Promoting and Supporting Good Governance in the European Football Agents Industry

INTERIM REPORT CONCLUSIONS ON

Professional Standards: Licensing and Qualification

March 2019

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This project has been funded with support from the European Commission. This publication reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.
1. Introduction

1.1 These interim conclusions pertain to the issue of promoting high professional standards in the football agent industry. This paper should be read in conjunction with our published papers: Interim Report, General Conclusions and Conclusions on Remuneration and Representation Restrictions. At the time of writing, papers on Working with Minors and Dispute Resolution are being prepared.

1.2 The main objective of a set of rules regulating the activity of football agents must be to ensure the quality of the service provided to the market. Although the public debate has not focussed on the issue of licensing and qualification of agents, this is an aspect of vital importance for all the stakeholders involved in the area. Formal standards of knowledge and specific levels of experience prepare agents to become qualified representatives of individuals or collectives in professional football and ensure the overall integrity and legitimacy of the system. In practice, the service of football agents may cover a broad range of activities, from financial, legal and tax services, to assistance on matters such as education, dual careers, foreign language, media presence and cultural integration. In order to respond to the growing demands and challenges of an ever-complex football environment, the implementation of certain standards is largely considered as inevitable.

1.3 Against this backdrop, this report provides an overview on the issue of licensing and qualification of football agents. The second section of this report shows how the matter has evolved through the various versions of FIFA Regulations. Previous issues and debates around licensing and qualification are also addressed. A third section deals with the 2015 RWWI and the way the regulations have been implemented at national level. The fourth section is dedicated to an assessment of the 2015 RWWI with special regard to licensing and qualification. The fifth part of this report addresses objectives and requirements of a licensing and qualification system, followed in the sixth section by a discussion of four possible models of licensing and qualification, with regard to the range of stakeholders involved and the interest they represent. The seventh section examines agent licensing requirements in other sports. Finally, the report offers some conclusions and recommendations on core elements and requirements of licensing and qualification.

1.4 This study expounds recommendations from a specific standpoint: considering requirements of good governance as a normative backdrop, it is argued that an efficient licensing system, supported by an examination and ongoing educational requirements, will help to promote a high level of professionalism in the football agents’ industry and reduce instances of abuse.

1.5 The FIFA TMS Report on Intermediaries reveals that agents have been involved in only 29.3% of international transfers in 2018.1 It is expected that a reform of the current

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regulations and the incorporation of formal standards will foster transparency and a culture of client care in the industry, which are key components of good governance. In addition, a system bound to a certain set of standards and requirements may also ensure greater accountability and control.

2. Changes and Development: The Provisions on Qualification and Licensing

2.1 As mentioned in the Interim Report, between 1991 and 1994 FIFA responded to the increase in cross-border transfers of players and the growing number of player agents being active in this field by adopting the first set of regulations on players’ agents (PAR).

2.2 Under the 1994 PAR, national associations were to issue a licence to natural persons that applied to become players’ agents in their territory. For a licence to be issued, the candidate had to undergo an interview, aiming to assess his/her knowledge of law and sports related matters. In addition, applications by individuals with a criminal record or a “bad reputation” would have been rejected. Having met these requirements, the applicant had to deposit a bank guarantee of CHF 200,000.

2.3 Following a number of complaints before the European Commission, FIFA amended the regulations on players’ agents in 2001. The new FIFA regulations maintained the obligation to hold a licence issued by the respective national association (Articles 1, 2 and 10). The candidate should have had impeccable reputation, and pass a multiple-choice questions exam, aiming to assess his/her knowledge of law and sport. The players’ agent was also required to take out a professional liability insurance policy or, failing this, deposit a bank guarantee of CHF 100,000 (Articles 6 and 7).

2.4 In 2007, the European Commission published the White Paper on Sport in preparation for the implementation of Article 165 in the Lisbon Treaty. In this regard, the accompanying Commission Staff Working Document acknowledged that the issue of professional qualifications of players' agents was already covered by Directive 2005/36/EC on the recognition of professional qualifications in cases where the profession of players' agent was subject to national qualification requirements. In section 4.4, the European Commission highlighted reports of bad practice in the activities of some agents which resulted in instances of corruption, money laundering and exploitation of minors.

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3 Articles 1 and 2 of the PAR.
4 Idem, Articles 6-8.
2.5 The European Parliament addressed the question of players’ agents in its Resolution on the White Paper on Sport. The Resolution critically refers to “bad practices in the activities of some representatives of professional sports players which have resulted in instances of corruption, money laundering and the exploitation of under-age players and sportsmen and sportswomen, and takes the view that such practices harm sport in general”.

2.6 In January 2008, another revision of the regulations (FIFA Player’s Agents Regulations) was adopted. Clubs and players were prohibited from using non-licensed players’ agents and the system of sanctions was tightened. The 2008 version provided for a 5-year licence, which would have had to be renewed through a “refresher test” for those holding a licence.

2.7 After lengthy preparatory work, in June 2014 the 64th FIFA Congress in Sao Paulo adopted the *FIFA Regulations on Working with Intermediaries* (RWWI), which came into force on April 1st 2015. In addition to abandoning the previous examination and licensing procedure in favour of a registration procedure, the parties involved in a transfer are subject above all to considerable disclosure and publication obligations.

