The Regulation of Football Agents: Historical Background

The 1994 Regulations

FIFA first attempt at regulating the work of football agents came with the introduction of the 1994 Players’ Agents Regulations (PAR). The decision of the FIFA Executive Committee to adopt these regulations was recognition that the volume of agent activity in the modern game was such that agents needed bringing into the ‘football family’, at least in regulatory terms. Just over twenty years later in 2015, FIFA enacted set of regulations that acknowledged the failure of this approach and agents were effectively ejected from the family.

The 1994 PAR required that an individual wanting to provide agent services must be in possession of a licence issued by the competent national association. Clubs and players were under an obligation to only engage the services of such licensed agents during transfer or contract negotiations. Agents in receipt of a license were referred to as FIFA Licensed Agents.

The occupation was reserved for natural persons, as opposed to legal entities such as businesses, another situation amended by the 2015 regulations. However, relatives of the player and qualified lawyers were deemed exempt individuals and did not require a license, the logic being that family members were trusted by the player and lawyers were subject to state professional body requirements and state regulation.

To be in receipt of a licence, the individual was required to undertake an interview to ascertain the candidate’s knowledge, particularly of sport and the law. The candidate was also required to satisfy certain conditions, such as having no criminal record and depositing a bank guarantee of 200 000 Swiss Francs (CHF). Contractual relations (representation agreement) between the agent and the player was for a maximum period of two years, which was renewable. Agents, players and clubs found to be in breach of the regulations faced being sanctioned. Agents could face a caution, censure or warning, a fine of an unspecified amount, or withdrawal of their licence. Players and clubs could be fined up to CHF 50 000 and CHF 100 000 respectively. Players could also be liable to disciplinary suspensions of up to 12 months. Suspension measures or bans on transfers could also be applied to clubs. Disputes were heard by FIFA’s Players’ Status Committee.

The 2001 Regulations and the Laurent Piau Case

The 1994 regulations were the subject of a complaint lodged before the European Commission in 1996 by Multiplayers International Denmark. The complaint alleged incompatibility of the regulations with EU competition law. In 1998 French agent Laurent Piau also lodged a complaint, adding that the 1994 PAR were also contrary to EU laws on freedom to provide services (Article 56 of the Treaty on the Functioning of the European Union (TFEU), ex 49EC). Specifically, Piau objected on three grounds. First, the licensing conditions unfairly restricted access to the market. Second, the regulations were likely to give rise to discrimination between citizens of the Member States. Third, the regulations did not include any legal remedies against decisions or applicable sanctions.
In 1999, the Commission opened an investigation into the 1994 regulations and issued a statement of objections. The Commission considered that the 1994 PAR constituted a decision by an association of undertakings within the meaning of Article 81 EC (now Article 101 TFEU) and that the licence requirement, the exclusion of legal persons from the award of a licence, the prohibition on clubs and players using unlicensed agents, the requirement of a bank guarantee and the sanctions, were incompatible with EU competition law. In doing so, the Commission rejected FIFA’s argument that the regulations could not be classified as a decision by an association of undertakings and that, in any event, the regulations could qualify for an exemption under Article 81(3) EC (now Article 101(3) TFEU) because they sought to raise ethical standards and professionalism within the sector.

In response to the statement of objections, FIFA introduced a new set of regulations that entered into force in 2001. The 2001 FIFA Players’ Agent Regulations retained the obligation for natural persons who wanted to offer agent services to hold a licence issued by the competent national association. For a license to be issued, the candidate was required to have an “impeccable reputation” and instead of undergoing an interview, must take a written multiple choice examination which tests the candidate’s knowledge of sport and the law. The agent was also required to take out a professional liability insurance policy or, failing that, deposit a bank guarantee to the amount of CHF 100,000. As before, the relationship between the agent and the player must be the subject of a written contract for a maximum period of two years, which could be renewed. The contract had to stipulate the agent’s remuneration, which was calculated on the basis of the player’s basic gross salary and, if the parties could not reach an agreement, was fixed at 5% of the salary.

The contract had to be lodged with the national association, whose register of contracts had to be made available to FIFA. Once licensed, the agent was required to respect FIFA’s statutes and regulations and to refrain from approaching a player who was under contract with a club. Clubs, players and agents who breached the regulations were subject to sanctions. An agent could have his or her licence suspended or withdrawn and could face a fine. The regulations provided that disputes be heard by the competent national association or FIFA’s Players’ Status Committee. A code of professional conduct and a standard representation contract were also annexed to the 2001 regulations. In 2002, FIFA made a technical amendment to the regulations by stating that nationals of the EU/EEA must make their application for a licence to the national association of their home country or the country of domicile without any condition relating to length of residence and that they could take out the required insurance policy in any country of the EU/EEA.

