



2009



Bosman Revolution

- The European football labour market changed substantially (abolishment 3+2 rule)
- Influx of foreign EU players and non EU players
- Higher sign-on fees and higher salaries
- Long term contracts in order to safeguard “transfer” sums
- Players relatively young high skilled workers
- Players’ agents: the oil that keep the wheels of international football in motion



Content of Presentation

- Regulation of players' agent throughout the years
- Need for regulation: indicators from various sources
- Impact assessment EC and FIFA Draft regulations on intermediaries
- The future...?



Regulation of Players' Agents

- From the mid-nineties to 2001: interviews; deposit of CHF 200.000; signing of code of conduct
- Growing number of agents demands a new approach
- New regulations in 2001 followed by the regulations of 2008



Current Method of Regulation: FIFA Regulations Players' Agents Edition 2008

The most striking elements:

- No consultation, unilaterally drafted by FIFA
- Compulsory signing of a code of conduct
- Exempt individuals such as lawyers and parents
- Requirements to contracts
- Temporary license, re-examination after 5 years
- The proposed use of standard contracts
- Restrictions on methods of payments
- Commission percentage lowered to 3% of annual salary of the player
- Payments by clubs and players
- Sanctions for agents, clubs and players



Need for Regulation?

- Not many DRC cases related to illegal agent activity
- What kind of problems or indicators exist that stress the necessity for the regulation of players' agents?



Piau Case

European Court of Justice (2005)



“Thus the need to

- introduce professionalism and morality to the occupation of players’ agents in order to protect players whose careers are short*
- the fact that competition is not eliminated by the license system*
- the almost general absence (except in France) of national rules*
- the lack of collective organisation of players’ agents are circumstances which justify the rule-making action on the part of the FIFA.”*



Independent European Sport Review (Report Co-Financed by UEFA) (2006)

- *“Having analysed both the legal reasoning set out in the Piau case and also the practical operation of regulatory control of agents in the European area, the authors of this Review consider that a more rigorous form of regulatory enforcement is required. Furthermore, it may be appropriate to examine a system involving not only EU legal instruments but also with a stronger role for the European governing body (UEFA in the case of football) in particular to oversee effective enforcement of the Rules.”*
- *“A more effective system for regulating the activities of players’ agents would also assist in the fight against money laundering by ensuring the integrity of registered agents and monitoring financial flows. This would represent a logical development of the central clearing house system that has been discussed in the context of player transfers in Europe.”*
- *“It is submitted that rules concerning players’ agents are inherent to the proper regulation of sport and therefore compatible with European Community law.”*



European Parliament

Report on the Future of Professional Football (2007)

- The Committee on Culture and Education...

“Believes that the current economic reality surrounding players' agents requires that football governing bodies at all levels, and in consultation with the Commission, to improve the rules governing players' agents; in this respect calls on the Commission to support UEFA's efforts to regulate players' agents, if necessary by presenting a proposal for a directive concerning players' agents which would include: strict standards and examination criteria before anyone could operate as a football players' agent; transparency in agents' transactions; minimum harmonised standards for agents' contracts; an efficient monitoring and disciplinary system by the European governing bodies; the introduction of an "agents' licensing system" and agents' register; and ending "dual representation" and payment of agents by the player”



European Commission

White Paper on the Future of Sport in the European Union (2007)

- *“There are reports of bad practices in the activities of some agents which have resulted in instances of corruption, money laundering and exploitation of underage players. These practices are damaging for sport in general and raise serious governance questions. The health and security of players, particularly minors, has to be protected and criminal activities fought against.”*
- *“The Commission will 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.”*



Statement of Governments of France and The Netherlands (2007)

- Mr. Timmermans; Mrs. Bussemaker; Mr. Laporte; Mr. Jouyet :

“Par ailleurs, dans un context juridique complexe, des joueurs professionnels de plus en plus nombreux recourent aux services d’agents pour négocier et signer leurs contrats. Des rapports à ce sujet font toutefois état de derives multiples, prévisibles compte tenu des montant en jeu. La France et les Pays-Bas soutiennent le lancement de l’étude d’impact de la Commission sur cette question. Elle constituerait la base de reflexion en vue d’une position commune dans l’Union sur les licenses requises pour exercer les fonctions d’agents de joueurs, ce qui permettrait de protéger joueurs et clubs des pratiques délictuelles.”



