the FIFA Players’ Agents Regulations, as well as Article H.5.6.2.1(e) of the FIBA Players’ Agents Regulations.

Agents' responsibility for problems associated with the movement of sportspersons was highlighted by 118 respondents. In a large proportion of the cases mentioned, agents were involved in the entry into the EU of sportspersons from South America, Africa and European countries outside the EU. While some sportspersons from these geographical areas integrate successfully into the EU, many are "left in the lurch" and fail to find a club that employs them in the EU<sup>148</sup>.

As regards the question of whether sportspersons know the appropriate body or person to approach in the event of a dispute with their agent, the responses highlight a blatant lack of training and information in this respect. Of the 136 respondents who answered this question, 65 stated that they did not know whom to approach, while most of those who answered in the affirmative were unable to exactly identify the body or person in question. Of the 71 respondents in this group, 53 stated that they "thought" they should contact the international federation of the relevant sport (with football players mentioning both UEFA and FIFA) while 12 said that the competent body depended on the nature of the dispute concerned.

As for the specific problems experienced by sportspersons with their current or former agents, 82 of the 135 respondents (or 60.7%) stated that they had in fact experienced problems in one of the five problem areas mentioned above. The high percentage of affirmative responses shows not only the relevance of the question of the protection of professional sportspersons, but also the relative inefficiency and lack of visibility of existing provisions.

### **3. Limitations of the mechanism to protect professional sportspersons**

On the one hand, the existing international sport governing bodies, while exerting a major influence in certain areas such as the organisation of competitions or the fight against doping, are helpless when faced with situations where the financial stakes are much higher than the stakes in sporting terms. While "modern sport" is becoming increasingly synonymous with "professional sport", the sport governing bodies – both national and international – have remained largely "amateur" structures whose lack of adequate financial means to combat certain forms of malpractice is sometimes all too apparent.

On the other hand, the existing systems of arbitration and dispute-settlement can be said to provide efficient protection for professional sportspersons, provided that these systems are actually put to work. However, very often sportspersons are unaware of the existence of these systems and tend to switch agents rather than seek the assistance of a sport governing body.

Asked about the solutions that could provide better protection, the surveyed professional sportspersons usually mentioned the professionalisation of the sport governing bodies.

#### **Information as a tool to protect sportspersons**

Some organisations have developed information tools to strengthen the protection of sportsperson (and other actors) by making them aware of their rights and providing lists of recommended agents as well as of agents with whom it is unadvisable to work. For example:

In the United Kingdom, some ten years ago the performing artists' union, Equity, set up a system based on a so-called "special attention list" which names all participants in the sector – including artists agents – who have been found guilty of offences or malpractice in their dealings with artists. Published

<sup>148</sup> This type of situation will be examined in the section devoted to trafficking in human beings.

in the union's quarterly magazine, the list has great resonance among artists and discourages them from working with the entrants in the list.

Also in United Kingdom, the Football Association (FA) has developed a two-page "Quick Reference Guide" to inform players, clubs, coaches and agents about their rights and obligations under the existing regulations concerning sports agents' activities.

Some sport federations publish an updated list of authorised or licensed agents on their websites. This is the case with FIBA, which also explains, on its website, how to initiate proceedings before the FIBA Arbitration Tribunal in the event of a dispute (usually involving players, agents and/or clubs). For its part IAAF publishes a list of athletes' representatives (and of the athletes they represent).

### **Recommendations of the Olympic Movement to provide better protection for athletes**

On 5 October 2009, the 13<sup>th</sup> Olympic Congress adopted the following recommendations aimed at providing better protection for sportspersons in their relations with sports agents (as well as with managers and sponsors):

*"All involved with the Olympic Movement should develop and implement a standard code of conduct and certification system in order to protect the rights of athletes towards agents, managers and sponsors. This system should also provide athletes with the tools and education to manage these relationships effectively and to share and exchange models of best practice"<sup>149</sup>.*

### **III. The transparency of financial flows and financial crime**

This part of the study will highlight the role of sports agents in relation to issues concerning financial crime and the transparency of financial flows, given that sports agents are our object of analysis. This does not mean, however, that all the activities of sports agents raise issues concerning financial crime and the transparency of financial flows, nor does it mean that only sports agents' activities raise this kind of issues.

Sport is increasingly affected by organised crime. We are today witnessing a "criminalisation" of sport, i.e. the interference of "professional criminals" in the world of sport and their collusion with different actors in sport. As an economic sector generating increasingly large financial flows and involving a growing number of mutually interacting participants (sponsors, television channels, various intermediaries, etc), professional sport is considered a sector that is particularly vulnerable to financial crime<sup>150</sup>.

Before examining the specific problems concerning financial crime and the transparency of financial flows in connection with sports agents' activities, it might be appropriate to clarify some of the concepts used in this section.

<sup>149</sup> Recommendation No. 6 of the 13<sup>th</sup> Olympic Congress, 5 October 2009.

<sup>150</sup> Other structural, financial and cultural factors also explain the vulnerability of the sport sector to financial crime. See, in particular, Transparency International – Czech Republic (compiled by Radim BURES), "Why sport is not immune to corruption", Enlarged Partial Agreement on Sport, 2008, as well as Financial Task Force-Groupe d'action financière (FATF-GAFI), "Money Laundering through the Football Sector", FATF Report, July 2009, pp.14-16.

**Terminological clarifications****Transparency of financial flows**

The concept of “financial flow”, which can be defined as the value of sales and purchases in a given accounting period, refers mainly to movements of capital, which have developed exponentially at international level over the past 15 years in the context of an increasingly globalised economy. Financial flows are deemed to be transparent when they are carried out in a completely legal way, without giving rise to any form of financial crime.

The issue of the transparency of the financial flows related to sports agents’ activities arises mainly in connection with the transfer of professional sportspersons. In this context, in order to assess the transparency of financial flows, it is necessary to examine the income and expenditure of clubs, sponsors, sportspersons and agents in connection with any kind of contract involving a financial transaction, be it the transfer of a professional sportsperson from one club to another or the signature of an employment contract, a sponsorship contract or an image-rights contract.

**Financial crime**

The concept of “financial crime” designates any kind of illegal financial activity, i.e. any activity carried out in violation of existing laws and regulations. In the context of the activities carried out by sports agents, such illegal practices basically fall into three categories:

**Money laundering**

In general, the term “money laundering” refers to the process whereby money generated by criminal activities is re-injected into the legal economy.

The European Directive of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>151</sup> defines money laundering as the following conduct, when committed intentionally:

- The conversion or transfer of property derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property;
- Assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;
- The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property;
- The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity.

**Corruption**

The term “corruption” commonly refers to a person’s use and/or abuse of power in exchange for an unfair advantage obtained for private purposes. Thus, corruption does not always directly benefit the person who abuses his or her position of power, but may also involve securing advantages for close relatives or members of his family<sup>152</sup>.

<sup>151</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005.

<sup>152</sup> This simplified definition of corruption brings together various definitions, including those proposed by the NGO Transparency International in a 2002 publication entitled “Combating corruption: challenges and perspectives” and the Parliamentary Assembly of the Council of Europe in a report dated 18 February 2000 on “The Role of Parliaments in the Fight Against Corruption”.

Money laundering and corruption are two closely interrelated problems, given that *“while the money used for corruption is not always, originally, ‘dirty’ money, it is obvious that in the process of corruption it becomes ‘dirty’ and sooner or later it has to be re-injected into the legal economy”*<sup>153</sup>.

#### Tax fraud

Tax fraud (or tax evasion) consists in deliberately and unlawfully trying to pay less tax. On the other hand, “tax avoidance” refers to the legal use of loopholes in the tax system to reduce the amount of tax payable. A typical means of committing fiscal fraud is not to declare the full amount of one’s income to the tax authorities or, in the context of sports agents’ activities, not to declare certain fees received in exchange for some services provided. The mechanisms involved in money laundering and tax fraud are often similar (for example, transferring money to “tax havens” where tax regulations are not very strict and banking secrecy is an unassailable principle).

### **1. Sports agents and financial crime**

It should be noted, in the first place, that the illegal activities described in the preceding sections of this study are far from being generalised among sports agents and that they are not the latter’s exclusive province, given that other actors in the system may also be involved in them<sup>154</sup>. Thus, sports agents *“are often, in practice, at the centre of reprehensible practices [but] are not essentially responsible for them. Rather they crystallise the shortcomings of the system as a whole”*<sup>155</sup>.

The few existing expert reports and studies on practices relating to financial crime and sports agents’ activities are unanimous on one point: it is very difficult to prove the existence of such practices conclusively. This difficulty is explained by several factors, including the multiplicity of actors and intermediaries involved in such criminal activities, the international nature of the latter (which thus escape the control of national governments and sport authorities), and the immaterial nature of the object of the transactions (the value/talent of professional sportspersons) which also makes it easier to overestimate its market value.

However, several factors also explain why, in examining issues relating to financial crime in professional sport, the discussion often turns to the role of sports agents, particularly in football.

First of all, there is the major role played by sports agents in international transfers. For a majority of professional sportspersons, agents have in fact become essential partners enabling them to make the most of the existing market opportunities. In recent years, the sums paid for broadcasting rights for major sport events in the context of the liberalisation of the professional sportspersons market in Europe have rocketed to unprecedented levels – a development which has been favoured, among other factors, by the so-called Bosman judgment<sup>156</sup> pronounced by the Court of Justice of the European Communities

<sup>153</sup> “Blanchiment et corruption”, Annual Report (2003) of the Central Department for the Prevention of Corruption attached to the French Ministry of Justice and Civil Liberties), p. 1.

<sup>154</sup> See, in particular, Transparency International, “Corruption and Sport: Building Integrity and Preventing Abuses”, Working Paper No. 3, September 2009.

<sup>155</sup> Remarks by Mr Didier Primault, an economist at the French “Centre de Droit et d’Economie du Sport” (Sport Law and Economics Centre – CDES) – quoted in Report No. 3741 of February 2007 submitted by the Committee for cultural, family and social affairs of the French National Assembly, on the conditions for the transfer of professional football players and the role of sports agents (often called “Juillot Report”, after the name of the rapporteur).

<sup>156</sup> This judgment concerns the dispute between Belgian footballer Jean-Marc Bosman and his club, FC Liège, which refused to transfer him to the French club Dunkerque. The player brought the matter before the ECJ, arguing that the rules governing the transfer were not in line with Community law. This applied, in particular to the possibility for a club to claim transfer compensation for a player at the end of his contract as well as to the existence of a quota limiting to three the number of foreign players from another EU Member State in a club team. The ECJ sided with Bosman in finding that the UEFA Regulations were contrary to Community law.

(ECJ) in 1995. This has, in turn, led to an exponential increase in the salaries and transfer fees paid for professional sportspersons, especially football players<sup>157</sup>. Since the above-mentioned judgment, sport agents have taken on a much more important role to the extent that transfers have been facilitated by the fact that all players, upon expiry of their contract, are free to sign with another club without any transfer compensation being due. Thus, according to a former Head of the Players' Status Department of FIFA, the direction of financial flows in professional football has changed significantly following the Bosman judgment: *"Instead of moving from one club to another, the money ends up in the pockets of players and their agents much more consistently than in the past"*<sup>158</sup>.

It is therefore first and foremost in the context of player transfers that financial flows increased in the world of professional sport<sup>159</sup>. Football illustrates this phenomenon in view of the substantial sums of money invested in this sport. The amount paid for the recent transfer of Portuguese player Cristiano Ronaldo from Manchester United to Real Madrid – just over 93 million Euros – reflects the boom of the so-called "sport business". The fact that the potentially very lucrative transfer market of top sportspersons often functions in a context of opacity which favours the emergence of multiple forms of malfeasance has, in fact, been recognised by several sport governing bodies as well as by EU institutions<sup>160</sup>. It seems today that *"the acquisition, sale and remuneration of players are usually regarded as transactions exposed to a high risk of fraud, particularly as the financial stakes are very high"*<sup>161</sup>. Thus, sports agents often become the centre of attention when problems relating to fraud, money laundering or corruption are investigated in the professional sport sector<sup>162</sup>.

Another factor is the highly varied nature of sports agents' activities. While sports agents in most cases act as go-betweens in the context of a player's transfer or the signature of a contract, they may also manage their clients' assets (thus acting as a trustee), suggest advantageous tax measures (thus acting as tax advisers) or help negotiate sponsorship and image-rights contracts, and manage publicity (thus acting as advertising agents). All of these functions provide opportunities for sports agents to take part, whether directly or indirectly, in the financial flows associated with their clients and hence to engage in illegal practices.

## **2. Problems that sports agents' activities may give rise to in terms of lack of transparency of financial flows and financial crime**

Although it is usually difficult to prove the existence of a fraudulent or criminal practice associated with the activities of a sports agent, it is nevertheless possible to describe some mechanisms involved in such practices.

<sup>157</sup> From 1997 to 2007, the salaries of professional football players increased by 235% in the "big five" European leagues (England, Spain, Italy, Germany and France) reaching an average level equivalent to 60% of the clubs' turnover (See "L'arrêt Bosman, détonateur de l'explosion des salaires", *LesEchos.fr*, 11 May 2009).

<sup>158</sup> Quoted in Poli R., "Transferts de footballeurs: la dérive de la marchandisation", *Finance & Bien Commun*, No. 26, winter 2006-2007, p. 40.

<sup>159</sup> Of course, as a result of the professionalisation of sports as well as of the increasing cost of television broadcasting rights and the growing commercialisation of professional sports, financial flows have become even larger.

<sup>160</sup> European Parliament Resolution of 29 March 2007 on the future of professional football in Europe (articles 27 and 28); European Commission: White Paper on Sport (presented on 11 July 2007); European Parliament Resolution of 8 May 2008 on the White Paper on Sport (Recital AG and article 10).

<sup>161</sup> "Blanchiment et corruption", *op.cit.*, p.25.

<sup>162</sup> This fact has been recently highlighted by "EU Athletes", a federation of 26 athletes' associations from 15 European countries representing over 25,000 professional athletes. Following a conference organised under the auspices of the European Commission in Cracow (Poland), the members of EU Athletes called for more transparency in the player transfer market, particularly as regards sports agents' fees. EU Athletes also stressed the need for a greater participation of athletes' representative associations in the ongoing debates on the accreditation of sports agents (news item published on the website [www.playthegame.org](http://www.playthegame.org) on 3 October 2009).

## **2.1 In the context of transfers of professional sportspersons**

Transfers of professional sportspersons are characterised, in financial terms, by a range of financial transactions of different kinds. In fact, the negotiations for a transfer concern many other aspects in addition to the transfer fee as such and the sportsperson's future salary. Thus, *“the grouping of several operations into a single financial flow means that traditional checks are almost impossible. Moreover, the operation can be spread over several financial years, creating a break in the control procedure and fragmenting the flows in time”*<sup>163</sup>. Therefore, the financial flows associated with players' transfers are those which give rise to the highest risk of fraud and whose transparency is most often called into question.

### 2.1.1 Overvaluation of the transfer and secret fees or “bungs”

The first method consists in overestimating a player's price in relation to his real value, which is a relatively easy thing to do given the immaterial nature of a sportsperson's “price”, which is mainly based on two subjective criteria, namely the sportsperson's estimated value according to specialists in the sector (which can vary considerably over a wide range, by as much as several million euros), and the added value that the sportsperson is expected to provide to the club to which he is transferred.

This overvaluation may later benefit the managers of both clubs as well as the coaches, the sportspersons and the agents concerned<sup>164</sup>. It is in this kind of context that hidden fees or “bungs” are paid, enabling clubs to misuse corporate assets<sup>165</sup> or to create a slush fund to finance other transfers or pay for new recruits “under the table”, i.e. without incurring the cost of social security contributions. Both of these methods were brought to light, notably, during the trial of a number of persons involved in suspicious transfers carried out by the football club Olympique de Marseille between 1997 and 1999. At the end of the trial, in June 2006, the city's criminal Court convicted 13 people, including six agents, five managers and a coach.

### 2.1.2 Collusion networks and “relational rents”

Given the collusion that may exist between sports agents and club managers in relation to the “bungs mechanism”, several actors repeatedly confirmed to us that only some agents are “entitled” to transfer players to certain clubs. By controlling the access of players to some clubs through a collusion with those clubs' managers and employees (in exchange for the payment of bribes), some sports agents benefit from a sort of “relational rent”<sup>166</sup>.

### 2.1.3 The use of “talent pools”

The use of closed “talent pools”, in which agents can play a major role, also provides opportunities for money laundering. Talent pools entitle private investors who invest money in them to a share of the profits when a player is transferred to another club. For example, let us imagine a club which purchases a player for 10 million Euros but which officially declares that the purchase only costed 5 million. The 10 million have been provided, in full, by investors, who pay 5 million into the talent pool and pay another 5

<sup>163</sup> Pons N., *Cols blancs et mains sales: Economie criminelle, mode d'emploi*, Odile Jacob, March 2006, p.32.

<sup>164</sup> It should be noted, furthermore, that the overvaluation technique can also be applied in the context of the signature of a sponsorship contract or image-rights contract.

<sup>165</sup> A “misuse of corporate assets” usually refers to an instance where the executive or manager of a company intentionally uses the assets, credit or powers of the company to further his own personal interests (or those of members of his family or close relatives) against the interests of the company.

<sup>166</sup> Poli R., *Production de footballeurs, réseaux marchands et mobilités professionnelles dans l'économie globale. Le cas des joueurs africains en Europe*, doctoral thesis defended at the University of Neuchâtel on 2 June 2008, p.151.

million to the club “under the table”. If the player is later sold for 15 million Euros, all the parties to the transaction would benefit from the operation. The club will be able to buy a better player, the investors will be able to launder 5 million Euros and receive a substantial return on their investment and the player’s agent will receive a huge fee, given that “his” player has been bought for 10 million Euros instead of 5 million and is then sold for 15 million Euros<sup>167</sup>.

#### 2.1.4 Other fraudulent practices

Other fraudulent practices involving sports agents may also occur in the context of a transfer:

- The purchase of a “ghost player” (who is listed as part of the team but never plays, and who subsequently “disappears”);
- Inflating the amount paid to a training club;
- A “forward purchase”, i.e. taking out an option on a player and paying for it in cash, then giving up the option without recovering the money – which enables the club concerned to justify a major outflow of cash;
- Concluding a “one-two pass contract”, which consists in transferring a player who will then be loaned to another club to which he will finally be sold later on (hidden “loan fees” can be shared in the meantime)<sup>168</sup>;
- Paying money into a bank account abroad without it being possible to check the name of the account holder<sup>169</sup>;
- False invoices associated with misuse of corporate assets, with the agents invoicing the club for services performed for the player.

### **2.2 In the context of the remuneration of professional sportspersons**

As we have seen, a sports agent’s remuneration is theoretically agreed upon in the agency contract signed with the client. According to the Central Department for the Prevention of Corruption in France, *“this does not pose a problem if the real object of the contract is simply the management of the sportsperson’s interests. On the other hand, if this is not the case, the agent’s activities can be used as a support for fraudulent financial flows – for example, by multiplying the number of transfers of a medium-level player with the possible complicity of several clubs”*<sup>170</sup>.

#### 2.2.1 Additional money paid to players through their agents and/or through the latter’s fees

In order to pay as little social security contributions as possible, a club may sign a false contract with an agent for non-existent activities in the context of a player transfer. Such a contract can be used to conceal payments made to the player through the agent<sup>171</sup>. This type of arrangement takes place, for example, when a club that wishes to transfer a player pays a “severance bonus” (which may be worth

<sup>167</sup> This imaginary example is given by the Financial Task Force-Groupe d’action financière (FATF-GAFI) in its report “Money Laundering through the Football Sector”, *op.cit.*, p.24.

<sup>168</sup> For a discussion of the “one-two-pass contract” (in French, “contrat une-deux”) see in particular “Blanchiment et corruption”, *op.cit.*, p.25.

<sup>169</sup> For example, an investigation of the Spartak Moscow club by the Russian tax authorities in 2003 showed that a Swiss bank account into which AS Roma had paid 7 million dollars in 1998 for the transfer of a player was directly controlled by the coach and two other members of the board of directors of the Spartak Moscow. Cited in Poli R., “Transferts de footballeurs: la dérive de la marchandisation”, *op.cit.*, p. 43.

<sup>170</sup> “Blanchiment et corruption”, *op.cit.*, p.28.

<sup>171</sup> This kind of practice was brought to light, e.g. during an audit of the accounts of the Paris-St-Germain football club in 2006 (See, in particular, “PSG: les découvertes de la police financière”, article published on the website of *Figaro* on 15 October 2007, or “Transferts: des coûts pas très francs,” *Libération*, 26 September 2009).



several million Euros) to the club employing the concerned player. In reality, part of this amount is received by the player, through his agent, e.g. to offset a lower salary. The “bonus” thus enables the new club to reduce its salary costs and social security contributions. In this kind of arrangement, the agent acts as an intermediary and may eventually receive a bonus justified by a mandate (issued after the player has been transferred) to recruit another player<sup>172</sup>.

The additional benefits usually offered to players (home, car, jobs or financial arrangements for members of his family) in the context of a transfer also provide opportunities for money laundering – to the advantage of the player, the club or the agent.

### 2.2.2 Hidden dual agency

As previously mentioned, it is not uncommon for a club to be responsible for paying an agent who has been engaged by a player to act on his behalf. In order to give this practice a semblance of legality where regulations prohibit dual agency and require the fee to be paid by the player, a club may resort to a sham “recruitment mandate”, which is often predated and drawn up specifically for the purpose at hand. For their part, the agents concerned avoid signing a written contract with the player and usually make do with a verbal agreement or, if a written agreement exists, they do not submit a copy of it to the federation<sup>173</sup>.

### 2.2.3 Other fraudulent practices

Several other arrangements can be devised in the context of the remuneration of sportspersons and can be implemented to the advantage of players, clubs, managers and sports agents. These arrangements may involve turning salaries into travel expenses, granting loans at nominal interest rates, paying severance bonuses just before the sportsperson’s contract is due to expire, etc.

## **2.3 In the context of image-rights contracts**

Bogus image-rights contracts are another means used by different actors for money-laundering or tax-evasion purposes. Such bogus contracts can be used to boost players’ salaries or to conceal payments made to agents. The method involves increasing the value of the contract to include a payment made by the club to the agent. When the payment for image rights is made to an offshore company, the agent will receive the fee for the services provided, without having to declare it to the tax authorities.

## **2.4 In the context of illegal betting and match fixing**

Given the special relationship they have with players, sports agents are ideal targets of organised crime in the area of betting and match fixing. While players and referees are the main targets of this kind of illegal practices, agents are sometimes approached and asked to persuade players to cheat in

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<sup>172</sup> This kind of arrangement was used, e.g. in the context of the transfer of Laurent Blanc of FC Barcelona to the SA Olympique de Marseille (See, e.g. “Le bréviaire des coups tordus”, an article published on the website of the *Nouvel Observateur* on 6 April 2006).

<sup>173</sup> It should also be noted that this type of concealed dual agency situation is not without risk for the various parties involved. The club can face action by the social security authorities over contentious commissions (leading to the inclusion of the relevant amounts in the base for calculation of social security contributions); the agent may be subject to disciplinary sanctions for violating the prohibition against dual agency; and, lastly, the player may have to pay additional taxes (on the commissions that he should have paid his agent).

exchange for money. A case in point is that of an agent who was indicted in 2006 for playing an active role in fixing football matches in Belgium<sup>174</sup>.

It should be pointed out, moreover, that the involvement of sports agents in match fixing is sometimes made easier by the lack of adequate regulations. For example, following revelations of corruption among international referees in European handball competitions, the European Handball Federation (EHF) recently decided to prohibit referees from acting in certain capacities, including that of players' agent, which was permitted until then<sup>175</sup>.

### **2.5 In the more general context of the activities carried out by unlicensed sports agents**

Allowing for differences between one sport and another, the number of unlicensed or unauthorised sports agents who practice the profession illegally can be expected to be relatively high<sup>176</sup>. These unauthorised individuals or entities use the transfer market to generate profits that are not reinvested into the sport sector. However, any profits derived from the illegal exercise of a regulated – albeit privately – profession are illegal, and making use of such income is an offence that can be subsumed under the concept of money laundering<sup>177</sup>. This phenomenon is particularly alarming given that, in the event of irregularities, no sanctions can be taken against unlicensed agents by the relevant international or national federation, given that federations can only sanction persons affiliated to them<sup>178</sup>.

### **3. The extent of the phenomenon**

Because of their role, particularly in the player transfer system, sports agents are important vectors of financial transactions in professional sport. However, it is almost impossible to determine the extent of the activities (including the sums concerned) which are related to financial crime or can be subsumed under this concept and in which sports agents are involved. For example, the UN Office against Drugs and Crime estimate the total amount of money that goes through the money laundering system at 2% to 5% of the world's annual GDP or 800 to 2,000 billion dollars<sup>179</sup>. The estimate range is very wide, given that the amount is difficult to calculate, owing to the secret nature of money laundering operations. Estimating the extent of money laundering associated with sports agents' activities in Europe is, *a fortiori*, even more difficult, if not impossible.

In view of the huge amounts of money involved in football, the latter is often at the centre of the cases of corruption or fraud that are brought to light<sup>180</sup>. But other sports are also affected by this scourge. In a

<sup>174</sup> See, e.g. "Nouvelle inculpation d'un agent de joueurs", article published on 23 March 2006 on the website of *Libre Belgique*.

<sup>175</sup> See, e.g. "L'EHF prend des mesures anti-corruption" (article published on the website "Internet Sport.fr" on 29 March 2009) and "Le scandale s'étend" (article published in *L'Equipe* on 26 March 2009).

<sup>176</sup> See the first part of this "Study on sports agents in the EU".

<sup>177</sup> Financial Task Force-Groupe d'action financière (FATF-GAFI), "Money Laundering through the Football Sector", *op.cit.*, p.23.

<sup>178</sup> Thus the English Football Association (FA) dealt with three cases involving the use of the services of unlicensed sports agents. Given that the FA could not sanction these agents, it limited itself to sanctioning the players and clubs that had had dealings with them.

<sup>179</sup> <http://www.unodc.org/unodc/en/money-laundering/globalization.html>

<sup>180</sup> According to an estimate by the Deloitte auditing and consultancy firm, the European football market was worth 13.8 billion Euros in 2007, or 0.1% of Europe's GDP. For the influence of organised crime in football, see, e.g. Graham Johnson G., *Football and Gangsters*, Mainstream Publishing, 2006 and Robert D., *Le milieu du terrain*, Editions Les Arènes, Paris, 2006. According to the author, "football has become a formidable money laundering machine".

report published in July 2009, the Financial Action Task Force (FATF-GAFI)<sup>181</sup> indicated that, while all sports were exposed to one form or another of financial crime, those most vulnerable to money laundering appeared to be football, cricket, rugby, horse racing, auto and motorcycle racing, ice hockey, basketball and volleyball<sup>182</sup>. Other professional sports, such as handball and tennis, are at risk to varying degrees<sup>183</sup>.

Just as all sports are exposed to the risk of financial crime, it can be said that virtually all Member States of the European Union are affected by the problem. Of course, countries where a variety of professional sports are more or less highly-developed are more vulnerable. Conversely, countries with no (or moderately developed) professional sports and hence with only a small presence of sports agents (Malta, Cyprus, Luxembourg and the Baltic countries being the main examples)<sup>184</sup> are undoubtedly less affected by the problem.

In spite of the difficulty of assessing the extent of the above-mentioned problems, some actors of the sport movement have tried to investigate the situation in their respective sports. The independent inquiry which was conducted in 2006 into irregularities in English football is an interesting example of this kind of investigation.

#### **An independent inquiry commissioned by the Football Premier League in March 2006**

Following revelations of corruption and fraud in English football, made towards the beginning of 2006 by various sources both within<sup>185</sup> and outside<sup>186</sup> the world of football, in March 2006 the Football Premier League appointed Lord Stevens of Kirkwhelpington<sup>187</sup> and his London-based investigations and risk-management company, Quest Ltd, to carry out an independent inquiry into possible irregularities in player transfer deals involving Premier League clubs<sup>188</sup>.

Based on an analysis of 362 transfers carried out between January 2004 and January 2006, the inquiry mainly aimed to identify any such irregularities which would have enabled managers, players' agents or clubs in the Premier League to receive unauthorised or fraudulent payments. Vested by the Premier

<sup>181</sup> FATF-GAFI is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. FATF-GAFI describes itself as "a policy-making body that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas".

<sup>182</sup> "Money Laundering through the Football Sector", *op.cit.*, pp.7-8.

<sup>183</sup> As apparent from the remark of an official of the French rugby federation: "We are concerned by what is happening in football. We have no illusions; we are not immune from this kind of problem". Mentioned in "Agent, un métier à surveiller", <http://www.paradisfj.info/spip.php?article114&lang=fr>.

<sup>184</sup> See the first chapter of this "Study on Sports Agents in the EU".

<sup>185</sup> For example, Swedish football coach Sven-Goran Eriksson, who managed England at the 2002 and 2006 World Cups, hinted that he knew coaches who accepted bribes ("Stevens puts spotlight on the agents", *The Telegraph*, 16 June 2007). Early in 2006, the manager of Luton Town FC, the second-division English football club, accused the FA of not taking any measures against "the front men of official managers who offer money to managers to finalise transfers" (*Sport/ Foot Magazine*, 18 January 2006).

<sup>186</sup> On 19 September 2006, the BBC broadcast a "Panorama" report on corruption in English football. Entitled "Undercover: Football's Dirty Secrets", the report – largely filmed using hidden cameras – showed meetings between agents and players, as well as club managers and senior officials, in the course of which agents and managers accepted bribes and sought to recruit players who were under contract to other clubs, without involving the latter in the discussions, which is expressly prohibited by the FIFA Regulations (See, e.g. Article 22.2 of the FIFA Players' Agents Regulations, which prohibits approaching any player who is under contract to a club with the aim of persuading him to terminate his contract prematurely).

<sup>187</sup> Lord Stevens spent most of his career in the British Police Force. After heading London's Metropolitan Police Service from 2000 to 2005, he became the Executive Chairman of Quest Ltd, an independent company specialising in audits and investigations.

<sup>188</sup> "Inquiry into Alleged irregular Payments from Transfer Dealings", an inquiry carried out by Quest Ltd on behalf of the Football Premier League (final report dated June 2007).

League with the power to investigate, Lord Stevens' team examined – over a period of more than one year – the bank accounts of the various participants in the 362 transfer deals, including several clubs and managers as well as the agents and players directly concerned.

Lord Stevens' report underlines that serious doubts persist about the regularity of 17 transfers<sup>189</sup>, thus calling directly into question the good faith of some 15 players' agents, some of whom apparently refused to communicate the details of their bank accounts. Quest's investigators also revealed a conflict of interests involving an agent who had taken part in the transfer of players to the Bolton Football Club, who was managed by the agent's father.

At the end of the inquiry, Quest recommended FIFA and the FA to investigate matters further. In fact, following investigations by the police into alleged cases of corruption in English football, a number of arrests (including that of an agent) took place in 2007 in the Portsmouth FC<sup>190</sup>, which had been listed by Quest as one of the clubs involved in the 17 potentially irregular transfers.

Already in December 2006, Quest had submitted a preliminary report which put forward 38 recommendations to improve the financial transparency of transfers<sup>191</sup>. Following this preliminary report, the Premier League and the FA accepted their share of responsibility for not having put in place an efficient system to monitor and supervise transfers. At the same time they stressed that this did not justify the "unacceptable" breach of existing rules by certain clubs.

In February 2007, the Premier League clubs agreed that 31 of Quest's 38 recommendations should be incorporated, in one form or another, into the FA Regulations (including in particular the Regulations on players' agents) and/or of the Premier League. As for the other seven recommendations, which concerned the involvement of clubs in the discussions to determine agents' fees and the role of managers' agents involved in dealings with clubs that employ the managers in question, it was decided to take them into account in other ways, albeit pursuing the aims set out by Quest.

#### **4. Solutions put in place by public authorities and sport authorities**

Faced with the above-mentioned problems, a number of public authorities as well as certain sport governing bodies have progressively put forward solutions to combat financial crime in sport. Given that it is impossible to give here a detailed account of all of these initiatives, we decided to focus on some of them, which are particularly thought-provoking and innovative.

##### **4.1 Provisions adopted by the national public authorities**

Clearly, governments have an essential role to play in combating financial crime in all sectors, including sport. In France, Article L 132-2 of the Code of Sport establishes the obligation, for each federation that has a professional league, to create a body responsible for the legal and financial supervision of the relevant sport associations and companies. Pursuant to this legislation, several bodies – called "Directions Nationales du Contrôle de Gestion" (National Directorates for Management Supervision – DNCG) – were set up to monitor the finances of both professional and amateur sport clubs in the football, rugby, basketball and handball sectors. Although they do not have the authority to check

<sup>189</sup> These included the transfer of Ivorian international striker Didier Drogba from Olympique de Marseille to Chelsea, of Czech international goalkeeper Petr Cech from Stade Rennais to Chelsea, and of French international defender Jean-Alain Bounsong from the Glasgow Rangers to Newcastle United.

<sup>190</sup> See, in particular "Redknapp arrested in corruption investigation", *The Guardian*, 28 November 2007.

<sup>191</sup> These recommendations concerned all the different actors involved in football: players, managers, clubs, agents and the FA itself.

whether funds originate from legal sources, these bodies are still useful instruments in that they cooperate closely with the competent public authorities.

In view of the persistence of certain problems<sup>192</sup>, and following the publication of several reports<sup>193</sup>, a bill was submitted by a number of French senators in May 2008 for the purpose of regulating the sports agent's profession and amending the Code of Sport. The bill includes provisions aimed at establishing a legal framework which would allow agents to be paid by clubs (even when the agents act on behalf of the players)<sup>194</sup> and making the remuneration of the agent conditional upon the transmission of a copy of the agency contract to the relevant sport federation<sup>195</sup>.

A number of initiatives have also been taken in other EU Member States, including the Netherlands, where the national tax authorities have set up a specialist unit dealing with professional sports, which is often consulted by sport clubs on tax matters.

## **4.2 Provisions adopted by the sport movement**

### 4.2.1 Provisions set out in the FIFA and FIBA Players' Agents Regulations

Apart from the successful completion of an examination, the FIFA and FIBA Players' Agents Regulations currently in force have established a number of other requirements to obtain a sports agent's licence. These requirements – which include the absence of any convictions for serious offences (Articles 6 of the FIFA Regulations and H.5.4.2 of the FIBA Regulations), taking out professional liability insurance (Articles 9 of the FIFA Regulations and H.5.4.12 of the FIBA Regulations) and providing a bank guarantee (Article 10 of the FIFA Regulations) – are basically aimed at excluding ill-intentioned persons from the sports agent's profession.

### 4.2.2 FIFA's "Player Transfer Matching System" (TMS)

To make transactions more transparent, FIFA decided that all the important data on each international transfer should be recorded in an on-line "Transfer Matching System" (TMS) which all FIFA member federations must join by March 2010<sup>196</sup>. This electronic system, which is currently being adopted by the national federations, is intended to ensure that all interested parties agree on the details of each transfer, that said details are correct, and that all payments are duly recorded.

The TMS makes it possible to check many different details of a transfer, including the identity of the parties to the transaction (clubs, player and, possibly, an agent), the age of the player, the agent's licence number, the clubs' bank account details, etc. Once the data have been matched (which involves checking, e.g. that the agent is not representing several parties at once), an electronic International

<sup>192</sup> Detailed in Report No. 363 of the French Senate on the above-mentioned bill.

<sup>193</sup> The most often cited being Report No. 3741 of February 2007, submitted by the Committee for cultural, family and social affairs of the French National Assembly, on the conditions for the transfer of professional football players and the role of sports agents ("Juillot Report").

<sup>194</sup> This aspect is raising some doubts, which have been put forward, notably, during the analysis of regulatory differences concerning who is responsible for paying the agent.

<sup>195</sup> These provisions are in line with the proposals put forward by the French Football League in a document entitled "*Mieux encadrer la profession d'agent et assurer la transparence des transferts*", published in April 2006, as well as with the proposals put forward by the French National Olympic and Sport Committee (CNOSF) in a document entitled "*Ensemble pour un sport européen. Contribution du CNOSF sur le sport professionnel*" (published in July 2008).

<sup>196</sup> At the time of completing this report, the TMS had already been adopted by a number of national federations. According to FIFA, 108 associations (including the 53 associations of UEFA) and 1,263 clubs have joined TMS. By October 2009, no less than 4,312 transfers had been recorded in the system (See "FIFA reaches milestone in the regulation of international football transfers", media release published on the FIFA website on 13 October 2009).

Transfer Certificate (ITC) is issued and the price of the transfer is paid into the bank account of the club selling the player<sup>197</sup>.

The aim of the TMS is therefore, basically, to enable tracing the origin and destination of the amounts paid for transfers in order to increase the transparency of all transactions. This will also make it possible “to better safeguard the protection of minors”<sup>198</sup>. Unless all the requirements of the system are fulfilled, a transfer cannot be concluded<sup>199</sup>.

As part of the TMS, a so-called “clearing house system” will be established requiring the club that purchases a player to pay the price of the transfer into a special TMS bank account, where the money will be held until all the details of the transfer have been checked.

Of course the TMS is not expected to solve all the problems described in the preceding sections of this report. Thus, for example, FIFA will not be able to control the final destination of the money once the transfer has been completed, i.e. once the money has been credited to the account of the selling club. Furthermore, the TMS is only intended to deal with international transfers. Monitoring national transfers will remain the responsibility of the national federations<sup>200</sup>.

Thus, in establishing the TMS, the aim of FIFA was not so much to prevent money laundering – a task which falls largely within the competence of the State – but rather to make transactions more transparent, while reserving the right to communicate any suspicious data to the competent authorities.

#### 4.2.3 Specific provisions adopted by certain national sport federations

Some national sport federations have taken steps to ensure financial transparency and prevent phenomena such as money laundering and tax fraud.

The Italian football federation, for example, set up a committee to monitor the finances of professional clubs (*Commissione di Vigilanza sulle Società Calcistiche* – COVISOC).

In September 2003, the clubs of the three divisions that make up the English Football League<sup>201</sup> agreed to publish reports specifying the number of transactions carried out by the clubs (in relation to the signature of an initial contract as well as in relation to transfers, renewals or terminations, loaned players, etc.) and the amounts paid by the clubs to sports agents, whether directly or through the players (so as to enable them in turn to pay their agents). These “Agents’ Fees Reports”, which cover a period from July to December or, alternatively, a whole season, aim to improve the transparency of the football business and its finances, and reflect the willingness of Football League clubs to make this kind of information public. The publication of the Agents’ Fees Reports, which started in July 2004, can be considered an example of good practice in terms of financial transparency<sup>202</sup>.

<sup>197</sup> The first ever electronic ITC was issued by The Scottish Football Association in favour of the French Football Association on 8 October 2009.

<sup>198</sup> Remarks by FIFA President Joseph S. Blatter, published in the above-mentioned media release of 13 October 2009. It should be noted that the issue of the protection of minors will be examined more closely later in this report.

<sup>199</sup> Thus, in the above-mentioned media release, FIFA indicated that “from 1 October 2010, only electronic ITCs will be accepted for the transfer of professional players, thus ensuring complete transparency.”

<sup>200</sup> Other football associations (notably the English and the Italian ones) have already set up their own national versions of the electronic Player Transfer Matching System.

<sup>201</sup> The Football League consists of three divisions (Championship, League 1 and League 2, which can be regarded as the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> divisions of the Premier League, which brings together the top English football teams) comprising English as well as Welsh professional teams.

<sup>202</sup> The Agents’ Fees Reports can be downloaded from the website of the Football League: <http://www.football-league.co.uk/page/PublicationsIndex/0,,10794,00.html>

In 2007, following a review of its Players' Agents Regulations (carried out in response to the Quest inquiry, among other factors), the English Football Association (FA) set up a team to carefully monitor and control the player transfer market and the payments made to players' agents. One of the key mechanisms of this effort is the above-mentioned "clearing house system".

### **The licensing of professional sport clubs: an important element to ensure financial transparency**

The gradual introduction of professional club licensing systems is another step forward in terms of improving the financial transparency of sport in Europe. Licensing systems exist mainly in team sports (football, basketball, rugby, handball, etc.) and apply to competitions organised at national and European level.

One of the aims of the licensing system is to preserve the integrity of sport competitions by ensuring that participating clubs observe the same rules, particularly with regard to financial management. Thus, although the granting of a licence to a club is also subject to other criteria, the financial requirements (aimed at increasing the economic and financial efficiency of clubs, improving their transparency and credibility, and monitoring their accounts) constitute the core of the club licensing system.

The licensing system put in place by UEFA at the beginning of the 2004-05 season is based on 34 specific criteria concerning financial and economic aspects, among others. Further checks coordinated by UEFA in cooperation with independent partners on the proper application of the system at each association reinforce the Europe-wide nature of the system, enabling UEFA to exclude clubs that do not fulfil the requirements from UEFA membership as well as from participating in UEFA competitions. The main objective of the system is therefore to achieve better transparency and governance by clubs and national associations and to establish a degree of financial solidarity among them.

In addition to the club licensing system, the UEFA Executive Committee recently approved a "rule of financial fair play", which is aimed at ensuring the healthy, lasting viability of football clubs in Europe. As part of this effort, UEFA intends to introduce several requirements, e.g. clubs of a certain size will be requested to balance their books, or "break even", which in simple terms means they will not be allowed to spend more than the revenue they generate; they will also be required to issue guidelines on salaries and transfer-related expenses and to provide indicators of debt sustainability<sup>203</sup>. These measures will be introduced over a three-year period in order to promote long-term investment, particularly in training centres and infrastructure. In the short term, the supervision of expenditure and compliance with the regulations will be entrusted to an independent "Club Financial Control Panel" chaired by the former prime minister of Belgium, Mr. Jean-Luc Dehaene. Composed of legal and financial experts, the panel will carry out audits to ensure that the UEFA club licensing system is applied correctly across all UEFA member associations.

Other sport organisations also operate a licensing system for sport clubs in Europe. This applies e.g. to most national football leagues in Europe, the basketball Euroleague, the English Rugby Union, the English Rugby League and the German and Spanish handball leagues. Although the aims of these licensing systems are usually similar, the requirements and procedures to obtain a licence vary from one organisation to another.

<sup>203</sup> "UEFA Executive Committee Nyon decisions – Financial Fair Play concept approved", media release published on the UEFA website on 15 September 2009.

#### **IV. Trafficking in sportspersons**

In this Part of the study we shall highlight the role of sports agents in relation to issues concerning trafficking in sportspersons, given that sports agents are our object of analysis. This does not mean, however, that all the activities of sports agents raise issues concerning trafficking in sportspersons, nor does it mean that only sports agents' activities raise this kind of issues.

Trafficking in sportspersons concerns – mainly, though not exclusively – football. Faced with a steady rise in the price of players, many European clubs are increasingly turning to non-European markets, most of which are located in the African and South American continents, where it is possible to acquire talented players at significantly lower prices than in Europe. Furthermore, European clubs are allowed to recruit as many foreign players as they wish, provided that the players come from a signatory country of an association agreement with the EU containing a clause of non-discrimination on grounds of nationality (as in the case of African countries).

