



Expert Group "Good Governance"

Deliverable 3

Supervision of sports agents and transfers of players,
notably young players



1. INTRODUCTION

The EU Work Plan for Sport identifies integrity of sport, in particular the fight against match fixing and the promotion of good governance, as priority themes for EU level cooperation in sport. Annex I of the Work Plan specifies the actions based on these priorities, which include notably the following point:

Address the issues identified related to access to and to supervision of the profession of sport agents and to transfers in team sports, including, in particular, the issue of transfer rules for young players.

For this action, the Expert Group on 'Good Governance' (XG GG) has been given the task to **propose a follow-up to the Commission conference on sport agents and to the forthcoming study on transfers in team sports.**

At the fifth meeting of the XG GG, held in Brussels on 9 April 2013, the Members and Observers of the Group had a first exchange of views on the topics that would be included in the Group's third deliverable. FIFA's TMS and the Study on the economic and legal aspects of transfers of players were presented and discussed. FIFA also presented the state of play concerning discussions about reforming the regulations applicable to intermediaries/players' agents in football based in principle on a set of minimum standards/requirements to be contained in FIFA's future regulatory framework.

At the sixth meeting of the XG GG, held in Brussels on 18 July 2013, the discussion on these topics was further developed, on the basis of a discussion document circulated in advance amongst the Members and Observers. It was agreed that the recommendations to be produced by the Group should have a broad scope embracing different disciplines, although participants recognised that football deserved to figure prominently in the discussion because of the significant role played by football agents¹ and of the economic importance of transfers in football². It was also agreed that, since the topics to be addressed as part of the third deliverable of the Group clearly fall under the responsibility of the sport movement, recommendations by the Group should be limited in scope and mainly address questions related to areas of relevance for public authorities (protection of minors, prevention and fight against crime, respect for EU law having regard to the specificity of sport as well as good governance of sport).

On this basis, the following recommendations are proposed by the Members of the Group, with a view to being discussed at the appropriate Council structures. The recommendations are preceded by a brief section presenting the general context for the work of the Group.

¹ See the Study on Sports Agents in the European Union (http://ec.europa.eu/sport/documents/study_on_sports_agents_in_the.pdf) which notes that football is by far the sport with the highest number of official sports agents, accounting for roughly 70% of the total number of agents in Europe.

² See the Study on the Economic and Legal Aspects of Transfers of Players (<http://ec.europa.eu/sport/library/documents/f-studies/cons-study-transfers-final-rpt.pdf>) which notes that the total economic size of transfers in football in the EU in 2010/2011 was € 3 billion, as compared with € 27 million for basketball in the same season.



2. CONTEXT

Transfer rules in team sports have been the subject of close scrutiny by the EU notably as a follow-up to the landmark 1995 Bosman ruling which declared the transfer system in place at that time in football as contrary to EU free movement rules. In 2001, the Court of Justice of the EU in the Lehtonen ruling implied that certain restrictions on labour mobility may be justified in order to ensure certain important characteristics of sporting competition such as transfer windows.

In 2001, in the context of the pursuit of a case concerning alleged infringements of EU competition law and after discussions with the Commission, FIFA undertook to revise its Regulations on the Status and Transfer of Players, based on compensation for training costs incurred by sports clubs, the creation of transfer periods, the protection of school education of underage players, and guaranteed access to national courts. The 2007 White Paper on Sport recognised that the revised FIFA Regulations constituted an example of good practice that ensured a competitive equilibrium between sport clubs while taking into account the requirements of EU law.

The 2011 Communication from the Commission noted that transfers of players regularly came to public attention because of concerns about the legality of the acts and about transparency of financial flows involved and that the time had come for an overall evaluation of transfer rules in professional sport in Europe. In this context, the Commission launched in 2011 a study on the economic and legal aspects of transfers of players, whose results were published in February 2013³.

FIFA's Transfer Matching System (TMS) was established in October 2010. The system is designed to regulate the international transfers of male professional footballers. The main objectives of the TMS are to increase transparency of international transfers, to improve the protection of minors and to ensure compliance with the relevant transfer regulations; increased traceability of financial transactions as a result of the TMS may be helpful in strengthening the fight against money laundering.