As a result of the introduction of the 2001 regulations, the Commission notified Piau and Multiplayers International Denmark that the main restrictive effects contained in the 1994 regulations had been removed and that there was no remaining EU interest in continuing the case. Multiplayers International Denmark did not respond to the Commission’s position but Piau retained his objection to the examination requirement and the requirement to take out professional liability insurance. Furthermore, he argued that the new regulations introduced new restrictions by way of the rules on professional conduct, the use of a standard contract and the rules on the determination of remuneration. These, he argued, were in breach of EU competition law, specifically Articles 81 and Article 82 (now Articles 101 and 102 TFEU). It seems that Piau ceased his complaint relating to Article 49 (now Article 56 TFEU).

The Commission rejected Piau’s complaint and closed the case. In doing so the Commission restated its view that the most restrictive provisions had been removed by FIFA and that
whilst the licence requirement could be justified, the remaining restrictions could satisfy the exemption criteria under Article 81(3) EC (now Article 101 TFEU) given that the regulations promote the better operation of the market and therefore contributes to economic progress. The Commission added that Article 82 EC (now Article 102 TFEU) was not applicable in the present case although the Commission did not state reasons why this was the case.

In April 2002, Piau lodged an appeal before the European Court of First Instance (CFI), since renamed the General Court. The Court commenced by assessing whether the FIFA regulations amount to a decision of an undertaking or an association of undertakings thus potentially bringing its decision making within the scope of review of EU competition law. In this regard, the Court established that FIFA, as an association grouping together national associations, constitutes an association of undertakings within the meaning of Article 81 EC (now Article 101 TFEU). The court also established that the regulations amount to a decision of an association of undertakings and as such one that must comply with EU competition law. The regulations are binding on national associations that are members of FIFA, which are required to draw up similar rules that are subsequently approved by FIFA. They are also binding on clubs, players and players’ agents. The regulations therefore reflect FIFA’s resolve to coordinate the conduct of its members with regard to the activity of players’ agents and cannot be considered a matter of internal sporting regulation unrelated to economic activity (Piau para. 75). The Court therefore considered the regulation of players’ agents as an issue that does not fall within the scope of the specificity of sport as defined in the sports related jurisprudence of the European Court (Piau para’s 73-74 & 105).

Piau contested the legitimacy claimed by FIFA to regulate the economic activity carried out by agents. By rejecting his complaint, the Commission had, according to Piau, gone beyond the powers conferred upon it by the Treaty by implicitly delegating to FIFA a power to regulate an activity of providing services. On this point, the Court came close to agreeing with Piau. It stated that FIFA’s legitimacy to regulate agents is “open to question” (Piau para. 76). FIFA’s self-proclaimed statutory purpose is to promote football and the 2001 PAR, which the Court had established do not have a sport-related object, regulate an economic activity that is peripheral to the sporting activity in question and touch on fundamental freedoms. Regulating a profession, such as the activity of agents, would normally fall to a public authority and not a private entity such as FIFA and this situation “cannot from the outset be regarded as compatible with Community law, in particular with regard to respect for civil and economic liberties” (Piau para. 77).

However, the Court choose to limit its assessment to the compatibility of the regulations with EU competition law and not assess the legal basis that allows FIFA to regulate agents. This was due to “the almost complete absence of national rules” on agent regulation (Piau para. 78) and because “collectively, players’ agents do not, at present, constitute a profession with its own internal organisation” (Piau para. 102). FIFA’s need and legitimacy to regulate this profession is therefore strengthened by the absence of external regulatory control and a representative trade body to consult with.