While initially this kind of recruitment focused on the best players, in recent years head-hunting and recruitment activities by the actors concerned have targeted, more and more often, young players under 16 years of age. Furthermore, the increasingly high media profile of football and the success of African and South American football players in major European championships have fuelled the hopes of young players from these parts of the world, who are more than willing to try their chances in Europe. In addition to the legal and official transfers to European clubs, there are many players who fall victim to economic exploitation. This phenomenon is usually described as “trafficking in sportspersons”.

##### **1. Trafficking in human beings: a scourge that affects sportspersons**

The United Nations Organisation (UNO) defines “trafficking in persons” as *“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”*<sup>204</sup>.

As pointed out in Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings, *“children are more vulnerable and are therefore at greater risk of falling victim to trafficking”*.

Trafficking in persons does not involve solely sexual exploitation. At the European Council meeting held in Tampere on 15-16 October 1999, economic exploitation was also brought into relation to trafficking in persons.

In the case of sport, trafficking can be described as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of fraud, of deception, of the abuse of power or of a position of vulnerability to achieve the consent of a person having control over another person, for the purpose of economic exploitation.

In his “Enquiry concerning the recruitment of young foreign football players in the training centres of professional clubs” (November 1999), the General Inspector for Youth and Sport, Mr Jacques Donzel (France) stated that he had *“the absolute conviction that there is a market for young football players –*

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<sup>204</sup> Article 3.a of the “Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organised Crime”.



*most of whom come from countries that are experiencing serious economic and social difficulties – which works to the advantage of clubs in Western Europe as a whole*".<sup>205</sup>

## **2. Scenario involving trafficking in young football players**

Trafficking in sportspersons mainly concerns young sportspersons from third countries, particularly from Africa and Latin America. In the specific case of football, these continents represent a reservoir of young talent and are the main areas of origin of foreign professional football players who play in European championships.

### **The classic scenario of trafficking in football players**

1. An intermediary spots a – usually young – player and promises to have him recruited by a European club. In most cases these players, who wish to emulate their idols, practice their sport in informal settings which are not easy to monitor.
2. The intermediary asks the player's family for money in exchange for finding a "placement" for him in Europe. Sometimes the player's family will sell all their possessions or take out a loan to pay the intermediary, in the hope of receiving a quick return on their investment.
3. The player arrives in Europe, in most cases with a one-month tourist visa. The travel conditions are often illegal (e.g. travelling as a stowaway in a ship) and dangerous (excessively long journeys, dehydration, hypothermia, etc.).
4. Once he arrives in Europe, the player is "put to the test" by several clubs, which are not necessarily those promised by the intermediary. He is taken from one club to another until the intermediary is satisfied or gives up the process.
5. If the tests are successful, the player signs a (usually, short-term) contract with the club (in fact, very often the intermediary encourages the player to sign a short-term contract). The contract is often precarious and its terms are disadvantageous to the player. If the player no longer has a contract with a club, the intermediary often "drops him".
6. If the player does not pass any of the tests and is not recruited by a club, the intermediary usually abandons him to his fate.
7. In principle, an intermediary who brings a player to Europe should bear the costs of his stay as well as all travel costs, including the return fare to the country of origin. However, many intermediaries will abandon the player if the tests with the clubs do not lead to a contract. With no money, no connections and often unable to speak the language of the country where he stays, the abandoned player usually has no choice but to remain in Europe in an irregular situation, i.e. without a work permit or a stay permit. He will end up doing undeclared, casual jobs for a living, possibly sending part of his earnings to his family back home. Most often, the player is unable to return to his country of origin because he cannot afford the fare or because he does not wish to return, since this would be perceived as failure by his family, which made sacrifices for him. In general, it is apparent that very few players from these countries are recruited or given a contract in relation to the high numbers who travel to Europe – which

<sup>205</sup> "Enquête concernant le recrutement des jeunes footballeurs étrangers dans les centres de formation des clubs professionnels. Rapport préliminaire", report by the General Inspector for Youth and Sports, Mr Jacques Donzel, November 1999, p.26.

results in a large population of destitute persons who are reluctant to return to their countries of origin and who try to remain in Europe at any price<sup>206</sup>.

There are variants to this scenario. Thus, there are many cases where nobody is waiting for the player when he arrives in Europe, which means that he will not even be given the opportunity to undergo a test with a club, since it is unlikely that a club will consider recruiting him unless he is introduced by an agent.

#### **Examples illustrating some aspects of the phenomenon**

In 2007, 34 Ivorian youths (aged 16 to 18) were held against their will for three months in a villa located in the town of Sikasso, in southern Mali, before being freed by the Malian police. They were undernourished and had been forced to sleep on the floor in a single room. Their parents had been swindled by an intermediary who had promised to have them recruited by a European club in exchange for CFA300,000 (equivalent to approximately 450 Euros)<sup>207</sup>.

A young Guinean football player, aged 17, travelled from Ghana to Senegal and thence to Tenerife, lured by the promise made by a Lebanese intermediary that he would arrange a test for him with Metz FC. His mother sold her home and his two younger brothers started working at the age of 12 to pay for his passage to Europe. After a two-week voyage by sea, he was held prisoner in Tenerife for a month. Finally, pretending he was 18, he was able to travel to France but, when he contacted Metz FC, the club had no idea of who he was and threatened to report him to the police. He remained in France, illegally and without any links to the world of football<sup>208</sup>.

### **3. The actors involved in the trafficking of sportspersons**

As in the case of the above-mentioned problems relating to financial crime, many different actors may be involved in the trafficking of sportspersons, which is far from being the exclusive province of sports agents.

#### **3.1 The exporting clubs and their managers**

The sale of players to European football clubs is a major business activity for clubs in third countries. It can be a source of essential income and offers opportunities for investment. A triangular trade pattern has therefore developed between exporting clubs, intermediary clubs and European clubs. It is the latter two actors that make the largest gains from this trade, but the exporting clubs also profit from it.

Membership of a national federation is no guarantee that a club will not engage in illegal activities. Some managers of member clubs use unlicensed intermediaries and collude with illegal networks to misappropriate funds from transfer deals. This deprives clubs of valuable financial assets and hence prevents the development of the sport at national level – which would make it possible to retain more local players and counter the “talent drain”.

<sup>206</sup> Centre pour l'égalité des chances et la lutte contre le racisme (Centre for Equal Opportunities and the Fight Against Racism), “Lutte contre la traite des êtres humains. Images du phénomène de la traite des êtres humains et analyse de la jurisprudence”, Annual Report 2000.

<sup>207</sup> Press release of the International Organisation for Migration (IOM), “Football players’ Dream of Fame in Europe Shattered”, 27 March 2007.

<sup>208</sup> McDougall D., “The scandal of Africa’s trafficked players”, *The Observer*, 6 January 2008.

It should be pointed out that some officials of national federations also play a non-negligible role in the trafficking of sportspersons by issuing official release documents.

It should also be noted that, in addition to the clubs, new actors have become involved in the phenomenon of trafficking in sportspersons: private companies can become owners of football players – particularly in South America – through federated rights, and sell them wherever they like, without the players being able to choose their destination.

### **3.2 Sport associations that are not members of federations**

The number of sport associations that are not officially affiliated to national football federations has been steadily increasing at the same time as European clubs have become increasingly attractive for their players. For example, there are currently in Accra, Ghana's capital, some 500 non-affiliated football academies, and thousands more across the country<sup>209</sup>. They are often run by former local football stars who play a major role in identifying and recruiting young players. The latter are often homeless and/or come from disadvantaged backgrounds; they have no licence, are not officially listed anywhere and hence are outside the legal/administrative system.

These associations are at the centre of illegal networks for the transfer of players abroad. Their operations completely escape the control that the national football federations exert over affiliated clubs (e.g. by issuing a release document and following up players) and are not included in the information the federations are supposed to receive on all player transfers abroad. Unofficial agents (or collaborators/intermediaries of official agents) from Europe are increasingly involved in transfer dealings with these informal football schools for young players.

Most often, these unofficial schools are strictly profit-oriented, which is also usually the case with the official training centres.

### **3.3 Recognised training centres**

In many African and South American countries, businessmen have set up training centres with the help of former professional players<sup>210</sup>.

Many of these centres are officially recognised by the national football federations, which can thus, in principle, supervise the training and recruitment of the players. However, official recognition is not a guarantee of proper training conditions. For example, according to the Ivorian National Technical Director, of the 262 football schools or training centres officially recognised by the Ivorian Football Federation in 2007, *“in reality, only three or four of these structures deserve to be called training centres”*<sup>211</sup>.

As in the case of the non-affiliated sport associations, the training centres in some of these countries usually specialise in providing players for European clubs.

### **3.4 European clubs**

European clubs are often the final destination of young foreign players. They are therefore directly concerned by the issue of trafficking in sportspersons. As underlined by Robert Beroud, who heads the

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<sup>209</sup> McDougall D., *op.cit.*

<sup>210</sup> For example, the Salif Keita Centre in Bamako (Mali), owned by former professional player Salif Keita, and the Abidjan Football Academy, directed by Jean-Marc Guillou, a former professional player from France.

<sup>211</sup> Penda S., “Un trafic d'enfants en Côte d'Ivoire”, BBC Africa, Abidjan, 7 March 2007.

training centre of Olympique Lyonnais, “we are regularly approached by traffickers who try to sell us 13- or 14-year-olds as if they were commodities”<sup>212</sup>. European clubs can therefore find themselves acting as accomplices in the trafficking of sportspersons by accepting to take them on for a trial period, which will encourage the intermediaries to approach the clubs again to propose new potential recruits. If a club demands – in accordance with the regulations in force – that the intermediary holds a proper licence or authorisation, he will no doubt propose the player to another club that is prepared to turn a blind eye to the lack of a licence.

It should also be noted that many European clubs often operate through unofficial intermediaries, which allows them not be directly involved in the transaction in the event of problems with the judicial or sport authorities. According to the “Centre belge pour l’égalité des chances et la lutte contre le racisme” (Belgian Centre for Equal Opportunities and the Fight Against Racism), “unofficial managers or intermediaries are still the most widespread means used by the European clubs and the exporting clubs in the trade in players, and they play a central role in organising this migratory flow”<sup>213</sup>.

#### **4. The role of sports agents**

In considering the issue of trafficking in sportspersons, it is useful to distinguish several different types of intermediary:

##### **4.1 Agents recognised or licensed by a sport federation or government body**

Intermediaries in this category do not usually take part directly in the trafficking mechanisms described above. They are often victims of unfair competition on the part of unscrupulous intermediaries, who harm the image of agents as a professional group. This does not necessarily mean that they take no part in illegal transfers and are not responsible for the exploitation of young players. However, they are only involved indirectly in these practices, which explains why they are not usually called to account. It is in fact the case that many official agents have networks of collaborators and recruiters – notably in Africa and South America – who work for them and who act as their intermediaries.

##### **4.2 Assistants or collaborators who work for recognised or licensed agents**

These persons are involved in the trafficking of players to a much greater extent than licensed/authorised agents are. They may be involved in trading young players (who are often minors) and thus be guilty of engaging in practices which are contrary to the ethics of sport or even to human rights. When these intermediaries are found to carry out illegal recruitment or transfer activities, the official agents are not prosecuted, given that an agent has no responsibility for a player until the contract between the two has been signed.

##### **4.3 Independent intermediaries who are not recognised by any official body**

This group of intermediaries is steadily increasing in size. They are not usually interested in experienced players, but prefer to make use of illegal networks specialising in the trade of young players who are minors, unlicensed or unregistered in their countries of origin, and who come from the “informal sector” (local football, street football, private football schools or training centres). These practices bring discredit to the sports agent’s profession and to recruitment and transfer operations in general.

<sup>212</sup> Mandard S., “Le monde du football s’inquiète du trafic des jeunes Africains”, *Le Monde*, 4 November 2006.

<sup>213</sup> Centre pour l’égalité des chances et la lutte contre le racisme, “Lutte contre la traite des êtres humains. Images du phénomène de la traite des êtres humains et analyse de la jurisprudence”, Annual Report 2000.

These intermediaries mainly specialise in purchasing players from the poorest countries – particularly from Africa and Latin America – and selling them to European clubs. They are usually based in those countries or travel to them regularly to find new talents, whom they persuade to come to Europe by promising them contracts with European professional clubs.

## 5. The lack of quantified information on the extent of the problem

Trafficking in sportspersons is a phenomenon which is still not quantified – and which indeed is difficult to quantify, as is trafficking in persons in general.

In its Communication of October 2005 on the fight against trafficking in human beings<sup>214</sup>, the European Commission pointed out that precise figures enabling us to gauge the actual extent of the problem are not available and that *“law enforcement data, although important, are not sufficient”*. The information published by the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI) includes data on the entry of foreigners through “facilitator networks”, but it is difficult to distinguish people who are victims of trafficking from those who are not. Furthermore, according to EUROPOL, by its very nature trafficking in persons precludes accurate estimates of the number of victims involved, both in the EU and in the world at large.

Similarly, the International Organisation for Migration (IOM) does not provide any precise statistics on trafficking in sportspersons and recognises the difficulty of assessing the problem in statistical terms<sup>215</sup>. Football is the sport mainly concerned by trafficking but other sports – e.g. handball, basketball, rugby and boxing – are also affected by the phenomenon. In general terms, it can be said that the higher the financial stakes, the more a particular sport is likely to be affected. Trafficking is found mainly in team sports, owing to the transfer of players, but it is by no means confined to team sports. For example, a Belgian Senate report on trafficking in sportspersons, published in 2002, mentions the case of Kenyan runners who were deprived of their identity documents by traffickers<sup>216</sup>.

The victims of trafficking are mostly from Western Africa and Latin America. It appears that trafficking in young sportspersons concerns numerous European countries, particularly former colonial powers such as Belgium, France and Portugal. According to the above-mentioned 2002 Senate report, *“the fact that clubs can field any number of players from non-EU countries and the low salaries paid to players make Belgium into a trafficking hub. Owing to the limited number of inspections, this phenomenon cannot be countered”*.

### **Trafficking in sportspersons concerns immigration policy more than it does sport policy**

Trafficking in sportspersons forms part of the more general problem of trafficking in human beings and hence is also an issue for immigration policy. Regulations on sports agents are powerless to eradicate the phenomenon not only because of its international and covert nature, but also because the intermediaries who are at the centre of trafficking activities escape the implementation of these regulations since in most cases they are not officially registered agents.

Moreover, federations, clubs and organisers of sport events cannot replace the public authorities in

<sup>214</sup> Communication from the Commission to the European Parliament and the Council: Fighting trafficking in human beings – an integrated approach and proposals for an action plan, COM(2005) 514, 18 October 2005.

<sup>215</sup> Telephone interview conducted on 10 June 2009 with Richard Danzinger, Head of Counter-Trafficking at the IOM.

<sup>216</sup> “Traite des êtres humains dans le sport”, Belgian Senate report presented by Messrs De Decker and Lozie, on behalf of the Sub-Committee on Trafficking in Persons to the Committee for the Interior and Administrative Matters, 1<sup>st</sup> July 2002.

dealing with immigration issues.
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As we have seen, trafficking in persons and the protection of minors are often interrelated issues. In fact, worldwide, one victim of trafficking in persons in five is under 18<sup>217</sup>. The following section, which focuses on the potential threats that sports agents' activities pose for minors, should be read in the light of the findings described in the previous section.

## **V. The protection of minors**

In this Part of the study we shall highlight the role of sports agents in relation to issues concerning the protection of minors, given that sports agents are our object of analysis. This does not mean, however, that all the activities of sports agents raise issues concerning the protection of minors, nor does it mean that only sports agents' activities raise this kind of issues.

Although the protection of minors is an issue which concerns all sports and all EU Member States, football is – for the reasons set out above (high financial stakes, increasing number of transfers, growth in the recruitment of young players, etc.) – the sport most often examined in relation to this issue<sup>218</sup>.

The need to take into account the interests of minors in all decisions made by public authorities and private institutions has been stressed in several important international legal texts, including the UN Declaration of November 1959, the UN Convention on the Rights of the Child of November 1989 and the Charter of Fundamental Rights of the European Union. In view of the rapid growth of the professional sport market in recent years, the protection of underage sportspersons and their rights has become a priority for the EU policymaking bodies as well as for sport governing bodies<sup>219</sup>.

### **1. The regulation of the protection of minors in professional sport**

#### **1.1 At European level**

At European level, the regulation of the protection of minors in professional sport is indirectly provided for by Directive 94/33/EC of the Council, on the protection of young people at work. In fact, this Directive applies to any person under 18 years of age having an employment contract or an employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State. Its principal aims are to prohibit work by children<sup>220</sup> in Member States, to ensure that

<sup>217</sup> According to a report published by ECPAT (a global network of organisations and individuals working together to eliminate child prostitution, child pornography and the trafficking of children for sexual purposes), the proportion of minors in the total number of identified cases of trafficking in human beings worldwide rose from 15% to 22% between 2003 and 2007 (report published on the website of the Belgian daily *Le Soir* on 31 August 2009).

<sup>218</sup> According to "The Demographic Study of European Footballers", published in December 2008 by the Professional Football Players Observatory, the proportion of professional football players under 18 in first-division clubs in Europe at the beginning of the 2008-2009 season was 0.8%. Of course, these data do not take into account minors who had not yet signed a professional contract. The study looked at 11,015 players in the 456 clubs of the 30 main first-division European championships.

<sup>219</sup> For example, the European Council held in Nice in 2000 issued a "Declaration on the specific characteristics of sport and its social function in Europe", which mentions the need for the Community to take into account the protection of young sportspersons. Point 13 of the Declaration states the following: "*The European Council expresses concern about commercial transactions targeting minors in sport, including those from third countries, inasmuch as they do not comply with existing labour legislation or endanger the health and welfare of young sportsmen and -women. It calls on sporting organisations and the Member States to investigate and monitor such practices and, where necessary, to consider appropriate measures.*"

<sup>220</sup> In the context of the Directive, "child" means any young person of less than 15 years of age or who is still subject to compulsory full-time schooling under national law.

Member States strictly regulate and protect work by adolescents<sup>221</sup>, and to ensure in general that employers guarantee that young people<sup>222</sup> have working conditions which suit their age.

The Directive allows Member States to make legislative or regulatory provision, under certain conditions, for the prohibition of work by children not to apply to the employment of children for the purposes of performance in sport activities, subject to prior authorisation to be given by the competent authority in individual cases. In its White Paper on Sport, however, the European Commission recognises that *“there are indications that the practical enforcement of the Directive is only partial with regard to minors in sport”*.<sup>223</sup>

### **1.2 By EU Member States**

In EU Member States, the protection of minors in sport is basically provided for by labour law or contract law.

Certain specific public regulations reinforce this protection, e.g. by imposing on sports agents a blanket prohibition on entering into contracts with minors in sport. This is the case, for example, in Portugal (Law 5/2007, Article 37) and Greece (Ministerial Decision No. 23788/2002), even though in the latter case the text permits an exemption from this prohibition where the regulations of an international sport federation provide for such an exemption.

In France, Article L. 222-5 of the Code of Sport establishes that the conclusion of a contract concerning the performance of a sport activity by a minor may not give rise to the payment of any remuneration or compensation, nor to the granting of any advantage whatsoever to a sports agent, club or any other person acting in the name and on behalf of the minor concerned. Otherwise the contentious contract may be declared null and void. French sport federations have transposed this legal provision into their regulations on sports agents, so that agents operating in France are usually dissuaded from approaching a minor since they are not allowed to be remunerated for any of the services they may provide. Although sanctions have been imposed on agents who did not observe this prohibition<sup>224</sup>, it is difficult to imagine that agents who have helped talented underage players to sign their first professional contract have not been remunerated in one way or another for the services they provided.

### **1.3 By the sport federations**

Given the scope of this study, our examination of the regulations issued by sport governing bodies with the aim of protecting minors is limited to the regulations issued by international sport federations which have specific regulations applicable to sports agents (football, basketball, rugby and athletics)<sup>225</sup>. This approach is particularly justified in view of the fact that the international federations of various team sports (including handball, volleyball and hockey) have no specific provisions on the transfer of minors

<sup>221</sup> “Adolescent” means any young person of at least 15 years of age but less than 18 years of age who is no longer subject to compulsory full-time schooling under national law.

<sup>222</sup> Any person under 18 years of age.

<sup>223</sup> Commission staff working document: “The European Union and Sport: background and context”, accompanying document to the White Paper on Sport, p.50.

<sup>224</sup> The French Football Federation (FFF) recently suspended a licensed agent for three months for signing a paid contract with an underage player (See “Procès verbal du Bureau du Conseil Fédéral du 12 février 2009”, available on the website of the FFF).

<sup>225</sup> As previously mentioned, some national sport federations have adopted regulations on agents, even though their respective international federations have no such regulations. A case in point is that of the French sport federations, which have to comply with the Code of Sport. Another example is that of the Italian tennis federation, which in Article 5.3 of its agents’ regulations stipulates that minors may be assisted by an agent, but the contract must be signed by the player as well as by a parent or legal guardian of the latter.

in their regulations<sup>226</sup>. The International Ice Hockey Federation (IIHF) only provides for the transfer of minors who were not registered in the federation of origin<sup>227</sup>.

The four sets of regulations examined in this study are characterised by significant differences between the provisions concerning the protection of minors. Similar differences are found in the regulations of the national federations (rugby and athletics) whose respective international federations have given them a mandate to regulate agents' activities.

### 1.3.1 Football

The situation in football is clear-cut, given that Article 19 of the FIFA Regulations on the Status and Transfer of Players – which is one of the articles mandatorily applicable at national level and hence must be included, without alterations, in the regulations of each of the national associations – prohibits international transfers of players who are under 18 years of age. There are however, three exceptions to this prohibition, which are set out in Article 19.2. Thus, transfers of players who are minors are permitted, provided that:

- The player's parents move to the country in which the new club is located for reasons not linked to football;
- The transfer takes place within the territory of the European Union or European Economic Area and the player is aged between 16 and 18. (In this case, the new club must fulfil certain minimum obligations, including the following: provide the player with an adequate football education and/or training in line with the highest national standards; guarantee the player an academic and/or school and/or vocational education and/or training, in addition to his football education and/or training, which will allow the player to pursue a career other than football should he cease playing professional football; and make all necessary arrangements to ensure that the player is looked after in the best possible way);
- The player lives no further than 50 km from a national border and the club with which the player wishes to be registered in the neighbouring association is also within 50 km of that border (the maximum distance between the player's domicile and the club's headquarters is set at 100 km.) In such cases, the player must continue to live at home with his parents.

The first of these exceptions is the most controversial. In fact, sometimes the parents of young players are offered jobs by the clubs themselves in order to allow the transfer of their child. This kind of arrangement is sometimes facilitated by the agent.

Pursuant to Article 19.2 of the FIFA Players' Agents Regulations, if the player is a minor, the player's legal guardian(s) must also sign any representation contract concluded between the player and an agent. The relationship between the agent of an underage player and the latter's parents is therefore rather special. As we have seen, some ill-intentioned agents may take advantage of the parents' unreasonable willingness to make all kinds of sacrifices to enable their child to become a professional player and sign a contract with a major club.

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<sup>226</sup> However, the European Handball Federation lays down, in Article 6 of its Rules of Procedure for Transfers, that international transfers of players under the age of 18 are permitted only when the player's family moves to the country in which the new club is located for reasons that are not linked to handball or in the case of non-contract players under the age of 18 (e.g. students, pupils). In the latter case, no fees should be charged, neither by the releasing Federation nor by the EHF. The same principles apply to the first registration of players under the age of 18 who have a nationality other than that of the country in which they first apply for registration.

<sup>227</sup> Article 211 of the IIHF Statutes and Bylaws states the following: *"Where a player under the age of 18 has moved from one country where he was not registered with the member national association to the member national association of another without an international transfer card and is playing under jurisdiction of the national association of his new country, transfers may be effected in accordance with the procedures outlined in the International Transfer Regulations."*



### 1.3.2 Basketball

Article H.3.4.1 of the FIBA Internal Regulations 2009 prohibits international transfers before a player's eighteenth birthday *"except in special cases as decided by the FIBA Secretary General after examination of the matter with the member federations and, if necessary, with the clubs and the player concerned"*. Pursuant to Article H.3.4.1.1., the player's new club must, e.g. guarantee adequate academic and/or vocational training which prepares him for a career after his career as a professional athlete, as well as provide appropriate basketball training in order to further the player's career as a professional athlete. Moreover, not more than five transfers of players under the age of 18 can be approved in any one year from any one national member federation to another. Protection for minors is also provided for by Article H.5.6.2.1, Point L, of the FIBA Players' Agents Regulations, which establishes an obligation for all FIBA-licensed agents *"never to approach a player, in particular a player under eighteen years of age, during training camps and during competitions"*.

We may also note, as an interesting example, that the regulations of the French basketball federation (FFBB) incorporate the above-mentioned provisions of the Code of Sport which prohibit agents from receiving remuneration or compensation for services rendered to a minor in the framework of the conclusion of a contract (Article 25 of the FFBB Regulations on sports agents). This prohibition is also established in the agents' regulations of the Italian basketball federation, which stipulate that an agent may not work for, or be remunerated by, players under 18, whether they are Italian nationals or foreigners playing in Italy (Article 13.1).

### 1.3.3 Rugby

The IRB regulatory provisions on the transfer and protection of underage players are almost non-existent, since the IRB mandates its national member federations to take adequate measures in this area. Article 4.5.13 of the IRB International Regulations mentions, for example, that *"each union is entitled to establish appropriate regulations relating to the registration and development of players below the age of contractual majority within the jurisdiction of such union"*. The IRB reserves the right to issue guidelines to assist the national federations in implementing such rules.

Similarly, the IRB Regulations on sports agents include no provisions concerning minors. In fact, Article 5.1 of said regulations states that *"each union is responsible for the authorisation and regulation of agents acting on behalf of its members (or persons within its jurisdiction) and agents operating under that union's jurisdiction"*.

By way of example, the English and Irish Rugby Football Unions have not included any provisions concerning minors in their regulations on sports agents. The situation is different in France, since Article 19.10 of the national rugby federation's regulations on sports agents' activities incorporates the above-mentioned provisions of the Code of Sport.

### 1.3.4 Athletics

As in the case of rugby, the national federations are responsible for regulating the activities of agents operating on their territory or on behalf of an athlete who is a member of the federation concerned. Article 6.4 of the IAAF Regulations Concerning Federation/Athletes' Representatives establishes that when the athlete is under 18 years of age, the contract between him and his representative must be signed and approved by his parents or legal guardian.

While the regulations of the English Athletics Association on athletes' representatives say nothing about minors, the Italian federation for its part sets out, in Article 1.1 of its regulations on agents, that the latter may only represent the interests of athletes over 18 years of age. As for the French athletics federation, it complies with the provisions of the Code of Sport.

**From the various provisions reviewed above, it is apparent that:**

- Directive 94/33/EC of the Council on the protection of young people at work does not seem to be applied systematically, as far as minors in sport are concerned;
- In Greece and Portugal, the legislative provisions specific to sports agents prohibit the latter from entering into a contract with a minor (in Greece, this prohibition applies unless otherwise provided in the regulations of an international sport federation);
- France expressly prohibits sports agents from being remunerated for services provided in the context of the conclusion of an employment contract with a minor;
- With the exception of the IRB, international sport federations that have issued specific regulations on sports agents have included in the latter a number of provisions that regulate, to a limited extent, relations between agents and underage sportspersons.

## **2. Potential problems concerning the protection of minors**

As we have seen, various (public and private) sources of regulation include provisions to protect minors in their relations with sports agents and, more generally, in the context of remunerated sport activities.

However, despite these provisions, which are observed by the vast majority of actors in sport, the protection of minors can be undermined by the activities of some unscrupulous sports agents who take advantage of loopholes in the system, for example by misleading the parents of very young players. It is in fact apparent that the main problems concerning the protection of minors in relation to the activities of sports agents are caused by agents who search for new recruits outside the EU (particularly in Africa and Latin America, for the reasons explained above) or in European training centres.

In some cases, sports agents do not necessarily strive to further the interests of young players or to provide advice and assistance to them throughout their careers as professional sportspersons. Unscrupulous agents may indeed be interested solely in transferring a player to a European club in order to earn a hefty commission. The guarantees concerning a “dual curriculum of education/vocational training and sports” and “looking after the player in the best possible way” in the context of a transfer – as set out in both the FIFA and the FIBA Regulations and endorsed by the EU policymaking bodies<sup>228</sup> – are far from being a major concern for some agents.

This type of problem is fostered by several factors, among them the lack of protection of training clubs, coupled with growing competition between clubs, which encourages the recruitment of increasingly young players.

<sup>228</sup> The dual curriculum principle was notably endorsed by the European Parliament in its Resolution of 27 March 2007 on the future of professional football in Europe (Articles 36 and 37), as well as by the EU Sport Ministers who, in a declaration adopted by them under the French Presidency of the EU, in November 2008, considered that “a dual curriculum of education and sport is vital for the training of young sport professionals and high-level athletes to enable them to prepare for a future life after their sport career has ended” (Point 7). To which they added that “to encourage the development of the relevant facilities and structures to ensure that athletes can have access to a dual curriculum, the ministers encourage national federations and confederations, in association with the public authorities and sport/club representatives, to define the quality criteria these structures should meet to provide a dual training to men and women athletes” (Point 8).

## 2.1 Lack of protection for the training clubs

As we have seen, in many cases, particularly in football, the training centres of clubs are being “robbed” of their young talents<sup>229</sup>, especially through the activities of sports agents. *“The real problem is the agents”,* stated one of the directors of the training centre of the French club FC Nantes. *“They undermine the training programmes by distorting the recruitment process. Although they are not entitled to negotiate on behalf of the players, they take it upon themselves to advise the players’ parents, at the same time manoeuvring behind the scenes to push up the bidding between different clubs (...) There is a type of agent who lurks outside the gates of training centres, handing out business cards to the kids, and who finally makes them lose their heads.”*<sup>230</sup>

In order to protect the work and the mission of training centres (among other aims), UEFA proposed adopting a “home-grown players rule”, described in the box below.

### The “home-grown players rule” proposed by UEFA

To counter certain negative trends, including the lack of investment in the training of players on the part of some clubs, the concentration of the best players in the wealthier clubs (which reduces the competitive balance between European clubs) and the “pillaging” of training centres by agents, some years ago UEFA proposed introducing a “home-grown players rule”, which required clubs participating in the Champions League and the UEFA Cup to have a minimum number of “home-grown players” in their squads, i.e. players who, regardless of their nationality or age, had been trained by their club or by another club in the national association for at least three years between the ages of 15 and 21.

In its White Paper on Sport, the Commission considered that the rule proposed by UEFA could be accepted as being compatible with the provisions on free movement of persons, provided that it did not lead to *“any direct discrimination based on nationality and if possible indirect discrimination effects resulting from [the rule] can be justified as being proportionate to a legitimate objective pursued, such as to enhance and protect the training and development of talented young players”*. Following an independent study – conducted on behalf of the Commission – on the training of young sportspersons in Europe, the Commission finally endorsed the rule suggested by UEFA, explaining that although the potential risk that the “home-grown players rule” might lead to indirect discrimination on the basis of nationality could not be discounted, the objectives underlying the rule, namely promoting training for young players and consolidating the balance of competitions, seemed to be legitimate objectives of general interest, as they were inherent to sporting activity<sup>231</sup>.

In a declaration adopted under the French Presidency of the EU, in November 2008, the EU Sport Ministers stated that the UEFA’s project *“is one of the approaches that could reinforce the training of young players in clubs”*.

## 2.2 Growing competition between clubs favours the recruitment of increasingly young players.

This phenomenon takes place mainly in the football sector, where for some years now we have been witnessing a shift of the core group of recruits in the major European clubs from the 16-17 age group to

<sup>229</sup> This fact was observed, among others, by William Gaillard, UEFA Communication Director and advisor to UEFA President Michel Platini (AFP brief of 10 March 2009).

<sup>230</sup> Interview conducted by *So Foot*, 16 August 2006.

<sup>231</sup> European Commission Press Release of 28 May 2008 (IP/08/807).

the 12-13 age group<sup>232</sup>. The aim of the European clubs is to outrace competitors, making use of the exceptions allowed by the FIFA Regulations prohibiting the transfer of minors (e.g. in respect of the presence of the player's parents).

There is a risk that the above-mentioned "home-grown players rule" will generate increased child trafficking, in that European clubs might be tempted to offer contracts to players under 16 so that they can be considered "home-grown players" and take part in European club competitions without violating UEFA rules. This perverse effect was in fact recognised by the European Parliament in its Resolution of 29 March 2007 on the future of professional football in Europe, in which it expressed its conviction of the need for "additional arrangements" to prevent this kind of problem<sup>233</sup>.

Thus, on 9 March 2009, UEFA's Professional Football Strategic Council, which brings together representatives of the national federations affiliated to UEFA as well as of professional players (FIFPro Europe), clubs (European Club Association – ECA) and leagues (European Professional Football Leagues), adopted a resolution on the protection and development of young players, in which it called for a ban on international transfers of players under 18 years of age<sup>234</sup>. The signatories of the resolution "agreed that no international transfers (or first registration of non-nationals) of players under 18 into Europe or within Europe should be permitted. This means in particular that the third exception foreseen today in Article 19, paragraph 2 b), of the FIFA Regulations for the Status and Transfer of Players, and which relates only to the EU/EEA, should be reviewed in order to guarantee that the same system regarding transfer bans of under-18 year old players applies both within and outside Europe and that this system is strictly monitored."

This proposal however raises the question of its compatibility with European regulations on the free movement of workers, given that the minimum age for employment in the EU is 16. In fact, an agreement between FIFA and the European Commission, signed in 2001, allowed international transfers of players of at least 16 years of age under certain conditions.

#### **Recent measures taken by FIFA to protect minors**

In the area of the protection of minors, in March 2009 FIFA's Executive Committee adopted the following measures, which amended the FIFA Regulations on the Status and Transfer of Players and came into force on 1<sup>st</sup> October 2009:

- Creation of a Sub-Committee of the Players' Status Committee to examine and, if appropriate, approve every international transfer of a minor – which transfer may be justified by one of the exceptions stipulated in the applicable regulations. Every first registration of a minor who is not a national of the country where he wishes to be registered is also subject to approval.
- All football schools that do not belong to a registered club must register with a member association. Furthermore, all clubs that run a training centre must report all minors who attend the centre for the purpose of training to the association upon whose territory the training centre operates. In all cases, each association must ensure that all players who attend a training centre not linked to a club are reported to the association.
- The training compensation payable for players aged 12 to 15 has been significantly increased in order to discourage the recruitment of increasingly young players.

<sup>232</sup> See the analysis by Didier Primault, an economist at the French "Centre de Droit et d'Economie du Sport" (Sport Law and Economics Centre – CDES), quoted in "Les grands clubs à la recherche des baby-footballeurs", *L'Express.fr*, 20 April 2009.

<sup>233</sup> Article 35 of the Resolution.

<sup>234</sup> Available at:

[http://en.uefa.com/MultimediaFiles/Download/PressRelease/uefa/UEFAMedia/80/81/29/808129\\_DOWNLOAD.pdf](http://en.uefa.com/MultimediaFiles/Download/PressRelease/uefa/UEFAMedia/80/81/29/808129_DOWNLOAD.pdf)

## **PART 3. IS THERE A NEED FOR A EUROPEAN REGULATORY FRAMEWORK?**

This part looks at whether a European legal framework is necessary for the activity of sports agents. After describing the current Community instruments which apply to the activities of sports agents, this part specifically analyses the extent to which regulations governing the activity of sports agents can constitute barriers to the agents' cross-border activity, in particular via an analysis of the problems that are posed with regard to the recognition of professional qualifications, contract law, competition, and the freedom to provide services, freedom of establishment and freedom of movement.

### **CHAPTER 1. COMMUNITY LAW AND THE ACTIVITY OF SPORTS AGENTS**

In this chapter we will examine the provisions of the Treaty and the directives applicable to the activities of sports agents. This will also provide an opportunity to review the case-law on the subject and the interpretation given by the European Court of Justice.

#### **I. The provisions of the Treaty**

The object of this section is to present the provisions of the Treaty establishing the European Community which might apply to sports agents, and to draw up an inventory of the case-law of the European Court of Justice in the implementation of the rules of the Treaty.

#### **1. With regard to the freedom to provide services and freedom of establishment of sports agents within the EU**

Since the sports agent activity is a commercial one, it is obviously subject to the Community principles of the free provision of services and freedom of establishment when an agent wishes to occasionally exercise or to establish himself in a Member State other than that of which he is a national.

##### ***1.1 The principles of free provision of services and freedom of establishment***

The freedom of movement of self-employed persons such as sports agents raises problems which are far more complex than those related to the free movement of employees, and this complexity is reflected by the provisions of the Treaty which are devoted to it (art. 43 to 55 TEC). This is because it is not limited to the activities of natural persons but also covers the legal persons which are assimilated to them to benefit from the advantages it offers to economic operators. Moreover, it requires the adoption of appropriate measures to eliminate the numerous obstacles which can impede its fulfilment. It is important to carefully define the outlines of the notions of "provision of services" and "establishment", as this important distinction in the treaties and in the case-law shall remain crucial as long as their reciprocal legal systems are not entirely unified.

The beneficiaries of these freedoms are the nationals of the 27 Member States who exercise an independent profession of whatever kind (liberal profession, merchant, craftsman, farmer, etc.) and the companies which are assimilated to them with a view to benefiting from the right of establishment (art. 48) and of the free provision of services (art. 55). The companies or firms which possess the nationality

of a Member State “formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community (...)” (art. 48) and which exercise a commercial activity, whatever their status (under civil or commercial law, cooperative societies, public establishment, etc.) - with the sole exception of those which are non-profit-making - can benefit from this assimilation. The Council specified in December 1961 that there should exist a “real and continuous link with the economy of a Member State”<sup>235</sup>. These principles are also extended to the nationals of the European Economic Area (EEA - Iceland, Liechtenstein and Norway).

These activities can be exercised either in the form of the right of establishment or under that of the freedom to provide services.

### 1.1.1 The right of establishment

Guaranteed by articles 43 to 48 of the TEC, it is defined as the right recognised to the national of one Member State to establish himself in another Member State in order to exercise a self-employed activity there. It also includes the right to set up and manage undertakings and the right to create agencies, branches or subsidiaries. These rights are guaranteed by the principle of equality of treatment (or of national treatment). However, it is the Court of Justice of the European Communities (ECJ) which will clarify the scope of articles 43 to 48. Since the 1970’s, the ECJ has specified that these provisions “have a direct effect” and prescribe “an obligation to attain a precise result, the fulfilment of which had to be made easier by, but not made dependent on, the implementation of a programme of progressive measures: the fact that this progression has not been adhered to leaves the obligation itself intact beyond the end of the period provided for its fulfilment”<sup>236</sup>.

The ECJ later defined the notion of establishment as involving “the actual pursuit of an economic activity through a fixed establishment in another Member State for an indefinite period”<sup>237</sup> and that this article also prohibits any national measure, even though it is applicable without discrimination on grounds of nationality, which is “liable to hamper or render less attractive the exercise by Community nationals of the freedom of establishment that is guaranteed by the Treaty, and notably the activities of the service provider established in another Member State, in which he legally provides analogous services”<sup>238</sup>.

The right of establishment can be exercised by way of primary or secondary establishment. Primarily entails the setting up of the independent service provider or the establishment of the registered office of a company in a State other than the State of origin; secondarily, the setting up of an establishment ancillary to the principal establishment (office, subsidiary or branch office), this possibility being mainly used by legal persons. The right of primary establishment is less open to legal persons than to natural persons because the former do not enjoy the right to transfer their registered office to another Member State, in the absence of an agreement between the Member States on this point. On the other hand, this right will be recognised, but strictly regulated, for European companies<sup>239</sup>.

To benefit from the freedom of establishment, the Community national must demonstrate a permanent and effective exercise of his activity and a real economic activity in the host State. In addition, he must prove that he possesses the professional qualifications and the degrees required of the national; the latter condition is obviously of such a nature as to drastically reduce the right of establishment if a State

<sup>235</sup> Council Directive 64/225/EEC of 25 February 1964.

<sup>236</sup> ECJ, 21 June 1974, case 2/74, Reyners, paragraphs 26 and 27.

<sup>237</sup> ECJ, 25 July 1991, case C-221/89, Factortame and others: paragraph 20.

<sup>238</sup> See inter alia ECJ judgment of 31 March 1993, case C-19/92, Kraus, paragraph 32 and ECJ judgment of 14 October 2004, case C-299/02, Commission v Netherlands, paragraph 15).

<sup>239</sup> Art 8 of Council Regulation (EC) no 2157/2001 of 8 October 2001 on the Statute for a European company (SE).

requires the same degrees as those delivered on its territory without recognising those acquired in another Member State. The Court then specified that *“the possible application of the restrictions on freedom of establishment provided for by the first paragraph of article 55, paragraph 1, [former] must therefore be considered separately in connexion with each member state having regard to the national provisions applicable to the organization and the practice of this profession”*<sup>240</sup>.

After the elimination of apparent discriminations, there might however exist other possibilities for impediments to the freedom of establishment, i.e. requirements on the part of States with regard to education and qualification of the service providers and/or concerning the modalities of exercising the activities concerned. Even if these education and qualification requirements were not in themselves discriminatory, they could hinder the free establishment of persons, if only because they would differ from one country to the next and oblige the interested party to take a new examination to secure recognition of his professional competence. To prevent these requirements from constituting obstacles to the mobility of service providers, the Community adopted mechanisms for the recognition of qualifications and educations with the Directive 2005/36/EC, which consolidated the existing Community *acquis*.

### 1.1.2. The free provision of services

Covered by articles 49 to 55 TEC, which provides that *“Services shall be considered to be “services” within the meaning of this Treaty where they are normally provided for remuneration, (...) services shall in particular include: activities of an industrial character; activities of a commercial character; activities of craftsmen; activities of the professions”* (art. 50). The principle governing the free provision of services is formulated in the following article, which prohibits any restriction on the provision of services vis-à-vis nationals of the Member States who are established in a State other than that of the recipient of the service (national treatment principle). However, the application of the “national treatment” must be reconciled with the intrinsic nature of this freedom; it may not lead to imposing on the service provider excessive obligations which would constitute an impediment to its exercise. The search for this reconciliation makes necessary the adoption of appropriate legislation which will sometimes subject the provision to the law of the State of the service provider, at other times to that of the State where the service is provided. However, the Community case-law has allowed that, in the absence of harmonisation of the legislations, the access to certain activities, due to their specific nature, may be subject to an authorisation scheme. The host State can, therefore, impose on the service provider specific requirements dictated by the application of professional rules or controls, provided that the application of the rules is non-discriminatory, justified and proportionate by a pressing reason of public interest and takes account of the rules to which the service provider is already subject in his Member State of origin.

Articles 49 and following, relating to the elimination of “restrictions on freedom to provide services”, also find their full application as a result of judgments of the Court of Justice. Thus, after having recognised “the direct effect” of the provision, the Court then regularly recalled that *“article 49 EC requires not only the elimination of all discrimination on grounds of nationality against providers of services who are established in another Member State but also the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, which is liable to prohibit or further impede the activities of a provider of services established in another Member State where he lawfully provides similar services”* and *“precludes the application of any national rules which*

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<sup>240</sup> Reyners judgment, paragraph 49.

have the effect of making the provision of services between Member States more difficult than the provision of services purely within one Member State”<sup>241</sup>.