The 2007 White Paper also raised the issue of sports agents' activities by noting that there were reports of bad practices in the activities of some agents resulting in instances of corruption, money laundering and exploitation of underage players. The Commission noted that these practices were damaging for sport in general and raised serious governance questions. In order to acquire more in-depth knowledge about the activities of agents, an independent study was launched in 2009 by the Commission⁴.

The results of the study as well as ongoing developments concerning the possible overhaul of the licensing system in place for players' agents in football were discussed at the EU Conference on Sports Agents organised by the Commission in Brussels in November 2011⁵. The main outcome of the conference was that football stakeholders agreed that the current regulatory system should be reviewed and that further work was needed to achieve consensus on any new system that may be adopted by the sport. The conference also highlighted that the EU could play a role in helping the sport movement in this context, notably by explaining the possibilities offered by developing standardisation of agents'

³ http://ec.europa.eu/sport/news/20130207-study-on-transfers_en.htm.

⁴ http://ec.europa.eu/sport/documents/study_on_sports_agents_in_the.pdf.

⁵ http://ec.europa.eu/sport/library/sport-and_en.htm#C10_Sports-Agents.



activities or through discussions to be held within the EU social dialogue committee for professional football.

3. RECOMMENDATIONS

In line with the mandate given to the Group by the EU Work Plan for Sport with regard to its third deliverable, two sets of recommendations are proposed. The first set concerns the supervision of sports agents and the second set concerns the issue of transfers of players.

A. SUPERVISION OF THE PROFESSION OF SPORTS AGENTS

The XG GG recognises that the supervision of the activities of sports agents is a complex issue since it entails the need for sports governing bodies to set rules that are applicable to stakeholders that may not be under their direct supervision. The XG GG also acknowledges the important role played by agents both as intermediaries between employers (clubs) and employees (athletes) in a very competitive market as well as partners and advisers of both parties⁶.

The regulation of sports agents by public and private organisations

According to the EU Study on Sports Agents in the EU, there are no major obstacles for the provision of the services of sports agents across the EU. The profession of sports agents is regulated differently in the various Member States, with minor problems only being identified in this respect. On this basis, the XG GG considers that there is no compelling need for public authorities to adopt new rules or change their existing rules concerning sports agents, either at national or EU level.

Recommendation nr 1

The Group considers that the current legal framework applicable to the activities of agents is appropriate; as a consequence, the Group estimates that the relevant sporting bodies are best placed to introduce any needed changes in the supervision of the profession of agents, in accordance with good governance principles such as democracy and inclusion of stakeholders. The Group also recalls that national rules and sporting regulations should remain in line with EU law having regard to the specificity of sport, notably in the field of Internal Market and competition.

Sports disciplines most affected by the activities of agents

The XG GG notes that the activities of agents are preponderant (in demographic and economic terms) in football but that agents also play an active role in basketball, whereas the role of agents is less important in other disciplines⁷. In this context, the Group welcomes the positive developments which have occurred in basketball with the creation of the Basketball Arbitral Tribunal and with the improvement of the relations between agents and

⁶ This double role of agents is described in depth in the Study on Sport Agents in the EU.

⁷ See figures presented in the Study on Sport Agents in the EU.



FIBA, as recognised by the different stakeholders participating in the EU Conference on Sports Agents in the EU⁸.

Recommendation nr 2

The Group recommends that certain aspects of the system put in place by FIBA, together with relevant basketball stakeholders, in order to supervise the activities of agents is, as may be appropriate, taken into account by other sports disciplines when addressing similar issues.

The XG GG also takes note of the ongoing reform process carried out under the aegis of FIFA with a view to overhauling the licensing system currently in place for players' agents in football. The XG GG encourages FIFA together with all relevant stakeholders to pursue in their efforts aimed at improving the supervision of sports agents in football.

General principles underpinning the supervision of agents

Whilst acknowledging that sports organisations are best placed to adopt the appropriate supervision mechanism, taking into account the specificity of each discipline and the relevant economic and legal context in which each sport operates, the XG GG is of the opinion that some general objectives and principles should underpin the action of the sport movement in this field. The XG GG therefore wishes to address the following recommendations to sports stakeholders in view of drawing their attention on the main features that should be part of an effective system for the supervision of the activities of sports agents.

