



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 agents¹. In July 2007, the European Commission indicated in its White Paper on Sport² 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 sports clubs/organisers of sports 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 sports 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 sports clubs/organisers of sports 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.

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

² European Commission's White Paper on Sport, 11 July 2007, COM(2007) 391 final.

The study has identified 32 sports 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 sports disciplines considered in the study – operating on the territory of the European Union³. 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, sports regulations). For example:

- While under certain regulations some form of permit is required to carry out sports 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.

³ 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 sports 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 services⁴ and recognition of professional qualifications⁵), especially where an agent wishes to work occasionally or establish himself or herself in a Member State other than that of which he or she 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 Sports-Related Arbitration will be sufficient to deal satisfactorily with the matters at issue.

In the field of competition, the Community judge⁶ 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

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

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

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

extent to which sports 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 sports 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 sports 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 sports placement mechanisms in general – should be based on the following principles:
 - Complementarity (between the rules of sports 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 sports 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 sports 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

Sports 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 sports 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 sports federations and countries throughout Europe.

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

In Europe, the regulation and organisation of sport is mainly left to the various sports federations. The European Council has recognised the role of sports bodies in organising and promoting their respective disciplines. This role is protected by all European Union institutions. The rules adopted by sports 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 sports 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 sports bodies or public authorities) involving sportspersons, agents, clubs, organisers of sports 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.