### 1.1.3 The derogations to the freedom of establishment and the free provision of services

Some activities are removed by their very nature from the application of the freedoms contained in articles 43 and 49 TEC. Article 45, which excludes them from the benefit of the right of establishment and defines them as “activities which in that State are connected, even occasionally, with the exercise of official authority”, also applies with regard to provisions of services (art. 55). Since this derogation is interpreted in a very minimalist manner by the Court<sup>242</sup>, it would seem evident that the profession of sports agent is logically excluded from it. Article 45 also provides the possibility for the Council, ruling by qualified majority, to exclude certain activities<sup>243</sup>.

Besides articles 45 and 46 TEC, the Court has allowed that certain national measures liable to hinder or render less attractive the exercise of the fundamental freedoms guaranteed by the Treaty can be justified if they meet four conditions<sup>244</sup> :

- That they are applied in a non-discriminatory manner to both nationals and Community nationals;
- That they are justified by pressing reasons of public interest;
- That they are suitable to guarantee the fulfilment of the objective they seek;
- And that they do not go beyond what is necessary to achieve it (proportionality).

### **1.2 The impediments to the free movement of service providers**

Therefore, according to the case-law, any national measure which, even if applicable without discrimination relating to nationality, is capable of prohibiting, hindering or rendering less attractive the exercise of this freedom by a national of a Member State constitutes an impediment to free movement.

According to consistent case-law, the existence of an impediment is evaluated relative to the dissuasive effects that the concerned measure is capable of producing (regardless of how it is formulated or characterised). One must ask whether the concerned measure prohibits, hinders or renders less attractive the exercise of free movement. Thus, for the Court, administrative authorisations constitute severe restrictions, because they must be granted prior to the exercise of the activity<sup>245</sup>. The Court also observes that an impediment can exist independently of the strictly legal effects of the disputed measure<sup>246</sup>. Moreover, the Court engages in a very pragmatic analysis of potential impediments. For example, it considered that the possession of a driving licence duly recognised by the host State can have an impact on the effective exercise of a large number of professional activities<sup>247</sup>. In addition, the Court recalls that one must take into account not only the direct effects of the concerned measure in question, but also its indirect effects (see, for example, the Lehtonen judgment).

<sup>241</sup> See e.g. ECJ, judgment of 5 December 2006, joined cases C-94/04 and C-202/04, Cipolla-Macrinò, paragraphs 56-57. The extension of the scope of application of article 49 to measures applicable without distinction goes back to the Säger judgment, case C-76/90, paragraph 12.

<sup>242</sup> See e.g. the Reyners case which concerned a lawyer, paragraph 631.

<sup>243</sup> Article 45 provides, with regard to the provision of services and establishment, that “The Council may, acting by a qualified majority on a proposal from the Commission, rule that the provisions of this Chapter shall not apply to certain activities”.

<sup>244</sup> See e.g. ECJ, Bosman case, Säger case, ECJ, 4 July 2000, case 424/97, Haim; ECJ judgment of 30 November 1995, case 55/94, Gebhard.

<sup>245</sup> ECJ, 21 September 2006, Commission v Austria, case C-168/04.

<sup>246</sup> See, for example, the transfer periods within the framework of the Lehtonen judgment, 13 April 2000, case 176/96.

<sup>247</sup> ECJ, 28 November 1978, case 16/78, Choquet, p. 2293, paragraph 4.



The general principle of a prohibition on any measure likely to put at a disadvantage nationals of the EU who wish to exercise an economic activity on the territory of another Member State implies that a measure constitutes an impediment when it produces negative effects vis-à-vis certain persons, independently of the circumstance that it is accompanied by positive measures or the fact that it could, itself, offer benefits to other administrative subjects<sup>248</sup>. Finally, the free movement of persons does not comport with a “*de minimis*” rule. The fact that a restrictive measure affects only a small number of persons or that it is limited in time does not overcome the prohibition in principle resting upon it<sup>249</sup>. As the Court indicates, “*that finding alone [of a restrictive effect] is a sufficient indication of an impediment*”<sup>250</sup>.

The prohibited measures are not only those which hinder access to the services markets of a Member State, but also those which affect the simple modalities of exercise of the economic activity<sup>251</sup>. A measure constitutes an impediment when it harms the economic interest to exercise certain professional activities<sup>252</sup>.

## 2. The Community competition rules and the activity of sports agent

### 2.1 The applicability of article 81 of the EC Treaty

Four criteria must be brought together for the application of article 81 §1. One must be in the presence of an agreement between undertakings or associations of undertakings which affects the trade between Member States and entails a restriction of competition on a given market.

According to the case-law of the Court of First Instance of the European Communities (CFI) and the ECJ (Piau and Frubo<sup>253</sup>), sport federations constitute associations of undertakings and their regulations may be regarded as agreements between associations of undertakings.

Concerning the impact of this regulation on the trade between the Member States, one must firstly recall that the ECJ considers that the term “trade” is not limited to trading in goods, but that it concerns the totality of economic exchanges between Member States. The cross-border operations of placing sportspersons with sport clubs or organisers of sport events can be assimilated to economic exchanges between Member States, since they generate financial flows between these States. A regulation governing the activity of sports agents thus has an impact on the trade between Member States.

As to the competition-restricting effects of the regulation of the profession of sports agent, they would derive from the simple fact that the regulation - particularly when it puts into place an obligatory licence system - can impede the freedom of action of persons who are qualified to exercise this activity but who do not have any licence.

Finally, one must identify the market on which a possible restriction is occurring. In the case of regulations aimed at governing the activity of sports agents, the market concerned is that of advising sportspersons.

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<sup>248</sup> The Court does not engage in a balancing of the advantageous and disadvantageous aspects of the measure (ECJ, 12 December 2002, case C-385/00, *de Groot*, paragraph 97).

<sup>249</sup> ECJ, 13 May 2003, case C-463/00, *Commission v Spain*.

<sup>250</sup> CFI, 8 July 1999, case T-266/97, *Vlaamse Televisie Maatschappij NV*, paragraph 114.

<sup>251</sup> ECJ, 13 May 2003, *Commission v Spain* and 13 May 2003, case C-98/01, *Commission v United Kingdom*, ECJ case Kohl.

<sup>252</sup> See for example the judgments rendered in the cases *Commission v Denmark* (case C-464/02, 15 September 2005) and *Commission v Finland* (case C-232/03, 23 February 2006).

<sup>253</sup> ECJ, 15 May 1975, case 71/74, *Frubo*.

In the current state of the case-law, nothing stands in the way of applying the above reasoning to the regulations governing the activity of sports agents issued from both international and national sport federations.

It is the task of the competent authorities to judge the combination of these four criteria in order to evaluate the compatibility of a sport regulation governing the activity of sports agents with the Community competition rules. It would seem that they are brought together in most cases, and that therefore such regulations can constitute agreements between undertakings which can nevertheless be exempted from the prohibition provided by article 81 §1 in application of article 81 §3<sup>254</sup>. The question has come before the European competition authorities only once (in the Piau case, developed below), but they did not explicitly analyse the presence of the four above-mentioned criteria.

## **2.2 The applicability of article 82 of the EC Treaty**

Concerning the applicability of article 82 of the EC Treaty to sport regulations framing the activity of sports agents, the CFI has had a single occasion to rule on this question. In its Piau judgment (see below) it deemed that FIFA holds a dominant collective position on the market of advice to players, so that article 82 is applicable to it. Nothing prevents the reasoning of the CFI (developed below) in the Piau judgment from applying generally to regulations governing the activity of sports agents issued by international or national sport federations. It is therefore up to the competent authorities to judge whether or not this dominant position is being abused.

## **3. The social dialogue in sport and article 138 of the EC Treaty**

As the European Commission emphasises in its White Paper on Sport, “*European social dialogue is a unique and indispensable component of the European social model. It refers to the discussions, consultations, negotiations and joint actions undertaken by the social partner organisations representing the two sides of industry*”<sup>255</sup>. Pursuant to article 138 of the Treaty, the European Commission is responsible for promoting social dialogue and consulting the European social partners (i.e. the representatives of the employers and employees, whether they are interprofessional or sectoral) before submitting proposals in the area of social policies. Article 139 offers the possibility of negotiating agreements which can be put into application by virtue of procedures and practices specific to the social partners and to the Member States or via decisions of the Council in the areas listed in article 137 (working conditions, protection of workers’ health in the workplace and social protection of workers).

One of the strengths of the social dialogue thus resides in its capacity to create new laws. Indeed, when the social partners agree on a new policy or a set of rules, the EU institutions can then approve the agreement and integrate it into European law.

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<sup>254</sup> Article 81 §3 of the EC Treaty provides that: “*the provisions of paragraph 1 may, however, be declared inapplicable in the case of:*

- *any agreement or category of agreements between undertakings,*
- *any decision or category of decisions by associations of undertakings and*
- *any concerted practice or category of concerted practices*

*which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:*

- a) *impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;*
- b) *afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question”.*

<sup>255</sup> “Accompanying Document to the White Paper on Sport”, SEC (2007) 935, p. 59.

By its decision of 20 May 1998 (98/500/EC), the European Commission established sectoral dialogue committees to promote dialogue between social partners on the European level. Organisations of social partners wishing to participate in this type of committee must address a joint request to the European Commission and fulfil certain representativeness criteria. In particular, they must:

- Belong to specific sectors or categories and be organised at the European level;
- Be composed of organisations which are themselves recognised as forming an integral part of the structures of the Member States' social partners, have the capacity to negotiate agreements and be representative in several Member States;
- Dispose of adequate structures permitting them to effectively participate in the consultation process.<sup>256</sup>

There currently exist around thirty sectoral social dialogue committees recognised by the European Commission, one of which is dedicated to football. Launched officially in July 2008<sup>257</sup>, this sectoral social dialogue committee in professional football brings together the representatives of the professional football players (FIFPro Europe) and, on the employers' side, the Association of European Professional Football Leagues (EPFL) and the European Club Association (ECA). The UEFA was invited by the social partners to preside over their dialogue<sup>258</sup>. If the social partners wish so (inasmuch as they decide themselves on the agenda of their discussions), the social dialogue committee could lead to the collective drafting of codes of conduct or charters, notably concerning the working conditions, the transfer system, the duration of the contracts, the professional reconversion, the protection of minors, as well as the regulations concerning sports agents active in football<sup>259</sup>.

Following the publication of the White Paper on Sport, in which the European Commission encouraged and welcomed "*all efforts with the objective of establishing one or more European Social Dialogue Committees in the sport sector*"<sup>260</sup>, the representatives of racing cyclists (CPA - Coureurs Professionnels Associés) and of cycling teams (the AIGCP - Association Internationale des Groupes Cyclistes Professionnels, as well as the IPCT - International Professional Cycling Teams) also expressed their desire to create a European social dialogue committee. It is also useful to note that the European Association of Sport Employers (EASE) and EURO-MEI, a federation of European unions, are currently working on the establishment of a social dialogue committee for the sport sector and recreational leisure activities at the European level<sup>261</sup>.

It should be noted that the Lisbon Treaty consecrates the importance of the social dialogue, providing for the involvement of the social partners in the decisions taken by the European institutions, in order to

<sup>256</sup> Internet site of the DG Employment, Social Affairs and Equal Opportunities.

<sup>257</sup> See notably the Press Release of the European Commission of 1 July 2008 (IP/08/1064).

<sup>258</sup> The launch of this social dialogue committee in football follows the creation, in January 2004, of a tripartite "external" dialogue by the FIFPro, the EPFL and the UEFA in which each of the organisations acknowledged the two others as the relevant interlocutors for initiating a "European dialogue on football". The priorities established by this structure were: 1° the establishment of a standard contract for professional players, 2° the introduction of a European social dialogue which includes the European institutions, and 3° resolution of the doping problem.

<sup>259</sup> At the present time, it would appear to be difficult for sports agents to participate directly in this social dialogue committee, for several reasons. Firstly because the agents who are active in football might not meet the three representativeness conditions highlighted above. Moreover, in the event that these criteria were to be met, the agents' representative bodies would still have to be invited by the social partners who compose the committee (the Commission indeed recalls in its White Paper on Sport that "*Taking into account the specificity of the sport structure, social partner organisations could identify relevant third bodies that they want to invite to take part in their social dialogue as observers*"). For example, the UEFA was invited by the social partners to chair the social dialogue committee for professional football launched in Paris on 1 July 2008.

<sup>260</sup> "Accompanying Document to the White Paper on Sport", SEC (2007) 935, p. 61.

<sup>261</sup> It should be noted that the member organisations of "EU Athletes" recently gave their support to the establishment of a social dialogue on sport at the European level: "*The members of the European Elite Athletes Association support the European Social Dialogue application of UNI Europa and EASE and pledge their support to establish and actively participate in a European Social Dialogue in the Sport Sector*" (published on the site [www.playthegame.org](http://www.playthegame.org) on 3 October 2009).

guarantee respect of the European citizens' social rights. Article 152 of the Treaty states that: *“The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy. The Tripartite Social Summit for Growth and Employment shall contribute to social dialogue”*. The Lisbon Treaty thus strengthens the social dialogue by giving a legal basis to the social partners' role.

#### 4. The Lisbon Treaty

The Lisbon Treaty, signed on 13 December 2007 and which amends the treaties in force, provides that the EU disposes of a competence to conduct actions to support, complete or coordinate the action of the Member States in the field of sport (art. 2 E). Article 165 of the Lisbon Treaty mentions that the action of the EU is notably aimed at *“developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen”*.

Article 165 specifies that, to attain this objective:

- *the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States.*
- *the Council, on a proposal from the Commission, shall adopt recommendations.*

It follows from these provisions that the EU possesses a coordination competence with regard to sport. Consequently it could not, on this basis, legislate on the question of sports agents by way of directive (nor *a fortiori* by way of regulation). The above-mentioned article 165 authorises a Community intervention with regard to sport on the basis of a non-constraining act, which can take the form of actions of encouragement or recommendations.

## II. The European directives and the activities of sports agents

The object of this section is to draw up an inventory of the European-derived law and of its application with regard to the activity of sports agents.

### 1. The “services” directive and its impact on the regulation of the profession of sports agent

Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, also called the “services” directive, essentially seeks to facilitate the freedom of establishment of service providers in other Member States as well as the freedom to provide services between the Member States, with the objective of creating a genuine internal market for services by 2010<sup>262</sup>.

The directive establishes a general legal framework for any service provided in exchange for economic remuneration while taking account of the specificity of certain activities or professions. However, some services are excluded from the scope of application of the directive (art. 2). Amongst these are the non-economic services of general interest, financial services, audiovisual, transport and healthcare services,

<sup>262</sup> The Member States have until 28 December 2009 to bring into force the laws, regulations and administrative provisions necessary to comply with the directive (art. 44).

services of temporary work agencies, gambling activities, activities connected with the exercise of official authority, as well as some social services (relating to social housing, childcare and support of persons in need).

To facilitate the freedom of establishment, the directive notably provides:

- The obligation to evaluate the compatibility of the authorisation schemes in the light of the principles of non-discrimination and proportionality and to respect certain principles relating to the authorisation conditions and procedures applicable to service activities (art. 10);
- The prohibition of certain legal requirements remaining in the legislations of some Member States and which cannot be justified, such as nationality requirements (art. 14);
- The obligation to evaluate the compatibility of a number of other legal requirements in the light of the principles of non-discrimination and proportionality (art. 15).

In order to strengthen the free provision of services, the directive provides that the Member States must guarantee free access to the service activity as well as its free exercise on their territory. Thus, the Member State in which the service provider moves may impose compliance with its own requirements only if they are non-discriminatory, proportionate and justified for reasons of public order, public security, public health or the protection of the environment (art. 16).

The scope of application of the “services” directive is substantially restricted because of multiple exclusions dictated by very wide-ranging imperatives. While the services of temporary work agencies are expressly excluded from its scope of application (art. 2 paragraph 2, point e), the exemption nevertheless does not cover placement agencies. Moreover, after the adoption of the “services” directive, the Court had the occasion to recall that *“the activity of employee recruitment constitutes, in accordance with case-law, the provision of services for the purposes of Articles 49 EC and 50 EC”*<sup>263</sup>. If placement agencies fall within the scope of the “services” directive, the same applies for professional sports, the directive excluding from its scope of application only *“non-profit making amateur sporting activities (...)”* (recital 35). The fact that the activity of “sports agent” is covered by the directive is confirmed by recital 33, which specifies that *“the services covered by this Directive concern a wide variety of ever-changing activities, including business services such as management consultancy, certification and testing; facilities management, including office maintenance; advertising; recruitment services; and the services of commercial agents (...)”*.

EU Member States must guarantee free access and the exercise of the temporary activity of services on their territory, and may only impose compliance with their own requirements if these are justified by reasons of public order, public security or protection of the environment, and provided that they are applied in a non-discriminatory and proportionate manner. Moreover, additional derogations are provided for matters covered by other Community sectoral texts (art. 17), or derogations in individual cases and on a case-by-case basis (art. 18). At the same time, the directive provides for mutual assistance between the Member States in order to check the services provided. Finally, one will note a whole series of provisions which seek to render effective the rights of the recipients of services (art. 19 to 21) and to strengthen the quality of services (chap. V).

In the event of temporary provision of services, article 16 of the services directive will thus apply to the activities of sports agents for matters not linked to the recognition of professional qualifications, a matter falling under the directive 2005/36/EC.

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<sup>263</sup> ECJ, judgment of 11/01/2007, case C-208/05, ITC Innovative Technology Center, paragraph 54.

## 2. The directive on the recognition of professional qualifications and its application to the activities of sports agents

In so far as sports agents are very regularly led to exercise their activity in Member States other than that of which they are nationals, the exercise of their activity logically poses the question of professional mobility, and thus of the recognition of professional qualifications. This issue forms the object of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, which are defined in art. 3.1 paragraph b) of the directive as “*the qualifications attested by evidence of formal qualifications<sup>264</sup>, an attestation of competence referred to in Article 11, point (a) (i)<sup>265</sup> and/or professional experience<sup>266</sup>”.*

The directive applies to any national of a Member State who wishes to exercise a “regulated” profession in an EU Member State other than that in which he acquired his professional qualifications; the text defines a regulated profession as a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications (art. 3.1 paragraph a).

With regard to these details, it is thus appropriate to provide clarifications on the scope of application of Directive 2005/36/EC in order to determine the regulated character (or not) of the activity of sports agents in EU Member States. The provisions of the directive which apply to sports agents exercising their activities in the EU (when their profession or their placement activity is regulated according to the terms of the directive) will be described.

### 2.1 The application of the directive on the recognition of professional qualifications to the activities of sports agents

In the light of the definition of “regulated profession” provided by the directive, it is possible to affirm that the profession of sports agent is specifically regulated, within the meaning of the directive, in only two countries: France and Greece.

The French case is the clearer one, inasmuch as the French sport federations issue licences to sports agents pursuant to a delegation of the French State provided by law; moreover, these licences correspond to the definition of “professional qualification” provided by the directive<sup>267</sup>.

The Greek case appears to be more delicate to the extent that, as mentioned above, the legislative system provides the framework for the sports agent’s activity via a ministerial decision which notably establishes the qualifications and prerequisites necessary for obtaining the sports agent’s licence (such

<sup>264</sup> These include “*diplomas, certificates and other evidence issued by an authority in a Member State designated pursuant to legislative, regulatory or administrative provisions of that Member State and certifying successful completion of professional training obtained mainly in the Community*” (art. 3.1 paragraph c)). When that does not apply, art. 3.3 of the directive specifies: “*Evidence of formal qualifications issued by a third country shall be regarded as evidence of formal qualifications if the holder has three years’ professional experience in the profession concerned on the territory of the Member State which recognised that evidence of formal qualifications (...)*”.

<sup>265</sup> The attestation of competence referred to in article 11, point a) i) concerns a certificate issued by a competent authority of the Member State of origin designated by virtue of legislative, regulatory or administrative provisions of this State on the basis of “*a training course not forming part of a certificate or diploma within the meaning of points (b), (c), (d) or (e), or a specific examination without prior training, or full-time pursuit of the profession in a Member State for three consecutive years or for an equivalent duration on a part-time basis during the previous 10 years*”.

<sup>266</sup> Defined as the “*actual and lawful pursuit of the profession concerned in a Member State*” (art. 3.1 paragraph f)).

<sup>267</sup> The licences issued by the French delegatee federations may be regarded as “attestations of competences” in the light of the directive.

as holding a degree from an institution of higher education), but this ministerial decision does not yet appear to have been applied in practice, for the reasons which were touched on earlier.

For their part, the other specific public laws on sports agents (in Bulgaria, Hungary and Portugal) are not affected by the directive on the recognition of professional qualifications inasmuch as they say nothing about the supervision of the activity of sports agents (Bulgaria) or leave it to the national sport federations to supervise access to the activity, without however subordinating this access to the possession of specific professional qualifications nor conferring upon the federations the accreditation to organise the activity.

Besides the above-mentioned cases, the directive on the recognition of professional qualifications also applies to the placement activities (and only to these placement activities) performed by sports agents in the Member States which have legislation on the private placement of manpower in which access to and/or the exercise of this activity is subject to requirements of professional qualifications, as in Belgium or the Czech Republic for example<sup>268</sup>. In the Flemish Community (Belgium), for example, an implementation decree of the Flemish government of 8 June 2000 provides that, in order to exercise an activity of private placement of professional sportspersons, one must satisfy at least one of the following conditions:

- Have at least five years of professional experience in the sector of personnel management in the sector concerned;
- Be the holder of a degree obtained following at least a basic higher education including two cycles and have at least five years of professional experience in the corporate management sector<sup>269</sup>.

It appears from these elements that in the EU Member States which have neither a specific law on sports agents nor a law on the private placement of manpower which subject the access to or the exercise of the activity of sports agents to specific professional qualifications, the activity of sports agents cannot be considered, with regard to Directive 2005/36/EC, as a “regulated” activity<sup>270</sup>, so that the sports agents would theoretically be free to exercise their activity without being obliged to demonstrate a qualification or a specific experience.

However, this finding does not put into question the existence of regulations issued by national sport federations which frame the access to and exercise of the activity of sports agents, including in States belonging to the category envisaged above. Nevertheless, the licences issued by sport federations in the States of the latter category may not be regarded as “professional qualifications” in the light of the directive.

In the perspective where the legal validity of the sport federations’ competence to regulate the access to and exercise of the activity of agent was not put into question, it could be considered that sport federations are entitled to require a qualification level to access or exercise the sports agent activity. However, according to the information which has been gathered, it appears that - apart from a few

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<sup>268</sup> The elements relating to the conditions of access to the private placement activity in these different countries are set forth in the annexed detailed reports on these countries.

<sup>269</sup> Article 6 §2 of the decree of the Flemish Government of 8 June 2000 implementing the decree of 13 April 1999 on private placement in the Flemish Region.

<sup>270</sup> Moreover, one must note that in a judgment rendered on 8 July 1999, the ECJ deemed that the provisions of a collective agreement which governs, in general, the access to a profession or its exercise are capable of constituting “*legislative, regulatory or administrative provisions*” defining a regulated profession within the meaning of Directive 2005/36/EC. Nevertheless, such collective agreements must be concluded between a public body and the representatives of the workers that it employs (Judgment of the Court of 8 July 1999, Teresa Fernández de Bobadilla v. Museo Nacional del Prado, Comité de Empresa del Museo Nacional del Prado et Ministerio Fiscal, case C-234/97).

exceptions in Italy - no national sport federation subjects the obtainment of a sports agent licence to a requirement of any qualification.

In the unverified hypothesis where this were to be the case, however, it would then be necessary to examine whether these clauses are truly intended to verify that the non-national sports agents have the skills and the necessary qualifications for exercising the activity (and this independent of the nationality of the holder or of the original place of issuance of the licence), and not instead to limit the access of these non-nationals to the activity of sports agents, which could constitute an impediment to free movement. It would also be necessary to critically examine the justifications offered for any licences / authorisations recognition scheme which would be introduced in case of establishment, even if the sports agent activity would not be, in such cases, regarded as a regulated profession in the light of Directive 2005/36/EC. Indeed, it must be recalled that, under the terms of article 9 of the services directive 2006/123/EC, the Member States must evaluate the necessity and the proportionality of prior authorisation schemes which are unrelated to the professional qualifications. Moreover, these schemes must respect articles 10 to 13 of the directive.

## **2.2 The provisions of the directive on the recognition of professional qualifications**

Article 4 of the directive provides that “*the recognition of professional qualifications by the host Member State allows the beneficiary to gain access in that Member State to the same profession as that for which he is qualified in the home Member State and to pursue it in the host Member State under the same conditions as its nationals*”. However, the directive makes a distinction in the modalities for obtaining this recognition between the cases which fall under the free provision of services and those which fall under the freedom of establishment.

### **2.2.1 The recognition of professional qualifications within the framework of a provision of services**

In the case of the free provision of services, the directive mentions that any Community national who is legally established in a Member State must be able to provide services on a temporary and/or occasional basis<sup>271</sup> by moving to another EU country under his original professional title, and this without having to request the recognition of his qualifications.

However, if the activity performed is not regulated, within the meaning of the directive, in the State of establishment of the service provider, the directive provides that the latter will have to demonstrate at least two years of full-time professional experience or the equivalent acquired over the course of the past ten years (art. 5)<sup>272</sup>.

The directive also provides that the host Member State may require the national to make a declaration prior to his first provision of services on its territory and prove his nationality, the attestation of his legal establishment and his professional qualifications (art. 7). Moreover, the host Member State may demand that this declaration to be renewed annually.

### **2.2.2 The recognition of professional qualifications within the framework of an establishment**

Concerning freedom of establishment, if the access to a professional activity or its exercise is regulated in the host Member State, i.e. subject to the possession of a professional qualification, the competent

<sup>271</sup> The temporary and occasional nature of the provision of services shall be assessed on a case-by-case basis, in particular in relation to its duration, its frequency, its regularity and its continuity (art. 5.2 of the directive).

<sup>272</sup> The condition requiring the exercise of the profession during two years does not apply if either the profession or the training leading to the profession is regulated.



national authority of this Member State will have to authorise the access to this profession and its exercise “*under the same conditions as apply for its nationals*”, when the applicant holds the attestation of competences or the evidence of formal qualifications prescribed by his home State in order to access this same profession on its territory. Nevertheless, if the applicant obtained his professional qualification in a Member State that does not regulate the profession within the meaning of the directive, the host Member State may require that he demonstrates two years of full-time professional experience during the course of the ten preceding years in addition to the attestation of competence or the evidence of formal qualifications (art. 13.2)<sup>273</sup>. The attestations of competences or evidence of formal qualifications must have been issued by a competent authority of the State in question in conformity with the legislative, regulatory or administrative provisions of this State, and must moreover attest to a level of professional qualification at least equivalent to the level immediately prior to that required in the host Member State (art.13.1). The host country may require from the applicant the application of a compensation measure (test or traineeship) in the event of substantial differences between the trainings (example: training shorter by at least one year, essential matters to the pursuit of the profession presenting important differences in terms of duration and/or content) not compensated by the applicant’s professional experience (art. 14).

### 2.2.3 The recognition of professional qualifications acquired in a third country

The directive does not create an obstacle to the possibility of Member States recognising, in accordance with their rules, the professional qualifications acquired outside the EU territory by third country nationals (recital 10). A Community citizen holding a qualification acquired in a third country already recognised by a Member State may benefit from the directive if he migrates to another Member State, provided that he is able to demonstrate three years of professional experience on the territory of the Member State which has recognised his qualification and certified by this Member State.

#### **In practice, one finds few significant problems with regard to the recognition of professional qualifications**

According to the interviews conducted with the national sport federations responsible for issuing licences and authorisations to exercise as well as with sports agents, the number of requests for recognition of the qualifications on the part of foreign agents established in another Member State or in third countries is relatively low<sup>274</sup>.

This finding was also verified via the returns of questionnaires sent to the licensed sports agents. Although these intermediaries are often pursuing – at least on an occasional basis – their activity in different EU Member States, the answers collected did not reveal cases where these agents have had to request the recognition of their professional qualifications.

This finding might lead one to think that, in practice, the recognition of professional qualifications is not a determining or problematic criterion for pursuing the sports agent activity. Indeed, to get around potential problems with regard to the recognition of professional qualifications, it happens that agents wishing to exercise their activity in a State where the profession of sports agent is regulated call upon an agent who is legally authorised to exercise in the State concerned so as to avoid possible criminal

<sup>273</sup> However, the directive provides that the two years of professional experience cannot be required if the evidence of formal qualifications held by the applicant sanction a regulated training within the meaning of article 3 paragraph 1, point e) (i.e. “*any training which is specifically geared to the pursuit of a given profession and which comprises a course or courses complemented, where appropriate, by professional training, or probationary or professional practice*”), levels of qualification described in article 11, points b), c), d) or e).

<sup>274</sup> Only a few cases in France and Italy were reported to us.

and/or disciplinary sanctions for illegal practice of the sports agent activity.

In addition, one must note that this finding certainly comes from the fact that the profession of sports agent is little regulated within the meaning of the directive 2005/36/EC.

### **The directive on commercial agents**

As its name indicates, Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents had as its primary objective to harmonise the laws, regulations and administrative provisions of the different Member States of the European Communities relating to commercial agents, notably on issues such as the rights and obligations of the commercial agent, his remuneration, as well as the conclusion and termination of the commercial agent contract. However, the directive leaves to the Member States the possibility of choosing between several options for other points, such as whether or not a commercial agent contract must be concluded in writing in order to be valid, as well as the method for calculating the indemnity due to the agent in the event of cessation of his contract.

The directive was drafted because it became evident that the differences between the national laws with regard to commercial representation significantly affected the conditions of competition and the exercise of the profession in the internal market and impaired the level of protection of the commercial agents in their relations with their principals, as well as the security of the commercial operations. These differences also hampered the establishment and the functioning of the commercial representation contracts between a principal and a commercial agent established in different Member States.

However, it should be recalled that Directive 86/653/EEC does not apply directly to sports agents since the “commercial agent” is defined there as a person who, as a self-employed intermediary, has continuing authority to negotiate the sale or purchase of goods for another person. Although a sports agent is indeed a self-employed intermediary exercising a commercial activity, he is not responsible for negotiating goods, but, primarily, for putting employed or self-employed sportspersons into relation with clubs or organisers of sport events.

## **CHAPTER 2. ARE THE NATIONAL AND INTERNATIONAL REGULATIONS AN IMPEDIMENT TO THE CROSS-BORDER ACTIVITY OF AGENTS?**

As the European Commission observes in its White Paper on Sport<sup>275</sup>, “*Due to the integrated nature of the European players’ market, the activity of players’ agents is almost always of a cross-border nature*”. A nature encouraged by the accelerated internationalisation of professional sports which, since the Bosman judgment<sup>276</sup> was sharply facilitated and which has concomitantly entailed the increased intervention of intermediaries, including foreigners, inasmuch as the European championships call upon foreign sportspersons on a massive scale. Thus, the major European football championships feature an average of 30 to 50% foreign players, who are most often represented by an agent from their own country.

<sup>275</sup> White Paper on Sport, Commission staff working document, COM(2007)391 final. Pt. 4.4

<sup>276</sup> ECJ, 15 December 1995, Bosman, case C-415/93, Rec. 1995

With regard to the international and Community dimension of the sports agents' activities, the question arises whether the regulations governing these activities constitute an impediment to the exercise of the sports agent's activity, particularly in its cross-border dimension. This question will be dealt with by analysing the following points:

- The questions posed with regard to contract law.
- The questions of competition law raised by regulation of the sports agent activity.
- The questions posed with regard to the freedom to provide services, the freedom of establishment of sports agents within the EU, and the free movement of employed sports agents.

## **I. The questions posed with regard to contract law**

As emphasised earlier, the exercise of the sports agents activity is characterised in practice by the conclusion of sports agency contracts (also called mediation contracts), which can take the form of mandate or brokerage contracts uniting a sports agent to another actor, whether the latter is a sportsperson, a trainer, a club or an organiser of sport events. It has to be recalled that the aspects related to the legal nature of the sports agency contract, to the disparity of the contractual provisions linked to the sports agents's remuneration, and to the penalties in the event of non-compliance with the contractual obligations were examined in earlier sections of this report.

This part will focus more specifically on the problematic of determining the law which applies to the sports agency contract, particularly when the contract in question includes elements of foreign origin, i.e. points of contact with several countries. The internationalisation of the sport job market, the distinctive characteristics of the sports agency contract, as well as the multiplicity and disparity of the regulations framing the sports agents' activity are different elements which make it more complicated to determine what law applies to the sports agency contract.

### **1. Why it is difficult to determine the applicable contract law**

One major difficulty comes from the fact that the laws of the 27 EU Member States do not classify the sports agency contract in the same way. While for some the sports agent's activity is subject to the rules on private placement agencies, for others the sports agency contract falls under the ordinary law of contracts. Finally, in some Member States, sports agents are subject to specific rules deriving from these two types of laws. The difficulty also stems from the fact that the content of the various regulations varies a lot on some important issues, such as the amount of the agent's remuneration or the terms of payment of this remuneration<sup>277</sup>.

Finally, the difficulty has to do with the fact that the standards produced by international sport federations governing sports agents' contractual activities may not be in harmony with public statutory and regulatory provisions.

### **2. The absence of difficulty when the contract has no elements of foreign origin**

When a sports agent operates within the territory of a single State, and when all the actors concerned have the nationality of that State, and the national sport federation is not affiliated with an international federation obliging it to apply the regulation on sports agents that it has drafted, then the question of the applicable law resolves into a discussion of purely domestic law within this internal legal order, taking account of the common and/or specific regulations to which the sports agent activity is subjected.

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<sup>277</sup> See the section on the disparities regarding the agent's remuneration.

There is also less difficulty if the contracting parties of the same nationality establish a sports agency relationship on their own national territory where there is no regulation specific to the profession of sports agent, but where the parties are licensed (sportspersons) by or affiliated (clubs) with a sport federation which, following the example of football, is linked to an international sport federation that claims to exercise control over such a situation. In this sort of case, the regulation of the international sport federation is the only one that will apply.

### **3. The determination of the law applicable to the contract having elements of foreign origin**

By contrast, it becomes more difficult to determine the applicable law in those - very frequent - cases where the sports agency contract contains elements of foreign origin, i.e. connections with several countries (due to different nationalities, places of establishment or domicile of the parties, as well as distinct places of formation or performance of the contract). One is then in the presence of an international contract which can fall under the law of several States and which thus requires an examination of the rules of private international law relating to the legislative competence.

Moreover, determining the applicable law in such situations is made more difficult by the wish of the sport international legal order to implement its own rules in the disputes that are submitted to it, particularly via the (international) Court of Arbitration for Sport. Thus, one must distinguish several hypotheses.

#### **3.1 The applicable law generally falls under the law of the States**

As indicated earlier, not all of the laws of the 27 EU countries are covering the sports agent's activity, and those which do conceptualise it in very different ways. To determine the national law applicable to the sports agency contract, one must refer primarily to the rules related to the conflicts of national laws or to the provisions of an international convention. In this regard, two international conventions can claim to be applicable: the Hague Convention of 14 March 1978 on the law applicable to intermediary and representation contracts, and the Rome Convention of 19 June 1980 on the law applicable to contractual obligations, which is applicable to international contracts. Theoretically, only the Hague Convention should govern the sports agent's situation in his capacity as intermediary. However, given the fact that this convention was signed and ratified by only three EU Member States (France, the Netherlands and Portugal), sports agent's situation can, in practice, be subsumed under the more universally applicable Rome Convention.

It should be noted that the rules of conflicts defined by the Rome Convention were taken over and modernised by EC Regulation nb. 593/2008 of the Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations ("Rome I"), which will enter into effect as of 17 December 2009.

In practice, these three texts offer similar guidelines:

- The two parties (in this case to the sports agency contract) are free to choose by mutual agreement the law which will apply to their contractual relations, even if this law were not to have any point of contact with the contract being considered;
- In the absence of agreement between the parties on the applicable law, the contract is governed by the law of the State in which, at the time the contract is concluded, the intermediary has his professional establishment or, failing that, his habitual residence<sup>278</sup>. However, the Hague and Rome

<sup>278</sup> Article 4 of the Rome Convention. Applying these provisions in a dispute involving a French sports agent who had intervened in the transfer of a Tunisian player from a Tunisian club (La Marsa) to a French club (Olympique de Marseille), the French Court of Cassation judged that the Law of 16 July 1984 on Sport was applicable to the interested party inasmuch as

Conventions enact exceptions to this principle. For example, the Hague Convention provides that the law of the State where the intermediary must primarily exercise his activity is applicable, if the represented party has his professional establishment or, failing that, his habitual residence in that State.

If one were to follow only these rules of conflict, it would be very easy for the parties, and notably for the mandated agent, to escape from a restrictive national regulation. All they would have to do is provide for the application of the law of another country, considered more permissive, even though the contract would have no connection with this country.

It is to prevent this type of situation that the Hague and Rome Conventions have provided that the application of the rules of conflicts must be excluded in the presence of mandatory provisions<sup>279</sup>. Thus, the domestic laws of a State fulfilling the definition of mandatory laws - police and security laws, laws of immediate application, public order laws -, can apply whatever the law applicable to the sports agency contract once they claim, through a point of contact with the legal order being considered, their application so as to achieve their objectives of safeguarding socio-economic protection. These principles are also taken over by the above-mentioned EC regulation of 17 June 2008<sup>280</sup>.

For example, the French legislative provisions on sports agents (articles L. 222-6 and following of the Sport Code) must be considered, according to the French courts as well as an authorised doctrine, as mandatory provisions in as far as their object is notably to protect sportspersons, and in particular young sportspersons, and to raise the sports agents' professional standards. In principle, therefore, they must apply to any representation contract having connections with France<sup>281</sup>, and this even if the parties had opted for the application of a foreign law<sup>282</sup>.

Similarly, the regulation of the English Football Association (FA) on sports agents proclaims itself to be applicable to all transactions presenting an element of nexus with England. This regulation therefore applies to any placement operation (transfer or negotiation of the employment contract) of a player with

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the latter, debtor of the characteristic obligation of the contract, was domiciled in France at the time it was concluded (Cass., 1<sup>st</sup> civil division, 18 July 2000 : Bull. civ. I, nb. 217).

<sup>279</sup> The Hague Convention provides in article 16 that “*effect may be given to the mandatory rules of any State with which the situation has a significant connection, if and in so far as, under the law of that State, those rules must be applied whatever the law specified by its choice of law rules*”. The Rome Convention stipulates that “*nothing in this Convention shall restrict the application of the rules of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the contract*”, and that “*effect may be given to the mandatory rules of the law of another country with which the situation has a close connection, if and in so far as, under the law of the latter country, those rules must be applied whatever the law applicable to the contract. In considering whether to give effect to these mandatory rules, regard shall be had to their nature and purpose and to the consequences of their application or non-application*”.

<sup>280</sup> The EC regulation specifies that “*Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation*” (art. 9).

<sup>281</sup> This could be the case of a French sports agent established in France or abroad, or a foreign agent mandated by a sportsperson/club located in France or abroad in view of a contact with a contracting party established in France.

<sup>282</sup> In this sense: Cass., criminal division, 24 January 2006, appeal no. 04-85.016, Dalloz 2006, jur. p. 2649, note Karaquillo J.-P. According to this judgment, a French national established in the United Kingdom, who is neither declared with the French administration nor holds a licence issued by the competent sport federation, and who intervenes, at the request of a player, in the negotiations with a view to his recruitment by a French football club, commits the offence of illegal exercise of the activity of sports agent under article 15-2 of the Law of 16 July 1984, in its version deriving from both the Law of 13 July 1992 and the Law of 6 July 2000 when, firstly, this activity, even if only occasional, was performed for profit (regardless of the fact that the agreed fee was not actually paid), and secondly, the club's agent, holder of a licence, who the accused claimed to have mandated, could not combine the positions of agent of the sportsperson and of the club which recruited him.

an English club, regardless of the nationality of the player involved or his agent. It is also applicable to any operation concerning a player, whatever his nationality, registered with the English FA<sup>283</sup>.

In the final analysis, the outsourcing of the sports agent's activity, the diversity of national regulations, and the complexity of the choice-of-law methods applicable despite the efforts at harmonisation by the international conventions of The Hague and Rome, do nothing to guarantee legal certainty. The judge to whom has been submitted a dispute relating to the performance or breach of a sports agency contract is therefore confronted with questions to which he does not always have a relevant response, as demonstrated by examining several sports agency cases that have been dealt with by state courts<sup>284</sup>.

### **3.2 Cases in which the applicable law falls within the Code of Arbitration for Sport**

When there exist regulations of international sport federations concerning the activity of sports agent, and the decision of one of these federations following a dispute between the parties to the sports agency contract is contested before the Court of Arbitration for Sport (CAS), the question of the applicable law will then fall within the Code of Arbitration for Sport. It will find itself somewhat simplified in so far as when the CAS is called upon to rule on a dispute, it does so according to the applicable regulations of the international sport federations and according to the rules of law chosen by the parties, or, in the absence of such a choice, according to the law of the country in which the international federation, the national federation or any other sport-related body which has rendered the challenged decision is domiciled, or according to the rules of law whose application it deems appropriate (art. R. 58 of the Code of Arbitration for Sport).

However, the judgments of the CAS must, under the control of the Swiss Federal Court, respect the fundamental interests of the national legal orders and thus, notably, the police and security laws of a State with which the sports agency contract has one (or several) point(s) of contact rendering their application indispensable. In sum, here again, the necessary coexistence between the international sport legal order and the legal orders of the States obliges the arbitrators to act prudently and precisely in navigating the meanders of the various applicable laws.

Several elements thus make it theoretically possible to determine the law applicable to the contract binding a sports agent to his client (sportsperson, club, etc.) when it presents elements of foreign origin:

- The two parties can choose the law applicable to their contractual relations, even if this law has no point of contact with the contract.
- In the absence of such an agreement, the contract is theoretically governed by law of the State in which the sports agent has his professional establishment or, failing that, his habitual residence.
- According to the Hague Convention of 14 March 1978, the law of the State where the sports agent must primarily exercise his activity is applicable if the club/player has its/his professional establishment or, failing that, its/his habitual residence in this State.
- The "mandatory" domestic laws of a State which has at least one point of contact with the contract can apply, regardless of the law which is theoretically applicable to the contract, and this in order to protect public interests (see French case).
- The CAS rules on the basis of the applicable regulations of the international sport federations and

<sup>283</sup> However, one might well question the mandatory character, within the meaning of the Hague Convention, of regulatory provisions issued by a private body such as a sport federation.

<sup>284</sup> See for example "L'application internationale de la réglementation française sur l'activité d'agent sportif à une mission d'assistance et de soutien", concerning the judgment of the Court of First Instance of Paris, 11 September 2007, *Lovey v SA Paris Saint-Germain*: commentary of Karaquillo J.-P., *Dalloz* 2008, no. 35.

according to the rules of law chosen by the parties. In the absence of a choice, it will rule according to the law of the country in which the international federation, the national federation or any other sport-related body which rendered the challenged decision has its domicile, or according to the rules of law whose application it deems appropriate; however, the judgments of the CAS must respect the “mandatory” state standards.

- However, one might well question the mandatory character, within the meaning of the Hague and Rome Conventions, of regulatory provisions issued by a sport federation.