Recommendation nr 3

The Group considers that mechanisms for the supervision of sports agents should be aimed at increasing transparency in the transactions involving agents (thus covering club-agent, player-agent, club-player and club-club transactions); they should also aim at strengthening the necessary protection of the youngest players, notably when they are involved in international transfers. The overall goal of such mechanisms should be to set higher standards for the activity of agents, to establish clear and universal rules, whilst taking into account the diversity existing in sporting structures, and to ensure an efficient monitoring, enforcement and compliance framework, with dissuasive and proportionate sanctions as well as equitable disciplinary measures in place.

On the basis of these general principles, the following specific recommendations are presented to the attention of sports organisations for their further consideration when establishing or reviewing systems for regulating the activities of sports agents:

Protection of young players

Recommendation nr 4

Sports bodies are invited to consider the opportunity of establishing gradual and stricter rules for sports agents taking into account the age of players involved in transactions managed by agents/intermediaries:

⁸ See final report of the conference: <http://ec.europa.eu/sport/library/documents/c10/final-report.pdf>.



- Rules on ethics, transparency, conflict of interest, disclosure of information and payment of intermediaries should be the strictest when the player signing a contract with the club is a minor (e.g. by restricting or eliminating fees for transfers of under-18 players);
- For transactions involving minor players, it is proposed that particular scrutiny is exercised on the credentials of agents/intermediaries, e.g. by requesting proof of criminal records or other means of testing the aptitude of agents to work with underage players including their ability to provide specific careers advice that would be appropriate for the relevant sports discipline;
- Rules on ethics, transparency, conflict of interest, disclosure of information, the ability to dispense specific careers advice and payment of intermediaries should also be particularly strict when the young player is considered as being in the training phase of his/her career (this phase may vary according to the characteristics of each sport);
- Although high ethical standards must be maintained at all times, it may be possible for certain rules to be made more flexible for agents working with players who can be considered in the main stage of the careers (to be determined by each sport in accordance with its specificities).

Registration and certification mechanisms of agents

Recommendation nr 5

Registration of agents considered as being legitimate providers of services for clubs and/or players is one of the most effective tools at the disposal of sporting bodies to promote transparency in the transactions involving agents and to ensure appropriate scrutiny of the relevant activities.

Registration is a first step in ensuring an effective supervision of the activities of agents. However, registration alone cannot guarantee that agents provide their services according to certain minimum standards concerning the basic skills and expertise necessary for their profession and that they carry out their duties in compliance with principles related to deontology, ethics and avoidance of conflict of interests.

In addition to registration, a proportionate certification or similar process aimed at verifying the compliance of registered agents with the minimum standards established by each sport is therefore recommended.

The Group recommends establishing universal systems of registration, with the same standards regarding disclosure of information and necessary requirements applicable at global level.

The Group considers that minimum standards should be adopted at international level in order to guarantee a level playing field for all the interested parties. At the same time, the Group recommends, subject to the structures of the sport, leaving the possibility to national and/or continental organisations to introduce higher standards according to local contexts and needs.

In the views of the Group, certification of agents or similar mechanisms should ideally take place at national/continental level as well, with international bodies acting as a guarantors that local schemes respect some common basic principles, whilst leaving local bodies responsible for the main task of supervising the process of validation of skills and competencies needed to be certified as an agent.



The Group further estimates that the process of acquisition of these competencies, either through training programmes, examinations and other instruments, should also be implemented at local level. International sporting organisations should be in charge of providing common guidelines and of ensuring consistency in the way programmes are managed by national and/or continental bodies.

The Group recommends that stakeholders seek to adopt a system for the mutual recognition of certification mechanisms.

The Group recommends and encourages that agents promote and take responsibility for applying high ethical standards such as developing and adhering to codes of conduct, continued professional development and best practices.

Enforcement and sanctions

Recommendation nr 6

An appropriate enforcement mechanism is the necessary condition for any supervision system to achieve concrete results.

The Group recommends to sports bodies the establishment of a system of effective, dissuasive and proportionate sanctions. Sanctions should target all the relevant stakeholders having been proven in breach of the rules (such as agents, clubs, players and national associations). Sanctions may be applied by international and/or national organisations. A system for the recognition of sanctions at cross-border level would be necessary to ensure uniform and universal application of the rules.