European Team Sports (2008)

- Safeguarding the heritage and future of team sports in Europe

““The increased prevalence of agents in team sport (operating predominantly in the European area) and the well documented problems linked to their various activities calls for improved regulation to be developed by the sports federations possibly in conjunction with appropriate measures at EU level.”



The European Football Agents Associations

-EFAA-

“The EFAA has been formed to maintain, and where necessary, to introduce a high standard of professionalism, clarity and regulatory control in the profession of players' agents within the football family.”

“The EFAA is recognized by the European Commission and its national members are part of the national football structures. The EFAA seeks to participate in the sound regulation of agents and to combat corruption and criminal activities in sport.”

“The EFAA wishes to stress its important role in the (self-) regulation of the profession of agents and professional football in general, within the boundaries of European Law. Efficient and enforceable regulation is merely achievable with the support, participation and the consent of the organized collective of Players' Agents, in a spirit of transparency and collaboration with all relevant stakeholders in football.”



EFAA Organisation

Location

- The Hague, the Netherlands

Legal Structure

- Association (Not for profit)

The Board

- **President:** Rob Jansen (NI)
- **Vice-President:** Giovanni Branchini (It)
- **Vice-President:** Jerome Anderson (Uk)

Management

- **General Manager:** Roberto Branco Martins



Connected National Agent Associations

- Netherlands: **Pro Agent**
- Germany: Deutsche Fussballspieler Vermittler Vereinigung (**DFVV**)
- England: **The Football Agents Association**
- France: Union des Agents Sportifs du Football (**UASF**)
- Italy: Associazione Agenti Calciatori e Societa (**A.I.A.C.S**)
- Portugal: Associação Nacional de Agentes de Futebol (**ANAF**)
- Spain: Asociación Española de Agentes de Futbolistas (**AEAF**)
- Sweden: Svenska Spelaragentföreningen

EFAA as a Stakeholder

- EFAA and the **European Commission**
 - Officially recognized by DG Education and Culture, present at the EU Sports Forum
 - Good working relation with DG Employment and Social Affairs; DG Competition, consulted various times on the position of agents
- EFAA and the **European Parliament**
 - Good relation with MEP's Toine Manders, Ivo Belet, Emine Bozkurt and Chris Heaton Harris.
 - Players' agents as a stakeholder mentioned in official EP positioning documents
- EFAA members and **national associations**
 - EFAA members have amicable relations and / or are officially recognized by their national football associations
- EFAA and **UEFA**
 - Good relation with different levels of UEFA administration
- EFAA and the **European Professional Football Leagues (EPFL)**
 - Good working relation.
- EFAA and the **European Club Association (ECA)**
 - Good working relation
- EFAA and **FIFA**
 - Good working relation, consulted on the content of new draft regulations on intermediaries



EFAA's points of interest (2009)

- A solid legal framework is necessary in Europe and / or in the EU – 93% of EU agents primarily governed by other sources of law - “legal jungle”
- Ban on unlicensed agent and licensed agents that act as a “cover-up” and limitations on the activities of exempt individuals
- Youth players and minors: avoid “forum shopping”; negative effects of HGPR;
- See the EFAA – ECA list.



Recent Developments

FIFA Draft on Intermediaries

- Deregulation
- Duties on clubs and players including sanctions
- No control or sanctions on agents
- No qualifications
- Conflicts of interest

EC Impact assessment study

- Probably not enough ground for a directive as it is not the tendency for the EC / EU to intervene
- Enough grounds for a certain form of regulation



EFAA Comments

“From our point of view deregulation will harm those, who FIFA for so many years tried to protect by introducing agent regulations: players and clubs. A predictable consequence of deregulation is uncertainty in the industry as each football association continues to have its own set of regulations that differ from country to country. An uneven labour market within Europe will be the result. There will be no protection for players, clubs and associations against a multitude of unqualified individuals seeking to approach these actors with business opportunities. The market will turn into chaos.”



Interim Conclusion (?)

“An interim conclusion could therefore be that the level at which the profession and activities of players’ agents is regulated will shift from the worldwide level of the umbrella organization to the level of the European Union.”



The Future...