## **II. The competition law issues raised by the regulation of the sports agent’s activity**

From the Community law perspective, the questions posed by the activity of sports agents with regard to competition essentially come down to the assessment of the compatibility of the regulations adopted in this area by the sport federations with articles 81 (on cartels)<sup>285</sup> and 82 (on abuses of a dominant position)<sup>286</sup> of the EC Treaty. The issue is indeed to determine to what extent a regulation of a sport federation restricting access to the activity of sports agent, in particular via a system of obligatory prior licence or authorisation, and framing its conditions of exercise can clash with the Community competition rules which prohibit cartels and abuses of a dominant position.

In practice, at European level, this question has been posed only once, when the European Commission, the CFI and the ECJ in their turn pronounced themselves, a few years ago, on the FIFA regulation governing the activity of sports agents in football<sup>287</sup>. Their decisions and judgments are of interest, but also reveal certain limits concerning the problems that can be posed by the regulations on sports agents vis-à-vis competition law.

### **1. The Piau case**

#### **1.1 The decision of the European Commission to validate FIFA’s regulation with regard to the Community competition rules**

##### **1.1.1 The facts and the procedure**

In 1998 a complaint was submitted to the European Commission at the initiative of Mr Laurent Piau, in which the latter argued that the regulation on players’ agents adopted in 1994 by the FIFA (and amended in 1995) violated Community law, and notably articles 49 and following and 81 of the EC Treaty concerning the freedom to provide services and free competition (prohibition of cartels), respectively. In its initial version, contested by Mr Piau, FIFA’s regulation subjected the exercise of the profession of players’ agent to the holding of a licence issued by the competent national federation and reserved the exercise of the activity exclusively to natural persons. The procedure prior to obtaining the licence foresaw an interview designed to verify the knowledge (especially legal and sport-related) of the candidate, the latter also being subject to certain incompatibilities and ethical conditions. He also had to furnish a bank guarantee worth 200,000 Swiss francs. The relations between the agent and the player

<sup>285</sup> Article 81 §1 of the EC Treaty provides that: “*The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market...*”.

<sup>286</sup> Article 82 of the EC Treaty provides that: “*Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States*”.

<sup>287</sup> CFI, 26 January 2005, case T-193/02, *Piau v Commission, FIFA*, judgment confirmed by ECJ, order of 23 February 2006, case C-171/05 P.

obligatorily had to be governed by a contract of at most two years, which was renewable. Finally, a system of penalties vis-à-vis the agents, the players and the clubs was provided in the event of violation of the regulation.

As a result of these complaints, the European Commission initiated an administrative procedure for violation of the competition rules and, after inquiry, sent the FIFA on 19 October 1999 a statement of objections under the terms of which it indicated that the contested regulation constituted a decision of association of undertakings and expressed doubts about the compatibility of some of the restrictions contained in this regulation with the provisions of article 81 EC. The objections formulated by the European Commission included in particular the obligatory character of the licence, the exclusion of its attribution to legal persons, the prohibition imposed on clubs and players to use unlicensed agents, as well as the requirement of a bank guarantee.

On 10 December 2000, the FIFA adopted a new regulation governing the activity of players' agents which entered into force on 1 March 2001 and was once again amended on 3 April 2002. Despite the European Commission's objections, this new regulation maintained the licence obligation, as well as the exclusivity of its issuance for the benefit of natural persons. It also maintained the sanctions regime applicable to the players' agents, the players and the clubs. The oral interview was replaced by a written examination in the form of a multiple-choice questionnaire. The agent was obliged to take out an insurance policy covering his professional civil liability or, failing that, to deposit a bank guarantee of 100,000 Swiss francs. In this new version of the regulation, the relations between the agent and the player always had to be formalised in a written contract having a maximum duration of two years, which was renewable. The contract had to stipulate the agent's remuneration, which could not exceed, in the absence of agreement between the parties, 5% of the player's gross basic salary. In addition, a copy of the contract had to be sent to the national association.

### 1.1.2 The decision of the European Commission

Satisfied with the changes that the FIFA had made to its regulation, the European Commission addressed to Mr Piau, on 3 August 2001, a letter indicating to him that its intervention with the FIFA had resulted in the elimination of the main restrictive aspects of the contested regulation, and that there was no longer any Community interest in continuing the procedure<sup>288</sup>.

On 28 September 2001, Mr Piau informed the European Commission that he was maintaining his complaint because, according to him, the amended FIFA regulation continued to violate article 81 EC with regard to the examination and the professional insurance, and that new restrictions had been introduced in the form of ethical rules, standard contract and concerning the determination of the remuneration. In his view, these restrictions could not form the object of an exemption on the basis of article 81 § 3 EC. Moreover, the complainant reproached the European Commission for not having examined the regulation in question in light of the provisions of article 82 EC (abuse of a dominant position).

By a decision of 16 April 2002, the European Commission definitively rejected Mr Piau's complaint, explaining that "*FIFA's aims of extending good practice, raising professional standards and protecting its members from unqualified or unscrupulous agents prevail over competition considerations*"<sup>289</sup>. But it also added: "*However, should it later emerge that these objectives can be achieved without the FIFA rules because, for example, the Member States regulate the profession or because players' agents are*

<sup>288</sup> The Commission addressed a similar letter to Multiplayers International Denmark on 12 November 2001, to which this complainant did not respond.

<sup>289</sup> Press release of the European Commission, dated 18 April 2002 (IP/02/585).



able to introduce self-regulation while ensuring a high level of professionalism and integrity, the Commission could review the rules”.

## **1.2 The CFI judgment on the compatibility of FIFA’s regulation with Community competition rules**

By a judgment of 26 January 2005, the CFI rejected the appeal filed by Mr Piau against the decision of the European Commission rejecting his complaint (CFI, 25 January 2005, case T-193/02).

### 1.2.1 The nature of FIFA’s regulation

Concerning the nature of the contested FIFA regulation, the court recalled that the Community competition law, in particular article 81 EC, was only applicable in this case if FIFA could be regarded as an association of undertakings and the contested regulation as a decision by an association of undertakings.

On this point, the court confirmed the European Commission’s position. According to it, FIFA is clearly an association of undertakings since its members are national associations which regroup clubs for which the practice of football constitutes an economic activity. These football clubs are, consequently, undertakings within the meaning of article 81 EC and the national associations which bring them together are associations of undertakings.

Moreover, for the court, FIFA’s regulation on players’ agents does indeed constitute a decision by an association of undertakings, because the activity of players’ agent is an economic activity of providing services which does not fall within the sport specificity as defined by the case-law<sup>290</sup>. Indeed, this regulation was adopted by the FIFA on its own authority and not by virtue of any normative powers that had been delegated to it by public authorities within the framework of a recognised mission of public interest aimed at the sport activity. Nor does it fall under the freedom of internal organisation of sport associations. Secondly, being of obligatory application for the national associations which are members of the FIFA, which are bound to establish an analogous regulation subsequently approved by the FIFA, as well as for the clubs, the players and the players’ agents, this regulation expresses FIFA’s determination to coordinate its members’ conduct vis-à-vis the activity of players’ agents.

### 1.2.2 Confirmation of the absence of Community interest in the complaint

Concerning the assessment of the complaint, the court re-examined the three considerations which had led the European Commission to reject Mr Piau’s complaint, namely the abrogation of the most restrictive provisions contained in the initial regulation, the eligibility for an exemption under article 81§3 EC of the provisions of the amended regulation, and finally the inapplicability of article 82 EC.

#### *a) Concerning the abrogation of the most restrictive provisions contained in the initial regulation*

The court highlighted the fact that the European Commission did not make a manifest error of assessment of the provisions of the amended regulation by considering that the written examination imposed on the candidates offered satisfactory guarantees of objectivity and transparency, that the professional liability insurance obligation as well as compliance with the code of professional conduct

<sup>290</sup> ECJ 14 July 1976, *Dona*, 13/76, Rec. p. 1333, paragraphs 14 and 15; ECJ 15 December 1995, *Bosman*, C-415/93, Rec. p. I-4921, paragraph 127; ECJ 11 April 2000, *Deliège*, C-51/96 and C-191/97, Rec. p. I-2549, paragraphs 64 and 69; ECJ 13 April 2000, *Lehtonen*, C-176/96, Rec. p. I-2681, paragraphs 53 to 60.

did not constitute disproportionate requirements and, with regard to the provisions relating to the players' agents' remuneration, by implicitly excluding the classification as the fixing of imposed prices from the point of view of competition law.

For the court, the provisions of the contested regulation relating to the obligation for players' agents to comply with FIFA's regulation on the transfers of players, to the content of the contract between the agent and the player and to the two-year limitation on the duration of contract, to the sanctions regime, as well as to the remedies at law open to the agents in the event of dispute also lacked any anti-competitive effect.

As for the petitioner's arguments based on the breach of contractual freedom, on the incompatibility of FIFA's regulation with the French legislation, and on the violation of personal data protection, the court deemed that they should be dismissed as irrelevant in a competition dispute.

*b) Concerning the eligibility of the provisions of the amended regulations for an exemption under article 81§3 EC*

According to the court, the actual principle of the licence, which is imposed by the FIFA and is a condition for carrying on the profession of players' agent, constitutes a barrier to the access to that economic activity and, therefore, necessarily affects competition. It can therefore be accepted only in so far as the conditions set out in Article 81§3 EC are satisfied, i.e. if it were established that the amended regulations contribute to promoting economic progress, allow consumers a fair share of the resulting benefit, do not impose restrictions which are not indispensable to the attainment of these objectives, and do not eliminate competition.

The court noted that the conditions governing the exercise of the players' agent's activity were characterised by a general absence of national rules and no collective organisation for players' agents, and that certain practices on the part of players' agents could, in the past, have harmed players and clubs, both financially and professionally.

It also emphasised that competition was not eliminated by the licence system, which appears rather to result in a qualitative selection, appropriate for the attainment of the objective of raising professional standards for the players' agent's activity, rather than a quantitative restriction on access thereto (according to the data communicated by the FIFA, there were 214 agents in 1996, when the original regulations entered into force, and 1500 at the beginning of 2003).

In view of these circumstances of law and fact, the court found that the Commission had not committed a manifest error of assessment by considering that the restrictions stemming from the compulsory nature of the licence might benefit from an exemption on the basis of Article 81§3 EC.

*c) Concerning the inapplicability of article 82 EC*

In the challenged decision, the European Commission had considered that article 82 EC relating to the offence of abuse of a dominant position did not apply in the present case since the FIFA was not active on the market of providing advice to players.

On this point, the European Commission was reversed by the court, which found on the contrary that the FIFA held, as an emanation of the clubs, a collective dominant position on the market concerned.

After recalling what is meant by the notions of dominant position and collective dominant position, the court indicated that the market concerned by the contested regulation is a market for the provision of

services where the buyers are the players and clubs and the sellers are the agents. In this market the FIFA may be regarded as acting on behalf of the football clubs.

A decision like the FIFA regulations governing the players' agents' activity may, where it is implemented, result in the undertakings operating on the market concerned (in this case the clubs) being so linked as to their conduct on a particular market that they present themselves on that market as a collective entity vis-à-vis their competitors, their trading partners and consumers.

Because the regulations are binding for national associations that are members of FIFA and the clubs forming them, these bodies appear to be linked in the long term as to their conduct by rules that they accept and that other actors (players and players' agents) cannot violate on pain of sanctions that may lead to their exclusion from the market, in particular in the case of players' agents.

According to the court, such a situation therefore characterises a collective dominant position for clubs on the market for the provision of players' agents' services, since, through the rules to which they adhere, the clubs lay down the conditions under which the services concerned are provided.

For the court, the fact that the FIFA is not itself an economic operator that buys players' agents' services on the market concerned and that its involvement stems from rule-making activity, which it has assumed the power to exercise in respect of the economic activity of players' agents, is irrelevant as regards the application of Article 82 EC, since FIFA is the emanation of national associations and clubs that are the actual buyers of the players' agents' services, and it therefore operates on this market through its members.

While it acknowledged that FIFA held a collective dominant position on the players' agents' market, the court nevertheless considered that there was no abuse of a dominant position. Thus, although the European Commission wrongly considered that article 82 EC was inapplicable, the other conclusions contained in the challenged decision, according to which the most restrictive provisions of the regulation had been repealed and the licence system could benefit from a decision of exemption under article 81§3 EC, consequently led to the conclusion of an absence of infringement under article 82 EC.

There results from the foregoing that the European Commission did not commit a manifest error of assessment in deciding to reject Mr Piau's complaint.

By an order of 23 February 2006, the ECJ rejected the appeal made by Mr Piau against the judgment of the CFI analysed above<sup>291</sup>.

#### **The primary lesson of the Piau case**

Subject to the assessment of its legitimacy (an issue which was not addressed in the Piau judgment), the existence of a private regulation imposing the possession of a licence for exercising the activity of sports agent can be compatible with the Community's competition law rules.

Indeed, although constituting a distortion of free competition, such a regulation can be exempted from the prohibition provided by the Community competition rules when it pursues legitimate objectives and the restrictions it contains are proportionate relative to these objectives.

<sup>291</sup> ECJ, order of 23 February 2006, case C-171/05 P.

## 2. The limits of the Piau judgment

The judgment of the CFI seems to validate FIFA's regulation governing the activity of players' agents in its 2001 version. However, its legal significance must be put in perspective in several respects.

### 2.1 *An analysis bearing exclusively on the Community competition rules*

Firstly, it must be emphasised that the judgment is limited to assessing FIFA's normative competence from the exclusive perspective of competition law, without regard to the considerations relating to the legal basis permitting FIFA to exercise such a regulatory activity.

Even if it did not fall within its prerogatives, the court expressed serious doubts about the legitimacy held by an international sport federation such as FIFA to decree a regulation capable of affecting an economic activity that is peripheral to the sport activity, in this case that of sports agent; the court thus points out, in its recitals 76 and 77, that *"the rule-making power claimed by a private organisation like FIFA, whose main statutory purpose is to promote football ... is indeed open to question"*. It adds that *"the very principle of regulation of an economic activity concerning neither the specific nature of sport nor the freedom of internal organisation of sport associations by a private-law body ... 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"*.

The court noted that its judicial review could extend to compliance with other provisions of the Treaty only in so far as any infringement of them were to reveal a concomitant breach of the competition rules. Moreover, this review could relate to a possible breach of fundamental principles only in the event that this breach resulted in an infringement of the competition rules.

The solution found by the CFI as to the compatibility of FIFA's regulation (in its 2001 version) with regard to the competition rules thus by no means prejudices either its legitimacy vis-à-vis its foundation, or its compatibility with regard to other Community principles such as that of the free provision of services.

### 2.2 *An evolving global legal environment*

Secondly, it is important to note that, amongst the justifications set forth by the court to "validate" the obligatory licence system imposed by FIFA's regulation and to consider that this restriction could benefit from an exemption under article 81§3 EC, there notably figures the virtually absence of national rules within the Community, as well as the absence of a collective organisation for the players' agents. It thus appears that the position of the Community judge with regard to the restrictions contained in FIFA's regulation could evolve as a function of the global legal environment in which the sports agent's activity is embedded (existence of State regulations, internal organisation of the profession).

### 2.3 *The compatibility of the 2001 FIFA regulation with the Community competition rules does not prejudice the compatibility of the regulations of other sport federations with those same rules*

Finally, it should be noted that the solution arrived at by the CFI in its judgment of 26 January 2005 applies only for FIFA's regulation in its 2001 version, and obviously cannot entail any "validation" for the future of all the regulations that might be decreed in this area by other national or international sport federations vis-à-vis the competition rules.

Moreover, the European Commission carefully specified that it reserved the right to re-examine the regulation in question, notably if it should prove that the objective being sought by FIFA of making the profession of players' agent more ethical can be achieved, in the future, by some method other than FIFA's regulation, either because the Member States regulate the profession or because the latter proves able to introduce self-regulation while ensuring a high level of professionalism and integrity of its members<sup>292</sup>.

The court of first instance of Liège (Belgium) is currently considering a proceeding initiated by several sports agents in football, the majority of whom are domiciled in Belgium, against FIFA's regulation governing players' agents, as amended at the end of 2007 and which entered into force as of 1 January 2008.

The interested parties contest in particular the legality of the provision of this regulation which limits the validity of the licence to a period of five years, with its holder being obliged to once again take and pass an examination at the conclusion of this period so as to be able to retain his licence. More generally, they contest FIFA's regulatory intervention on the issue of players' agents.

This procedure, currently pending before the Belgian courts, could reopen the discussion, touched on in the Piau judgment, of a sport federation's legitimacy to regulate an economic activity which is peripheral to its sphere of competence.

### **III. Obstacles to the functioning of the internal market?**

If the professional mobility of agents seems to be strongly facilitated by the sport provisions enacted by the international federations which provide that, once the licence has been obtained, its holder can exercise throughout the world<sup>293</sup>, the situation appears to us less easy in the case of States which have also adopted a particular legislation relating to the activity and which provide specific conditions for accessing and exercising the profession.

However, it should be emphasised from the outset that, amongst the problems raised by the sports agent's activity and which were mentioned by the agents themselves via interviews and questionnaires (remuneration, conflicts of interest, unlicensed agents, etc.), no one was able to provide with evidence of discriminatory practice relating to the exercise of the activity abroad.

The national legislations which oblige foreign agents to acquire a national licence can contribute either to discouraging them from exercising in that country, or push them to associate with a national agent. As the French deputy Dominique Juillot highlighted in his report of 2007 on the transfers of players and the activity of sports agents, "*dans la pratique, la plupart du temps, l'agent étranger, le véritable négociateur, passe par un intermédiaire agréé en France et ils font leur affaire entre eux...*"<sup>294</sup>. A situation also observed by several agents who declared that "*in practice, at any rate, the French clubs*

<sup>292</sup> Press release of the European Commission, IP/02/585.

<sup>293</sup> See for example art. 12.1 of FIFA's regulations on players' agents "*Essentially, [the licence] allows the players' agent to conduct his work in organised football on a worldwide basis, with due respect to the laws applicable in the territory of the association*".

<sup>294</sup> "*In practice, most of the time, the foreign agent, the real negotiator, acts through an intermediary who is authorised in France and they arrange their business between them...*". Information report of French deputy Dominique Juillot Nb. 3741 of 2007 on transfers of players and the activity of sports agents, p. 169.

call on the services of French agents (...) and that “the national licences are designed to protect the national agents”.

The present part will therefore seek to determine whether the double licence system (public and private), where it exists, is restrictive vis-à-vis foreign agents, and then to see whether, by virtue of a sport subsidiarity which leaves to the national sport federations the possibility to “draw up their own regulations” (art. 1.5 of the FIFA regulation), the latter have not adopted restrictive clauses for foreign agents.

### 1. Requiring a double licence: an impediment to the free movement of agents?

The “basic” principle is that an agent licence issued by the international sport federation makes it possible to exercise throughout the world. However, some States have chosen to also regulate the activity through legislation, a system which sometimes results in requiring that one hold two licences (one “public” and one private).

#### **Provisions relating to agents and private placement agencies located in an EU Member State**

In France, with respect to Community nationals wishing to exercise the activity of agent on the national territory, the Sport Code provides that:

##### Article L222-9

*The exercise on an occasional basis of the activity of sports agent by a national of a Member State of the European Community or of a State which is a party to the Agreement on the European Economic Area who is not established on the national territory is subject to compliance with the ethical standards defined in articles L. 222-7 and L. 222-8.*

Note: Articles L. 222-7 and L. 222-8 deal with incompatibilities

##### Article R222-22

*Nationals of an EU Member State or of another State which is a party to the Agreement on the European Economic Area can exercise the activity of sports agent in France if:*

- they obtain a licence under the conditions established by the present code;
- or they produce a licence issued in one of these States;
- or they can prove that they hold the titles or the professional qualification permitting them to exercise this profession there.

##### Article R222-11

*For the application of article R. 222-22, the committee examines the situation of those of the nationals of an EU Member State or of another State which is party to the Agreement on the European Economic Area who wish to obtain the sports agent’s licence without taking the written tests provided for in article R. 222-1:*

- either in light of the licence produced by the interested party;
- or by verifying the titles and qualifications which he claims to have in order to exercise the activity of sports agent.

Article L222-9 therefore authorises a Community agent to provide his services in France on an occasional basis without being obliged to hold a licence from the delegatee sport federation concerned, nor a licence issued in his home country and this “without respecting the remuneration rules of the Sport Code (10% limit on the agent’s remuneration), without sending the contracts and mandates to the competent delegatee federation, and without any disciplinary sanction being able to be taken against

*them*<sup>295</sup>. He must simply respect the ethical conditions (incompatibilities and incapacities) provided for by the law.

In the current situation, and in the absence of the adoption of the reformed Sport Code, most of the sport federations apply the provisions of article R. 222-22 of the Sport Code. If the agent who is a national of another Member State fulfils one of the three conditions of article R. 222-22, he can provide his services in France in accordance with the conditions of exercise established by the French regulations. In conformity with art. 50 TEC, which provides that “(...) *the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals*”, a State cannot impose on a temporary service provider compliance with all of the rules necessary in case of establishment. Therefore, full imposition of the French rules in the event of temporary provision poses the question of whether it is in conformity with article 49 TEC. Moreover, it seems that this framework was never respected<sup>296</sup> inasmuch as very few countries issue licences and there exists a wide variety of situations ranging from a real complex examination (French case with 2 tests, one on the sport regulations and one on general legal knowledge, while FIFA requires only the first) to the case where making a “simple” licence request is sufficient. Moreover, since the French State has not defined the nature of the titles or qualifications required to obtain an equivalent right to practice, the federations did not wish to pursue that approach. It therefore appears that, with regard to football, the federation in practice preferred to allow the foreign agents, licensed by FIFA, to act freely on the national territory, regardless of whether they are nationals of a member country of the EU or of the European Economic Area. The question remains open in the case of an agent who holds a “public” licence sufficient to exercise in his own country (Belgium, for example) but who wishes to exercise in France as well.

In practice, Community nationals thus exercise their activity quite freely on the territory, which constitutes a reverse discrimination to the detriment of French agents “*who complain of a competition rightly deemed unfair*”<sup>297</sup>. This situation is confirmed by the figures, which indicate that requests for licences officially addressed to the sport federations by foreign agents have remained rare. The FFR (rugby), the FFBB (basketball) and the FFVB (volleyball) received in 2004 respectively three, five, and one request, the FFF (football) having received eight requests, which were refused because they did not come from nationals of the EU or the EEA<sup>298</sup>.

Moreover, one observes that the regulations make no distinction between provision of services and establishment.

Article 4 of the Sports Agent Regulation of the French Federation of Basketball FFBB, in application of the Sport Code.

3. *A person of the European Economic Community (sic)*

*The nationals of a Member State of the European Economic Community or of another State which is party to the Agreement on the European Economic Area can exercise the activity of sports agent in France if they obtain a licence under the conditions established by this decree or produce a licence issued in one of these States or they establish that they hold the titles or the professional qualification*

<sup>295</sup> Response of the French Minister of Sport to question no. 45195 of Mr Jean-Claude Flory Official Journal of 07/07/2009 p. 6918.

<sup>296</sup> Often mentioned in the Information Report of French deputy Dominique Juillot Nb. 3741 of 2007 on the transfers of players and the activity of sports agents.

<sup>297</sup> Summary of the survey report on the exercise of the profession of sports agent, established by Pierre François, Inspector General of Youth and Sport - February 2005.

<sup>298</sup> Idem.

*permitting them to exercise this profession there. These agents must file a licence request as defined in points 4.1 and 4.2.*

In Belgium, as a result of the federalisation of the Belgian State, the competences relating to employment have been regionalised, meaning that each of the Regions has adopted its own regulation regarding private placement.

Thus, in Flanders, art. 5 of the “Decree on private placement in the Flemish Region” of 13 April 1999 (Belgian Official Gazette of 5 June 1999) provides that, for exercising placement activities, “an agency which, as a legal person, has its registered office in the Flemish Region or, as a natural person, maintains an office there”, must fulfil a list of 19 conditions. The decree then sets forth the conditions to be fulfilled for a placement agency that has its registered office or as a natural person maintains an office in the Brussels-Capital Region or in the Walloon Region (art. 8.2), or within the EU (art 8.3) and outside the EU (art. 8.4). With regard to Community nationals, article 8.3 indicates that:

**Article 8.3**

*“A foreign agency which has its registered office within the European Union or which has its agency there as a natural person and exercises within the Flemish Region the activities referred to in article 2, 1° [author’s note: private placement], must demonstrate that in its own country it fulfils conditions equivalent to those defined in the present decree. (The agency is obliged to continue to fulfil these conditions during the period of the approval.)*

*If the Minister reaches the conclusion that these conditions are not equivalent, he shall impose a part or all of the conditions defined in the present decree, after having secured the opinion of the Consulting Committee”.*

In the Walloon Region the decree provides that “*The provision of placement services is subject to prior approval of the placement agency, distinguished by type of services (...)*” (art. 4 of the Decree on the approval of placement agencies of 13 March 2003 - Belgian Official Gazette of 31/03/2003, p. 16040).

**Article 7**

To obtain the prior approval, the placement agency which does not have a fixed establishment on the territory of the French-speaking region, must:

*2° if it has its registered office or its registration with the Commercial Register, or any equivalent registration as a natural person abroad but within a Member State of the European Communities or contracting party to the Agreement on the European Economic Area, demonstrate that it fulfils in its country equivalent conditions to those determined by the present decree;*

*(...)*

*With respect to 1° and 2° of paragraph 1, if these conditions are not equivalent to those determined by or pursuant to articles 5 and 6, the Government shall impose, after having secured the opinion of the Consulting Committee with regard to placement approvals, hereafter referred to as the “Committee”, a part or all of the conditions defined in the present decree.*

In the Brussels-Capital Region, it is also provided that “*No (private) employment agency can exercise employment activities in the Brussels-Capital Region without having first been approved by decree of the Government*”<sup>299</sup>.

<sup>299</sup> Art. 6. § 1 of the Ordinance on the mixed management of the labour market in the Brussels-Capital Region - 26 June 2003.



**Article 8§6**

For the private employment agencies which do not have an operating site in the Brussels-Capital Region, the authorisation to exercise employment activities there, such as referred to in article 6, § 5, is requested from the Government which rules on the granting after having secured the opinion of the CESRB, in accordance with the same conditions established in § 1 for granting the approval.

To be granted this authorisation, a private employment agency that, as a legal person, has its registered office or, as a natural person, maintains an office in (the Walloon Region), in the Flemish Region or within the European Union must demonstrate that it fulfils within its region or its country the conditions equivalent [to those established] by the present ordinance. If the Government arrives at the conclusion that these conditions are not equivalent, it shall impose a part or all of the conditions defined in the present ordinance, after having secured the opinion of the CESRB.

(...)

The authorisation is granted for a maximum period of one year. This authorisation is renewable, without however exceeding the period established for the approval to which the authorisation is assimilated, according to the conditions set by decree by the Government.

The purely internal Belgian situation reveals itself to be complex. Indeed, how to regulate the possible conflict of legislations in the case where the intermediary is recognised in Flanders but his registered office is established in the Brussels-Capital Region, and he hires a remunerated Walloon sportsperson to play in a Flemish club? If a court believes that there is no equivalence of conditions between the Brussels approval and the Flemish approval, the sports agent's intervention will be illegal and he could be refused his remuneration. In each of the situations, the assessment of the conditions of interregional equivalence could in fact be a source of uncertainty.

With respect to agencies located in the territory of another EU Member State, one observes substantial differences between the different Regions' legislative texts. Indeed, in Flanders, articles 8 §2 and §3 of the decree impose on the intervening parties whose registered office is located in another region or within the European Union, a duty to demonstrate that they fulfil, in their region or country, the conditions defined by the decree. If the Minister arrives at the conclusion that these conditions are not equivalent, he shall impose a part or all of the conditions defined by the decree, while both article 7 §1 of the Walloon Decree and article 8 §6 of the Brussels ordinance provide, in the same circumstances, for the Walloon Region, a prior approval and for the Brussels Region, the obtainment of an authorisation to exercise these activities.

## **2. Administrative authorisations prior to exercising: an impediment to the freedom of movement of agents in the situation of temporarily providing services?**

As emphasised earlier concerning the free provision of services, the European Court of Justice agreed that restrictions can be justified if they are non-discriminatory, justified by a pressing reason of public interest and proportionate to the objective envisaged (i.e. that there are no other less restrictive means for achieving the same objective).

### **2.1 The case-law contribution**

The van Wesemael judgment which focused on fee-charging placement agencies for entertainers is particularly enlightening on the rules to be respected with regard to authorisation<sup>300</sup>.

<sup>300</sup> ECJ, 18 January 1979, Joined cases 110 and 111/78, Ministère public and "chambre syndicale des agents artistiques et impresarii de Belgique" ASBL v Willy van Wesemael and others.

Firstly, the Court recalled that *“Taking into account the particular nature of certain services to be provided, such as the placing of entertainers in employment, specific requirements imposed on persons providing services cannot be considered incompatible with the treaty where they have as their purpose the application of professional rules, justified by the general good or by the need to ensure the protection of the entertainer, which are binding upon any person established in the said state, in so far as the person providing the service is not subject to similar requirements in the member state in which he is established”* (paragraph 28). However, if the Court allowed the possibility of providing, in certain conditions, restrictions on the free provision of services, it also specified that the latter could not have the effect of subjecting the performance of a provision of service to compliance with all of the conditions required for an establishment, under penalty of rendering useless provisions which were intended to guarantee the free provision of services. Thus for the Court, *“when the pursuit of the activity of fee-charging employment agencies for entertainers is made subject in the State in which the service is provided to the issue of a licence, that State may not impose on the persons providing the service who are established in another Member State any obligation either to satisfy that requirement or to act through a fee-charging employment agency which holds such a licence when the service is provided by an employment agency which comes under the public administration of a Member State or when the person providing the services holds in the Member State in which he is established a licence issued under conditions comparable to those required by the State in which the service is provided and his activities are subject in the first State to proper supervision covering all employment agency activity whatever may be the Member State in which the service is provided”*<sup>301</sup>.

This approach would be regularly recalled thereafter. For example, in the case *Commission v Belgium*<sup>302</sup>, the Court had the opportunity to recall that *“According to consistent case-law, national legislation which makes the provision of certain services on national territory by an undertaking established in another Member State subject to the issue of an administrative authorisation constitutes a restriction on the freedom to provide services within the meaning of Article 59 of the Treaty (...)”*.

In keeping with the case-law of the Court, the “services” directive takes over these principles for its own account. The directive defines the *“authorisation scheme”* (as) *any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof* (art. 4 pt. 6) and then recalls that *“Member States may not restrict the freedom to provide services in the case of a provider established in another Member State by imposing any of the following requirements: (...) an obligation on the provider to obtain an authorisation from their competent authorities including entry in a register or registration with a professional body or association in their territory, except where provided for in this Directive or other instruments of Community law”* (art. 16. para. 2. under b))<sup>303</sup>, unless this is justified and proportionate with regard to public order, public security, public health or protection of the environment.

For the Court, the official name of the administrative authorisation - whether it is an approval, an inscription in a register or a licence - is of little importance<sup>304</sup>. The prior character of these formalities delays the beginning of the activities and can, therefore, discourage the interested parties *“A work licensing mechanism (...) cannot be regarded as constituting an appropriate means. It involves*

<sup>301</sup> Point 3 of the operative part of the van Wesemael judgment. Our underlining.

<sup>302</sup> ECJ, 9 March 2000, case C-355/98 paragraph 35.

<sup>303</sup> The “services” directive also specifies the nature of these restrictions from the perspective of the service providers (art. 9) para. 1, first sentence (establishment) and in article 16, para. 2, under b), of this directive. From the perspective of the recipients of services, see article 16, para. 2, under g), and 3, as well as article 19, under a).

<sup>304</sup> See on this point the judgments ECJ, 4 December 1986, *Commission v France*, case 220/83, paragraph 18 - ECJ 15 June 2006, case C-255/04, *Commission v France* paragraph 29 - (ECJ, 13 February 2003, case C-131/01, *Commission v Italy*, paragraph 27.

*formalities and periods which are liable to discourage the free provision of services through the medium of workers who are nationals of non-member countries*<sup>305</sup>. Moreover, these measures sometimes are really intended to limit the number of operators<sup>306</sup>. They are, in any case, liable to have this effect or to limit the services concerned “(...) *this requirement* (author’s note: concerning the prior authorisation of a sickness insurance fund for being able to turn to a care provider, whether an individual or an institution, established outside the Netherlands with a view to claiming his right to benefits) *by its very nature will severely limit the circumstances in which such authorisation can be obtained*”<sup>307</sup>.

It thus seems that, in the light of the case-law and of article 16 of the services directive, the system of a national authorisation enabling to exercise of the activity can pose a problem (subject to a possible justification of such a measure prior to the exercise of the activity).

## **2.2 The situation of the administrative authorisations vis-à-vis the Community principles and case-laws**

The Flemish decree appears to better correspond to the Community criteria. The Walloon decree and the Brussels ordinance also fulfil the European criteria with regard to a continuous activity but, by contrast, it could be understood from their wording that even an activity of providing services on an occasional basis must be subjected to a complete authorisation to exercise the activity, which would then be contrary to article 49 of the EC Treaty and to article 16 of the services directive 2006/123.

## **3. Location requirements: an impediment to the freedom of movement of agents?**

Several sport regulations contain residency conditions which raise questions about their compatibility with the Community principles of free provision of services and establishment.

Thus:

Art. 2.2 (h) of the Italian tennis federation

*To be registered as an agent by the federation, one must reside in Italy or have an organisation established in Italy whose objective is to carry out agent’s activities.*

Art. 3 (a) of the Italian men’s volleyball league

*To be registered as a sports agent with the federation, one must have the Italian citizenship and be domiciled in Italy or, in the event of foreign citizenship, be domiciled with a sports agent who is already registered on the list established by the league.*

### **The case-law contribution**

A residency obligation constitutes a restriction on the free provision of services and the freedom of establishment, which also entails the freedom of not getting established<sup>308</sup>. Moreover, having to possess

<sup>305</sup> ECJ, 21 October 2004, case C-445/03, Commission v Luxembourg, paragraph 30.

<sup>306</sup> See in this regard ECJ, 15 June 2006, Commission v France, paragraph 29, already mentioned above.

<sup>307</sup> ECJ, 12 July 2001, case C-157/99, Smits and Peerbooms, paragraph 64.

<sup>308</sup> See in this sense the judgments ECJ judgment of 7 May 1998, Clean Car Autoservice, C-350/96, Rec. p. I-2521, paragraphs 27 to 30); (ECJ 25 July 1991, case C-221/89, Factortame and others, paragraph 32); (ECJ, 29 October 1998, case C-114/97, Commission v Spain, paragraph 44) (ECJ, 9 March 2000, case C-355/98, Commission v Belgium, paragraph 31.

a registered office, a professional domicile or a fixed establishment in the host State is the very negation of the freedom to provide services, as an abundant case-law attests<sup>309</sup>.

Concerning sports agents, however, such a situation has been observed only in the case of the above-mentioned regulations.

In this regard, one should also mention the regularly advanced proposal of a limitation of the number of authorised agents on a territory as a function of the number of active professional sportspersons. Beyond the problems of competition that such a proposal would certainly raise, the Court has already had an occasion to pronounce on rules which condition the granting of a licence on the needs of the market by specifying with regard to the placement of artists that *“national legislation which makes the grant of a licence to pursue an activity such as the engagement of performing artists subject to the need to engage performing artists constitutes a restriction in that it tends to limit the number of suppliers of services. The French Government has not given any reason whatsoever that could justify that restriction”*<sup>310</sup>.

It therefore appears that, in the absence of a solid justification (objective, proportionality), the proposal regularly advanced to limit the number of sports agents authorised to exercise will not survive a Community review.

#### **4. Financial obstacles: an impediment to the freedom of movement of agents?**

As indicated earlier, sport laws and regulations often set the sports agent’s levels of remuneration. This is generally a percentage calculated on the player’s income, but many different situations exist. For example:

- In Portugal: maximum percentage of 5% if the parties do not agree on some other amount.
- In France, the maximum percentage is 10%.
- In Germany, the percentage is 14% if the job applicant (player) pays, and no limit if the employer (the club) pays.
- In England, few constraints on the remuneration to which a football player’s agent is entitled and no limit on its amount.

The definition of the annual salary on which the calculation of the percentage is based also varies. Indeed, for FIFA it means “basic” income, while in the Flemish Region (Belgium) this is total income (including also in a complex calculation all of the benefits, etc.).

The football regulations which were examined within the framework of the study showed that each federation imposes an insurance policy whose minimum amount to be guaranteed varies in application of FIFA’s regulation between €150,000 and €500,000. Belgium and France are the only two countries where no minimum amounts are imposed. In addition, it appears that, with the exception of Spain, all of the other federations impose that this insurance policy be taken out in the Member State where the licence is issued.

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<sup>309</sup> “As the Court has repeatedly held, the requirement of a permanent establishment is the very negation of the fundamental freedom to provide services in that it results in depriving Article 59 of the Treaty of all effectiveness, a provision whose very purpose is to abolish restrictions on the freedom to provide services of persons who are not established in the State in which their services are to be provided. If such a requirement is to be accepted, it must therefore be shown that it constitutes a condition indispensable for attaining the objective pursued (see, in particular, Case C-222/95 Parodi [1997] ECR I-3899, paragraph 31) ECJ 25 October 2001, case C-493/99, Commission v Germany, paragraph 19.

<sup>310</sup> ECJ, 15 June 2006, case C-255/04, Commission v France, paragraph 29.

Moreover, a committee of the Italian men’s volleyball league deliberates each year in order to determine the minimum and maximum amounts of the agents’ allowance (art. 6 g).

When sums are required for the “processing of a licence request”, one must emphasise that, although these amounts vary from one discipline to another (between €100 and €300 in France), they never vary as a function of the nationality of the applicant.

### **The case-law contribution**

The Court has already had the occasion to focus several times on the impediments to free movement that can be constituted by financial obstacles. Thus, it already ruled on the payment of a security deposit to which is subjected the obtainment of the authorisation required to exercise<sup>311</sup> as well as a bank guarantee<sup>312</sup>, which it considered in each case as an obstacle to the free provision of services. An approach which is formulated in the same way in the “services” directive with respect to the establishment: *“Member States shall not make access to, or the exercise of, a service activity in their territory subject to compliance with any of the following: 7) an obligation to provide or participate in a financial guarantee or to take out insurance from a provider or body established in their territory. This shall not affect the possibility for Member States to require insurance or financial guarantees as such, nor shall it affect requirements relating to the participation in a collective compensation fund, for instance for members of professional bodies or organisations”* (article 14, point 7)). Similarly, in the event of temporary provision of services, a Member State may only impose compliance with its own requirements on a service provider established in another Member State if these are justified and proportionate with regard to public order, public security, public health and protection of the environment.

If the Court has, to our knowledge, only had to rule on the prohibition of proposing prices lower than a minimum rate in order to attract customers<sup>313</sup>, the “services” directive goes further by asking that *“Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with any of the following non-discriminatory requirements: g) fixed minimum and/or maximum tariffs with which the provider must comply”* (article 15, para. 2. under g). This requirement falls within the process of mutual evaluation provided for by the services directive. In any event, in the case of temporary provision of services, a Member State may only impose compliance with its own requirements on a service provider established in another Member State provided that these are justified and proportionate with regard to public order, public security, public health and protection of the environment.

Beyond the competition issues that can be posed by putting a cap on fees, one might also wonder whether it dissuades the sports agent from exercising his activity in some Member States. Can this cap be justified, and does it constitute a proportionate means for achieving this objective?

<sup>311</sup> ECJ, 7 February 2002, case Commission v Italy, paragraph 32

<sup>312</sup> ECJ 21 October 2004, case C-445/03, Commission v Luxembourg, paragraphs 7 and 23

<sup>313</sup> ECJ, judgment of 5 December 2006, joined cases C-94/04 and C-202/04, Cipolla-Macrino, paragraphs 58-59

## **PART 4. SUMMARY AND RECOMMENDATIONS**

### **CHAPTER 1. SUMMARY**

The aim of this study is to examine the situation of sports agents in the European Union – focusing in particular on the public and private regulations that govern their activities – and to analyse the questions that their activities give rise to or might give rise to in future, in order to establish whether some form of EU action is necessary and, if so, at what level and in what form.

Sports agents act, first and foremost, as intermediaries between sportsperson and sport clubs/organisers of sport events with a view to employing or hiring an athlete or sportsperson. They bring together the parties interested in concluding an agreement concerning the practice of a sport as a remunerated activity. Finding a job placement for a sportsperson is the central role of sports agents. Sports agents may, however, engage in a broader range of activities, such as entering into different kinds of contracts on behalf of the sportsperson (image rights contracts, sponsoring contracts, advertising contracts, etc.) or managing the assets of the sportsperson. Sports agents have thus become essential partners of sportspersons and clubs/organisers of sport events, acting as a go-between and advisor for either side. In professional sport today, most sportspersons and clubs/organisers of sport events call on the services of a sports agent.

#### **I. Significant differences between regulations**

The activities of sports agents are regulated to a greater or lesser extent depending on the country and the sport concerned. The reasons commonly given for regulating the profession are the need to provide it with a legal basis and the need to protect the image and reputation of sport by adopting a deontology for sports agents. Five EU countries and four international federations as well as a number of national federations have developed specific regulations governing the activities of sports agents. On the other hand, most European countries<sup>314</sup> have general regulations on private job placements, and these regulations also apply – in theory at least – to the placement of professional sportspersons or remunerated athletes and hence to the activities of sports agents.

The scope of these specific regulations varies considerably from one case to another. Within the European Union, the French regulation is the most detailed. Among the regulations of international sport federations, those of the FIFA are the oldest. It is in football that there is the largest number of national sport federations with regulations on sports agents. The approaches to regulation are also very varied. The FIBA, for example, works in close cooperation with sports agents in order to develop and implement its regulations.

**Table 21:** Regulation of the activities of sports agents in EU Member States which have adopted specific public regulations applicable to sports agents

<b>EU Member States</b>	<b>Specific legislative texts</b>	<b>Regulation of the activities of sports agents</b>
BULGARIA	Law on sport and physical	In order to obtain a permit to operate as a sports agent – as far as

<sup>314</sup> Including at least the following countries: Austria, Belgium, Bulgaria, Czech Republic, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom

	activity of 9 July 1996, (latest) update of 30 May 2008: Articles 35 b, 35 c and 35 d.	remunerated job placement activities are concerned – registration is required in accordance with the provisions laid down by the law on the promotion of employment. This law establishes certain terms and conditions for exercising the profession (contract and remuneration) as well as sanctions.
FRANCE	Sport Code: Articles L.222-5 to L.222-11, R. 222-1 to R. 222-22 and A. 222-1 to A. 222-15.	Licensing system (licences issued by the delegatee federations, following a written exam); terms and conditions for exercising the profession (contract, remuneration, professional indemnity insurance, etc.); control and sanctions.
GREECE	Law 2725/1999 on amateur and professional sport: Article 90§9 (amended by Law 3479/2006, whereby Article 90§9 became Article 90§5).  Ministerial Decision 23788/2002.	Licences issued following a written exam (this system has not yet been implemented in practice); requirements for operating as an agent; sanctions.
HUNGARY	Law on Sport of 2000, complemented and amended in 2004: Article 11.	Only commercial agents registered with a national or international sport federation and complying with the latter's regulations are allowed to conclude agency contracts.
PORTUGAL	Law 28/98 of 26 June 1998 on sport contracts: Chapter IV, Articles 22 to 25.  Law 5/2007 of 16 January 2007 on physical activity and sport: Article 37.	Only natural or legal persons authorised by the competent national or international sport authorities can operate as sports agents. Registration with the competent sport federation; requirements for operating as an agent; sanctions.