The Court’s assertion that FIFA’s regulation of agents was partly justified with reference to the absence of national laws on agent regulation and the absence of a collective body of players’ agents has been questioned. At the time of the judgment, nine Member States of the

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EU had ratified an International Labour Organisation (ILO) Convention on Private Employment Agencies (Convention 181). The Convention defines a private employment agency as any natural or legal person, independent of the public authorities, which provides agent related services (Article 1). FIFA’s definition of an agent is consistent with their activities falling within the scope of the Convention. Amongst other things, the Convention is designed to allow the operation of private employment agencies as well as to protect the workers using their services (Article 2). This means that, contrary to the view of the Court, nine Member States had a legal base for regulating players’ agents through their ratification of the Convention. In addition to these states, and as recognised by the Court, France adopted national legislation on the regulation of sports agents. Greece and Portugal had adopted more general sports specific acts and elsewhere, general employment legislation was applicable to the activities of agents. On the question of the absence of a collective body of players’ agents, the International Association of FIFA Agents (IAFA) was in fact established, but largely dormant. Since then, the European Football Agents Association (EFAA) has emerged as a recognised umbrella organisation of national agents associations.

On the substance of the claim, that the FIFA regulations affected competition in the single market, the Court rejected Piau’s submissions (Piau para’s 83-121). First, it found no error on the part of the Commission to find that the most restrictive elements contained within the 1994 PAR had been removed in the 2001 version. In this regard, the Court found that the examination offered satisfactory guarantees of objectivity and transparency, the professional liability insurance obligation and the code of professional conduct did not impose disproportionate obligations on players’ agents and the remuneration provisions of the regulations referred to an objective, transparent criterion (the player’s basic gross salary) with the 5% cap merely a subsidiary mechanism for the settlement of disputes. Neither did the Court agree with Piau’s remaining objections. The content of the amended regulations, which concerned the obligation under the regulations to comply with FIFA rules such as transfer rules, was not the subject of Piau’s complaint and so could not be assessed in relation to competition law. The content of the standard contract, and its limited duration, was found not to restrict competition, but in fact stimulate it. The sanctions system could not be considered manifestly excessive for a system of professional sanctions. Finally, the Court disagreed with Piau’s assessment of the regulations that denied him access to ordinary courts in case of a dispute. The Court pointed out that interested parties can access ordinary courts, in particular in order to assert their rights under national or EU law, and actions for annulment can also be brought before the Swiss Federal Court against decisions by the Court of Arbitration for Sport.

Second, the Court concluded that the Commission committed no error in finding that the compulsory nature of the licence might be justified and that the amended regulations could be eligible for an exemption under Article 81(3) EC (now Article 101 TFEU). In this regard, the Court considered that the license system did not result in competition being eliminated, as the system resulted in a qualitative selection process, rather than a quantitative restriction on access to that occupation. This was necessary in order to raise professional standards for the occupation of a players’ agent, particularly as players’ careers were short and they needed protection.

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3 C181, Private Employment Agencies Convention, 1997 (No.181).
4 Case T-193/02, Laurent Piau, paragraph 102. The French law in question is Article 15-2 concerning sports intermediaries, Loi No. 84-610 du Juillet 1984 relative à l’organisation et à promotion des activités physiques et sportives.
Third, although the Court disagreed with the Commission’s assessment that FIFA did not hold a dominant position in the market of services of players’ agents, the Court went on to find no abuse of market dominance. The position of dominance was established as FIFA operated as an emanation of the clubs and in that role holds a collectively dominant position on the market for players’ agents’ services. However, no abuse of dominance could be established as the system resulted in a qualitative selection process, rather than a quantitative restriction on access to that occupation.

On appeal, and dispensed with by Order of the Court, the European Court of Justice upheld the judgment of the Court of First Instance.5

The 2008 FIFA Players’ Agents Regulations

The 2001 regulations were amended in 2007 with a new set of regulations entering force in 2008. The 2008 FIFA Players’ Agent Regulations (2008 PAR) defined an agent as “a natural person who, for a fee, introduces players to clubs with a view to negotiating or renegotiating an employment contract or introduces two clubs to one another with a view to concluding a transfer agreement, in compliance with the provisions set forth in these regulations”. This definition meant that once again, only natural persons, as opposed to legal entities such as a corporate entity, could act as an agent. Article 3(2) did permit a players’ agent to organise his or her occupation as a business as long as his employees’ work was restricted to administrative duties and the agent himself carried out the actual agency work. The regulations also made clear that the work of an agent was “strictly limited”6 to the employment related matters of negotiating or renegotiating an employment contract or introducing two clubs to one another with a view to concluding a transfer agreement. Other services offered by agents, such as image rights work, was not covered by the 2008 PAR. This activity is regulated by the laws applicable in the territory of the association (Article 1). National associations were required to implement and enforce the regulations and in doing so they were permitted to establish their own national regulations which must incorporate the principles established in 2008 PAR with these national rules only deviating from the FIFA regulations if the latter did not comply with the national law applicable in the territory of the association. The association was required to submit its regulations to the FIFA Players’ Status Committee for approval (Article 1(4)). An agent, once licensed, was required to respect and adhere to the statutes, regulations, directives and decisions of the competent bodies of FIFA, the confederations and the associations, as well as applicable national law (Article 23(1)). The 2008 PAR stipulated that clubs and players could only call upon the services of agents who are licensed by national associations (Articles 25 and 27) although this prohibition did not apply if the agent acting on behalf of a player is an “exempt individual” meaning a parent, a sibling or the spouse of the player in question or if the agent acting on behalf of the player or club is legally authorised to practise as a lawyer in compliance with the rules in force in his country of domicile (Article 4).