- European based regulations? Two (of many) possibilities:
 - European Social Dialogue
 - European Directive on players' agents



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Social Dialogue

- *"Footballers are some of the most mobile professionals in Europe, so this new social dialogue will help to tackle issues that simply cannot be resolved at national level," said **Commissioner Špidla**. "By sitting down together, employers and players will be able to improve employment relations for all players and reduce disputes through dialogue. I now encourage other social partners in the sport sector to follow this very good example."*
- ***Commissioner Figel'** added that "this is the first time that the various stakeholders are getting together with the Commission to discuss labour issues. I particularly welcome this, since it implements one of the main actions outlined in the Commission's White Paper on Sport of July 2007. I believe that it reflects an increased willingness and openness for lasting, constructive dialogue in the sporting world between the sports organisations, sportspersons themselves and the European Commission. We look forward to building on this initiative."**



Social Dialogue in the Treaty

Article 138

1. The Commission shall have the task of promoting the consultation of management and labour at Community level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.
2. To this end, before submitting proposals in the social policy field, the Commission shall **consult** management and labour on the possible direction of Community action.
3. If, after such consultation, the Commission considers Community action advisable, it shall **consult** management and labour **on the content of the envisaged proposal**. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.
4. On the occasion of such consultation, management and labour may inform the Commission of **their wish to initiate** the process provided for in Article 139. The duration of the procedure shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

Article 139

1. Should management and labour so desire, the dialogue between them at Community level **may lead to contractual relations, including agreements**.
2. Agreements concluded at Community level shall be implemented either in accordance with **the procedures and practices specific to management and labour** and the Member States or **, in matters covered by article 137**, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission.



Social Partners in Football

*“The partners – represented by Sir Dave Richards, Chairman of the **EPFL** and the Premier League, Philippe Piat, President of **FIFPro Division Europe**, and Jean-Michel Aulas, (**ECA and Olympique Lyonnaise**) –*

*Within the European Union, **FIFPro** represents more than 28 000 players in 20 EU Member States.*

***EPFL** represents high-level leagues and clubs associations from 17 EU Member States with altogether more than 600 clubs in the EU. In particular, it speaks on behalf of those leagues and the French and Dutch club associations that negotiate collective agreements at national level, which currently exist in eleven Member States. The social partners also want to promote social dialogue and reinforce capacity in the EU Member States.*

***ECA** represents 103 top clubs, of which currently 67 are in the EU Member States.”*



European Club Association

The new G-14

A Social Partner?

There are 3 criteria an organisation has to meet in order to be eligible for consultation:

be cross-industry, or relate to specific sectors or categories and be organised at European level;

consist of organisations which are themselves an integral and recognised part of Member States' social partner structures and with the capacity to negotiate agreements, and which are representative of all Member States, as far as possible;

have adequate structures to ensure the effective participation in the consultation process




Sport Specificity in the ESD?

Non representative organisations allowed in the European Social Dialogue?

See also the Mavromatis (EP) Report:

“Underlines the importance of social dialogue promoted by the Commission as a valuable platform to promote social consultation and stable relations between employer and employee representatives and ensure legal certainty and contractual stability in sport; in this respect, welcomes the fact that the EPFL and FIFpro, mutually recognising each other as social partners, have jointly requested to the Commission the formal establishment of a EU social dialogue committee in the professional football sector, with the clubs and UEFA taking part as equal partners”

Is this a “Strengthened Social Dialogue?”



Players' Agents as a topic in the EU Social Dialogue?

Mavrommatis:

*“Considers that players' agents should have a role within a **strengthened social dialogue in sports**, which, in combination with better regulation and a European licensing system for agents, would also prevent cases of improper action by agents;”*

EU Wide Directive?

Pro

- Supported by the sector
- Solid legal framework with clear implementation methods via the MS
- Basis on article 47 EC Treaty
- Not the first time that the EU intervenes in the regulation of professions

Contra

- EC reluctant to intervene in economic sectors
- Enough ground for self-regulation
- Possibility to operate in “shadow of EU law”



Conclusion

- Developments are surely going to take place
- There is an organized platform that may lead to self-regulation
- Directive: possible solution, but not only football agents
- Nota Bene: whatabout the core problem, Child Trafficking



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