**Table 22:** Regulation of the activities of sports agents under specific regulations established by international sport federations

<b>Sport federations</b>	<b>Regulations</b>	<b>Regulation of the activities of sports agents</b>
INTERNATIONAL AMATEUR ATHLETIC FEDERATION (IAAF)	Regulations concerning Federation/Athletes' representatives IAAF 2009 Competition Rules – Rule 7 concerning athletes' representatives	Authorisation issued by national federations, following an assessment; requirements for operating as an agent; control and sanctions
INTERNATIONAL BASKETBALL FEDERATION (FIBA)	Regulation H governing players, coaches, support officials, and player's agents – Regulation H.5: Players' agents.	Licence issued by FIBA following an exam; requirements for operating as an agent; control and sanctions.
INTERNATIONAL FEDERATION OF FOOTBALL ASSOCIATIONS (FIFA)	Players' Agents Regulations (2008).	Licence issued by each national federation, following an exam; requirements for operating as an agent; control and sanctions.
INTERNATIONAL RUGBY BOARD (IRB)	International regulations: Regulation 5 – Agents	National federations must “establish appropriate regulations to govern and authorise the activity of Agents”, including requirements for joining and exercising the profession and control procedures (mandatory in some cases, optional in others).

The regulations established by sport federations are basically aimed at controlling access to the profession and regulating its exercise. However, these bodies have only limited supervisory and sanctioning powers, since they lack any means of control or direct action vis-à-vis sports agents who are not registered with them; nor are they entitled to impose civil or criminal penalties.

The variety of regulations applicable to the activities of sports agents and/or private job placement activities raises the question of whether some degree of harmonisation is required. There is no concrete evidence that the existing regulations prevent EU sports agents from exercising their profession in a Member State other than their country of origin, but conditions do exist which may make it more difficult to provide services or set up business in such a case, particularly owing to the differences between the regulations (often resulting from different national approaches and mores). Such disparities would not be a real problem if the services provided by sports agents were limited to purely national transactions. However, in many professional sports the transactions in which sports agents participate are today transnational in nature. In this context, the observed differences between regulations may give rise to the following problems:

- A sense of legal uncertainty about the rules applicable to sports agents;
- Potential obstacles to the free movement of persons within the European Union, arising from differences as regards the requirement for a licence/authorisation/registration, the procedures involved in each case and the persons who are entitled to apply for a permit or are eligible for exemption;
- Difficulties in controlling the activities of sports agents (e.g. the parties to agency contracts, which are often international agreements, may circumvent – or try to circumvent – the regulations applicable in a given country by concluding the contract under less stringent national rules).
- Disparities between the rules governing the remuneration of sports agents with regard to assigning responsibility for paying the agent's commission or the procedure for calculating the latter.

Furthermore, questions remain with regard to the extent to which sport federations are legitimately entitled to regulate sports agents' activities in the absence of any mandate granted by a public authority, as well as with regard to the effectiveness of control and the enforcement of sanctions in a context of cross-border job placement activities and diverse national regulations applicable to sport.

Lastly, some stakeholders believe that the abolition of the FIFA licence might create a regulatory void in football (many players and clubs regard it as a guarantee protecting them in their dealings with sports agents; football sports agents will no longer be recognised by means of a licence in most countries), just at a time when the FIBA and IAAF are strengthening their rules on sports agents.

## **II. Ethical issues**

In addition to the problems associated with the multiplicity of regulations applicable to sports agents, and the difficulties in the area of controlling and sanctioning, the activities of sports agents, including in particular placement activities, give rise to a number of ethical problems, which often have a criminal dimension. It is not only sports agents who are implicated in such reprehensible practices. The latter require accomplices and are often inherent in the pernicious system which underlies, mainly, the functioning of the transfer market.

- Dual-agency or conflict-of-interests situations (the same agent may act as an intermediary in the deal between two clubs and, subsequently, in the deal between the player and his new club).



- Problems relating to financial criminality, particularly in connection with player transfer deals (payment of secret commissions for example).
- Problems relating to human trafficking in sport, including in particular the economic exploitation of young footballers from Africa and South America.
- Problems relating to the inadequate protection of minors, including the unregulated recruitment of minors among training clubs.
- Problems relating to the inadequate protection of sportspersons in general, in particular the lack of transparency, for the sportsperson concerned, of the deal between the sports agent and the club or the organiser of a sport event.

### **III. The question of an action that aims at regulating the activities of sports agent**

For the above-mentioned reasons (multiplicity of the applicable regulations, ethical issues), the question arises as to whether it is appropriate to take action to regulate the activities of sports agents at EU level and to achieve a more effective control of sport placement mechanisms in general (given that sports agents are not the only actors involved in the employment of professional sportspersons).

There is no conclusive evidence that the public regulations currently in force hinder, in practice, the freedom to provide services or the freedom of establishment of sports agents. Furthermore, only a limited number of Member States have adopted specific rules applicable to sports agents. It is therefore difficult to make a case for harmonisation on the basis of Article 47 TEC (which was the basis for adopting the Directive on commercial agents) or Article 52 TEC (which was the basis for adopting the “Services” Directive), even though EU regulatory action would have the benefit of increasing legal certainty. It should be noted, moreover, that the lack of evidence of problems in this area might be due to the fact that existing regulations – whether specific or applicable to all private placement activities – are being circumvented (or implemented only to a limited extent) by sports agents.

The sports agent’s profession is inherent to the existing system for the employment and transfer of sportspersons, particularly in the case of team sports. Agents facilitate transactions between sport clubs/organisers of sport events and sportspersons. They are an integral part of the market: they enter into the equation of commercial success and of investments capable of leading to convincing results in sport. In view of this, some believe that sports agents’ activities should not be regulated and are best left to market forces. The problem is that market forces are unable to preserve the specificity of sport<sup>315</sup> or to correct certain seriously deleterious trends that can be observed.

There seems to be a consensus, among the actors concerned, that measures need to be taken – particularly since the reputation of professional sport and its credibility are at stake – to tackle problems relating more to the integrity and image of sport and of the actors in sport than to the internal market. On the other hand, there is no consensus on the nature and contents of the measures needed.

In relation to the role of sports agents, different groups of stakeholders have different interests, which can be summarised as follows:

- Clubs: make the acquisition of sportspersons less expensive; deal directly with other clubs without any intermediaries; call on the services of agents to contact a player they wish to sign up or to

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<sup>315</sup> The European Council recognised the specificity of sport in its declaration of December 2000 concerning the specific characteristics of sport and its social functions in Europe.

- dismiss a player from the team; protect the image of the club and act in accordance with the law; deal with reputable, trustworthy agents.
- Organisers of sport events: ensure the participation of the relevant sportspersons; deal with reputable, trustworthy agents.
  - Sport federations: fulfil their sport governance obligations; ensure that sports agents' activities do not distort competition or harm the interests of sportspersons; adopt rules which they can effectively implement to ensure ethical practices.
  - Sportspersons: enjoy services enabling them to advance their career and practice their sport under the best possible conditions (e.g. this may include, in some cases, getting the best possible pay).
  - Agents: protect their reputation; ensure remuneration for their services; be able to exercise their profession across borders.
  - Sportspersons' unions: protect sportspersons from abuses (e.g. a clause providing for an excessively long period of exclusivity); avoid practices that are harmful to players or their reputation; protect the contractual freedom of sportspersons and their freedom of movement.
  - Supporters: support a reputable sport that stands for social and ethical values.

Regulations on sports agents are confronted with the internationalisation of sport and the evolution of sports agents' professional activities – which are increasingly transnational – as well as with sophisticated criminal practices. This gives rise to questions concerning the implementation and circumvention of the established rules, the roles of different stakeholders and the distribution of competences between states, international federations and national federations.

In Europe, the regulation and organisation of sport is basically left to sport federations. The European Council has recognised the role of sport bodies in organising and promoting their respective disciplines. This role is protected by all EU institutions (Commission, Parliament and Court of Justice). Our study does not aim to call into question the powers of federations in this area but advocates more complementarity with public authorities (including those responsible for sport, the police, justice, taxation, etc.). The implementation of the rules – which guarantees they are efficient – will depend on actors of the sport movement and the complementarity between their actions and the national legislative provisions on civil and criminal sanctions. The study calls for increased cooperation between the sport movement and the national and international police and judicial authorities.

The European Union has an important role to play in countering harmful trends, assisting and supporting actors in sport in their efforts to eradicate reprehensible practices, protecting sportspersons as well as sport events and competitions, ensuring fairness in sport, and preventing sport from losing its values and its social dimension while at the same time ensuring the free movement of sports agents within Europe.

#### **IV. International coordination options?**

Given the extra-Community dimension of sports agents' activities, some international coordination options aimed at regulating sports agents' activities were taken into account in preparing this report.

#### **Introduction of a regulation under the auspices of the International Olympic Committee (IOC) in cooperation with States**

Viewed from a certain angle, the issue of sports agents has some points in common with the issue of doping in sport. It is a transnational issue which requires a harmonised approach and harmonised rules or, at least, coordination between them. Furthermore, it is an issue that concerns the ethical values of

sport. The regulation of sports agents' activities could follow the lines of the cooperation process initiated some years ago by the sport movement and public authorities with the aim of harmonising anti-doping regulations on a global scale<sup>316</sup>. The process implemented to combat doping in sport could inspire the relevant public and private actors to draw up, under the auspices of the IOC, a set of common rules and/or deontological principles for all sports agents in all areas of sports. The European Commission could also participate in this process.

However, this is not an easy proposition. In the case of doping, the need for such a process is explained by the high prevalence of the problem, which is common to all sports and has attracted considerable media attention. It is uncertain whether the issue of sports agents would generate a similar consensus – either on the part of governments or on the part of sport federations – on the need for action. Furthermore, even assuming that the parties concerned could agree on a set of common rules applicable to all sports (which is not a foregone conclusion), for such rules to be binding on governments they would have to be enshrined in an international convention ratified by the latter.

### **Regulating sport placement activities by means of a Convention of the International Labour Organisation**

The International Labour Organisation (ILO) is a United Nations specialised agency that adopts conventions on a tripartite basis (governments-employers-employees), mainly in order to promote decent working conditions and protect labour standards around the world<sup>317</sup>. In theory, the adoption of an ILO convention on the placement of professional sportspersons might be a useful tool, particularly to clarify the relations between job placement agencies (the intermediaries) and sportspersons or to develop mechanisms to protect sportspersons who call on the placement services provided by an agency. Such a convention would be justified by the international nature of the job placement activities carried out by sports agents.

The lack of an international body representing sports agents is nevertheless a major obstacle to the adoption of an ILO Convention on sport placement activities<sup>318</sup>. A second obstacle lies in the fact that sport placement activities vary in nature depending on the sport concerned. Lastly, it should also be recalled that the implementation of any ILO Convention is subject to ratification by the Member States, and that actual implementation depends on the effectiveness of supervision and enforcement by governments and the social actors.

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<sup>316</sup> As a reminder, it was as a result of the doping scandals that shook professional cycling in the summer of 1998 that the IOC decided to organise a World Conference on Doping (February 1999), which brought together all parties interested in combating doping in sport. Following this conference, it was decided to set up an independent World Anti-Doping Agency (WADA), which was formally constituted in November 1999. In 2003, the WADA adopted a "World Anti-Doping Code" which has today become the benchmark for all sport organisations and other bodies involved in combating doping in sport. To date, 193 governments have signed the Copenhagen Declaration, stating their support for the WADA and recognising the World Anti-Doping Code. Subsequently, in order to incorporate the World Anti-Doping Code into international public law, UNESCO adopted an International Convention against Doping in Sport. Under this Convention, which came into force on 1<sup>st</sup> February 2007, signatory States have an obligation to take legislative, regulatory or administrative measures in accordance with the principles set out in the World Anti-Doping Code.

<sup>317</sup> Cf. the ILO Conventions on fee-charging employment agencies (No.181) and private employment agencies (No.181), mentioned earlier in this report. Furthermore, the ILO has already adopted a number of sectoral conventions, focusing specifically on certain professions or vocational fields including e.g. seafaring, nursing, and hotel and catering.

<sup>318</sup> A *sine qua non* condition for adopting an ILO Convention is in fact the existence of an interlocutor representing the relevant profession at international level.

## CHAPTER 2. RECOMMENDATIONS

### I. General principles

Any action aimed at regulating the activities of sports agents and, more generally, the placement mechanisms in sport should be based on the following principles:

- Complementarity (between the rules of sport federations and public policies). Sport federations play an essential role in organising sport. In the field of employment, this role can be supported by public action.
- Transparency (of financial flows in professional sport). A key problem with sports agents is that they are involved in financial transactions which often lack transparency.
- Simplicity (of the measures adopted). To be efficient and universally applicable, any measure must be simple to implement (smaller federations should be able to implement it with fewer financial and human resources). The rules must be easily adaptable to the peculiarities of each sport discipline.
- Trust (in sports agents and other actors in sport). It is necessary to establish dialogue and mutual trust between all stakeholders.

The results of this study do not argue against the introduction of specific mechanisms to regulate the activities of sports agents (and to control access to the profession), regardless of whether those mechanisms are adopted by governments or by national or international sport federations, provided that any such mechanisms are compatible with Community law. However, there appears to be no overriding reason for introducing an obligation to adopt said mechanisms.

As regards the ethics of sport, the task is to determine the means that need to be deployed to ensure exemplary governance, preferably organised by the sport sector itself. In relation to Community law, it is necessary to ensure that any public or sport rules do not infringe competition rules or hinder the freedom to provide services or the freedom of establishment.

### II. Ethical issues in sport are public order issues – Recommendations to governments

Sports agents are usually perceived as the main party responsible for the ethical problems associated with placement activities in professional sport, while in actual fact in many cases it is the whole “sport employment system” that lacks transparency. This penalises the clubs and organisers of sport events (risk of unfair competition; undue influence on the results of sport competitions), the sportspersons (risk of not being remunerated or of being exploited by the agents or the clubs), the agents (poor image, risk of not being remunerated) and the sport federations (risk of a loss of credibility for the sport concerned; risk that the ability of federations to ensure proper governance will be called into question).

Sport federations are not adequately equipped to combat and punish offences against public order, particularly in the fields of human trafficking in sport (which falls within the province of migration and security policies) and financial crime (which falls within the province of financial supervision, fiscal control and crime prevention/law enforcement policies). However, a number of recent initiatives by the sport federations, such as the introduction of a licensing system for clubs or the Transfer Matching System seem to be moving in the right direction in terms of promoting good governance in sport and strengthening the supervision and transparency of financial flows.

States must play a complementary role by supervising the measures implemented by national federations and imposing criminal penalties for offences against public order. This involves, for example, such measures as the following:

1. Intensify the audits and checks performed by tax, social welfare and labour inspectors in sport clubs. Carry out checks of various aspects, including financial flows, work permits, social security registration, undeclared labour, working conditions, housing, etc.
2. Improve the control of training centres in Europe to ensure compliance with national laws on the protection of minors.
3. Establish indicators to measure the “sport variable” in statistics on illegal immigration and financial fraud.

### **III. European institutions have a major role to play in structuring dialogue and coordinating actions – recommendations to European institutions**

Sport must contribute to strengthening the ideals of peace, mutual understanding and solidarity in order to promote personal and social development on an ethical basis<sup>319</sup>. Sport should convey the values that Europe wishes to share with the rest of the world. In this respect, Europe should lead the way.

European institutions have a major role to play as coordinators and promoters vis-à-vis the public authorities, the sport movement and sports agents, with a view to promoting common standards and principles that can serve as a basis for the adoption of at least a minimum set of rules by sport federations and countries throughout Europe. More specifically, EU institutions could act on the basis of Article 137 of the EC Treaty<sup>320</sup>, Article 165 of the Lisbon Treaty and the principles and procedures of the European social dialogue.

The following actions could be implemented:

#### **Dialogue / consultations**

1. Promote dialogue within the sport movement, e.g. to intensify the exchanges between national federations at European level, particularly to facilitate the dissemination of best practices.
2. Organise a public consultation/conference on the issue of sports agents. One of the aims could be to clarify the applicability of EU law to the activities of sports agents.
3. Discuss, with EU partner countries, the problems associated with the international transfer of sportspersons, the exploitation of underage sportspersons and money-laundering in sport (cf. Action 26 of the Pierre de Coubertin Action Plan).

#### **Information**

4. Clarify the applicability of EU law to the activities of sports agents, given that the array of existing legal instruments (rules laid down in the Treaty and directives on professional qualifications and services) is largely unknown as far as its applicability to sports agents is concerned. To this end, publicise the existing instruments, for example through the “Your Europe” Internet portal.

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<sup>319</sup> See European Commission's White Paper on Sport, 2007, page 6.

<sup>320</sup> Article 137 deals with aspects that concern sports agents, such as the social protection of workers and the protection of employees in the event of termination of the employment contract. It enables the Council to adopt measures to foster cooperation between Member States through initiatives aimed at extending knowledge, developing the exchange of information and good practices, promoting innovative approaches and evaluating experiences (with the exception of measures intended to harmonise the laws and regulations of Member States). It should also be noted that the provisions of Article 137 do not apply to remuneration.

## Studies / Reports

5. Carry out a study on the economic grounds for transfer fees, their impact on sport competitions and their compatibility with the provisions of Community and/or national law. The rules applicable to transfers – e.g. the rules governing breach of contract – could be examined as part of such a study.

## Promotion / coordination

6. Promote and/or coordinate – through the following instruments – the actions implemented by the European sport movement (which are described below under Point IV):
  - Social dialogue, as provided for by Article 138 of the EC Treaty.
  - The recommendations provided for by Article 249 of the EC Treaty.
  - The recommendations provided for by Article 165 of the Lisbon Treaty.
  - Structured dialogue between the European Commission and the sport movement (multilateral meetings, thematic discussions, consultations), as mentioned in Point 5.1 of the White Paper on Sport.

## IV. The sport movement has an essential role to play in organising placement activities – Recommendations to actors in sport

This study advocates regulation primarily at the level of the national sport federations (since they are the best placed to understand all aspects of the sport concerned and their national environment in each case) as well as the introduction of a licensing system to join the profession, with an examination designed to ensure that successful candidates have the necessary knowledge of the legal, economic and social environment and the minimum qualifications required to practise the profession, provided that such a system does not hinder the free movement of sports agents within the European Union. The proposed system – which should be adopted on a voluntary basis – could be promoted by the national federations themselves (as in the case of, e.g. ice hockey in Finland), by international federations (as in the case of basketball), including European federations, or by Member States (as in the case of France).

Actors in sport at national, European and international level have an essential role to play in organising sport placement activities in terms of dialogue, education and training, information, transparency, mutual help, establishment of ethical principles and control/enforcement of sanctions. This role can be fulfilled through the following measures:

### Dialogue

1. Organise the sports agent profession through representative bodies that can act as interlocutors of public authorities and actors in sport.
2. Increase the representativeness of existing bodies that represent the interests of sports agents.
3. Involve sports agents in the elaboration of the regulations that govern their activities.
4. Examine the advisability of establishing a European certification system for sports agents as well as a set of minimum requirements that sports agents must fulfil to act as intermediaries.

### Education and training

5. The federations could provide training schemes for candidates preparing for the exam to obtain a sports agent's licence/permit (if such an exam is introduced).

6. Organise yearly refresher courses/seminars for sports agents, focusing in particular on knowledge of the regulations.
7. Publish guides for players/sportspersons, coaches, clubs, sports agents and organisers of sport events to inform them of the applicable regulations on the employment of sportspersons.
8. Educate and advise sportspersons on the role of sports agents (provided that the sportspersons' representative body does not itself offer placement services). A tax on transfers could be introduced to finance these schemes.

### **Transparency**

9. Inform about reprehensible or illegal practices by sportspersons, agents, clubs, organisers of sport events or federations (including information on sanctions imposed by the sport authorities or public authorities).
10. Publish (and update as appropriate) a list of sports agents and their clients (including, if possible, information on the duration of the contracts signed with the clients as well as on the qualifications and experience of the agents).
11. Include, in all placement contracts, the name of the agent and his remuneration.
12. Publish and make available to the members of the boards of directors (of clubs/organisers of sport events) the accounts concerning the placement of sportspersons.

### **Mutual assistance**

13. Consider setting up a mutual assistance fund to help sportspersons who are victims of human trafficking and to finance trafficking-prevention programmes.
14. Help to organise national sport competitions as and when appropriate, including – if necessary – the provision of financial assistance on the basis of the principle of financial solidarity.

### **Ethics**

15. Put in place a self-regulation system for sports agents<sup>321</sup>, to which agency agreements concluded between the contracting parties could refer in order to give the self-regulation system legal force.
16. Introduce mandatory terms and conditions (to be determined) in standard contracts, with the aim of providing better protection for sportspersons, agents, and clubs/organisers of sport events.
17. Put in place binding codes of conduct drawn up jointly by sports agents, federations, clubs and players (in accordance with Article 37 of Directive 2006/123/EC on Services – which promotes the development of codes of conduct by European professional associations), particularly in order to avoid conflicts of interests.
18. Develop a system that introduces the obligation, for a club assessing a player from a third country, to draw up an official document – signed by the club and the player – stipulating the rights and obligations of both parties. Non-compliance with this rule should be penalised.
19. Ensure that any intermediary that arranges for a player from another country to be assessed or attend trials, is liable for the cost of the return fare if the assessment is negative (e.g. introduce an obligation to refuse to start negotiations without guarantees to this effect).
20. Develop and adhere to a “European Charter of Solidarity in Sport” for sport clubs.

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<sup>321</sup> An interesting example of this kind of self-regulation is provided by the “Code of Conduct for Lawyers in the European Union” (adopted in 1988), which states, among other things, that “rules of professional conduct are designed through their willing acceptance by those to whom they apply to ensure the proper performance by the lawyer of a function which is recognised as essential...”

## **Supervision / sanctions**

21. Establish a centralised financial system or “clearing house” for transfer deals (involving financial rewards or compensation) between two clubs or teams.
22. Generalise the practice of providing federations with a copy of all agency contracts.
23. Strengthen the supervision of transactions in order to ensure that all interested parties are agreed on the details of the placement as well as to ensure that the terms and conditions of the employment contract comply with the regulations in force. The placement should only be authorised when all the relevant documents are valid in accordance with the conditions defined by the contracting parties and the regulations.
24. Control financial transactions through a club-licensing system. The regulations established by sport organisations or bodies could make the licensing of a club conditional upon compliance with financial and ethical requirements concerning, among other aspects, relations between clubs and agents.
25. Appoint a person or unit, within each federation, to be responsible for coordinating the prevention of money laundering and financial crime. A tax on transfers could be introduced to help finance this measure.
26. Facilitate appeals to the sport federations’ authorities (e.g. by limiting the administrative or financial requirements or procedures that might deter aggrieved parties from seeking redress).

## **Conclusion**

The rules adopted by sport federations are undoubtedly those which can best reflect the specificities of each sport, unlike government or Community regulations, which are necessarily more general in nature. The sport movement must continue to play the leading role in implementing the applicable regulations. It must be supported in this role by public authorities, given the ethical and legal problems to which sport placement activities can give rise, particularly in their cross-border dimension. The European Union has a key role to play in changing behaviours, harmonising existing practices, promoting the best of them – and introducing regulations, if and when appropriate.



# APPENDICES

**APPENDIX 1: List of people interviewed by the members of the consortium****1. Sports agents**

- Football: Günter ALBERT (AT), Kismet ERIS (BE), Colin GORDON (UK), Pierre MIGISHA (BE), René VIJT (BE)
- Basketball: Massimo RASENI (IT), Vincent CHAMOULAUD (FR, operates also in rugby)
- Handball: Wolfgang GUTSCHOW (DE)
- Tennis: Alexis TETANG (FR)

**2. Federations and sport leagues**

- Athletics: International athletics federation (IAAF), French athletics federation (FFA)
- Badminton: European badminton federation
- Basketball: International basketball federation (FIBA), Spanish basketball professional league, French basketball federation (FFBB)
- Cycling: French cycling federation (FFC)
- Fencing: International fencing federation (FIE)
- Football: International football federation (FIFA), European football federation (UEFA), International professional football players federation – division Europe (FIFPro Europe), European Club Association (ECA), English football federation (FA), Belgium football federation (URBSFA-KBVB), Bulgarian football federation, French football federation (FFF), French football league (LFP)
- Gymnastics: International gymnastics federation (FIG)
- Handball: International handball federation (IHF), German handball league (HBL)
- Hockey: International hockey federation (FIH)
- Motor sport: International motor sport federation (FIA)
- Sailing: European sailing federation (EUROSAF)
- Ski: International ski federation (FIS)
- Snowboard: International snowboard federation (WSF)
- Surfing: European surfing federation (ESF)
- Swimming: International swimming federation (FINA)
- Tennis: French tennis federation (FFT)
- Table tennis: International table tennis federation (ITTF)
- Triathlon: European triathlon federation (ETU)
- Wrestling: International wrestling federation (FILA)

**3. Others**

- Alain BELSOEUR, Director general, Havre Athlétique Club, and President of the French union of administrators and related professions in football
- Jérôme BONNISSEL, former professional football player, scout in Latin America for the football club Girondins de Bordeaux
- Georgi BOYCHEV, Secretary General of the Association of Bulgarian Footballers
- Roberto BRANCO MARTINS, Director of Pro Agent (Dutch football agents association), Coordinator of the European Football Agents Association, Researcher for the Asser International Sports Law Centre
- Gerd BUTZECK, Director General, Group Club Handball (GCH)
- Bertrand CAULY, President of Collectif Agent 2006
- Marc CHEVRIER, Journalist, l'Equipe
- Richard DANZIGER, International Organisation for Migration (IOM)
- Rudi DELARUE, International Labour Organisation (ILO)

- Jean-Claude DELEPIERE, President of the Belgian Financial Intelligence Processing Unit (CTIF-CFI)
- Filips DHONDT, General Manager, FC Bruges
- Bernard DIOMEDE, former professional football player
- Jean-Philippe DUBEY, Counsellor to the CAS
- Oliver FISCHER, Lawyer specialised in sport law
- Jean-François GAYRAUD, Chief Superintendent
- Grzegorz GAJEWSKI, European Commission, DG JLS, sector 002, Cybercrime; trafficking in human being
- Michael GERLINGER, Legal Director, FC Bayern Munich
- Mark GODDARD, FIFA – Transfer Matching System GmbH
- François-Xavier HOULET, former professional handball player, general manager, Gummersbach
- Bernard JEUNEJEAN, journalist, Sport/Foot Magazine
- Martin KENNY, Legal officer, Equity
- Nicolas LAMPERIN, President, Lagardère Unlimited
- Jean-Christophe LAPOUBLE, lawyer and lecturer at the IEP of Bordeaux
- James MACDOUGALL, European and International Officer, Central Council of Physical Recreation (CCPR)
- Corentin MARTINS, former professional football player, sport director, Brest football club
- Alexandre MESTRE, lawyer
- Jean-Claude MBVOUMIN, President of the Association Foot Solidaire
- Bruno N'GOTTY, former professional football player, European Sport Certification (ESC)
- Stéphane OSTROWSKI, former professional basketball player, Marketing Director, Limoges CSP
- Walter PALMER, Secretary General, EU Athletes
- Michel PAUTOT, lawyer, member of the sports agents committee within the French boxing federation
- Noël PONS, tax assessor and advisor, Service central de prévention de la corruption (SCPC - France)
- François RAUD, Director, European Sport Certification (ESC)
- Gregor REITER, German football agents association (Deutsche Fußballspieler-Vermittler Vereinigung - DFVV)
- Dominique ROCHETEAU, former professional football player, consultant
- Sylvia SCHENK, lawyer, member of Transparency International Germany (sport group)
- Anne SCHWOBEL, Director, Transparency International Switzerland
- Luc SILANCE, lawyer, former secretary general of the Belgium Olympic Committee, former member of the CAS
- Wilfried STRAUB, former Vice-President of the German football federation

#### People interviewed by the team set up by EOSE

Occupation / organisation	Country	Sport
Lawyer	Austria	
Organiser of Athletics meeting	Belgium	Athletics
Ministry for Youth and Sport	Bulgaria	
Agent	Cyprus	Football
Agent (non official)	Cyprus	Football
Cyprus Sport Organisation	Cyprus	
Agent	Denmark	Football
Lawyer	Estonia	
University of Sport	Estonia	

Finnish Sports Federation	Finland	
Sport Institute	Finland	
Agent	France	Boxing
Agent	France	Rugby
Agent	France	Tennis
Agent	France	Tennis
Agent	France	Tennis
Agent	France	Tennis
Agent	France	Basketball
Agent	France	Basketball
Former ski agent, responsible for Front de Neige	France	Ski
Lawyer French Rugby Federation, agents committee	France	Rugby
Club - President	France	Tennis
Club – President, Cholet basketball club	France	Basketball
French MP	France	
French MP	France	
General Director, Critérium du Dauphiné	France	Cycling
Marketing Director, Val d'Isère Ski World Championships	France	Ski
Coach	France	Boxing
Coach	France	Boxing
Coach - Coach PRO B	France	Basketball
Coach - Mental coach of Paul-Henry Matthieu	France	Tennis
Coach – Conditioning coach of the Table Tennis French team	France	Table Tennis
Deputy Coach, Bordeaux football club	France	Football
Coach, Créteil handball club, former international goalkeeper	France	Handball
Volleyball Coach	France	Volleyball
National Coach	France	Wrestling
National Coach	France	Weightlifting
National Coach national	France	Cycling
National Coach, former Olympic champion	France	Cycling
National Coach, former Olympic champion	France	Judo
Professional Coach	France	Boxing
Scientific Expert	France	Badminton
Rugby Federation	France	Rugby
Boxing French Federation	France	Boxing
French Rugby Federation (head of legal affairs)	France	Rugby
French Basketball Federation – Agents committee	France	Basketball
French Cycling Federation – Agents committee	France	Cycling
French Judo Federation	France	Judo
French Wrestling Federation	France	Wrestling
French Rugby Federation - President of the agents committee	France	Rugby
French Archery Federation	France	Archery
Sport Journalist	France	
French jugde	France	
Local Tennis League, Essonne	France	Tennis
Organiser - Teacher Stade Français	France	Tennis
Organiser - Company “Jeu Set et Match”	France	Tennis
Events Organiser	France	Surfing
Events Organiser	France	Boxing

Athlètes Representative	France	Rugby
Secretary General DNCG	France	Football
Sportsperson – former professional tennis player	France	Tennis
Sportsperson - Athlete – World Champion	France	Weightlifting
Sportsperson - Athlete – Olympic Champion	France	Kayak
Sportsperson - Athletics 110m hurdles	France	Athletics
Sportsperson - Boxing professional	France	Boxing
Sportsperson - Boxing professional	France	Boxing
Sportsperson - Boxing professional	France	Boxing
Sportsperson – World champion and Olympic vice-champion	France	Judo
Sportsperson - Racing Paris Basket	France	Basketball
Sportsperson – Former professional football player Monaco, Istres, works in collaboration with several agents	France	Football
Sportsperson	France	Basketball
Sportsperson – professional player	France	Basketball
Sportsperson - professional player	France	Rugby
Sportsperson - professional player	France	Football
Sportsperson - professional player	France	Basketball
Sportsperson – professional pilot	France	Motor sport
Sportsperson	France	Surfing
Sportsperson	France	Taekwondo
Sportsperson	France	Taekwondo
Sportsperson	France	Table Tennis
Sportsperson	France	Table Tennis
Agent	Germany	Football
Agent	Germany	Tennis
Agent - DFB licensed Sports Agent	Germany	Football
Agent - DFB licensed Sports Agent	Germany	Football
Agent - PRO profil GmbH, DFB licensed Sports Agent	Germany	Football
Agent	Germany	Basketball
Lawyer	Germany	
Bird & Bird Law Firm, Consultant	Germany	
Coach - Team manager, Halen club	Germany	Wrestling
German Athletics Federation	Germany	Athletics
German Rowing Federation (Director of Sports)	Germany	Rowing
German Badminton Federation	Germany	Badminton
German Basketball Federation (Managing Director)	Germany	Basketball
German Football Federation	Germany	Football
German Handball Federation (DHB) (Vizepräsident Recht)	Germany	Handball
German Ice Hockey Federation	Germany	Hockey sur glace
German Ski Federation	Germany	Ski
German Tennis Federation – Sport Director	Germany	Tennis
German Table Tennis Federation	Germany	Table Tennis
German Triathlon Federation (DTU) (Sportdirektor)	Germany	Triathlon
German Equestrian sport Federation - Secretary General	Germany	Equestrian sport
German Disabled Sports Federation	Germany	Multi sport
German Basketball League - BBL GmbH	Germany	Basketball
German Football League	Germany	Football
German Internal Affairs Ministry	Germany	

Agent Representative – Executive Director (Deutsch Fußballspieler)	Germany	Football
Athletes Representative - German Basketball Player's Union (Secretary General ), EU Athletes and Secretary General UBE	Germany	Tennis
Players Representative - Event manager (German tennis Player's Union)	Germany	Tennis
Sportsperson – high level athlete	Germany	Judo
Sportsperson - high level athlete	Germany	Judo
Sportsperson – professional Boxer	Germany	Boxing
Sportsperson - Wrestling professional	Germany/France	Wrestling
Coach, manager in Turkey, Germany and France	Germany/Turkey/France	Basketball
Agent	Greece	Football
Agent	Greece	Football
Agent	Greece	Football
Agent	Greece	Basketball
Organiser	Greece	Athletics
Sportsperson – professional player	Greece	Basketball
Sportsperson – professional player	Greece	Basketball
Sportsperson – professional player	Greece/Spain/Italy/France	Basketball
Hungarian Sport Confederation	Hungary	
Institute of Leisure and Amenity Management - ILAM	Ireland	
Agent	Italy	Football
Agent	Italy	Football
CONI - Scuola dello Sport	Italy	
Coach – former Coach Inter Milan	Italy	Football
Sport Journalist	Italy	
Sportsperson – professional player	Italy	Football
Agent	Italy	Football
Agent	Italy	Football
Agent	Italy	Football
Agent	Italy	Football
Agent	Italy	Football
Agent	Italy	Football
Agent	Italy	Volley ball
Coach - Manager	Italy	Cycling
Organiser	Italy	Athletics
Sportsperson – professional player	Italy	Football
Sportsperson – professional player	Italy	Football
Sportsperson – professional player	Italy	Football
Sportsperson – professional player	Italy	Football
University – Physical education and sport	Lithuania	
Lawyer	Luxembourg	
University of Malta – Physical and sport education department	Malta	
Brand - Adidas Relations with athletes	Netherlands	Athletics
Agents Representative - Pro Agent	Netherlands /Europe	Football
Agent	Poland	Football
Agent	Poland	Football
Agent	Poland	Football
Agent	Poland	Football

Sportsperson – professional player	Poland	Football
Sportsperson – professional player	Poland	Football
University – Physical education and sport	Poland	
Portuguese Institute for Sport	Portugal	
University – Sport sciences school of de Rio Maior (ESDRM)	Portugal	
Agent	Rumania	Football
Agents Representative - European Basketball Agent Association	Serbia/Europe	Basketball
University – Physical education and sport	Slovakia	
Agent	Slovenia	Football
Agent	Slovenia	Football
Agent	Slovenia	Football
Agent	Slovenia	Football
Agent	Slovenia	Football
Agent	Slovenia	Football
Ministry for Education and Sport	Slovenia	
Sportsperson	Slovenia	Athletics
Ljubljana Sport University	Slovenia	
Sportsperson	Slovenia	Athletics
Sportsperson	Slovenia	Athletics
Agent	Spain	Football
Agent	Spain	Football
Agent	Spain	Football
Agent	Spain	Football
Agent	Spain	Football
Agent	Spain	Football
Agent	Spain	Football
Agent	Spain	Football
Agent	Spain	Tennis
Coach - Manager	Spain	Cycling
Sportsperson – Professional player	Spain	Football
Sportsperson – Professional player	Spain	Football
Sportsperson – Professional player	Spain	Football
Sportsperson – Professional player	Spain	Football
Sportsperson – Professional player	Spain	Football
Sportsperson – French International, 20 professional seasons in France and Europe	Spain/France/Italy	Basketball
Lawyer	Sweden	
Sport Confederation / Boson College	Sweden	
Sportsperson	Switzerland	Judo
Sportsperson	Switzerland	Judo
Agent	United-Kingdom	Athletics
Agent	United-Kingdom	Boxing
Agent	United-Kingdom	Cricket, Football, Athletics
Agent	United-Kingdom	Football
Agent	United-Kingdom	Football
Agent	United-Kingdom	Football
Agent	United-Kingdom	Tennis

Agent (non official)	United-Kingdom	Football
English Football Federation	United-Kingdom	Football
English Rugby Federation - RFU	United-Kingdom	Rugby
English Rugby Federation - RFU (Legal and Company Secretary)	United-Kingdom	Rugby
English Rugby Federation - RFU (Legal Officer)	United-Kingdom	Rugby
English Rugby Federation - RFU (Regulations Manager)	United-Kingdom	Rugby
English Tennis Federation - The Lawn Tennis Association (UK)	United-Kingdom	Tennis
Sport Journalist	United-Kingdom	
Brand - Nike athletes representative	United States	Athletics
Regulator licences registration office	United States	Multisport
French Players Agent in NBA	United States /France	Basketball
Sportsperson – former NBA player, professional player in France	United States/France	Basketball



**APPENDIX 2: List of people / organisations contacted by questionnaire**

1. **International and European sport federations** (53 federations in 31 sports)
2. **National sport federations** (697 federations in 29 sports)
3. **National Olympic Committees and Sport Confederations** (in 48 European countries)
4. **European and national sport leagues** (51 leagues in 4 sports)
5. **Organisations representing agents** (11 organisations in 3 sports)
6. **Organisations representing sportspersons** (33 organisations in 6 sports)
7. **Sports agents** (1221 agents in 6 sports et 12 member States)
8. **Ministries** (54 ministries in 27 member States)

**1. International and European sport federations**

<b>SPORTS</b>	<b>INTERNATIONAL FEDERATIONS</b>	<b>EUROPEAN FEDERATIONS</b>
<b>ATHLETICS</b>	International Association of Athletics Federations (IAAF)	European Athletics
<b>BADMINTON</b>	Badminton World Federation (BWF)	Badminton Europe
<b>BASKETBALL</b>	International Basketball Federation (FIBA)	FIBA Europe
<b>BEACH SOCCER</b>	Beach Soccer WorldWide (BSWW)	
<b>BOXING</b>	International Boxing Federation (AIBA)	European Boxing Union (EBU)
<b>CRICKET</b>	International Cricket Council (ICC)	
<b>CYCLING</b>	Union Cycliste Internationale (UCI)	Union Européenne de Cyclisme (UEC)
<b>FENCING</b>	Fédération Internationale d'Escrime (FIE)	Confédération Européenne d'Escrime
<b>FOOTBALL</b>		Union Européenne de Football Association (UEFA)
<b>FUTSAL</b>	World Futsal Association (AMF)	Union Europea de Futsal
<b>GOLF</b>	International Golf Federation (IGF)	European Golf Association (EGA)
<b>GYMNASTICS</b>	Fédération Internationale de Gymnastique (FIG)	European Union of Gymnastics (EUG)

<b>HANDBALL</b>	International Handball Federation (IHF)	European Handball Federation (EHF)
<b>HOCKEY</b>	International Hockey Federation (FIH)	European Hockey Federation
<b>ICE HOCKEY</b>	International Ice Hockey Federation (IIHF)	
<b>JUDO</b>	International Judo Federation (IJF)	European Judo Union
<b>MOTORCYCLING</b>	Fédération Internationale de Motocyclisme (FIM)	
<b>MOTOR SPORT</b>	Fédération Internationale de l'Automobile (FIA)	
<b>ROWING</b>	Fédération Internationale des Sociétés d'Aviron (FISA)	
<b>RUGBY</b>	International Rugby Board (IRB)	FIRA-Association Européenne de Rugby (FIRA-AER)
<b>SKI</b>	Fédération Internationale de Ski (FIS)	
<b>SNOWBOARD</b>	World Snowboard Federation (WSF)	
<b>SURFING</b>	International Surfing Association (ISA)	European Surfing Federation (ESF)
<b>SWIMMING</b>	Fédération Internationale de Natation (FINA)	Ligue Européenne de Natation (LEN)
<b>TABLE TENNIS</b>	International Table Tennis Federation (ITTF)	European Table Tennis Union (ETTU)
<b>TAEKWONDO</b>	World Taekwondo Federation (WTF)	European Taekwondo Union (ETU)
<b>TENNIS</b>	International Tennis Federation (ITF)	European Tennis Association (Tennis Europe)
<b>TRIATHLON</b>	International Triathlon Union (ITU)	European Triathlon Union
<b>SAILING</b>	International Sailing Federation (ISAF)	European Sailing Federation (EUROSAF)
<b>VOLLEYBALL</b>	Fédération Internationale de Volleyball (FIVB)	Confédération Européenne de Volleyball (CEV)
<b>WRESTLING</b>	Fédération Internationale des Lutttes Associées (FILA)	Comité Européen des Lutttes Associées (CELA)

9 answers (17%)