The individual wanting to become a licensed agent was required to submit a written application for a players’ agent licence to the relevant association. They had to be a natural

5 Case C-171/05 P, Laurent Piau v Commission of the European Communities, Order of the Court (Third Chamber) of 23 February 2006, ECR 2006 I-37.
person with an impeccable reputation which meant having no criminal sentences for a financial or violent crime (Article 6(1)). Applicants were debarred if they held any position at FIFA, a confederation, an association, a league, a club or any organisation connected with such organisations and entities (Article 6(2)). By applying, the applicant agreed to abide by the statutes, regulations, directives and decisions of the competent bodies of FIFA as well as of the relevant confederations and associations (Article 6(4)).

On receipt of the application, and subject to the prerequisites being met, the applicant was invited to undertake a written multiple choice examination designed to test knowledge of relevant football regulations and national laws (Article 8). If the candidate passed the examination, the applicant was required to either conclude professional liability insurance with an insurance company in their country (Article 9) or deposit a bank guarantee to the amount of CHF 100,000 (Article 10). The applicant was then required to sign a Code of Professional Conduct (Article 11 and Annex 1). If the above requirements were met, the competent national association issued a personal and non-transferable licence (Article 12(1)) and the agent was entitled to use the title “Players’ agent licensed by the football association of [country]” (Article 12(2)). The national association was required to keep a register of licensed agents and share this with FIFA (Article 13). As the license expired after five years, agents wishing to continue to offer their services were subject to re-examination. If the re-examination was unsuccessful, the license was suspended until such a time as the examination was passed (Article 17).

The 2008 PAR established not only the conditions of access to the profession but also the standards of conduct expected of those subject to them. In this regard, only on the conclusion of a written representation contract between the agent and the player or club could an agent represent a party in negotiations (Article 19(1)). This contract was for a maximum duration of no more than two years, although it could be extended for a further two (Article 19(3)). If the player was a minor, the player’s legal guardian(s) was also required to sign the representation contract in compliance with the national law of the country in which the player is domiciled (Article 19(2)).

The representation contract had to contain details of who was responsible for paying the players’ agent and in what manner. In that regard, the regulations required, subject to national law, payment to be made exclusively by the player. However, the player could give his written consent for the club to pay the player’s agent on his behalf (Article 19(4)). Article 19 ended with a statement on conflicts of interest. Players’ agents were required to avoid all conflicts of interest in the course of their activity and they could only represent the interests of one party per transaction. In particular, a players’ agent was forbidden from having a representation contract, a cooperation agreement or shared interests with one of the other parties or with one of the other parties’ players’ agents involved in the player’s transfer or in the completion of the employment contract (Article 19(8)).

The remuneration of an agent acting for a player was calculated on the basis of the player’s annual basic gross income, including any signing-on fee that the players’ agent had negotiated for him in the employment contract (Article 20(1)). This excluded the player’s other non-guaranteed benefits such as a car, accommodation and bonuses. Payment could be made by way of a lump sum at the start of the employment contract that the players’ agent had negotiated for the player or through annual instalments at the end of each contractual year (Article 20(2)). In the event that the payment was structured annually and the player’s employment contract negotiated by the agent extended beyond the representation contract,
the agent was entitled to annual remuneration even after expiry of the representation contract. This entitlement lasted until the relevant player’s employment contract expired or the player signed a new employment contract without the involvement of the same players’ agent (Article 20(3)). In the absence of agreement on the amount of remuneration, the agent was entitled to a payment of 3% of the player’s basic income (Article 20(4)). In terms of an agent’s services rendered to a club, the agent was entitled to payment of a lump sum agreed upon in advance (Article 20(4)). Article 29 made clear that no compensation payment, including transfer compensation, training compensation or solidarity contribution, that was payable in connection with a player’s transfer between clubs, could be paid by the club to the agent.