B. TRANSFER RULES IN TEAM SPORTS

As highlighted by the EU Study, transfer rules are a unique mechanism. The Study argues that the main objective of the rules is to ensure fair and balanced competition in sport. Some football stakeholders consider that they are mainly intended to strike a balance between contractual stability and freedom of movement for players. Transfer rules are at the heart of the functioning of team sports in Europe. Their management and supervision are ensured by relevant sports bodies, with very little, if any, interference from public authorities. Transfer rules, as any other rule enacted by sports organisations for the proper running of competitions, have to be in line with EU law, notably in the field of Internal Market and antitrust subject to the specificities of sport.

Cooperation between public authorities and the sport movement

Out of the 21 proposals put forward by the Study to address the main issues identified in its findings and conclusions, one only refers to public authorities, inviting the Commission as well as national and international law enforcement agencies to foster cooperation with sports bodies in the fight against corruption and money laundering.

**Recommendation nr 7**

The Group invites the Commission, the Council and the Member States to establish and to reinforce existing cooperation mechanisms aimed at the exchange of information and best practices and at the coordination of common actions with a view to preventing and fighting against corruption and money laundering in connection with the transfer of players.

In this regard it is essential to raise awareness of the need for coordination and dialogue between sport and public authorities (including law enforcement agencies at national, European and international level) to ensure that the relevant resources, knowledge, skills and expertise are in place.

Conclusions of the EU Study on the economic and legal aspects of transfers of players

The other 20 recommendations of the Study are addressed to sports stakeholders: federations, leagues, clubs and players.

Recommendation nr 8

The Group invites sports stakeholders to take into consideration the conclusions and recommendations of the EU study in their reflections about finding ways to improve the functioning of transfer systems in team sports. The Group underlines that the principles of autonomy of sport and self-regulation should underpin any action to be taken in this field. The Group further notes that issues such as the establishment of a 'fair-play levy', the limit to clubs' squad sizes, the implementation of Financial Fair Play measures, the limiting of excessive transfer fees after contracts' extension, the regulation of buyout clauses, the increasing of solidarity mechanisms and the improvement of dispute settlement structures are all topics that clearly fall under the remit of sporting bodies.

FIFA' TMS

Of particular interest for the XG GG is the positive development represented by FIFA's TMS mechanism. The XG GG recognises that the establishment and implementation of the TMS has resulted in concrete improvements brought to the supervision of international transfers in professional football, with beneficial effects notably on the transparency of transactions and on the protection of young players.

Recommendation nr 9

The Group recommends the adoption of systems similar to FIFA's TMS for transfers taking place at national level in professional football. In this respect, the Group welcomes the intention expressed by FIFA to further work on the development of TMS with its member associations and to extend its scope in the context of training compensation, solidarity contribution claims and the supervision of agents' activities. The Group also invites other sports to take inspiration from FIFA's TMS where appropriate for the development of monitoring systems for international and national transfers of players.



Harmonisation of entry of young footballers in the EU

Recommendation nr 10

The Group endorses the Study's recommendation addressed to FIFA for harmonising the conditions for the entry of young players coming from third countries into the EU, through discussion with relevant stakeholders and EU institutions and in compliance with EU rules.

Forum for further discussion

The XG GG takes note of the position expressed by several football stakeholders that FIFA disposes of the adequate structures for discussing the functioning of the regulations related to transfers of players and for amending those regulations if necessary. The XG GG also notes that social partners in the field of football have decided to discuss some of the elements of the transfer system as part of their ongoing work on the topic of contractual stability in the framework of the EU Social Dialogue Committee for Professional Football.

Recommendation nr 11

The Group considers that discussions on the different aspects of the mechanisms underpinning transfers of players can take place in different fora as appropriate and that those discussions may run in parallel and not be mutually exclusive. In this respect, the Group invites the social partners in the field of football to consider making such use as may be appropriate of the structures available within the EU Social Dialogue Committee to examine elements of the transfer systems that may have a relation with labour and social insurance law.

In case EU social partners decide to include in their discussion issues that fall under FIFA's direct responsibility, the Group recommends that FIFA is invited to take part in the discussion in accordance with the appropriate modalities.

The Group also considers that the aspects of transfers of players that are related to labour law may constitute a topic for debate in the framework of the test phase (as well as in possible other phases) of the EU Social Dialogue Committee for Sport and Active Leisure. In this context, discussions amongst football stakeholders may serve as a model for stakeholders in other team sports with an interest in the same topic.