## 2. National sport federations

SPORTS	FEDERATIONS NATIONALES
<b>ATHLETICS</b>	<p><b>27 federations contacted:</b>            Deutscher Leichtathletik-Verband, Österreichischer Leichtathletik-Verband, Ligue Royale Belge d'Athlétisme, Bulgarian Athletic Federation, The Amateur Athletic Association of Cyprus, Dansk Atletik Forbund , Real Federación Española de Atletismo, Estonian Athletic Association (EKJL), Suomen Urheiluliitto RY, Fédération Française d'Athlétisme, Association Hellénique d'Athlétisme Amateur (SEGAS), Magyar Atlétikai Szövetség, Athletics Ireland, Federazione Italiana di Atletica, Latvian Athletic Federation, Athletic Federation of Lithuania, Fédération Luxembourgeoise d'Athlétisme, Malta Amateur Athletic Association, Royal Dutch Athletics Federation (Atletiekunie), Polski Związek Lekkiej Atletyki, Federação Portuguesa de Atletismo, Cesky Atletický Svaz, Romanian Athletic Federation, UK Athletics Ltd, Slovak Athletic Federation, Slovenian Athletic Federation, Svenska Friidrottsförbundet</p>
	<b>5 answers (18.5%)</b>
<b>BADMINTON</b>	<p><b>27 federations contacted:</b>            Deutscher Badminton Verband, Österreichischer Badminton Verband, Belgian Badminton Federation, Bulgarian Badminton Federation, Cyprus Badminton Federation, Danmarks Badminton Forbund, Federacion Española de Badminton, Badminton Estonia, Badminton Finland, Fédération Française de Badminton, Hellenic Badminton Federation, Magyar Tollaslabda Szövetség, Badminton Union of Ireland, Federazione Italiana Badminton, Latvian Badminton Federation, Lithuanian Badminton Federation, Fédération Luxembourgeoise de Badminton, Badminton Malta, Nederlandse Badminton Bond, Polski Związek Badmintonu, Federação Portuguesa de badminton, Český Badmintonový Svaz, Romanian Badminton Federation, Badminton England, Slovak Badminton Federation, Badmintonska Zveza Slovenije, Svenska Badmintonförbundet</p>
	<b>1 answer (3.7%)</b>
<b>BASKETBALL</b>	<p><b>29 federations contacted:</b>            Deutscher Basketball Bund, England Basketball, Österreichischen Basketballverbandes, Fédération Royale Belge de Basketball, Bulgarian Basketball Federation, Cyprus Basketball Federation, Danmarks Basketball-Forbund, Basketball Scotland, Federación Española de Baloncesto, Estonian Basketball Federation, Suomen Koripalloliitto, Fédération Française de Basketball, Hellenic Basketball Federation, Magyar Kosárlabdazokország Szövetsége, Basketball Ireland, Federazione Italiana Pallacanestro , Latvian Basketball Federation, Lietuvos Krepšinio Federacija, Fédération Luxembourgeoise de Basketball, Malta Basketball Association, Nederlandse Basketball Bond, Basketball Wales, Polski Związek Koszykówki, Federação Portuguesa de Basquetebol, Česká Basketbalová Federace, Federatia Romana de Baschet, Slovenská Basketbalová Asociácia, Košarkarska zveza Slovenije, Svenska Basketförbundet</p>
	<b>8 answers (27.6%)</b>
<b>BOXING</b>	<p><b>21 federations contacted:</b>            Bund Deutscher Berufsboxer, Faustkämpfer verband, Royale Fédération Belge de Boxe, Professional Boxing League of Bulgaria, Dansk Professionelt Bokse Forbund, Federacion Espanola de Boxeo, Estonian Boxing Federation, Fédération Française de Boxe, Hungarian Boxing Association, Boxing Union of Ireland, Federazione Pugilistica Italiana, Lithuanian Professional Boxing Federation, Fédération Luxembourgeoise de Boxe, Profboksen Nederland, Polish Boxing Association, Portuguese Boxing Federation, Ceska Unie Boxeru Profesionalu, Romanian Boxing Federation, British Boxing Board of Control, Pro Boxing Slovenia, Svenska Boxningsförbundet</p>

	<b>0 answer</b>
<b>CRICKET</b>	<b>1 fédération contactée:</b> England and Wales Cricket Board
	<b>0 answer</b>
<b>CYCLING</b>	<b>27 federations contacted:</b> Bund Deutscher Radfahrer, Österreichischer Radsport-Verband, Royale Ligue Vélocipédique Belge, Union Bulgare de Cyclisme, Cyprus Cycling Federation, Danmarks Cykle Union, Federación Española de Ciclismo, Union Cycliste de l'Estonie, The Cycling Union of Finland, Fédération Française de Cyclisme, Fédération Hélienne de Cyclisme, Hungarian Cycling Federation, Cycling Ireland, Federazione Ciclistica Italiana, Fédération Lettone de cyclisme, Fédération Lituanienne de Cyclisme, Fédération du Sport Cycliste Luxembourgeois, Malta Cycling Federation, Koninklijke Nederlandsche Wielren Unie, Polski Związek Kolarski, Federacao Portuguesa de Ciclismo, Fédération Tchèque de Cyclisme, Fédération Roumaine de Ciclisme, British Cycling Federation, Slovak Cycling Federation, Fédération Slovène de Cyclisme, Svenska Cykelforbundet
	<b>2 answers (7.4%)</b>
<b>EQUESTRIAN SPORT</b>	<b>27 federations contacted:</b> Deutsche Reiterliche Vereinigung, Bundesfachverband für Reiten und Fahren in Österreich, Fédération Royale Belge des Sports Equestres, Bulgarian Equestrian Federation, Cyprus Equestrian Federation, Dansk Ride Forbund, Real Federacion Hipica Española, Equestrian Federation of Estonia, Equestrian Federation of Finland, Fédération Française d'Equitation, Hellenic Equestrian Federation, Hungarian Equestrian Federation, Horse Sport Ireland, Italian Equestrian Federation, Latvian Equestrian Federation, Lithuanian Equestrian Federation, Fédération Luxembourgeoise des Sports Equestres, National Equestrian Federation of Malta, Royal Dutch Equestrian Federation, Fédération Equestre Polonaise, Federação Equestre Portuguesa, Czech Equestrian Federation, Fédération Equestre Roumaine, British Equestrian Federation, Slovak Equestrian Federation, Equestrian Federation of Slovenia, Svenska Ridsportförbundet
	<b>0 answer</b>
<b>FENCING</b>	<b>27 federations contacted:</b> Deutscher Fechter-Bund, Österreichischer Fechtverband, Fédération royale belge des cercles d'escrime, Fédération Bulgare d'Escrime, Fédération d'Escrime de Chypre, Dansk Faegte-Forbund, Real Federacion Española de Esgrima, Fédération Estonienne d'Escrime, Suomen Miekkaileijät, Fédération Française d'Escrime, Fédération Hellenique d'Escrime, Magyar Vívó Szövetség, Irish Fencing Federation, Federazione Italiana Scherma, Fédération Lettonienne d'Escrime, Fédération Lituanienne d'Escrime, Fédération Luxembourgeoise d'Escrime, National Fencing Association Malta, Koninklijke Nederlands Algemene, Polski Związek Szermierczy, Federação Portuguesa de Esgrima, Fédération Tchèque d'Escrime, Federatia Romana de Scrima, British Fencing Association, Fédération Slovaque d'Escrime, Fédération Slovène d'Escrime, Svenska Fäktförbundet
	<b>0 answer</b>

<b>FOOTBALL</b>	<p><b>29 federations contacted:</b>  The Football Association, Deutsche Fußball-Bund , Österreichischer Fußball-Bund, Union Royale Belge des Sociétés de Football-Association, Bulgarian Football Union, Cyprus Football Association, Dansk Boldspil-Union , The Scottish Football Association, Real Federación Española de Fútbol, Eesti Jalgpalli Liit , Suomen Palloliitto , Fédération Française de Football, Hellenic Football Federation, Magyar Labdarugo Szövetség, The Football Association of Ireland , Federazione Italiana Giuoco Calcio, Latvian Football Federation, Lietuvos Futbolo Federacija , Fédération Luxembourgeoise de Football, Malta Football Association, Koninklijke Nederlandse Voetbalbond, The Football Association of Wales, Polski Związek Piłki Nożnej, Federação Portuguesa de Futebol, Football Association of the Czech Republic, Federatia Romana de Fotbal, Slovenský Futbalový Zväz, Nogometna Zveza Slovenije, Svenska Fotbollförbundet</p>
	<b>7 answers (24.1%)</b>
<b>FUTSAL</b>	<p><b>7 federations contacted:</b>  Futsal Germany, English Futsal Federation, Association Belge de Football en Salle, Futsal Bulgaria, Union Nationale des Clubs de Futsal, Federazione Italiana Calcio da Sala, Česká federace sálového fotbalu-futsalu</p>
	<b>0 answer</b>
<b>GOLF</b>	<p><b>29 federations contacted:</b>  Deutscher Golf verband, England Golf Union, Osterreichischer Golf Verband, Royal Belgian Golf Federation, Bulgarian Glof Association, Cyprus Golf Federation, Dansk Golf Union, Scottish Golf Union, Real Federacion Espanola, Estonian Golf Association, Finnish Golf Union, Fédération Française de Golf, Hellenic Golf Federation, Hungarian Golf Federation, Golfing Union of Ireland, Federazione Italiana Golf, Latvian Golf Federation, Lithuanian Golf Federation, Fédération Luxembourgeoise de Golf, Malta Golf Association, Nederlandse Golf Federatie, Golf Union of Wales, Polish Golf Union, Federação Portuguesa de Golf, Czech Glof Federation, Romanian Golf Federation, Slovak Golf Federation, Slovenian Golf Association, Swedish Golf Federation</p>
	<b>5 answers (17.2%)</b>
<b>GYMNASTICS</b>	<p><b>27 federations contacted:</b>  Deutscher Turner-Bund, Österreichischer Fachverband für Turnen, Fédération Royale Belge de Gymnastique, Fédération Bulgare de Gymnastique, Cyprus Gymnastics Federation, Danish Gymnastics Federation, Fédération Royale Espagnole de Gymnastique, Estonian Gymnastics Federation, Finnish Gymnastics Federation, Fédération Française de Gymnastique, British Gymnastics Association, Hellenic Gymnastics Federation, Hungarian Gymnastics Federation, Irish Gymnastics Ltd, Federazione Ginnastica d'Italia, Gymnastics Federation of Latvia Lithuanian Gymnastics Federation, Fédération Luxembourgeoise de Gymnastique, Malta Gymnastics Federation, Koninklijke Nederlandse Gymnastiek Unie, Polish Gymnastic Association, Fédération Portugaise de Gymnastique, Czech Gymnastics Federation, Fédération Roumaine de Gymnastique, Slovak Gymnastics Federation, Fédération de Gymnastique de Slovénie, Svenska Gymnastikförbundet</p>
	<b>2 answers (7.4%)</b>

<b>HANDBALL</b>	<p><b>29 federations contacted:</b>  English Handball Association, Deutscher Handballbund, Österreichischer Handballbund, Union Belge de Handball, Bulgarian Handball Federation, Cyprus Handball Federation, Dansk Haandbold Forbund, Scottish Handball Association, Real Federación Española de Balonmano, Estonian Handball Association, Suomen Käsipalloliitto, Fédération Française de Handball, British Handball Association, Hellenic Handball Federation, Magyar Kezilabda Szövetség, Irish Olympic Handball Association, Federazione Italiana Giuoco Handball, Latvijas Handbola Federacija, Lietuvos Rankinio Federacija, Fédération Luxembourgeoise de Handball, Malta Handball Association, Nederlands Handbal Verbond, Związek Pilki Recznej w Polsce, Federação de Andebol de Portugal, Cesky Svaz Hazene, Federatia Romana de Handball, Slovensky Zvaz Hadzanej, Rokometna Zveza Slovenije, Svenska Handbollförbundet</p>
	<b>6 answers (20.7%)</b>
<b>HOCKEY</b>	<p><b>29 federations contacted:</b>  Deutscher Hockey Bund, England Hockey, Austrian Hockey Federation, Royal Belgian Hockey, Bulgarian Hockey Associations, Cyprus Hockey Association, Dansk Hockey Union, Scottish Hockey Union, Real Federacion Espanola de Hockey, Finnish Hockey Association, Fédération Française de Hockey, Olympic Hockey Board, Hellenic Hockey Federation, Hungarian Hockey Federation, Irish Hockey Federation, Federazione Italiana Hockey, Latvia Hockey Federation, Lithuanian Hockey Federation, Hockey Club Luxembourg, Hockey Association Malta, Welsh Hockey Union, Koninklijke Nederlandse Hockey Bond, Polish Hockey Association  Federação Portuguesa de Hoquei, Czech Hockey Federation, Romanian Hockey Federation, Slovak Hockey Federation, Zveza Za Hokej Na Travi Slovenije, Swedish Hockey Association</p>
	<b>0 answer</b>
<b>ICE HOCKEY</b>	<p><b>25 federations contacted:</b>  Deutscher Eishockey Bund, Österreichischer Eishockeyverband, Royal Belgian Ice Hockey Federation, Bulgarian Ice Hockey Federation, Danmarks Ishockey Union, Federación Española Deportes De Hielo, Estonian Ice Hockey Association, The Finnish Ice Hockey Association, Fédération Française de Hockey sur Glace, Hellenic Ice Sports Federation, Hungarian Ice Hockey Federation, Irish Ice Hockey Association, Federazione Italiana Sport Ghiaccio, Latvian Ice Hockey Federation, Lithuanian Ice Hockey Federation, Fédération Luxembourgeoise de Hockey sur Glace, Nederlandse Ijshockey Bond, Polish Ice Hockey Federation, Federação Portuguesa de Desportos no Gelo, Czech Ice Hockey Association, Romanian Ice Hockey Federation, Ice Hockey UK, Slovak Ice Hockey Federation, Ice Hockey Federation of Slovenia, Swedish Ice Hockey Association</p>
	<b>3 answers (12%)</b>
<b>JUDO</b>	<p><b>27 federations contacted:</b>  German Judo Federation, Austrian Judo Federation, Belgium Judo Federation, Bulgarian Judo Federation, Cyprus Judo Federation, Denmark Judo Federation, Royal Spanish Judo Federation, Estonian Judo Association, Finnish Judo Association, Fédération Française de Judo, British Judo Association, Greek Judo Federation, Hungarian Judo Association, Ireland Judo Association, Italian Judo Federation, Latvian Judo Federation, Lithuanian Judo Federation, Fédération Luxembourgeoise des Arts Martiaux, Malta Judo Federation, Netherlands Judo Federation, Polish Judo Association, Portugal Judo Federation, Czech Judo Federation, Romanian Judo Federation, Slovak Judo Federation, Slovenian Judo Federation, Swedish Judo Federation</p>
	<b>0 answer</b>

<b>MOTOR SPORT</b>	<p><b>27 federations contacted:</b>  Deutscher Motorsportbund e.V., Österreichischer Automobil, Motorrad und Touring Club, Royal Automobile Club de Belgique, Union des Automobilistes Bulgares, Cyprus Automobile Association, Dansk Automobil Sports, Union Real Federacion Española de Automovilismo, Estonian Autosport Union, AKK – Motorsport, Fédération Française du Sport Automobile, Automobile and Touring Club of Greece, National Automobil Sport Federation of Hungary, Royal Irish Automobile Club, Automobile Club d'Italia, Latvijas Automobilu Federacija, Lithuanian Automobile Sport Federation, Automobile Club du Grand-duché de Luxembourg, Malta Motorsport Federation, Knac Nationale Autosport Federatie, Polski Związek Motowy, Federação Portuguesa de Autobilismo e Karting , Autoclub of the Czech Republic, Automobil Clubul Roman, Motor Sports Association, Slovak Association of Motor Sport, Avto-Moto Zveza Slovenije, Svenska Bilspportförbundet</p>
	<b>3 answers (11.1%)</b>
<b>ROWING</b>	<p><b>25 federations contacted:</b>  Germany Rowing Federation, Austria Rowing Federation, Belgium Rowing Federation, Bulgarian Rowing Federation, Cyprus Rowing Association, Denmark Rowing Federation, Spain Rowing Federation, Estonian Rowing Association, Finnish Rowing Federation, Fédération Française d'Aviron, Greece Rowing Federation, Netherlands Rowing Federation, Ireland Rowing Federation, Italy Rowing Federation, Latvian Rowing Federation, Lithuanian Rowing Federation, Netherlands Rowing Federation, Poland Rowing Association, Portugal Rowing Federation, Czech Rowing Association, Romania Rowing Federation, British Rowing, Slovak Rowing Federation, Slovenia Rowing Federation, Sweden Rowing Federation</p>
	<b>1 answer (4%)</b>
<b>RUGBY</b>	<p><b>29 federations contacted:</b>  Rugby Football Union, Deutscher Rugby-Verband, Österreichischer Rugby Verband, Fédération Belge de Rugby, Bulgarian Rugby Union, Cyprus Rugby Federation, Dansk Rugby Union, Scottish Rugby Union, Federación Española de Rugby, Estonian Rugby Federation, Suomen Rugbyliitto, Fédération Française de Rugby, Greek Rugby Federation, Magyar Rögbi Szövetség , Irish Rugby Football Union, Federazione Italiana Rugby, Latvian Rugby Federation, Lithuanian Rugby Federation, Fédération Luxembourgeoise de Rugby, Malta Rugby Football Union, Nederlandse Rugby Bond, Welsh Rugby Union, Polski Związek Rugby, Federação Portuguesa de Rugby, Czech Rugby Union, Federatia Romana de Rugby, Slovak Rugby Union, Rugby Zveza Slovenije, Svenska Rugbyförbundet</p>
	<b>0 answer</b>
<b>SKI</b>	<p><b>27 federations contacted:</b>  Deutscher Skiverband, Österreichischer Skiverband, Royal Belgian Ski Federation, Bulgarian Ski Federation, Cyprus Ski Federation, Dansk Skiforbund, Real Federacion Española Deportes, Estonian Ski Association, Finnish Ski Association, Fédération Française de Ski, SnowsportGB, Hellenic Ski Federation, Hungarian Ski Federation, Ski Association of Ireland, Federazione Italiana Sport Invernali, Latvian Ski Association, National Skiing Association of Lithuania, Fédération Luxembourgeoise de Ski, Malta Olympic Committee, Netherlands Ski Federation, Polski Związek Narciarski, Portuguese Ski Federation, Ski Association of the Czech Republic, Federatia Romana de Schi + Biatlon, Slovak Ski Association, Ski Association of Slovenia, Svenska Skidförbundet</p>
	<b>0 answer</b>

<b>SNOWBOARD</b>	<p><b>11 federations contacted:</b> Austria Snowboard Association, Vlaamse Ski en Snowboard Federatie, Winter Single Session, Suomen Lumilautailitto, Fédération Française de Snowboard, Snowsport GB, Hungarian Snowboard Federation, Federazione Snowboard Italia, Asociace Českého Snowboardingu, Slovakian Snowboard Fests, Svenska Skidforbundet</p>
	<b>1 answer (9.1%)</b>
<b>SURFING</b>	<p><b>12 federations contacted:</b> Deutscher Wellenreit Verband e.V., England Surfing Federation, Austrian Surfing Federation, Belguim Surfing Federation, Federacion Espanola de Surf, Fédération Française de Surf, Irish Surfing Association, Federazione Italiana Surfing, Holland Surfing Association, Welsh Surfing Federation, Federação Portuguesa de Surf, Swedish Surfing Association</p>
	<b>0 answer</b>
<b>SWIMMING</b>	<p><b>28 federations contacted:</b> German Swimming Federation, Austrian Swimming Federation, Fédération Roayle de Natation, Bulgarian Swimming Federation, Cyprus Swimming Federation, Danish Swimming Federation, Royal Spanish Swimming Federation, Estonian Swimming Federation, Finnish Swimming Federation, Fédération Française de Natation, British Swimming Federation, Fédération Hellénique de Natation, Hungarian Swimming Association, Hungarian Open Water Swimming Federation, Swim Ireland, Italian Swimming Federation, Latvian Swimming Federation, Lithuanian Swimming Federation, Fédération Luxembourgeoise de Natation et Sauvetage, Aquatic Sports Association of Malta, Royal Dutch Swimming Federation, Polish Swimming Federation, Portuguese Swimming Federation, Czech Swimming Federation, Romanian Swimming Federation, Slovak Swimming Federation, Slovenian Swmming Federation, Swedish Swimming Federation</p>
	<b>4 answers (14.3%)</b>
<b>TABLE TENNIS</b>	<p><b>29 federations contacted:</b> Deutscher Tischtennis-Bund, English Table Tennis Association, Österreichischer Tisch-Tennis Verband, Fédération Roayle Belge de Tennis de Table, Bulgarian Table Tennis Federation, Cyprus Table Tennis Association, Danish Table Tennis Association, Table Tennis Scotland, Real Federacion Espanola de Tenis de Mesa, Estonian Table Tennis Association, Finnish Table Tennis Association, Fédération Française de Tennis de Table, Hellenique Table Tennis Association, Hungarian Table Tennis Association, Irish Table Tennis Association, Italian Table Tennis Federation, Table Tennis Federation of Latvia, Lithuanian Table Tennis Federation, Fédération Luxembourgeoise de Tennis de Table, Malta Table Tennis Association, Nederlandse Tafeltennisbund, Table Tennis Association of Wales, Polish Table Tennis Federation, Federacao Portuguesa de Tenis de Mesa, Czech Table Tennis Association, Romanina Table Tennis Federation, Slovak Table Tennis Association, Slovenian Table Tennis Association, Swedish Table Tennis Association</p>
	<b>1 answer (3.4%)</b>
<b>TAEKWONDO</b>	<p><b>27 federations contacted:</b> Deutsch Taekwondo Union, Austrian Taekwondo Federation, Belgian Taekwondon Federation, Bulgarian Taekwondo Federation, Cyprus Judo and Taekwondo Federation, Dansk Taekwondo Forbund, Federacio Espanola de Taekwondo, Estonian Taekwondo Federation, Finnish Taekwondo Federation, Fédération Française de Taekwondo et disciplines associées, British Taekwondo Control Board, Hellenic Taekwondo Federation, Hungarian Taekwondo Federation, Irish taekwondo Union, Federazione Italiana Taekwondo, Latvia Taekwondo Federation, Lithuanian Taekwondo Federation, Fédération Luxembourgeoise des Arts Martiaux, Malta Taekwondo Federation, Taekwondo Bond Nederland, Polish Taekwondo Federation, Federação Portuguesa de Taekwondo, Czech Taekwondo Federation, Romanian Taekwondo Federation, Slovak Taekwondo Association, Slovenian Taekwondo Association, Swedish Taekwondo Federation</p>
	<b>0 answer</b>



<b>TENNIS</b>	<b>27 federations contacted:</b> Deutscher Tennis Bond, Österreichischer Tennisverband, Fédération Royale Belge de Tennis, Bulgarian Tennis Federation, Cyprus Tennis Federation, Dansk Tennis Forbund, Real Federaci3n Espa3ola de Tennis, Estonian Tennis Association, Suomen Tennisliitto, Fédération Française de Tennis, Hellenic Tennis Federation, Magyar Tenisz Sz3vetseg, Tennis Ireland, Federazione Italiana Tennis, Latvian Tennis Union, Lithuanian Tennis Association, Fédération Luxembourgeoise de Tennis, Malta Tennis Federation, Koninklijke Nederlandse Lawn Tennis Bond, Polski Zwi3zek Tenisowy, Federaç3o Portuguesa de T3nis, Czech Tenisova Asociace, Federatia Romana de Rugby, The Lawn Tennis Association, Slovak Tennis Association, Slovene Tennis Association, The Swedish Tennis Association
	<b>0 answer</b>
<b>TRIATHLON</b>	<b>11 federations contacted:</b> Deutsche Triathlon Federation, Austrian Triathlon Federation, Belgium Triathlon and Duathlon Federation, Bulgarian Triathlon Federation, Cyprus Triathlon Federation, Danish Triathlon Federation, Estonian Triathlon Federation, British Triathlon Federation, Fédération Luxembourgeoise de Triathlon, Federaç3o de Triatlo de Portugal, Czech Triathlon Federation
	<b>0 answer</b>
<b>VOLLEYBALL</b>	<b>29 federations contacted:</b> German VolleyBall Association, English VolleyBall Association, Osterreichischer Volley Verband, Fédération Royale de VolleyBall, Bulgarian VolleyBall Federation, Cyprus VolleyBall Association, Dansk VolleyBall Forbund, Scottish VolleyBall Association, Real Federacion Espanola de Voleibol, Eesti Vorkpalli Liit, Lentopaleoliitto R.Y, Fédération Française de VolleyBall, Hellenic VolleyBall Federation, Hungarian VolleyBall Federation, VolleyBall Association of Ireland, Federazione Italiano Pallavolo, Latvijas Volejbola Federacija, Lithuanian VolleyBall Federation, Fédération Luxembourgeoise de VolleyBall, Malta VolleyBall Association, Nederlandse VolleyBall Bond, Welsh VolleyBall Association, Polski Zwi3zek Pilki Siatkowej, Federaç3o Portuguesa de Voleibol, Czech VolleyBall Federation, Federatia Romana de Volei, Slovak VolleyBall Federation, Slovenian VolleyBall Federation, Sweden VolleyBall Federation
	<b>3 answers (10.3%)</b>
<b>WRESTLING</b>	<b>27 federations contacted:</b> Deutscher Ringer-Bund e.V, Osterreichischer Amateurringer Verband, Ligue Roayle Belge de Lutte, Fédération Bulgare de Lutte Amateur, Cyprus Wrestling Association, Danmarks Brydeforbund, Federacion Espanola de Lucha, Estonian Wrestling Federation, Finnish Wrestling Federation, Fédération Française de Lutte, British Wrestling Association Limited, Fédération Hellenique de Lutte, Hungarian Wrestling Federation, Irish Amateur Wrestling Association, Federazione Italiana Judo Lotta Karate Arti Marziali, Latvian Wrestling Association, Lithuanian Wrestling Federation, Fédération Luxembourgeoise de Lutte, Malta Amateur Wrestling Federation, Nederlandse Olympische Worrstel Bond, Fédération Polonaise de Lutte, Federaç3o Portuguesa de Lutas Amadoras, Fédération Tchèque de Lutte, Fédération Roumaine de Lutte, Slovak Wrestling Federation, Wrestling Association of Slovenia, Swedish Wrestling Federation
	<b>1 answer (3.7%)</b>

### 3. National Olympic Committees and Sport Confederations

**In the 48 following countries:** Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, the Netherlands, Norway, Poland, Portugal, Republic of

Moldova, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Former Yugoslav Republic of Macedonia, Turkey, Ukraine, United-Kingdom

**18 answers (18.8%)**

#### 4. European and national sport leagues

SPORTS	EUROPEAN LEAGUES	NATIONAL LEAGUES
<b>BASKETBALL</b>	Union of European Leagues of Basketball (ULEB)	<b>11 leagues contacted:</b> BBL Germany, Basketball League, ÖBL Austria, ACB Spain, HEBA Greece, LEGA Italy, LKL Lithuania, FEB Holland, PLK Poland, LCB Portugal, ALK Czech Republic
	<b>0 answer</b>	
<b>FOOTBALL</b>	European Professional Football Leagues (EPFL)	<b>28 leagues contacted:</b> Österreichische Fußball Bundesliga, Russian Football Premier League, Pro League, Scottish Premier League, Bulgarian Professional Football League, Union of 1. SNL, Divisionsforeningen, Liga Nacional de Fútbol Profesional, The Premier League, Foreningen Svensk Elitfotboll, Veikkausliiga, Swiss Football League, Ligue de Football Professionnel, Professional Football League of Ukraine, Deutsche Fußball Liga GmbH, Welsh Premier League, Super League Greece, Lega Nazionale Professionisti, The Football League, Eredivisie NV, Union des Clubs Professionnels de Football, Norsk Toppfotball, Federatie Betaald Voetbal Organisaties, Polish Professional Football League, Association Professional Football League, Liga Portuguesa de Futebol Profissional, Lega Pro, Eircom League of Ireland
	<b>13 answers (44.8%)</b>	
<b>HANDBALL</b>		<b>6 leagues contacted:</b> Handball-Bundesliga, Handball Liga Austria, Ligue Francophone de Handball, Vlaamse Handbal Vereniging, Liga Asobal de balonmano, Ligue Nationale de Handball
		<b>0 answer</b>
<b>RUGBY</b>		<b>6 leagues contacted:</b> Rugby League Deutschland, Ligue Belge Francophone de Rugby, Scotland Rugby League, Rugby League Ireland, Wales Rugby League, Portuguese Rugby League
		<b>0 answer</b>

**5. Organisations representing agents**

SPORTS	REPRESENTATIVE ORGANISATIONS
BASKETBALL	<b>2 organisations contacted:</b> Association française des agents de basketball, Associazione Procuratori Pallacanestro
	<b>0 answer</b>
FOOTBALL	<b>6 organisations contacted:</b> Deutsche Fussballspieler Vermittler Vereinigung, The Association of Football Agents, Asociación Española de Agentes de Futbolistas, Union des agents sportifs du football, Associazione Italiana Agenti Calciatori e Societa', Pro Agent (NL)
	<b>2 answers (33.3%)</b>
RUGBY	<b>3 organisations contacted:</b> Association of Rugby Agents, Association des agents du Rugby, Intervals
	<b>0 answer</b>

**6. Organisations representing sportspersons**

SPORTS	REPRESENTATIVE ORGANISATIONS
BASKETBALL	<b>6 organisations contacted:</b> German Basketball Players Association (SP.IN), Spanish Basketball Players Association (ABP), Asociación de Jugadoras de Baloncesto (AJUB), Union des Basketteurs Professionnels (SNB), Greek Basketball Players Association (PSAK), Italian Basketball Players Association (GIBA)
	<b>3 answers (50%)</b>
CYCLING	<b>1 organisation contacted:</b> Cyclistes Professionels Associés (CPA)
	<b>0 answer</b>
FOOTBALL	<b>20 organisations contacted:</b> Professional Footballers Association, Vereinigung der Fussballer, Sporta V.S.B, Association of Bulgarian Footballers, Pancyprian Footballers Association, Spillerforeningen, Professional Footballers Association Scotland, Association des Footballeurs Esapgnols, Jalkapallon Pelaajayhdistys, Union nationale des footballeurs professionnels, Greek Union of Professional Footballers, Trade Union of Professional Footballers, Professional Footballers Association of Ireland, Association of Italian Footballers, Union of Dutch professional football players, Polski Związek Piłkarzy, Portuguese Players Union, Asociatia Fotbalistilor Amatori si Nonamatori, Slovenian players union, Swedish Footballers Union
	<b>3 answers (15%)</b>
GOLF	<b>1 organisation contacted:</b> The Professional Golfers' Associations of Europe Limited (PGAE)

	<b>0 answer</b>
<b>HANDBALL</b>	<b>1 organisation contacted:</b> European Handball Players Union (EHPU)
	<b>0 answer</b>
<b>RUGBY</b>	<b>4 organisations contacted:</b> Professional Rugby Players Association, Provale l'Union des joueurs de rugby professionnels, Italian Rugby Players Association, Welsh Rugby Players Association
	<b>1 answer (25%)</b>

## 7. Sports agents

<b>SPORTS</b>	<b>AGENTS</b>
<b>ATHLETICS</b>	<b>50 agents contacted in 8 member States: 4 answers (8%)</b>
<b>BASKETBALL</b>	<b>94 agents contacted in 9 member States: 5 answers (5.3%)</b>
<b>BOXING</b>	<b>12 agents contacted in 6 member States: 0 answer</b>
<b>FOOTBALL</b>	<b>1015 agents contacted in 12 member States: 14 answers (1.38%)</b>
<b>RUGBY</b>	<b>37 agents contacted in 4 member States: 5 answers (13.5%)</b>
<b>TENNIS</b>	<b>13 agents contacted in 2 member States: 2 answers (15.4%)</b>
<b><u>TOTAL:</u> 1221 agents contacted in 6 sports and 12 member States: 30 answers (2.46%)</b>	

## 8. Ministries

### **Ministries in charge of sport in the 27 member States**

8 answers (29.6%)

### **Ministries in charge of employment in the 27 member States**

1 answer (3.7%)

### **APPENDIX 3: Explanations on the Research Methodology used in the framework of the study**

The field of investigation of this study is both wide and quite unique as it concerns the 27 EU Member States as well as all the sports in which sports agents are active. A research methodology has been implemented in order to collect as much information as possible on the topic.

#### **The research methodology used for this study**

##### Bibliographical research

The team carried out bibliographical research to collect as many relevant texts, reports, qualitative and quantitative data as possible on the issue of sports agents in Europe. This research was made on the Internet, in libraries, as well as with the stakeholders contacted in the framework of the study. The bibliography which resulted from this process can be found in appendix 9.

##### Contacts with various national correspondents in the 27 EU Member States

The team contacted national correspondents in the 27 EU Member States to collect qualitative and quantitative data on the issue of sports agents and to identify and facilitate further contacts with the most relevant actors to interview.

##### Questionnaires

The team consulted a large number of stakeholders in order to collect as much information and points of view as possible. Various types of questionnaire were prepared according to the nature, characteristics and functions of the actors contacted:

- Questionnaires to national Ministries in charge of sports and employment/social affairs;
- Questionnaires to the Olympic national committees and the national sports confederations;
- Questionnaires to national sport federations and leagues;
- Questionnaires to European and international sport federations;
- Questionnaires to unions of European sport leagues;
- Questionnaires to sports agents;
- Questionnaires to representative structures of sports agents;
- Questionnaires to representative structures of sportsmen/athletes.

These questionnaires were elaborated in English and French and were tested with actors within the sports movement and with future interviewees before being sent.

A number of sports and countries were selected for the sending of questionnaires to sports agents, to their representative structures and to the representative structures of sportsmen/athletes:

- 3 major collective sports in which sports agents intervene: football, basketball and rugby;
- 3 major individual sports in which sports agents intervene: boxing, athletics and tennis;
- The most populated countries in which professional sport is the most developed: Germany, United Kingdom, Spain, Italy, and France;
- Countries that include important trends with regard to the level of the organisation of sport or represent European "regions": Greece, Slovenia, Poland, Finland, Lithuania and Romania.

Moreover, the above-mentioned countries have various types of legislation applying to the sports agents' activity: specific regulations, regulations on the employment placement activities, and ordinary law.

Questionnaires were sent to the following stakeholders:

- Ministries responsible for sports in the 27 EU Member States;
- Ministries responsible for employment/social affairs in the 27 EU Member States;
- National federations – in the 27 EU Member States – of the following sports: athletics, badminton, basketball, boxing, cricket (only in the United Kingdom), cycling, equestrian sports, fencing, football, futsal (only in Belgium, Bulgaria, Czech Republic, France, Italy, and the United Kingdom), golf, gymnastics, handball, hockey, ice hockey, judo, motor sports, rowing, rugby, skiing, snowboard (only in Austria, Belgium, Czech Republic, Finland, France, Hungary, Italy, Slovakia, Spain, Sweden and the United Kingdom), surfing (only in Austria, France, Ireland, Italy, the Netherlands, Portugal, Sweden and Wales), swimming, table tennis, taekwondo, tennis, triathlon (only in Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Germany, Luxembourg, Portugal and the United Kingdom), volleyball and wrestling.
- National leagues in the following sports: basketball (in Austria, Belgium, Czech Republic, Germany, Greece, Italy, Lithuania, the Netherlands, Poland, Spain and the United Kingdom), football (in the 27 EU Member States), handball (in Austria, Belgium, France, Germany and Spain) and rugby (in Belgium, Germany, Ireland, Italy, Portugal, Scotland and Wales).
- International federations of the following sports: athletics, badminton, basketball, beach soccer, boxing, cricket, cycling, equestrian sports, fencing, football, futsal, golf, gymnastics, handball, hockey, ice hockey, judo, motorcycling, motor sports, rowing, rugby, skiing, snowboard, surfing, swimming, table tennis, taekwondo, tennis, triathlon, volleyball and wrestling.
- European federations of the following sports: athletics, badminton, basketball, beach soccer, boxing, cycling, fencing, football, futsal, golf, gymnastics, handball, hockey, judo, rugby, sailing, surfing, swimming, table tennis, taekwondo, tennis, triathlon, volleyball and wrestling.
- European basketball and football leagues.
- National Olympic Committees in 49 European countries.
- National Sports Confederations in 49 European countries.
- Sports agents in athletics, basketball, boxing, football, rugby and tennis in Finland, France, Germany, Greece, Italy, Lithuania, Poland, Slovenia, Spain, Romania and the United Kingdom.
- Representative structures of sports agents in basketball (one country), football (5 countries) and rugby (one country).
- Representative structures of sportsmen/athletes at European level in basketball, cycling, handball and golf, and at national level in basketball (in 6 countries), football (in 20 countries) and rugby (in 4 countries).

The questionnaires to the National Olympic Committees and the National Sports Confederations were sent via the EU office of the European Olympic Committees, which was associated with the study. The questionnaires to the national football leagues were sent by the European Professional Football Leagues (EPFL).

The list of the actors of the sport movement contacted through questionnaire can be found in Appendix 2.

### Qualitative interviews

Interviews with various actors (National Olympic Committees, international and European sports federations, representative bodies of sportsmen and sports agents, national sports federations, national sports leagues, sports agents, professional sportsmen/athletes, managers of sports clubs, professional coaches, journalists, etc.) were conducted throughout the study, either in the framework of face-to-face discussions or on the phone. A large number of stakeholders were interviewed by the members of the consortium. The list of the interviewed actors can be found in appendix 1.

## **Research constraints**

### A relatively low answer rate to the questionnaires

Given the rather technical nature of the topic and the relatively weak implication of some actors, the answer rate to the questionnaires remains quite low (approximately 10% excluding sports agents); moreover, as in any other study, the questionnaires have often been partially answered.

### Lack of literature on the issue of sports agents in Europe

Little academic work has been carried out on the topic of sports agents in Europe.

### Diversity of the (cultural) sources and problem of comparison

The data - in particular quantitative – were collected through the various methods previously mentioned (questionnaires, interviews, literature) and from various sources (federations, States, agents, etc.), which can engender problems of coherence related to the different sporting cultures. For example, while it is relatively easy to provide the number of official agents active in football in France (as they have to have a licence), it is much more difficult to provide such figures for agents active in golf in Spain (since no regulation and no registration system exists neither in golf, nor in Spain at the public level). Moreover, comparisons can be difficult to make due to the regulatory contexts and the definitions of sports agents which can be very different from one sport or country to another.

### A rather unknown field of investigation

The elements brought by the various stakeholders into the field of investigation of the study are often incomplete or contradictory. For example, few actors are aware of the ordinary law provisions that apply to sports agents. The volume of the sports agents' activity is not quantified, either in terms of cross-border worker flows or economic volume generated by the activity. Moreover, actors of the sports movement are not very keen to provide economic and financial data – more particularly regarding the fees paid to the agents. Finally, quantitative information is not always brought up to date, even by the actors who are responsible for providing such information.

The above mentioned limits result from the wide scope of the field studied, from the contexts that are sometimes very different from one sport/country to another, and from the levels of knowledge on the issue of sports agents, which also varies from one actor to another. The collected data and information can sometimes be non-exhaustive. Nevertheless, they make it possible to define tendencies and issues related to the sports agents' activities in Europe.

**APPENDIX 4: Demographic characteristics and GDP per capita of the EU Member States**

<b>Member States</b>	<b>Population<sup>322</sup> (Million inhabitants)</b>	<b>GDP per capita (PPS) <sup>323</sup> (EU 27 = 100)</b>
Austria	8,36	123,1
Belgium	10,75	114,6
Bulgaria	7,61	40,1
Cyprus	0,79	94,6
Czech Republic	10,47	80,4
Denmark	5,51	118,3
Estonia	1,34	67,2
Finland	5,33	115
France	64,35	107,3
Germany	82,05	115,8
Greece	11,26	95,3
Hungary	10,03	62,9
Ireland	4,47	139,5
Italy	60,05	100,5
Latvia	2,26	55,7
Lithuania	3,35	61,3
Luxembourg	0,49	252,8
Malta	0,41	76,4
Netherlands	16,49	134,6
Poland	38,14	57,5
Portugal	10,63	75,3
Romania	21,50	45,8
Slovakia	5,41	71,9
Slovenia	2,03	89,8
Spain	45,83	103,9
Sweden	9,26	121,4
United Kingdom	61,63	117,5

<sup>322</sup> Source Eurostat – 2009.

<sup>323</sup> Source Eurostat – 2008. The gross domestic product (GDP) is a measure of the economic activity. It is defined as the value of all the goods and services produced minus the value of the goods and services used in their creation. The volume index of the GDP per capita in purchasing power standards (PPS) is provided with regard to the European Union's average (EU-27) fixed at 100. If a country's index is higher than 100, the level of the GDP per capita for this country is higher than the EU's average and vice versa. The basic figures are provided in PPS, i.e. in a common currency which eliminates the differences between the countries in terms of price levels, allowing relevant comparisons of the GDP in volume between the different EU countries.



**APPENDIX 5: Ranking of the 50 best paid football players in Europe in 2008**

	<b>Player</b>	<b>Club</b>	<b>Annual gross wage* in million Euros (€ M)</b>
1	Zlatan Ibrahimovic	Inter Milan	€ 9 M
2	Ricardo Kaká	AC Milan	€ 9 M
3	Lionel Messi	FC Barcelona	€ 8.4 M
4	John Terry	Chelsea FC	€ 7.6 M
5	Frank Lampard	Chelsea FC	€ 7.6 M
6	Thierry Henry	FC Barcelona	€ 7.5 M
7	Samuel Eto'ó	FC Barcelona	€ 7.5 M
8	Cristiano Ronaldo	Manchester United	€ 6.8 M
9	Ronaldinho	AC Milan	€ 6.5 M
10	A. Shevchenko	AC Milan	€ 6.5 M
11	Michael Ballack	Chelsea FC	€ 6.5 M
12	Steven Gerrard	Liverpool FC	€ 6.5 M
13	Rio Ferdinand	Manchester United	€ 6.5 M
14	Raul Gonzalez	Real Madrid	€ 6.4 M
15	Ruud Van Nistelrooy	Real Madrid	€ 6.4 M
16	Iker Casillas	Real Madrid	€ 6 M
17	Frederic Kanouté	Seville FC	€ 6 M
18	Wayne Rooney	Manchester United	€ 5.9 M
19	Michael Owen	Newcastle United	€ 5.9 M
20	Fabio Cannavaro	Real Madrid	€ 5.8 M
21	Robinho	Manchester City	€ 5.7 M
22	Francesco Totti	AS Roma	€ 5.5 M
23	Luca Toni	Bayern Munich	€ 5.5 M
24	Arjen Robben	Real Madrid	€ 5.4 M
25	Ashley Cole	Chelsea FC	€ 5.4 M
26	Deco	Chelsea FC	€ 5.4 M
27	Fernando Torres	Liverpool FC	€ 5.4 M
28	Carlos Tevez	Manchester United	€ 5.1 M
29	Adriano	Inter Milan	€ 5 M
30	Patrick Vieira	Inter Milan	€ 5 M
31	Charles Puyol	FC Barcelona	€ 5 M
32	Andres Iniesta	FC Barcelona	€ 5 M
33	Xavi	FC Barcelona	€ 5 M
34	Sergio Aguero	Atletico Madrid	€ 5 M
35	Gianluigi Buffon	Juventus	€ 5 M
36	Willy Sagnol	Bayern Munich	€ 5 M
37	David Beckham	AC Milan	€ 5 M
38	Dimitar Berbatov	Manchester United	€ 4.9 M
39	Andrei Arshavin	Arsenal FC	€ 4.9 M
40	Didier Drogba	Chelsea FC	€ 4.9 M

41	Nicolas Anelka	Chelsea FC	€ 4.9 M
42	Paul Scholes	Manchester United	€ 4.9 M
43	A. Del Piero	Juventus	€ 4.8 M
44	Karim Benzema	Olympique Lyonnais	€ 4.8 M
45	Lúcio	Bayern Munich	€ 4.8 M
46	Frank Ribery	Bayern Munich	€ 4.8 M
47	Joe Cole	Chelsea FC	€ 4.6 M
48	Ryan Giggs	Manchester United	€ 4.6 M
49	Xabi Alonso	Liverpool FC	€ 4.6 M
50	Jamie Carragher	Liverpool FC	€ 4.6 M

(Source: [www.futebolfinance.com](http://www.futebolfinance.com) updated. The ranking was made in June 2008 as a forecast of the players' wages for the season 2008/2009)

\* The figures are unofficial estimations; they vary according to the rate of exchange used and can be subjected to new agreements or renewals of contracts.

## APPENDIX 6: Typological description of the mechanisms governing the sports agents' activities in the 27 EU Member States (Country-by-Country Reports)

### AUSTRIA

#### 1. National regulations

##### 1.1. State regulations

###### 1.1.1. Specific regulation: NO

It is to be mentioned however that a bill on professional sport is being elaborated. Article 10 of this bill refers to the sports agent's activity.