Article 22 of the 2008 PAR established two ‘tapping up’ prohibitions. First, an agent could not approach a player who already held an exclusive representation contract with another agent (Article 22(1)). Second, the agent was prohibited from approaching any player who was under contract to a club with the aim of persuading him to terminate his contract prematurely or to violate any obligations stipulated in the employment contract. The regulations presumed, unless established to the contrary, that any agent involved in a contractual breach committed by the player without just cause had induced such breach of contract (Article 22(2)). Once an agent had acted in any transaction for a player or a club, his or her name, and that of the client, must appear in that contract (Articles 26 and 28). This was the proof required to demonstrate that an agent took part in a relevant transaction.

Under the 2008 PAR, agents were required to abide by the principles described in the Code of Professional Conduct annexed to the regulations. This code required an agent, inter alia, to perform his activities conscientiously, professionally, truthfully and fairly whilst protecting the interests of his client in compliance with the law. The agent was required to conduct a minimum of bookkeeping on his/her business activity and furnish any authorities conducting an investigation into disciplinary cases and other disputes with information directly connected with the case in point (Annex 1).

Domestic disputes arising from the activity of an agent were not to be heard by FIFA but had to be resolved by independent arbitration at national level, albeit taking into account FIFA Statutes and national law. International disputes could be referred to the FIFA Players’ Status Committee with disciplinary matters being referred to the Disciplinary Committee (Article 30).

Violations of the 2008 PAR could give rise to sanctions being imposed on agents, clubs, players and associations. In domestic transactions, the relevant association was responsible for imposing sanctions, although the FIFA Disciplinary Committee could impose additional sanctions. In international transactions, the FIFA Disciplinary Committee was responsible for imposing sanctions in accordance with the FIFA Disciplinary Code (Article 32). Sanctions that may be imposed for violating the regulations were a reprimand or a warning, a fine of at least CHF 5000 (CHF 30,000 for associations), a suspension or withdrawal of the licence for up to 12 months (for an agent), a match suspension (for players), exclusion from a competition (for associations), a ban on taking part in any football-related activity and for clubs, a transfer ban, points deduction or relegation (Articles 33-35). An agent was prohibited from taking a dispute to ordinary courts of law as stipulated in the FIFA Statutes and is required to submit any claim to the jurisdiction of the association or FIFA (Annex 1).
Reforming the 2008 PAR

The apparent deficiencies of the 2008 PAR were revealed when only a year after their enactment, FIFA embarked on another reform process. According to FIFA these deficiencies were:

- Inefficient licensing of players’ agents, resulting in the conclusion of many international transfers without the use of licensed agents.
- Even transfers concluded with the use of licensed agents were often intransparent and thereby not verifiable.
- Confusion regarding the differences between club representatives and players’ agents and their respective financial obligations.7

FIFA’s aim was to adopt a new, more transparent system that would be easier to administer and implement, resulting in improved enforcement at national level. The FIFA Committee for Club Football established a sub-committee composed of key football stakeholders including member associations, confederations, clubs, FIFPro and professional football leagues. Not included within the sub-committee’s membership was a body representing agents, such as the European Football Agents Association.

The outcome of these deliberations saw the FIFA Executive Committee approve new regulations in March 2014. Following amendments to the FIFA Statutes at the 64th FIFA Congress in June 2014, a new set of Regulations on Working with Intermediaries entered into force on 1 April 2015 thus replacing the 2008 PAR.

The key changes in the 2015 RWWI are:

- The regulations no longer speak of agents but refer to intermediaries.
- An intermediary can be both a natural or legal person.
- Intermediaries no longer require a licence. They now have to certify that they have no conflicts of interest (unless declared) and that they have an impeccable reputation.
- Each time an intermediary is involved in a transaction, they must be registered with the national association to which the club is affiliated. National associations are required to maintain the register.
- FIFA has recommended remuneration caps on the services provided by intermediaries.
- Intermediaries cannot be remunerated in terms of employment contracts and/or transfer agreements if the player concerned is a minor.
- Breaches of the RWWI are enforced by national associations and any sanctions imposed may be extended by the FIFA Disciplinary Committee.

7 Working with Intermediaries – reform of the players’ agents system, www.fifa.com
Richard Parrish
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