###### 1.1.2. General regulation on private placement: YES

- Commercial law (Gewerbeordnung - GewO)
- Labour-market promotion act (Arbeitsmarktförderungsgesetz – 2002)
- Decree on placement offices/agencies (Arbeitsvermittlungs-Verordnung) (BGBl. II Nr. 26/2003)

###### 1.1.3. Ordinary law: YES

- Law on brokerage (Maklergesetz)

##### 1.2. Regulations enacted by national sport institutions

###### 1.2.1. Sport federations: YES

- Austrian football federation
- Austrian handball federation

###### 1.2.2. Olympic committee: NO

##### 1.3. Others (code of professional conduct, collective agreement...) : NO

#### 2. Definition

The placement activity covers any activity carried out to connect job-seekers with employers and to establish a working relationship, unless such activity is conducted occasionally, for free or in a number of limited cases. This definition also applies to the placement of Austrian workers abroad and foreign workers in Austria (Labour-market promotion act, § 2).

Draft bill on professional sport: is considered as a professional sportsperson agent any individual or legal entity who, for remuneration, connects professional sportspersons and sports partners to set up a relationship in professional sports (Article 10).

#### 3. Conditions governing the access to the sports agent's activity

##### 3.1. Authorisation system (licence, permit, registration, declaration...)

The workforce placement activity carried out by individuals or legal persons for profit requires a **licence / a permit** (Commercial Law, § 94 and 97).

To exercise such an activity it is required:

- For individuals, to have the nationality of a EEA Member State and to be resident in one of the EEA Member States;
- For legal persons and registered companies:
  - a) to have their headquarters or main place of business in a EEA Member State;
  - b) members legally representing the legal person or managing it, must be nationals of a EEA Member State and reside in a EEA Member State.

Draft bill on professional sport: the draft bill does not provide any specific authorisation system. Article 6.4 refers to sport federations, which benefit from a discretionary power in this matter.

### **3.2. Status of foreign agents (EU and non-EU citizens)**

Foreign agents can operate a placement activity in Austria if they are nationals of one of the EEA Member States and are resident in this state.

## **4. Conditions governing the operation of the sports agent's activity**

Draft bill on professional sport: professional sportspersons' agents can act only under the regulations on intermediaries laid down by a sport federation.

### **4.1. Contract**

The legislation in force does not impose any written contract for the representation contract. In the event of a verbal contract, it is up to the agent to prove the existence of an agreement with the client.

Draft bill on professional sport: The representation contract must be a written document (Article 10).

The draft bill provides for the representation contract to be signed for a limited or an unlimited period, and terminated by both parties respecting one month notice period.

### **4.2. Remuneration**

Draft bill on professional sport: the minimum remuneration for the sports agent's work must be written in the contract (Article 10).

### **4.3. Prohibition against dual agency**

The sports agent can only act on behalf of one of the parties.

## **5. Controlling sports agent's activity**

### **5.1. Sanctions (criminal, civil, administrative / disciplinary)**

Draft bill on professional sport: The representation contract may become invalid notably in case of non compliance with regulations of the sport federation concerned (Article 10). In the event of nullity of the contract, the agent cannot claim any compensation.

<b>BELGIUM</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: NO**

Neither the Belgian Federal State, nor the federated entities (Flemish Region, Walloon Region, Brussels-Capital Region, German-speaking Community) have adopted regulations that specifically or exclusively concern sports agents. However, some particular rules related to professional or remunerated athletes have been inserted in the different regional regulations concerning private placement in general.

**1.1.2. General regulation on private placement: YES**

Different Belgian federated entities have a rather detailed regulation concerning workforce private placement for financial gain. These regulations are applicable to sports agents. They contain specific rules on professional and/or remunerated sportspersons placement.

- *Flemish Region*
  - Decree of 13 of April 1999 related to private placement in the Flemish Region ;
  - Decree of the Flemish Government of 8 June 2000 implementing the decree of 13 of April 1999 concerning private placement in the Flemish Region ;
  - Decree of 12 of December 2003 modifying the decree of 13 April 1999 concerning private placement in the Flemish Region.
- *Walloon Region :*
  - Decree of 3 of April 2009 concerning the registration or licensing of placement agencies
- *Brussels-Capital Region :*
  - Decree of the Brussels-Capital Region of 15 of April 2004 implementing the ordinance of 26 of June 2003 concerning the joint management of labour-market in Brussels-Capital Region.
- *German-speaking Community :*
  - Decree of 16 December 2006 concerning the permit of private placement agencies

NB: Belgium has ratified ILO's (International Labour Organisation) C181 Private Employment Agencies Convention.

**1.1.3. Ordinary law: YES**

- Civil code
- Commercial code

## 1.2. Regulations enacted by national sport institutions

### 1.2.1. Sports federations: YES

- Belgian athletics federation
- Belgian football federation (FIFA players' agents regulations)

### 1.2.2. Olympic committee: NO

## 1.3. Others (code on professional conduct, collective agreement...): NO

## 2. Definition

Flemish Region: the placement activity is generally defined as an activity exercised by an intermediary, natural or legal person that aims at helping workers to find a new employment or employers to find employees (Decree of 13 April 1999, article 2-1° a).

Walloon Region: the placement activity of professional sportspersons is defined as an activity exercised by a natural or a legal person consisting of job-seeking or hiring and selecting on behalf of professional sportspersons or persons treated as such, fulfilling the conditions of article 2, § 1 of the law of 24 February 1978 related to employment contract of remunerated sportsperson, or acting on behalf of employers with a view to employing professional sportspersons or persons treated as such. Nevertheless, the placement agency does not become a party of the working relationship (Decree of 3 April 2009, article 1-12°).

Brussels-Capital Region: the placement activity of remunerated sportspersons is defined as a specific activity of selection and recruitment of remunerated athletes, i.e. persons who, for remuneration, commit themselves to prepare and to participate in competitions or sport events under the authority of another person, as well as persons responsible for the training during the preparation period (Decree of 15 April 2004, article 2 § 1, 2°).

German-speaking Community: the placement activity of sportspersons is defined as an activity exercised by a natural or a legal person that consists in placing sportspersons in view to make possible their participation in competitions, tournaments, championships, for which they are paid (Decree of 16 December 2006, article 1, 9°).

## 3. Conditions governing the access to the sports agent's activity

### 3.1. Authorisation system (licence, permit, registration, declaration...)

Flemish Region: private placement activity requires an **approbation** issued by the regional Ministry of Labour (Decree of 13 April 1999, article 7 § 3). In principle, this is an unlimited permit. The article 2 § 1 of the Decree of 8 June 2000 provides for the concession of a **separate approbation** for the placement of professional sportspersons.

In order to exercise professional sportsmen placement activities, the person who takes professional responsibility, or at least one of its nominees or agents, must meet at least one of the following conditions:

- 1° have a professional experience of at least five years in the field of human resources management in a relevant industry;

2° have a level of basic high education covering two cycles attested by a diploma and a professional experience of at least five years in the field of company management (Decree of 8 June 2000, article 6 § 2).

Walloon Region: the placement activity of professional sportspersons or persons treated as such, is subject to **prior registration** with the Walloon government (Decree of 3 April 2009, article 3 § 1).

Brussels-Capital Region: the placement activity of remunerated sportspersons requires a **specific approbation**.

The person who takes professional responsibility or at least one of their nominees or agents, must have at least one of the following competences:

- a professional experience of at least five years in the field of human resources management in the sports industry;
- a professional experience of at least ten years acquired in positions related to the recruitment and selection or job placement of temporary workers;
- a level of high education covering at least one cycle and attested by a diploma or a certificate and to have a professional experience of at least two years acquired in positions related to human resources management or recruitment selection and job placement (Decree of 15 April 2004, article 7 § 4).

German-speaking Community: the placement activity needs a prior **approbation** from the German-speaking government (Decree of 16 December 2006, article 3 § 1). Except in some specific cases, this approbation has an unlimited validity (article 7 § 2).

### 3.2. Exempt individuals (lawyers, relatives, etc.)

Brussels-Capital Region: an individual who has a kinship or first degree affinity with the placed sportsperson is not assimilated to a private employment agency and therefore is not obliged to obtain an approbation (Decree of 15 April 2004, article 7 § 4).

### 3.3. Incompatibilities/incapacities

Flemish Region: the placement agency cannot count among its leaders or main shareholders, to the extent that in practice they exercise the responsibilities of administrators, individuals:

- Who, for a period of five years preceding the approbation or during its validity period, were held responsible for commitments or debts of a bankrupted company, or have repeatedly exercised functions of manager or legal representative in a bankrupted company ;
- Who, for a period of five years preceding the approbation or during its validity period repeatedly or seriously infringed their fiscal or social obligations, or legal rules and regulations related to the activity of a private placement office ;
- Who are not entitled to their full rights as citizens (this incompatibility is also applicable to individuals) (Decree of 12 December 2003, article 2 1°).

German-speaking Community: placement agency must not be in a state of bankruptcy or insolvency, having an ongoing bankruptcy proceeding, or having asked for and obtained an arrangement with creditors (« concordat judiciaire »).

Agency executives cannot be individuals:

- a) who are staff members or members of the board of directors of public employment services ;

- b) who, by the legislation related to the prohibition for certain convicted or bankrupted persons to exercise certain functions, professions or activities, were forbidden to exercise such functions, professions or activities ;
- c) who, for a five years period preceding the approbation request, took over engagements or debts of a bankrupted company ;
- d) who are not entitled to their full rights as citizens;
- e) who, for a five years period preceding the approbation request, did not fulfil the obligations mentioned in this decree ;
- f) who, for a period of five years preceding the approbation request, did not fulfil their fiscal or social obligations (Decree of 16 December 2006, article 4).

### 3.4. Status of foreign agents (EU and non-EU citizens)

Flemish Region: when the approbation request comes from a placement office established in the EU, it has to be accompanied by documents certifying that the office meets equivalent conditions to those foreseen in the Flemish regulation (Decree of 8 June, article 4 § 4). This obligation is also applicable to the placement offices established in the Brussels-Capital Region or Walloon Region (article 4 § 3).

Placement offices established outside the EU have to present for their permit request the same documents as those required for the placement offices established in the Flemish Region. In addition, they must prove that they exercise a placement activity, within the meaning of Flemish regulation, in their country of origin (article 4 § 5).

Walloon Region: to be registered, the placement service provider established outside the Walloon Region has to provide authorities with some data, and in particular proof of a licence, a approbation, a registration, a prior declaration or any other equivalent official documents authorising it to exercise a placement activity in the State of origin (Decree of 3 April 2009, article 3 § 1).

Brussels-Capital Region: the approbation request coming from private placement agencies (individuals or legal entities) established outside the Brussels-Capital Region has to be accompanied by a certain number of documents, including the attestation of the competent public authority, dated maximum six months before the date of application, certifying that the agency has a public approbation allowing it to exercise the mentioned employment activities in its region or country, in application of a legislative act or specific regulation (Decree of 15 April 2004, article 9 § 2).

German-speaking Community: to obtain the approbation, the private placement agency that is not permanently established in the German-speaking Region, has to fulfil the following conditions:

- 1° if permanently established in the Brussels-Capital Region, the Flemish Community or the Walloon Region under equivalent conditions to those fixed in this decree. The Government decides on the equivalence;
- 2° if permanently established in an EU Member State or an EEA Member State, it has to prove that it fulfils the equivalent permit conditions as fixed by this decree in its country of origin. The Government decides on the equivalence;
- 3° if permanently established outside the EU or the EEA, it has to meet the approbation conditions fixed by the present decree and to prove at least two years activity as a placement agency in the country of origin (Decree of 16 December 2006, article 6 § 1).



## **4. Conditions governing the operation of the sports agent's activity**

### **4.1. Remuneration**

Flemish Region: in no case should the placement office accept or ask for any compensation from the worker. However, for certain categories of workers, the Flemish government can grant an exemption and raise this prohibition under the condition that this exemption serves the worker's interests.

The fee has to be determined by the placement office and the represented person. It represents either a percentage of the applicant's total gross income or a flat-rate amount. The applicant receives a copy of this convention. Regarding the placement of certain professional sportspersons, the maximum fee represents 7% of the professional sportsperson annual gross income (Decree of 8 June 2000, articles 7 § 1 and 2).

Walloon Region: in principle, the placement agency cannot accept or ask for any compensation from the worker. However, by way of derogation from that rule, and with the worker's prior written approval, the placement agency may receive compensation under the following conditions:

- 1° the fee has to be fixed in a convention signed between the registered placement agency and the worker. The convention should also provide for a cancellation clause;
- 2° the worker has to be provided with a copy of this convention;
- 3° the fee is calculated on the basis of a percentage of the sportsperson's total gross income or a flat-rate amount (Decree of 3 April 2009, articles 10 § 1 and 2).

Brussels-Capital Region: any approved placement agency can receive fees under the following conditions:

- 1° the fee is fixed in a convention between the agent and the sportsperson's employer;
- 2° the sportsperson has to be provided with a copy of this convention;
- 3° the fee is calculated on the basis of a percentage of the sportsperson's total gross income or a flat-rate amount;
- 4° the fee cannot correspond to more than 7% of the sportsperson's global gross income.

German-speaking Community: the private placement agency cannot accept or ask for any compensation from the worker, or ask the worker for a provision expenditure to provide him with a placement service (Decree of 16 December 2006, article 11 § 1 14°).

## **5. Controlling the sports agent's activity**

### **5.1. Activity report**

Flemish Region: professional sportspersons' placement agencies have to report their activities annually to the ministry, providing some data, notably:

- 1° concerning the agency: data related to individual agents/employees and any modification in this matter;
- 2° concerning the placement activities:
  - a) data related to the number of placements outside of Europe;
  - b) data related to the number of sportspersons the agency has contracted with;
  - c) rates applicable for the placement activities.

Walloon Region: professional sportspersons' placement agencies must submit to the Walloon government's services an annual report containing - among others - the following information:

- 1° the number of enrolled sportspersons at the beginning and at the end of the year;
- 2° the number of new sportspersons enrolled during the year;
- 3° the number of ongoing job-seeking missions, recruitment and selection of professional sportspersons at the beginning and at the end of the year;
- 4° the number of job-seeking missions, recruitment and selection of professional sportspersons started during that year (Decree of 3 April 2009, article 10 § 10).

The Government may suspend or withdraw the registration of a placement agency that does not comply with these provisions.

Brussels-Capital Region: a private employment agency exercising sportspersons placement activities has to submit to the government an annual report containing a number of information, including:

- 1° the number of remunerated sportspersons who have been placed, classified by sport discipline, level of education, status (worker/employee), workers' gender and age;
- 2° data related to incoming and outgoing international transfers, the number of placements carried out outside the EU;
- 3° the amount of fees received (Decree of 15 April 2004, article 16 § 8).

German-speaking Community: the private placement agency has to submit an annual activity report to the government containing a certain number of information (Decree of 16 December 2006, article 11 § 2).

## **5.2. Sanctions (criminal, civil, administrative/disciplinary)**

Flemish Region: the Ministry may withdraw the approbation by a motivated decision and for different reasons (non respect of the regulations, conviction of the requester or person responsible for forgery or others crimes and offences, collaboration with other Belgian or foreign agencies which do not have a registration or a valid approbation, etc) (Decree of 13 April 1999, article 11 § 1).

Are punished by imprisonment of 8 days or receive a fine from 100 to 5000 francs or only one of these two sentences:

- 1° a person who runs an agency without any regular approbation, as well as its employees or authorised representatives;
- 2° every person who runs an agency (with an approbation or not) as well as its employees or authorised representatives, and asks for or receives fees that are not foreseen by the terms of the present decree;
- 3° every person who, in full knowledge of all the considerations involved, uses the services of an agency that does not have a regular approbation;
- 4° every person, as well as its employees or authorised representatives, who runs an agency with or without a regular approbation, and prevents control foreseen under this decree;

Should the infringement be repeated, the maximum sentence may be doubled.

The executive of the agency, holder of an approbation or not, is the person liable for the payment of the fines for which his employees or authorised representatives were sentenced (articles 19, 20 and 21).

The law of 30th of June 1971 related to the administrative fines applicable in case of certain social law infringements, applies to any person who operates private placement activities in the Flemish Region without having a regular approbation as well as an employer who, in full knowledge of all the considerations involved, uses the services of an agency that does not have a regular approbation.

Walloon Region: after receiving the opinion of the advisory committee on placement issues, the government may suspend or withdraw the registration of the registered private placement agent, for different reasons (infringement of the rules on remuneration, collaboration with an agency that is not properly registered, failure to provide the annual report, etc) (Decree of 3 April 2009, article 13).

A penalty of imprisonment from 8 days to one year and / or a fine of €100 to €5,000 or one of these two penalties applies to:

- The person who runs an employment agency without prior registration;
- The person who runs a registered placement agency but demands from the worker fees, contributions, admission or registration fees other than those authorised under this decree;
- The person who runs a legally registered placement agency and does not meet the obligations required under this decree (article 16 § 1).

Should the infringement be repeated, the maximum sentence may be doubled (article 17).

In the absence of criminal prosecutions, the government may impose on the persons concerned administrative fines that may range from €250 to €2,000 (article 16 § 2).

Brussels-Capital Region: acting on a proposal of the responsible Minister and after receiving a reasoned opinion of the Economic and Social Council of the Brussels-Capital Region, the government can suspend or withdraw the approbation (Ordinance of 15 April 2004, article 13 § 4).

German-speaking Community: the government can suspend or withdraw, through a reasoned decision, the approbation of private placement agencies that do not comply with regulations (Decree of 16 December 2006, article 17 § 1).

Are punished by imprisonment from 8 days to one year and / or a fine of €100 to € 5,000:

- 1° the private agencies that provide job placement services without approbation or pursue their activities despite a suspension or withdrawal of the approbation;
- 2 ° any person who asks for or accepts fees, contributions, admission or registration fees other than those determined by the regulation;
- 3 ° any person who hinders or prevents the control foreseen under the regulation;
- 4° any person who provides a job placement activity regardless of the rules, acting on his behalf or on behalf of a principal (article 20).

Should the infringement be repeated, the maximum penalty may be doubled (article 21).

The director, in case of a legal person, or the head of a private placement agency, in case of an individual, is the person liable for the payment of criminal fines to which his employees or authorised representatives were sentenced (article 22).

The law of 30<sup>th</sup> June 1971 on administrative fines applicable in case of infringements of certain social legislation applies in German-speaking Region to private placement agencies that are guilty of the offences mentioned above (article 24).

<b>BULGARIA</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: YES**

Law on Physical Education and Sport of 9 July 1996. This law has been amended several times since its promulgation. Article 35 refers to sports agents.

**1.1.2. General regulation on private placement: YES**

- Act on employment promotion, 2002 (articles 26 and following)

NB: Bulgaria has ratified ILO's C181 Private Employment Agencies Convention.

**1.1.3. Ordinary law: YES**

- Civil code (contract law)

**1.2. Regulations enacted by national sport institutions****1.2.1. Sport federations: YES**

- Bulgarian basketball federation
- Bulgarian football federation

**1.2.2. Olympic committee: NO****1.3. Others (code of professional conduct, collective agreement...): NO****2. Definition**

Representation services for employment placement cover information and consultation provision to job seekers and employers (Act on employment promotion, article 26). These services can be provided by individuals or legal persons.

According to article 35d of the Act of 9 July 1996, as amended on 30 May 2008, third persons can be intermediary in the negotiations for the acquisition or transfer of "competition rights" if they meet the following conditions:

- be registered as a tradesman;
- have a contract with a sport club or an individual willing to acquire the status of a sportsperson or change club.

The "competition rights" are defined in article 35 b of the Act as:

1. A mix of the athlete's right to take part in training and competitions involving the sport club, as well as the rights related to the participation to those competitions;
2. An athlete's competition rights can be transferred from the club to which he/she is registered/enrolled or may be temporarily given to another club, but only after the athlete's clear written agreement.

NB: Bulgarian legislation on sport makes the distinction between "competition rights" and "transfer rights". Article 35 of the 1996 Act seems to limit sports agents' involvement in the negotiations only to "competition rights".

### **3. Conditions governing the access to the sports agent's activity**

#### **3.1. Authorisation system (licence, permit, registration, declaration...)**

The Act on employment promotion requires a prior **registration** with the National Agency for Employment and a permit issued by the Ministry of Labour, in order to operate a private employment placement in Bulgaria for profit.

### **4. Conditions governing the operation of the sports agent's activity**

#### **4.1. Contract**

The registered agency must sign a representation contract with the job seeker or the employer (Act on employment promotion, article 28). If the contract was concluded with a foreign employer, it must be registered with the National Agency for Employment.

#### **4.2. Remuneration**

The Act on employment promotion stipulates that the agency cannot receive any remuneration from the job seeker.

### **5. Controlling the sports agent's activity**

#### **5.1. Sanctions (criminal, civil, administrative/disciplinary)**

Any individual or legal person acting as an intermediary for a job placement without prior registration is liable to financial penalties (Act on employment promotion, article 81).

**CYPRUS**

**1. National regulations**

**1.1. State regulations**

**1.1.1. Specific regulation: NO**

**1.1.2. General regulation on private placement: NO INFORMATION AVAILABLE**

**1.1.3. Ordinary law: NO INFORMATION AVAILABLE**

**1.2. Regulations enacted by national sport institutions**

**1.2.1. Sport federations: YES**

- Cyprus football federation (FIFA rules on players' agents)

**1.2.2. Olympic committee: NO**

**1.3. Others (code of professional conduct, collective agreement...): NO**

<b>CZECH REPUBLIC</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: NO**

The Sport Department of the Ministry of Youth, Education and Physical Education is responsible for the issue of sports agents, but it seems that for the moment this matter is controlled only by the sport federations.

**1.1.2. General regulation on private placement: YES**

- The Act of 13 May 2004 on employment, article 58.

NB: The Czech Republic has ratified ILO's C181 Private Employment Agencies Convention.

**1.1.3. Ordinary law: YES**

- Civil Code
- Commercial Code
- Labour Code

**1.2. Regulations enacted by national sport institutions****1.2.1. Sport federations: YES**

- Football association of the Czech Republic

**1.2.2. Olympic committee: NO****1.3. Others (code of professional conduct, collective agreement...): NO****2. Conditions governing the access to the sports agent's activity****2.1. Authorisation system (licence, permit, registration, declaration...)**

In order to run their activity, the private employment agencies (natural or legal persons) must have an **authorisation** (licence) issued by the Minister of Labour.

An authorisation may be issued to an individual, only if he/she meets certain conditions: to be at least 23 years old, not to have been convicted of intentional crime and of property theft, to have a university degree and / or some professional experience related to the placement activity (Act of 13 May 2004, article 60).

The same conditions are applicable to an individual acting as a legal representative of a legal person.

The authorisation request must be accompanied by the following documents: identity of the person, type of placement for which an authorisation is required, etc (article 61).

The authorisation is granted for a maximum of three years and is renewable.

Article 60-5 of the Act of 13 May 2004 refers to a specific regulation related to the recognition of professional qualifications obtained outside the Czech Republic.

### **3. Conditions governing the operation of the sports agent's activity**

#### **3.1. Remuneration**

In principle, the employment agency may not receive any remuneration from the job seeker it placed (Act of 13 May 2004, article 58).

### **4. Controlling the sports agent's activity**

#### **4.1. Sanctions (criminal, civil, administrative/disciplinary)**

The Minister must revoke the authorisation if the individual or the legal person no longer meets the conditions established by the law.

If the revocation of the permit has been decided for non compliance with the conditions to operate the activity, the natural or legal person concerned may only apply for a new authorisation three years after the revocation notification.



## DENMARK

### **1. National regulations**

#### **1.1. State regulations**

##### **1.1.1. Specific regulation: NO**

##### **1.1.2. General regulation on private placement: NO**

The Act of 10 June 2003 on the active commitment for employment, contains provisions on placement, but does not seem to govern the activity of private employment agencies.

##### **1.1.3. Ordinary law: YES**

- Danish Contracts Act, 1986

#### **1.2. Regulations enacted by national sport institutions**

##### **1.2.1. Sport federations : YES**

- Danish football federation (FIFA rules on players' agents)

NB: the Danish handball federation set up a system governing the sports agent's activity. In principle, it should enter into force on 1 January 2010.

##### **1.2.2. Olympic committee: NO**

#### **1.3. Others (code of professional conduct, collective agreement...): NO**

<b>ESTONIA</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: NO**

The law of 15 June 1998 on sports contains no provisions applicable to sports agents.

**1.1.2. General regulation on private placement : NO INFORMATION AVAILABLE****1.1.3. Ordinary law: YES**

- Estonian Law of Obligations Act, and in particular provisions on agency contract (§ 670 and following).

**1.2. Regulations enacted by national sport institutions****1.2.1. Sport federations: YES**

- Estonian football federation

**1.2.2. Olympic committee: NO****1.3. Others (code of professional conduct, collective agreement...): NO****2. Definition**

According to paragraph 670 of the Act related to obligations, the agent accepts, by means of an agency contract and in the interest and to the benefit of another person (the principal), independently and permanently, to negotiate or make contacts in the name and on behalf of the latter.

**3. Conditions governing the access to the sports agent's activity**

No information available.

**4. Conditions governing the operation of the sports agent's activity****4.1. Contract**

The provisions on licence agreements apply to agency contract, unless otherwise provided in the provisions of Chapter 38 of the Law related to obligations.

Each party in the agency contract has the right to require the other party to formalise the content of the contract in a signed document (Obligations Act, § 672). Any clause restricting this right is null and void.

**4.2. Remuneration**

According to paragraph 670 of the Act related to obligations, the person/organisation that appoints the agent is responsible to pay his/her fees. The agent is entitled to fees on all contracts concluded by person/organisation that appoints him/her.

According to paragraph 680 (1), if the agency fees have not been accepted, the standard local agency fees need to be taken into account, or alternatively, a reasonable amount. The fees must be based on the agent's performance.

<b>FINLAND</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: NO****1.1.2. General regulation on private placement: NO INFORMATION AVAILABLE**

NB: Finland has ratified ILO's C181 Private Employment Agencies Convention.

**1.1.3. Ordinary law: YES**

- Commercial Code (Commission contract)
- Law on contracts

**1.2. Regulations enacted by national sport institutions****1.2.1 Sport federation: YES**

- Finnish football federation
- Finnish basketball federation (regulation in the process of being drafted)
- Finnish ice hockey federation (rules developed jointly by the federation, the national league and the players' association in consultation with agents. This regulation provides for a registration system for the agents within the federation).

**1.2.2 Olympic committee: NO****1.3 Others (code of professional conduct, collective agreement...): NO****2. Conditions governing the access to the sports agent's activity**

NO INFORMATION AVAILABLE.

**3. Conditions governing the operation of the sports agent's activity****3.1. Contract**

The placement contract falls into the category of commission contracts governed by the Commercial Code. The latter does not require the commission contract to be concluded in a written form. The commission contract may be of a limited or unlimited duration. A minor is not allowed to sign a contract of that type, unless he is represented by his legal representatives.

The placement contract is also subject to the law on contracts, particularly in Chapter 2 concerning the « authorisation ».

**3.2. Remuneration**

The legislation provides no specific restriction on the agents' remuneration.

<b>FRANCE</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: YES**

- Sports Code, articles L. 222-5 to L. 222-11, articles R. 222-1 to R. 222-22; articles A. 222-1 to A. 222-14
- Draft Bill of 5 June 2008 regulating the sports agent profession (under review by the Parliament, the Senate adopted it at first reading)

**1.1.2. General regulation on private placement: NO**

The French Employment Code contains provisions on private placement, but as there is a specific regulation governing the sports agent profession, these general provisions on private placement do not apply to sports agents (Employment code, Article L. 5323-3).

**1.1.3. Ordinary law: YES**

- Civil Code, in particular articles 1984 and following related to agency contract

**1.2. Regulations enacted by national sport institutions****1.2.1. Sport federations: YES**

- French athletics federation
- French basketball federation
- French boxing federation
- French cycling federation
- French football federation
- French golf federation
- French handball federation
- French ice hockey federation
- French motorcycling federation
- French rugby federation
- French sailing federation
- French tennis federation
- French volleyball federation

NB: The regulations of these sport federations implement the state regulations. A federation has the obligation to set up an examination or to create a sports agents commission after receiving an application for a licence from a person who would like to operate as a sports agent in the relevant discipline.

### **1.2.2. Olympic committee: NO**

### **1.3. Others (code of professional conduct, collective agreement...): NO**

## **2. Definition**

Any person (natural or legal) carrying out occasionally or regularly for remuneration an activity in view of bringing together parties interested in signing a contract, related to paid sports activity (Sports Code, article L. 222-6).

Draft Bill: Activity of bringing together, for remuneration, parties interested in signing a contract related to the operation of sports or training activities or the signature of an employment contract in view of operating a remunerated sports activity (transfer contract).

## **3. Conditions governing the access to the sports agent's activity**

### **3.1. Authorisation system (licence, permit, registration, declaration...)**

The operation of the sports agent's activity is subject to a licence delivered by the competent federation. The licence is issued for three years and must be renewed after this period.

The licence can be issued to natural or legal persons.

Draft Bill: the licence is issued for an unlimited period. It can be issued only to natural persons.

### **3.2. Examination**

The licence is issued after a written examination composed of two parts: a general test on ordinary law matters (employment law, tax law, contract law, etc) and a separate test on legal provisions and regulations which are specific to sport as well as on sport federations, national or international regulations.

### **3.3. Incompatibilities/incapacities**

The sports agent profession is incompatible with the functions of management or coaching in a sport club employing remunerated sportspersons, or in a federation or body that has been established by it (for example a professional league). It does not make any difference whether these functions are performed for financial gain or on a voluntary basis (Sports Code, article L. 222-7). These incompatibilities are applicable for functions performed during the previous year.

Licence applicant must not have been subject to conviction for crime or other offences.

Are subject to the same incompatibilities or incapacities the sports agent's employees as well as the managers if the licence has been issued to a legal person (Sports Code, article L. 222-8).

Draft Bill: the incompatibilities are extended to shareholders or members of companies employing athletes for financial gain or organising sport events, as well as to persons who have been sanctioned by the competent federation for breaching ethics, moral or sport conduct rules; to representatives of companies employing athletes for profit, or organising sport events; federation representatives or representatives of body established by it; lawyers.

In addition, the draft bill provides for the person who operated as sports agent during the previous year, the prohibition to perform certain functions mentioned above.

NB: the incompatibility with the lawyer profession is currently debated in France.

### **3.4. Status of foreign agents (EU and non-EU citizens)**

EU or EEA nationals can operate as sports agents in France on a permanent basis, after they have been officially recognised/obtained their licence under the same conditions as French nationals (written test) or after presentation of a licence delivered in their country of origin, diplomas, or professional qualification certificates giving them the right to operate the sports agent profession (the competent federal commission related to agents considers the requests for equivalence) (Sports Code, article R. 222-22).

EU or EEA nationals who are not established in France and who wish to operate occasional sports agents' activities must only comply with incapacity and incompatibility rules mentioned above (Sports Code, article L. 222-9).

Draft Bill: the sports agent profession may be operated in France by EU or EEA nationals:

1° if they are qualified in a EU or EEA Member State where the profession or the training of sports agent is regulated;

2° or if they have worked as sports agents for two years (on a full-time basis) during the previous ten years in a EU or EEA Member State where neither the profession nor the training of sports agents are regulated, and provided they hold several attestations of professional competence or certificates confirming the completion of vocational training issued by the competent State authority.

In the event of substantial difference in level between the qualifications presented by the applicant and the qualifications required in France, the draft bill refers to a decree specifying the conditions of establishment.

EU or EEA nationals legally established in their country of origin may operate the sports agent profession in France on a temporary and occasional basis, provided they comply with incompatibility and incapacity rules provided by the law. Nevertheless, when neither the related activity nor the training are regulated in the Member State where the applicant is established, he/she must have operated the profession for at least two years during the ten years preceding the service provision.

EU or EEA nationals who would like to get established as sports agent or to occasionally practice the profession in France, must declare it to the competent sport federation.

NB: These provisions incorporate the principles of the directive of 12 December 2006 on services in the internal market.

Non-EU or EEA nationals who do not hold a licence issued by the competent federation have to sign a convention with an officially recognised sports agent (« convention of presentation»).

## **4. Conditions governing the operation of the sports agent's activity**

### **4.1. Contract**

The law implicitly requires the use of a written representation contract (since it has to be communicated to the competent federation).

### **4.2. Remuneration**

Only the party that hires the agent can remunerate him.

The amount of the agent's remuneration cannot exceed 10% of the signed contract amount (contract of employment or service contract) (Sports Code, article L. 222-10).

Draft Bill: if all the concerned parties agree (agent, club, player), the agent may be paid by the sportsperson's co-contractor (i.e. the club). The 10% ceiling applies even if several agents are involved in the same contract.

The agent can be paid only after communication of the contract to the competent federation.

#### **4.3. Prohibition against dual agency**

An agent can work only for one of the parties of the same contract (Sports Code, article L. 222-10).

#### **4.4. Protection of minors**

The contract signature by a minor sportsperson, may not involve any remuneration of the sports agent (or club or any other person acting on behalf of the minor) (Sports Code, article L. 222-5).

Draft Bill: the prohibition mentioned above is extended to the contract related to sports activity by a minor.

#### **4.5. Insurance of professional civil liability**

At all times, the agent must be able to provide proof of the existence of a contract guaranteeing his civil professional liability (Sports Code, article R. 222-20).

### **5. Controlling the sports agent's activity**

Under their delegation authority, delegatee federations must ensure that representation contracts preserve the sportspersons' interests and the relevant sport discipline.

#### **5.1. Contract communication**

The agent has the obligation to notify to the competent delegatee federation the representation contracts as well as the employment contracts under negotiation, under threat of disciplinary sanctions (Sports Code, articles L. 222-10 and R. 222 -21).

#### **5.2. Activity report**

After the period of validity of the licence, the renewal application must be submitted with an activity summary, the list of mandates and contracts signed and possibly the state of play of disputes relating to these contracts (Sports Code, article R. 222-15).

#### **5.3. Sanctions (criminal, civil, administrative/disciplinary)**

##### **5.3.1. Criminal sanctions**

May be punished by imprisonment of one year and a €15,000 fine:

- the fact to operate as an agent without a licence, or to ignore a decision on the non-renewal or withdrawal of a licence.
- the fact of non complying with the morality clause laid down in the law.

Draft Bill: the penalties are increased to two years of imprisonment and to a €30,000 fine for the same offences. These penalties may be accompanied by a temporary or permanent prohibition to carry out the sports agent's activity.



The amount of the fine may be increased from €30,000 up to the double of the unduly received amount.

### **5.3.2. Disciplinary sanctions**

The licence may be withdrawn in the event of the breach of obligations laid down in the law (the withdrawal may be accompanied by a suspension in case of serious offences, for a maximum duration of three months). The sports agent also incurs penalties such as warning and reprimand (Sports Code, article R. 222-16).

Draft Bill : delegatee federations may impose sanctions against sports agents for different reasons: non-communication of contracts or documents necessary to control the agent's activity, breach of rules related to incompatibilities or incapacity, non-compliance with the prohibition of receiving remuneration provided for contracts involving minors, etc..

### **5.3.3. Civil sanctions**

In the event of a dual agency, non-respect of income ceiling, or infringement of the prohibition on remuneration provided for the contracts involving a minor, the contract is cancelled (Sports Code, articles L. 222 -10 and L. 222-5).

<b>GERMANY</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: NO****1.1.2. General regulation on private job placement: YES**

- German social code, Book III (Sozialgesetzbuch - SGB III): paragraphs 292 and following
- Ordinance on the agents' payment (Vermittlervergütungsverordnung)

**1.1.3. Ordinary law: YES**

- Civil code (Bürgerliches Gesetzbuch BGB)
- Act regulating trade and industry (Gewerbeordnung GewO).
- Act regulating legal advice (Rechtsberatungsgesetz RBerG)

**1.2. Regulations enacted by national sport institutions****1.2.1. Sport federations: YES**

- German football federation
- German handball federation

**1.2.2. Olympic committee: NO****1.3. Others (code of professional conduct, collective agreement ...): NO****2. Conditions governing the access to the sports agent's activity****2.1. Authorisation system (licence, agreement, registration, declaration...)**

Before 2002, according to § 291 of the Social code, the activity of private placement agencies - including the sports agent's activity - was subject to a licence. This article was ruled out in March 2002. Thus, in Germany, sports agents - both natural and legal persons - can operate today **without a licence**. However, they have to respect the provisions of the articles 296 and the following of the Social Code (Book III) when they act on behalf of sportspersons.

By way of regulations, the Federal Ministry of Labour and Social Affairs may claim that the job negotiation in a non-EU country or other EEA Member State, as well as job placement and recruitment of a foreigner inside Germany for certain professions or activities cannot be subordinated solely to the Federal Agency (SGB III, Article 292).

**3. Conditions governing the operation of the sports agent's activity****3.1. Contract**

The relation between a sports agent and a sportsperson should most of the time be considered as a brokerage relation which is subject to Civil code rules (Bürgerliches Gesetzbuch BGB, § 652 and follow.).

According to § 296 of the Social Code, the contract that regulates brokerage job placement activity for an employer must have a written form.

In application of this text, the contract between the sports agent and the sportsperson must be a written contract.

The contract must mention, in particular, the remuneration of the agent.

The contract must not contain an exclusivity clause, and this under nullity sanction. The sportsperson must be free to choose his agent.

### **3.2. Remuneration**

The sports agent cannot receive a fee representing more than 14% (VAT included) of the annual salary of the sportsperson (and this even if the contract has been negotiated for several years). This ceiling cannot be exceeded even if the agent cooperates with another intermediary during the negotiation (ordinance on the agents' payment, §2).

In principle, the payment is left at the sportsperson's (the job-seeker) discretion, even if this one may ask the support of his/her employer. The sportsperson has to pay only in case of a placement. The agent cannot demand or accept payment in advance.

### **3.3. Missions**

The first paragraph of the law on legal advice (RberG) states that, in the framework of a business, legal advice can be provided only by those who have a legal authorisation. In principle, only lawyers or notaries can provide professional sportspersons with legal advice. Sports agents are not authorised to provide such services.

The notion of legal advice is widely interpreted in the jurisprudence and may notably include the negotiation of a contract with third parties. If the sports agent does not limit its activity to a simple representation (setting up a connection in view of a contract signature for the sportsperson), but negotiate itself with the club the content of the contract, he violates the law on legal advice.

If an agent gives advice on fiscal issues, he also breaks the law related to fiscal advice. This is applicable to athletes' contracts, sponsorship contracts and all the other contracts that can be signed in the framework of an athlete's activities.

## **4. Controlling the sports agent's activity**

### **4.1. Sanctions**

In the event of any breach of the law on legal advice (RberG), the agent may be fined with € 5000 and its representation contract with the sportsperson becomes ineffective.

According to § 297 of the Social Code, the representation contract becomes invalid if the parties do not respect the rules related to the agent's remuneration. The same sanction is applicable if the contract contains an exclusivity clause.

<b>GREECE</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: YES**

- Law 2725/1999 on amateur and professional sport, as amended by Law 3479 of 19 July 2006, article 90 § 5.
- Ministerial Decision Nb. 23788 of 28 August 2002.

**1.1.2. General regulation on private placement: NO INFORMATION AVAILABLE****1.1.3. Ordinary law: NO INFORMATION AVAILABLE****1.2. Regulations enacted by national sport institutions****1.2.1. Sport federation: YES**

- Greek athletics federation
- Greek basketball federation
- Greek football federation

**1.2.2. Olympic committee: NO****1.3. Others (code of professional conduct, collective agreement...): NO****2. Definition**

A sports agent is the person who acts as an intermediary between athletes or coaches and Professional Sports Limited Companies (PSLtd) or "Divisions of Remunerated Athletes" with a view to negotiating contracts (Law 2725/1999). The law provides that sports agents can sign mediation contracts with only 20% of the sportspersons from the same team.

NB: In Greece there are three categories of sportspersons: professional sportspersons, remunerated sportspersons and amateurs. The agents may act only on behalf of professional or remunerated sportspersons.

**3. Conditions governing the access to the sports agent's activity****3.1. Authorisation system (licence, permit, registration, declaration...)**

The specific provisions and requirements to access and operate as a sports agent are determined by a joint decision of Ministers of finance and sports, after consultation with the relevant sport federations, clubs, players and professional coaches unions.

An authorisation system was set up by the Ministerial Decision Nb. 23788/2002. The latter also defines the conditions governing the operation of the sports agent's activity.

The **licence** is issued by the General Secretariat of Sports. The General Secretariat of Sports keeps a register containing the names of the sports agents for whom it has issued a licence, and the names of the sports agents allowed to operate under international sports rules.

In order to obtain a licence, the person has to submit an application, to have a diploma of high education level, to provide the authorities with an extract of his/her judicial records, to comply with the rules enacted by the tax and social authorities, to have a professional liability insurance and to comply with certain incompatibilities and disabilities requirements.

The licence is issued for the duration of one year. It is renewed if the conditions for its obtainment have not changed comparing to the previous year.

### **3.2. Examination**

The 2002 ministerial decision provides for a written examination prior to the delivery of a licence. However, it appears that, to date, no examination has yet been conducted.

### **3.3. Incompatibilities/incapacities**

A person who would like to operate as a sports agent cannot be a member of any players or coaches union, professional clubs, sport federation or management/leading team of a professional club.

## **4. Conditions governing the operation of the sports agent' activity**

### **4.1. Contract**

The Law 2725/1999 stipulates that the sportspersons can freely terminate a mediation contract, to the condition that they send a written notice to the agent.

### **4.2. Protection of minors**

Sportspersons who are younger than 18 years old may not have a sports agent, unless the rules of the relevant international sport federation allow it.

## **5. Controlling the sports agent's activity**

### **5.1. Sanctions (criminal, civil, administrative/disciplinary)**

A sports agent may have his licence withdrawn by the General Secretariat of Sports for certain reasons (non provision of the documents related to the operated activity, dual-agency, non-renewal of the licence, etc.).

When the agent loses the licence, his name is immediately deleted from the register and he will not be able to get a new licence or appear again in the register for a period of two years.

<b>HUNGARY</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: YES**

- Act on Sports of 2000, as supplemented and amended by a 2004 Act.

**1.1.2. General regulation on private placement: YES**

- Government Decree Nb. 118 of 2001 related to labour exchanges, conditions governing operation and registration of private employment agencies.

NB: Hungary has ratified ILO's C181 Private Employment Agencies Convention.

**1.1.3. Ordinary law: YES**

- Act CLXIV of 2005 on trade
- Act IV of 1959 on the Civil Code

**1.2. Regulations enacted by national sport institutions****1.2.1. Sport federations: YES**

- Hungarian football federation

**1.2.2. Olympic committee: NO****1.3. Others (code of professional conduct, collective agreement...): NO****2. Definition**

According to the 2000 Act on Sports, only commercial agents can carry out the activity of sports agent.

The mission of a commercial agent is to negotiate for the benefit of other persons and to conclude commission contracts related to the sale and purchase of goods and services (2005 Law on Trade).

**3. Conditions governing the access to the sports agent's activity****3.1. Authorisation system (licence, permit, registration, declaration...)**

The 2004 law provides that only commercial agents **registered** with national or international sport federations and meeting the conditions presented in the regulations of these federations, have the possibility to conclude mediation contracts.

<b>IRELAND</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: NO****1.1.2. General regulation on private placement: YES**

- Law of agency

**1.1.3. Ordinary law: YES**

- Civil Code

**1.2. Regulations enacted by national sport institutions****1.2.1. Sport federations: YES**

- Irish football federation
- Irish rugby federation

**1.2.2. Olympic committee: NO****1.3. Others (code of professional conduct, collective agreement...): NO****2. Definition**

In Ireland the agent /player relationship is governed by the contract law and more specifically, by all the rules concerning placement contract.

The agent is defined as a person who connects another person with a third person.

If the agent has a legal professional background, he has the obligation to respect the law on placement contracts as well as the rules governing the profession of lawyer (Law Society of Ireland, Law Society Guide to Professional Conduct).

Apart from legal professions, the agent is subject to regulations on employment agencies.

**3. Conditions governing the access to the sports agent's activity****3.1. Authorisation system (licence, permit, registration, declaration...)**

Persons who would like to operate as sports agents and do not work in legal professions, must obtain an **approval** (in addition, they shall get the sports agent's licence in the relevant sport discipline).

**4. Conditions governing the operation of the sports agent's activity****4.1. Contract**

There may be written or oral placement contract.

## **4.2. Remuneration**

The agent is entitled to a remuneration. If there is no agreement on a particular amount, a reasonable amount should be paid to the agent.

The agent is not entitled to any fee in the following circumstances:

- If he overrides his functions;
- If he acts illegally or dishonestly;
- If he doesn't respect his obligations.



<b>ITALY</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: NO**

Act Nb. 91 of 23 March 1981 concerning the relations between clubs and professional athletes ("Norme in materia di rapporti tra società e sportivi professionisti") contains a provision (article 4) that excludes the application of Law Nb. 300 of 20 May 1970 on employment placement.

Under this exemption, sports agents can perform a remunerated intermediary activity in Italy on behalf of sportspersons or clubs without being subject to the regulation on private employment agencies (system of ministerial prior authorisation).

Sports agents are however subject to the regulations enacted by national sport federations.

**1.1.2. General regulation on private placement: NO**

In accordance with article 4 of Law Nb. 91 of 23 March 1981 mentioned above, the Italian legislation on private job placement does not apply to sports agents.

NB: Italy has ratified ILO's C181 Private Employment Agencies Convention.

**1.1.3. Ordinary law: YES**

- Civil Code, articles 1742 and following.

**1.2. Regulations enacted by national sport institutions****1.2.1. Sport federations: YES**

- Italian athletics federation
- Italian basketball federation
- Italian cycling federation
- Italian football federation
- Italian tennis federation
- Italian volleyball league serie A

**1.2.2. Olympic committee: YES**

- By delegation, the Law on sport Nb. 91 of 23 March 1981 implicitly confers the competence to regulate sport to the Italian National Olympic Committee (CONI), which is simultaneously a confederation of national federations, a national Olympic committee and a non-governmental public body. To our knowledge, the CONI has not enacted rules regarding sports agents, but each sport federation may enact such a regulation under its control (somehow by a kind of "sub-delegation").
- The Decree-Law of 20 of September 1996 amending the Law Nb. 91 of 23 March 1981.

**1.3. Others (code of professional conduct, collective agreement...): NO**

**2. Conditions governing the access to the sports agent's activity**

**2.1. Authorisation system (licence, permit, registration, declaration...)**

The authorisation system varies from one sport federation to another. The CONI does not impose regulations on the activity to be uniform. Each federation decides on the conditions enabling the access to the profession. Therefore, the Italian football federation imposes a licence, the cycling federation issues an enabling document, while the federation of volleyball proceeds to registrations.

## LATVIA

### **1. National regulations**

#### **1.1. State regulations**

##### **1.1.1. Specific regulation: NO**

The law on sports of 2003 does not contain provisions applicable to sports agents.

##### **1.1.2. General regulation on private placement: YES**

- Law nb. 5/2004 related to employment services

##### **1.1.3. Ordinary law: YES**

- Commercial Law

#### **1.2. Regulations enacted by national sport institutions**

##### **1.2.1. Sport federations: YES**

- Latvian football federation

##### **1.2.2. Olympic committee: NO**

#### **1.3. Others (code of professional conduct, collective agreement...): NO**

### **2. Conditions governing the access to the sports agent's activity**

No information available.

<b>LITHUANIA</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: NO**

The law on physical education and sport does not contain provisions applicable to sports agents.

**1.1.2. General regulation on private placement: YES**

- Labour Code, articles 88 and 90.

NB: Lithuania has ratified ILO's C181 Private Employment Agencies Convention.

**1.1.3. Ordinary law: YES**

- Civil Code

**1.2. Regulations enacted by national sport institutions****1.2.1. Sport federations: YES**

- Lithuanian athletics federation
- Lithuanian basketball federation
- Lithuanian football federation

**1.2.2. Olympic committee: NO****1.3. Others (code of professional conduct, collective agreement...): NO****2. Definition**

The law on physical education and sports stipulates that athletes may be represented by another person whose activity is regulated by state laws or by regulations established by the relevant sport federations.

Article 88 of the Labour Code requires the representation services in the employment field to be offered for free by the Lithuanian Labour Exchange, falling within the responsibility of the Ministry of Labour and Social Welfare. Representation services may also be provided by companies, agencies or organisations whose rules or statutes contain adequate provisions.

Regarding the employment services provided for Lithuanian citizens abroad, article 90 of the Labour Code stipulates that representation is an exclusive prerogative of the State. However, "other companies, agencies or organisations may act as mediators in matters regarding the employment of Lithuanian citizens abroad, as long as they have a licence issued by a body empowered by the government".

**3. Conditions governing the access to the sports agent's activity**

No information available.

<b>LUXEMBOURG</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: NO**

The Sports law of 3 August 2005 does not contain provisions on sports agents.

**1.1.2. General regulation on private placement: NO INFORMATION AVAILABLE****1.1.3. Ordinary law: YES**

- Commercial Code (article 2)
- Law of 28 December 1988 regulating the access to craftsman, tradesman, industrial professions as well as to certain liberal professions.

**1.2. Regulations enacted by national sport institutions****1.2.1. Sport federations: YES**

- Luxembourg football federation

**1.2.2. Olympic committee: NO****1.3. Others (code of professional conduct, collective agreement...): NO****2. Conditions governing the access to the sports agent's activity****2.1. Authorisation system (licence, permit, registration, declaration...)**

According to the article 1 of the Law of 28 December 1988, tradesmen, would they be natural or legal persons, must obtain an **authorisation** from the competent minister.

In the absence of a special legislation, this text is applicable to sports agents.

**2.2. Status of foreign agents (EU and non-EU citizens)**

EU nationals who are not permanently established in Luxembourg but go there to provide occasional services and who are representatives of commercial or liberal professions are not subject to any administrative authorisation from local authorities.

However, artisans and manufacturers must prove to the relevant Ministry that they are legally authorised to practice their profession in their country of establishment. The Ministry shall issue an ad hoc certificate (Act of 28 December 1998, article 20).

Non-EU nationals who are not permanently established in Luxembourg but go there occasionally to provide services within the professions covered by this Act, continue to be subject to authorisation laid down under article 1 of this Act. However, a Grand Ducal regulation may consider that third countries nationals (those specified by the regulation), have the same status as EU nationals (Act of 28 December 1998, article 21).

<b>MALTA</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: NO**

The law on sport of 27 January 2003 does not contain any provisions related to sports agents.

**1.1.2. General regulation on private placement: YES**

- Employment Agencies Regulations, Subsidiary legislation 343.24 of 1 January 1996.

**1.1.3. Ordinary law: YES**

- Civil Code (contracts law).

**1.2. Regulations enacted by national sport institutions****1.2.1. Sport federations: YES**

- Maltese football association

**1.2.2. Olympic committee: NO****1.3. Others (code of professional conduct, collective agreement...): NO****2. Definition**

The regulation defines the employment agency as any activity performed in Malta with a view of recruiting persons for employment in Malta or abroad (article 2).

**3. Conditions governing the access to the sports agent's activity****3.1 Authorisation system (licence, permit, registration, declaration...)**

Article 3 of the regulation on employment agencies states that only the persons (natural or legal) having a one-year **licence** (renewable) delivered by the competent authority (in this case, the Department Director of Ministry of Social Policy) can act as an agent.

The conditions for obtaining the licence are described in article 7 of the regulation: the person has to be at least 25 years old, have "good moral character", and finally have at least 6 years of professional experience within an activity which includes human resources management or 3 years of experience coupled with a university degree, that could be judged useful by the competent authority to run an employment activity.

**4. Conditions governing the operation of the sports agent's activity****4.1. Remuneration**

Article 10 of the regulation prohibits the remuneration of services provided by the employment agencies.

## THE NETHERLANDS

### 1. National regulations

#### 1.1 State regulations

##### 1.1.1. Specific regulation: NO

##### 1.1.2. General regulation on private placement: YES

- The law of 14 May 1998 on the placement of workers by intermediaries (Wet Allocatie Arbeidskrachten door Intermediairs– WAADI)

NB: the Netherlands have ratified ILO's C181 Private Employment Agencies Convention.

##### 1.1.3. Ordinary law: NO

#### 1.2 Regulations enacted by national sport institutions

##### 1.2.1 Sport federations: YES

- Dutch football federation

##### 1.2.2 Olympic committee: NO

#### 1.3 Others (code of professional conduct, collective agreement...): NO

### 2. Definition

The « WAADI » law defines manpower placement as the provision of services within a profession or within a company for the benefit of an employer, a job seeker or both. This activity needs to be useful in the search for workers and involves the signature of an employment contract under Civil law.

### 3. Conditions governing the access to the sports agent's activity

#### 3.1 Authorisation system (licence, permit, registration, declaration...)

The 1990 Act on employment services was subordinating private employment agencies activity to a licence issued by the Central Employment Office. Thereby, sports agents needed to have a licence to operate; otherwise they were subject to financial penalties.

The 1990 Act was repealed by Act of 14 May 1998 called « WAADI ». The latter was amended in 2003, resulting in the abolition of compulsory licensing system for private placement agencies. Therefore, since 2003, sports agents in the Netherlands can operate **without a licence** (under restrictions of sports regulations, like the one enacted by the national football federation, imposing such a licence).

Arguments put forward by the government to justify this abolition include the fear that such a licence could represent a restriction to the free provision of services and to competition, or the fact that private placement services could be just as effectively controlled through a less binding system.

### **3.2 Status of foreign agents (EU and non-EU citizens)**

In principle, the situation of foreign workers is not influenced by the Dutch legislation, as the remunerated placement activity is not subject to prior authorisation.

## **4. Conditions governing the operation of the sports agent's activity**

The « WAADI » law provides for derogatory rules to be adopted for certain categories of job seekers or employers. Currently, there are no such derogations for sportspersons or clubs.

### **4.1 Remuneration**

The « WAADI » law prohibits the employment agency from receiving any remuneration from the job seeker. Failure to observe this rule makes the contract invalid. There are no exceptions to this rule for sports agents acting on behalf of athletes.



<b>POLAND</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: NO**

The law on physical education of 1996 does not contain any provisions applicable to sports agents.

**1.1.2. General regulation on private placement : YES**

- Employment and labour-market promotion Act, 2004

NB: Poland has ratified ILO's C181 Private Employment Agencies Convention.

**1.1.3. Ordinary law: YES**

- Civil Code (agency contract)

**1.2. Regulations enacted by national sport institutions****1.2.1. Sport federations: YES**

- Polish athletics federation
- Polish basketball federation
- Polish football federation

**1.2.2. Olympic committee: NO****1.3. Others (code of professional conduct, collective agreement...): NO****2. Conditions governing the access to the sports agent's activity****2.1. Authorisation system (licence, permit, registration, declaration...)**

Private employment agencies must be **registered** in the national employment agencies' register. Registration must be required with local authorities (Province). To do so, the agency has to fill in a specific form and pay a tax fee to the authorities. Only after that will the concerned agent receive a certificate to operate a placement activity.

**2.2. Status of foreign agents (EU and non-EU citizens)**

Private employment agencies established in EU or EEA Member States are allowed to operate their activity in Poland (without the certificate mentioned above), under the provision that they notify the relevant local authority.

**3. Conditions governing the operation of the sports agent's activity****3.1. Remuneration**

The employment agency cannot demand any payment from people it helps in job seeking process.

<b>PORTUGAL</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: YES**

- Law Nb. 28/98 of 26 June 1998 on the sportperson's employment contract (Chapter IV, articles 22 to 25).
- Law Nb. 5 / 2007 of 16 January 2007 related to the physical activity and sport (article 37).

**1.1.2. General regulation on private placement: NO INFORMATION AVAILABLE**

NB: Portugal has ratified ILO's C181 Private Employment Agencies Convention.

**1.1.3. Ordinary law: NO INFORMATION AVAILABLE****1.2. Regulations enacted by national sport institutions****1.2.1. Sport federations: YES**

- Portuguese football federation (Competitions regulation, article 32)
- Portuguese handball federation (Ethics Code)

**1.2.2. Olympic committee: NO****1.3. Others (code of professional conduct, collective agreement...): NO****2. Definition**

According to the 5/2007 Law, sports agents are officially authorised natural or legal persons who operate occasionally or permanently an activity of representation and intermediation, in exchange of a remuneration fee, in order to conclude a contract related to sports coaching, sportspersons' employment or image rights management.

**3. Conditions governing the access to the sports agent's activity****3.1. Authorisation system (licence, permit, registration declaration...)**

According to article 22 of the Law nb. 28/98 of 26 June 1998, only natural or legal persons officially **authorised** by national or international sports authorities may operate as sports agents.

As stated by article 23 of the same law, sports agents who have the intention to operate as intermediaries for the recruitment of sportspersons **have to register** as such with the sport federation and comply with the necessary procedures.

The relevant sport federation and, where appropriate, professional league, must keep a register of sports agents up to date.

Under the Portuguese law, the access to the sports agent's activity in Portugal is subject to compliance with the access conditions defined by each national or international sport federation. To our knowledge,

currently only two Portuguese sport federations have a regulation applicable to sports agents (the football federation and the handball federation). Therefore, these regulations apply to sports agents in the concerned disciplines, subject to the compliance with the rules set up by laws 28/98 and 5/2007 mentioned above.

### **3.2. Incompatibilities/incapacities**

In addition to the incompatibility and incapacity rules enacted by sports regulations, article 25 of the Law nb. 28/98 of 26 June 1998 stipulates that the following entities cannot operate as a sports agent:

- a) Sports companies
- b) Clubs
- c) Sports managers / executives
- d) Sports companies' employees
- e) Coaches, players, referees, doctors and physiotherapists

### **3.3. Status of foreign agents (EU and non-EU citizens)**

The Portuguese legislation does not specifically address this issue. Given the fact that there is no regulation on this aspect, it seems that foreign agents, would they be EU or non-EU citizens, may operate in Portugal as long as they are duly authorised by the relevant national or international sport federation.

## **4. Conditions governing the operation of the sports agent's activity**

### **4.1. Prohibition against dual agency**

Sports agents can only act on behalf of one of the parties to the contractual relationship (Law 28/98, article 22).

### **4.2. Remuneration**

Natural or legal persons operating occasionally or permanently as an intermediary may be remunerated only by the party they represent.

The maximum remuneration received by the agent is 5% of the global sum of the contract, unless otherwise agreed and written in the initial contract (Law 28/98, article 24).

### **4.3. Protection of minors**

Sports agents may not act on behalf of sportspersons under the age of 18 (Law 5/2007, article 37).

## **5. Controlling the sports agent's activity**

### **5.1. Sanctions (criminal, civil, administrative/disciplinary)**

According to article 23 of the Law 28/98, mandate contracts concluded with non-registered agents are not valid.

## ROMANIA

### **1. National regulations**

#### **1.1 State regulations**

##### **1.1.1. Specific regulation: NO**

##### **1.1.2. General regulation on private placement: YES**

- Act Nb. 156 of 26 July 2000 related to the protection of Romanian citizens working abroad
- Act Nb. 76 of 16 January 2002 on unemployment insurance.

##### **1.1.3. Ordinary law: NO INFORMATION AVAILABLE**

#### **1.2 Regulations enacted by national sport institutions**

##### **1.2.1 Sport federations: YES**

- Romanian football federation

##### **1.2.2 Olympic committee: NO**

#### **1.3 Others (code of professional conduct, collective agreement...): NO**

### **2. Conditions governing the access to the sports agent's activity**

No information available.

<b>SLOVAK REPUBLIC</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: NO**

Act Nb. 300/2008 of 2 July 2008 on the organisation and promotion of sport does not contain any provisions applicable to sports agents.

**1.1.2. General regulation on private placement: YES**

- Act nb. 5/2004 on employment services.

**1.1.3. Ordinary law: YES**

- Labour Code

**1.2. Regulations enacted by national sport institutions****1.2.1. Sport federations : YES**

- Slovak football federation

**1.2.2. Olympic committee: NO****1.3. Others (code of professional conduct, collective agreement...): NO****2. Definition**

A remunerated mediation activity (defined in article 32 of Law Nb. 5 / 2004 on employment services as an activity that is aimed at seeking and offering an appropriate employment to job seekers and seeking and suggesting appropriate employees to employers), may be carried out by natural or legal persons who have been authorised by the competent authorities to operate such activities (the Centre for employment, social and family affairs) (article 25.1 of the Law Nb. 5 / 2004).

**3. Conditions governing the access to the sports agent's activity****3.1 Authorisation system (licence, permit, registration, declaration...)**

The licence given to persons willing to exercise mediation activities is issued for an unlimited period (article 26.1 of Law Nb. 5 / 2004). All licence applications must include: the proof of education (at least secondary education level), a reference to the territorial scope of the mediation activities to be provided, an estimation of the fees received for the provision of mediation services, as well as the proof that the material conditions necessary for the provision of mediation services are met (article 26.5 and 26.6).

Furthermore, licence applicants must have an impeccable reputation, which is evaluated on the basis of criminal records (article 26.7).

#### **4. Conditions governing the operation of the sports agent's activity**

##### **4.1. Remuneration**

The level of the agent's remuneration is negotiated between the parties. If the activity is commissioned by a natural person, the agent receives his/her remuneration once the mediation mission is accomplished. If the mediation service is conducted abroad, a written agreement specifying the amount of the agent's fees has to be signed (article 25 of Law Nb. 5 / 2004).

#### **5. Controlling the sports agent's activity**

##### **5.1. Sanctions (criminal, civil, administrative/disciplinary)**

The provision of mediation services without a licence is considered by law as a crime and may result in fines of up to 10,000 crowns (SKK) (NB: the law was passed before the entry of Slovakia in the Eurozone on 1 January 2009; 10,000 SKK amounts to about € 330).

## SLOVENIA

### **1. National regulations**

#### **1.1. State regulations**

##### **1.1.1. Specific regulation: NO**

Sports Act of 2006 does not contain any provisions on sports agents.

##### **1.1.2. General regulation on private placement: YES**

- The 2006 Act on employment and unemployment insurance, articles 5 to 13.

##### **1.1.3. Ordinary law: YES**

- Contracts law

#### **1.2. Regulations enacted by national sport institutions**

##### **1.2.1. Sport federations: YES**

- Slovenian basketball federation
- Slovenian football federation

##### **1.2.2. Olympic committee: NO**

#### **1.3. Others (code of professional conduct, collective agreement...): NO**

### **2. Conditions governing the access to the sports agent's activity**

#### **2.1. Authorisation system (licence, permit, registration, declaration...)**

By means of a **concession contract**, the Ministry of Labour, Family and Social Affairs may authorise an agency to provide employment services (Act on employment and unemployment insurance, article 6).

The concession contract cannot be concluded for a period exceeding one year (article 6 c).

<b>SPAIN</b>
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**1. National regulations****1.1. State regulations****1.1.1. Specific regulation: NO**

The law Nb. 10/1990 of 15 October 1990 on sports contains no specific provisions relating to sports agents.

**1.1.2. General regulation on private placement: YES**

- Act related to the employees' status
- Royal Decree 735 of 5 May 1995 relating to non-profit private placement agencies and integrated employment services.

NB 1: According to our sources, commercial employment agencies are prohibited in Spain. In the absence of legal or regulatory basis, it is thus possible to question the legality of the sports agent's activity in this country (at least, when this activity concerns the provision of paid placements).

NB 2: Spain has ratified ILO's C181 Private Employment Agencies Convention.

**1.1.3. Ordinary law: YES**

- Civil code (contract law)
- Act n° 12/92 of 27 May 1992 related to placement contract
- Commercial code

**1.2. Regulations enacted by national sport institutions****1.2.1. Sport federations: YES**

- Spanish athletics federation (IAAF Rules)
- Spanish football federation (FIFA rules on players' agents)

**1.2.2. Olympic committee: NO****1.3. Others (code of professional conduct, collective agreement...): NO****2. Definition**

According to the law 12/92 of 27 May 1992, an agent is a natural or legal person who, in exchange of remuneration, commits to promote commercial deals and transactions on behalf of another person, or to promote and conclude such deals on behalf of another person as an independent intermediary, without accepting the risks linked to these acts.



### **3. Conditions governing the access to the sports agent's activity**

#### **3.1. Authorisation system (licence, permit, registration, declaration...)**

The Spanish state regulation only permits non-profit placement agencies. These agencies have to obtain an authorisation from the National Employment Institute (INEM - Instituto Nacional de Empleo). This authorisation is valid during a period of one year after the signature of a cooperation convention with the INEM. It can be extended for a period of one year. At the end of the second year, the authorisation becomes permanent.

### **4. Conditions governing the operation of the sports agent's activity**

#### **4.1. Contract**

The placement contract may be temporary or permanent.

#### **4.2. Remuneration**

The placement agent's remuneration may be a fixed amount or a fee or a combination of both. If no amount is specified, the compensation will be determined according to the commercial practice in the region where the operations are carrying out, and, failing this, the particular circumstances of the transaction will be taken into account (Law Nb. 12/1992, Article 11).

Non-profit placement agencies may receive remuneration from the employer and / or worker for the services they provide (Decree 735/1995).

## SWEDEN

### **1. National regulations**

#### **1.1 State regulations**

##### **1.1.1. Specific regulation: NO**

##### **1.1.2. General regulation on private placement: YES**

- Act on private placement agencies and temporary work (1993: 440)

##### **1.1.3. Ordinary law: YES**

- Commercial Agency Act (1991: 351)

#### **1.2. Regulations enacted by national sport institutions**

##### **1.2.1. Sport federations: YES**

- Swedish association of Ice Hockey Players (SICO) (Code of ethics)
- Swedish athletics federation
- Swedish football federation

##### **1.2.2. Olympic committee : NO**

#### **1.3. Others (code of professional conduct, collective agreement...): NO**

### **2. Conditions governing the access to the sports agent's activity**

#### **2.1. Authorisation system (licence, agreement, registration, declaration...)**

In the act concerning private employment agencies, there is no mention of authorisation/licence, permit or registration.

### **3. Conditions governing the operation of the sports agent's activity**

#### **3.1. Remuneration**

Private employment agencies cannot ask for or receive any remuneration from a job seeker (Act 1993: 440, section 6).

<b>UNITED KINGDOM</b>
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**1. National regulations****1.1 State regulations****1.1.1. Specific regulation: NO****1.1.2. General regulation on private placement: YES**

- Employment Agencies Act, 1973, as amended by the Employment Relations Act, 1999
- Conduct of Employment Agencies and Employment Businesses Regulations, 2003.

**1.1.3. Ordinary law: NO****1.2. Regulations enacted by national sport institutions****1.2.1. Sport federations: YES**

- British athletics federation
- England and Wales cricket board
- Rugby football union (entered into force for the 2009-2010 season)
- Welsh rugby union
- English football association

**1.2.2. Olympic committee: NO****1.3. Others (code of professional conduct, collective agreement...): NO****2. Definition**

Private employment agencies are mandated to bring together job seekers and employers.

**3. Conditions governing the access to the sports agent's activity**

Since 1994, private employment agencies **do not need a ministerial approval anymore** to carry out their activities.

**4. Conditions governing the operation of the sports agent's activity****4.1. Contract**

The agency contract may not contain any restrictions preventing the job seeker from terminating his/her relationship with the agency.

**4.2. Remuneration**

The English legislation on the placement of manpower stipulates that a private employment agency cannot be paid by the job seeker for the job placement (the agency can be paid for other services).

However, this rule does not apply to the placement of performers or professional athletes (Conduct of Employment Agencies and Employment Businesses Regulations 2003, Annex 3).

## **APPENDIX 7: Description of the existing regulations on sports agents enacted by international sport federations**

### **I. INTERNATIONAL FOOTBALL FEDERATION (FIFA)**

#### **Description of the main provisions provided in the Players' Agents Regulations (2008)**

##### **1. Definition of the players' agents' activity**

The role of players' agents is to introduce players to clubs with a view to negotiating or renegotiating an employment contract or introduce two clubs to one another with a view to concluding a transfer agreement within one association or from one association to another (article 1.1).

These regulations do not cover the services that may be provided by players' agents to other parties such as managers and coaches.

##### **2. Conditions related to the access to the players' agents' activity**

Players' agents' activity may only be carried out by natural persons (article 3.1). A person who would like to operate such an activity must obtain a licence. This licence is issued by the association of the country of which the applicant is a national (article 5).

The licence expires five years after its date of issue. After this period, the agent must resit the examination (article 17.1).

###### ***2.1. Incompatibilities / incapacities***

The person must have an impeccable reputation. The applicant may not, under any circumstances, hold a position as an official, employee, etc. at FIFA, a confederation, an association, a league, a club or any organisation connected with such organisations and entities. These conditions must be satisfied at all times by the agent (article 6).

###### ***2.2. Exempt individuals***

The parents, siblings or spouse of the player may represent him in the negotiation or renegotiation of an employment contract

Furthermore, a legally authorised practising lawyer may represent a player or a club in the negotiation of a transfer or an employment contract (article 4).

##### **3. Conditions related to the operation of the players' agents' activity**

###### ***3.1. Insurance***

The agent has to conclude a professional liability insurance. Instead of this insurance, the agent may also provide a bank guarantee from a Swiss bank for a minimum amount of 100,000 CHF (articles 9 and 10).

### **3.2. Contract**

A players' agent shall be permitted to represent a player or a club only by concluding the relevant written representation contract with that player or club (article 19.1). The agent must use a standard representation contract annexed to the regulation (article 21).

The contract must contain the following minimum details: the names of the parties, the contract duration and the remuneration due to the players' agent, the general terms of payment, the date of completion and the signature of the parties (article 19.5).

The contract may not be concluded for a period exceeding two years. It may be extended for another maximum period of two years by a new written agreement. It may not be tacitly prolonged (article 19.3).

If the player is a minor, his/her legal guardian(s) shall also sign the contract, in compliance with the national law in force of the country in which the player is domiciled (article 19.2).

### **3.3. Prohibition against dual agency**

The players' agent shall avoid any conflict of interests in the course of his/her activity. He/she may only represent interests of one party at a time. In particular, players' agent are not allowed to have a representation contract, a cooperation agreement or shared interests with one of the other parties or one of the other parties' agents involved in the player's transfer or in the completion of the employment contract.

### **3.4. Remuneration**

The representation contract shall explicitly state who is responsible for paying the players' agent and in what manner, taking into account all the laws applicable in the territory of the association. The players' agent shall be paid directly by his client for the services provided and in no circumstances by a third party. However, after the conclusion of the transaction, the player may give his written consent for the club to pay the agent on his behalf. The payment made on behalf of the player must reflect the general terms agreed between the player and the player's agent (article 19.4).

The remuneration of a players' agent who has been engaged to act on a player's behalf is calculated on the basis of the player's annual basic gross income, including any signing-on fee that the players' agent has negotiated for him in the employment contract (article 20.1).

If the players' agent and the player cannot reach agreement on the amount of remuneration to be paid or if the representation contract does not provide for such information, the players' agent is entitled to payment of compensation amounting to three per cent of the basic income described in paragraph 1 (article 20.4).

### **3.5. Code of professional conduct**

Any successful applicant shall sign the Code of Professional Conduct governing his activity and agree to comply with it (article 11 and annex 1).

## **4. Controlling the players' agent's activity**

### **4.1. Contract communication**

For registration purposes, the players' agent shall send a copy of the representation contract to his association and another copy to the association to which the player or club belongs within 30 days of their having been signed (article 19.6).

### **4.2. Sanctions**

According to the FIFA Disciplinary Code, the players' agents who violate these regulations and their annexes are subject to the following sanctions:

- a reprimand or a warning ;
- a fine of at least CHF 5,000 ;
- a suspension of licence for up to 12 months ;
- a licence withdrawal;
- a ban on taking part in any football-related activity.

These sanctions may be imposed separately or in combination (article 33).

The following sanctions may be imposed on players who violate the regulations and their annexes in accordance with the FIFA Disciplinary Code:

- a reprimand or a warning ;
- a fine of at least CHF 5,000 ;
- a match suspension ;
- a ban on taking part in any football-related activity.

These sanctions may be imposed separately or in combination (article 34).

The following sanctions may be imposed on clubs for violation of the regulations and their annexes in accordance with the FIFA Disciplinary Code:

- a reprimand or a warning ;
- a fine of at least CHF 10,000 ;
- a transfer ban ;
- a deduction of points ;
- demotion to a lower division.

These sanctions may be imposed separately or in combination (article 35).

## **II. INTERNATIONAL BASKETBALL FEDERATION (FIBA)**

### **Description of the main provisions provided in Rule H.5 on players' agents.**

#### **1. Definition of the players' agents' activity**

The activity of players' agent is to bring together or assist in the international transfer of players or coaches (article H.5.1).

Only individuals may operate as players' agents (article H.5.4.1).

Any national member federation which deems it necessary may establish its own regulations governing players' agents who deal with transfers within their own federation (H.5.2). In this case, the regulations should provide for personal interviews similar to that provided for in these regulations. Exceptions require FIBA's approval (H. 5.9.2.1).

#### **2. Conditions related to the access to the sports agent's activity**

##### **2.1. *Obligation of a licence***

In order to operate, the agent must be in possession of a valid licence issued by FIBA (article H.5.3.1).

##### **2.2. *Incompatibilities / incapacities***

The person wishing to obtain a licence with FIBA must provide a certificate of good reputation and a criminal record (article H 5.4.4).

A person applying for an agent's licence may not, under any circumstances, hold a position within FIBA, a Zone, a member federation, a club, or any organisation connected with such entities as leagues or players' associations (article H 5.4.5).

##### **2.3. *Examination***

A person applying for an agent's licence shall pass a personal interview and a test (article H 5.4.6).

##### **2.4. *Exceptions***

The obligation to possess a licence does not apply if an agent is licensed to practice law in the country of his permanent residence (article H.5.3.4).

##### **2.5. *Keeping the licence current***

Beginning at the end of the year in which the agent's licence has been issued, an agent shall attend every two years a seminar organised by FIBA in order to update the agent on new developments concerning agents' activities and to verify that the requirements for the issuing of the licence are still met (article H.5.5.1).



### **3. Conditions related to the operation of the sports agent's activity**

#### **3.1. Insurance**

The agent shall prove to FIBA that he has taken out professional liability insurance for no less than CHF 250,000 with an insurance company acceptable to FIBA (article H.5.4.12).

#### **3.2. Contract**

An agent may represent a player or a coach only if he has a written contract with the latter (article 5.6.1.2). A standard contract is annexed to the regulations.

The duration of a contract shall not exceed a period of two years but it may be renewed with the express agreement of both parties (article H. 5.6.1.3).

#### **3.3. Duties of the agents**

The regulations provide the agents for a certain number of duties such as never to approach a player who is under contract with a club so as to persuade him to break his contract, not to contact a player who is under contract with another agent to persuade him to break his contract, never to approach a player, in particular if he is under 18 years old, during training camps and competitions, etc (article H.5.6.2).

#### **3.4. Remuneration**

The agent may accept payment only from the party he is contractually linked with (H. 5.6.2.1 f).

### **4. Controlling the players' agent's activity**

#### **4.1. Contract communication**

The agent shall notify the name of every new client to FIBA within fourteen days of signing a new representation contract (article H. 5.6.2.1 c).

#### **4.2. Sanctions**

If the agent does not comply with his duties, he may be sanctioned by:

- a reprimand or caution
- a fine
- withdrawal of the licence (article H.5.6.3.3)

If a player uses the services of an unlicensed agent, he may be sanctioned by:

- a reprimand or caution
- a fine
- prohibit the player from obtaining national and/or international transfers (article H.5.7.2.1).

Any club violating one or more of the provisions of these regulations is subject to the following sanctions: - a reprimand or warning

- a fine
- prohibiting the club from carrying out national and/or international transfers
- ban from all national and/or international basketball activity (article H.5.8.2.1).

### **III. INTERNATIONAL RUGBY BOARD (IRB)**

#### **Description of the main provisions provided for in the regulation 5 related to agents**

##### **1. Definition of the agent's activity**

The agent is defined as an agent or an advisor acting on behalf of a person, union, rugby body or club in relation to that person's, union's, rugby body's or club's activity in the game (Regulation 1-Definitions)

##### **2. Delegation of the regulation to the national unions**

The IRB regulations demand to the unions to « establish appropriate regulations to govern and authorise the activity of agents ». These rules shall contain a certain number of mandatory and optional principles:

Among mandatory principles:

- Prohibition against dual agency.
- Transparency of the identity of persons/organisations for whom the agent is acting.
- Compliance with the highest standards of ethics, integrity and honesty.
- Obligation to « have in place appropriate professional liability insurance with a reputable insurer to an appropriate level ».
- Natural persons only may operate as agents; this is not possible for legal persons.
- Unions shall be entitled to impose disciplinary sanctions against agents.
- Transparency of the agent's accounts.
- Judgement by the IRB on « cases arising out of international transactions and/or a breach of Agent Regulation which is of an international nature »; implementation of the sanctions resulting from the IRB judgements by the national unions.

Sanctions for breaching the regulations may be taken against agents, clubs, unions and similar organisations directly or indirectly affiliated to the union. These sanctions include a reprimand, a censure, a warning, a fine, a suspension of the entitlement to act as an agent, and such other sanction as may be appropriate in the particular circumstances.

Among optional principles:

- The duration of contracts between players and agents should not exceed two years.
- The contract shall clearly state the basis on which the agent is to be remunerated and should be «reasonable ».
- The agent shall be remunerated only by the person or principal by whom he is engaged.

#### **IV. INTERNATIONAL AMATEUR ATHLETIC FEDERATION (IAAF)**

##### **Description of the main provisions provided in the IAAF Regulations concerning federation/athletes' representatives as well as the Rule 7 of the IAAF Competition Rules (2009) concerning athletes' representatives.**

**NB:** Amendments proposed to the Rule 7 were adopted by the 47th IAAF Congress held in Berlin on 12 August 2009. The final version of these changes will be included in the new 2010-2011 edition of the Rules of Competition, which will come into force on 1 November 2009.

##### **1. Definition of the activity of an athlete's representative**

The mission of athletes' representatives is to assist the athletes, in close cooperation with the federation to which they are affiliated, in the planning, arranging and negotiation of their athletics programme and, in that connection, of sponsorship contracts (Rule 7.1).

Modification of August 2009: it has been added to the Rule 7.1 that athletes may also choose to represent themselves or delegate this task to a relative on a non-contractual basis. The reference to the necessity to cooperate with the federation is removed.

##### **2. Conditions related to the access to the activity of the athletes' representatives**

###### **2.1. Authorisation**

National federations shall be responsible for issuing authorisation to athletes' representatives. Each member federation shall have jurisdiction over the athletes' representatives acting on behalf of their athletes as well as over athletes' representatives acting within their country or territory (Rule 7.2). To establish their own rules, member federations may be guided by IAAF rules related to athletes' representatives (Rule 7.3).

Modification of August 2009: it has been added to the Rule 7.2 that each member federation has also jurisdiction over athletes' representatives who are nationals of their country. Moreover, it is also mentioned (Rule 7.4) that the IAAF rules may provide for mandatory requirements on athletes' representatives to be included in each member federation's regulations governing athletes' representatives, including: the standard form « Athlete's Representative Agreement » and the application for registration as athlete's representative.

Individuals only may operate as athletes' representatives (Regulations on Athletes' Representatives, article 2.1).

The authorisation is granted for a period of one year, and will expire in any case on 31 December each year (Regulations on Athletes' Representatives, article 4.5).

###### **2.2. Conditions**

The athletes' representative shall demonstrate sufficient education and knowledge for the activity of athletes' representative. He shall have integrity and good reputation (Rule 7.5).

Modification of August 2009: The new regulation provides for successful completion of an athletes' representative examination by the applicants organised in accordance with the IAAF Regulations. As a condition of the grant of authorisation, a Member federation's regulations may provide for the formal affiliation of the applicant to the member federation in question (Regulations on Athletes' Representatives, article 3.6).

### **3. Conditions related to the activity of the athletes' representatives**

#### **3.1. Contract**

It is a condition of IAAF membership that each member federation includes a provision in its constitution guaranteeing that no athlete may use an athletes' representative, and that no athlete will be allowed to do so without a written contract signed between the athlete and his representative. That contract must comply with the regulations on athletes' representatives (Rule 7.4).

Modification of August 2009: the Rule 7.4 becomes the Rule 7.5 and it is amended as follows: "It is a condition of Membership that each Member includes a provision in its constitution, that all agreements between an athlete and an Athletes' Representative should comply with the Rules and Regulations governing Athletes' Representatives".

Member federations must require as a condition of granting an authorisation, that the athletes' representative concludes a written contract with the federation and with any athlete they wish to represent (Regulations on Athletes' Representatives articles 5.1 and 6.1).

The duration of these contracts may not exceed one year (Regulations on Athletes' Representatives, articles 5.3 and 6.2).

#### **3.2. Remuneration**

The representation contract signed with the athlete shall clearly state the athletes' representative's fee (Regulations on Athletes' Representatives, article 6.5).

#### **3.3. Duties of the athletes' representatives**

- To comply with all applicable IAAF rules and the rules of the member federation;
- To perform the contract of representation with reasonable care and skill;
- To be knowledgeable with regard to the athletic calendar of events and to assist, together with the athlete's coach, club and federation, in planning, arranging and negotiating the athlete's competition schedule;
- To help ensure that the athlete complies with applicable IAAF rules;
- To act only with the athlete's express authorisation and to keep the athlete fully informed of all dealings or arrangements made on his behalf;
- To conduct his business and represent the athlete in a manner which does not bring the sport or the athlete into disrepute;
- To avoid all conflicts of interests, whether or not disclosed;
- To make all reasonable endeavours to ensure that athletes uphold their agreements to compete;
- To respect IAAF calendar and the system of priorities governing Permit Meetings
- To ensure that the athlete competes in all IAAF and member federation designated competitions;

- To comply with all sanctions imposed under applicable IAAF and/or member federation rules and regulations;
- To ensure that disputes are resolved in compliance with IAAF and/or the member federation's rules and regulations;
- To discourage any represented athlete from using any substance or technique prohibited by IAAF rules and to include in the representation contract a provision compelling the athletes' representative to withdraw from such a representation and to report such a breach of the rules in the event that any such circumstances become known to the athlete's representative;
- To obtain from each represented athlete the authority to provide the IAAF or the member federation with information on the athlete's compliance with IAAF and member federation eligibility rules
- Upon request, to inform the IAAF of the whereabouts of their athletes (Regulations on Athletes' Representatives, article 7.2).

#### **4. Controlling the activity of the athletes' representatives**

##### **4.1. Information**

Before each season, the IAAF shall distribute to its member federations and the meetings organisers an official list of the athletes' representatives mentioning by which member federation they have been authorised and a list of athletes they are authorised to represent (Regulations on Athletes' Representatives, article 4.8).

##### **4.2. Sanctions**

Any athlete who uses the services of an unauthorised representative may be subject to sanctions in accordance with the rules and regulations of the IAAF (Rule 7.7).

Modification of August 2009: Rule 7.7 becomes 7.8 and the Rule is amended as follows: "Any athlete or Athletes' Representative who does not comply with the Rules and Regulations, may be subject to sanctions in accordance with the Rules and Regulations".

## **APPENDIX 8: Legal framework of a sports agency contract**

It was reminded in the body of this study that by limiting the sports agent's functions, the current regulations allow to better protect their co-contracting parties (athletes or clubs). Furthermore, by regulating the methods and the content of the sports agency contract, many of these regulations facilitate a real control of the sports agent's activity.

### ***Written contract requirement***

"A players' agent shall be permitted to represent a player or a club only by concluding the relevant written representation contract with that player or club" (FIFA regulations, article 19.1). The contract must include at least the names of the parties, the duration of the contract, the amount of remuneration due to the agent, the general terms of payment, the date of completion and the signature of the parties (articles 19.5).

The requirement to have a written document is expressly imposed by FIFA, FIBA (article H.5.6.1.2) and the IAAF (Rule 19, paragraph 4) in order to make a material evidence of the mediation contract. This requirement may also be found in the majority of the national specific public regulations on sports agents (France, Portugal and Greece), in other types of public regulations (it is for example the case in Germany where the law provides for the representation contract between a broker and a job seeker to be written) (SGB III, § 297), and in some national sports rules, such as that published in 2008 by the English football association.

It is in the same legitimate spirit of protecting the players and the clubs that some of these provisions encroach contractual freedom by requiring that the sports agency contract cannot be concluded for a period exceeding two years (FIFA regulations, article 19.3; FIBA regulations, article H.5.6.1.3; IRB regulation article 5.2)<sup>324</sup>, or one year (IAAF Rules, article 6.2).

Unfortunately, the scope of these few regulations is limited, either because they are restricted to one sport discipline although with an international scope, or because they have a national origin and clash with the relevant national sphere.

### ***Sports agents' contractual duties***

An agent's contractual duties and constraints depend on the nature of the contract (brokerage or representation) he has with an athlete or a club. Thus, concerning the brokerage activity, a fee is normally due immediately after the parties were brought together and have concluded a contract. As for the representation activity, the agent's remuneration involves the implementation of the legal acts mentioned in his mandate (see below). Thus, knowing the extent of the sports agent's activities is crucial.

However, these general duties are not sufficient to effectively regulate the sports agents' activity and should be supplemented by some specific provisions inspired by best practices found in sports regulations or specific public legislations aimed at protecting sports actors. These regulations include some requirements which can be well or less detailed.

All of them prohibit dual agency so as to avoid conflicts of interests and other perverse financial effects. Even more strictly, in its 2007 regulation, the English football association was prohibiting to a sports

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<sup>324</sup> It has to be acknowledged that these regulations generally include provisions related to the renewal of the representation contract.

agent to be mandated by a club during a transfer or a contract negotiation for a player, if he had already been mandated by this player during one of the two previous transfer windows. Similarly, it was forbidden for an agent to be mandated by a player during a transfer or a contract negotiation, if he had been mandated by a club during one of the two previous transfer periods. However, a radical change was observed in 2008, when the English football association appeared to allow a sports agent to be mandated by the player and the club parties to the same negotiation.

Most regulations also require the sports agency contract (and its eventual amendments) to be transmitted to the relevant national federation in order to check the legality of the contract and understand the sports agent's activities.



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