2.8 The 2015 Regulations put an end to the licensing system, offering easier access to serve as a player agent/intermediary. The role of the national associations was again reinforced. A first review of the 2015 regulations reveals that major targets have not been achieved. Accordingly, in 2018 FIFA started a revision of the existing regulations.

3. **Licensing and Qualification: The 2015 RWWI and its National Implementation**

3.1 The results of our Interim Report show that all the national associations surveyed have adopted the minimum requirements for the registration of intermediaries. However, several countries went beyond the requirements of the RWWI. By January 2019, three countries, namely Czech Republic, France and Italy, require players’ agents to hold a license. To receive the license, candidates must pass an exam or an interview. Further requirements differ among the three countries and may also include liability insurance (Czech Republic).

3.2 In two of the three countries, the upholding (France) or re-introduction (Italy) of a licensing system stems from national legislation which requires that the FA (France) or the National Olympic Committee and the FA (Italy) issue licenses for intermediaries.

3.3 While most countries have renounced to the licensing system, some have imposed certain registration conditions additional to those defined by the RWWI. These requirements include a University degree (Bulgaria), a personal interview (Slovakia, Spain), liability insurance (Portugal) or the recommendation by a bank (Malta).

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3.4 Additional measures to the RWWI requirements have been adopted by some FAs: the Danish and the Swedish FA issue certificates and provide training for intermediaries on a voluntary basis. The Dutch FA has implemented a system to certify intermediary organisations. These measures are commonly well accepted by intermediaries, which can use them as a marketing tool for their services.

3.5 The requirements to act as intermediary in the EU are therefore relatively heterogeneous, as several countries have departed from the minimum requirements adopted by FIFA RWWI.

4. Assessment of the 2015 RWWI Regulations on Licensing and Qualification

4.1 The RWWI are akin to a delicensing and deregulation of the sector. Whilst our national reports and the stakeholder survey indicated that transparency increased in terms of the information that is being published by the national associations, the market in fact became more opaque when looking at the individual transactions and constellations of representation.\(^8\)

4.2 The de-regulation resulted in an increase in the number of registered intermediaries, seemingly accompanied with a decrease in professional standards and the quality of services provided. Under the current RWWI, players who, generally, are young, have short careers and hold a weak position in negotiating transfer deals, are more likely to be exposed to unqualified intermediaries. Minors are particularly vulnerable to poor practice.

4.3 As the current RWWI focus on regulating the transaction as opposed to the individual agent, one could say that intermediaries are no longer part of the regulated football system, notwithstanding that some national associations continue to regulate agent activities, sometimes in conjunction with national law requirements. Nevertheless, to retain some regulatory authority over intermediaries, the intermediary self-declaration includes a paragraph in which the signatory declares their acceptance of the statutes and rules of the governing bodies. This situation was legally challenged in Germany. Sanctioning and enforcement has therefore become problematic within the framework of the current regulations.

4.4 On the cross-national level, different national requirements for licensing and qualification caused a fragmentation of the European market, counteracting endeavours to establish a common European market for the provision of football agents’ services. Differing standards and requirements incentivise forum shopping, causing intermediaries from countries with strict rules to move to markets with more loose requirements.

4.5 One country (Italy) reacted to the rising criticism associated with the de-regulation of the intermediary sector by adopting national legislation which establishes a licensing system. If more countries were to follow, this would further lead to a national fragmentation of the market.

4.6 Taking into account the results of our stakeholder survey, it becomes evident that the current situation is not satisfactory. Considering the effects of the 2008 PAR, 35% of respondents agree that “Prior to the introduction of the FIFA RWWI, the FIFA Players’ Agents Regulations were working effectively”; 45% disagree, 20% neither agree nor disagree. Whilst the old licensing system was flawed, many respondents argued that it was underpinned with sound principles and a return to it, or a similar system, is necessary in order to ensure that players and clubs are engaging a professional agent.

4.7 The counter argument is that under the RWWI, players and clubs are free to choose someone close to them and who they trust to represent them, and not just because they hold a license.

4.8 In terms of ensuring standards of professionalism, the respondents to the stakeholder survey favoured the following requirements:

- Ongoing education: 97.5% (strongly) agree
- Insurance: 85%
- Registration: 82.5%
- Training + exam: 75%
- Background checks: 70%
- Self-declaration on good character: 32.5%
- Bank deposit: 27.5%
- Training programme: 17.5%
- Exam: 10%

5. **Objectives and Requirements of a Licensing and Qualification System**

5.1 The future licensing and qualification system must serve the following objectives and meet certain requirements which arise from the criticism of the current system and principles of good governance. A licensing and qualification system must:

- guarantee a high baseline of professional standards and ensure a certain level of quality,
- increase transparency on all levels of the market,
- provide sanctioning power to the relevant authority and ensure enforcement of the rules,
- increase standardisation among EU members in order to prevent forum shopping,
- be in line with both EU and national law.
6. Future Scenarios of Licensing and Qualification

6.1 This study analyses four possible models for regulating the professional standards of football agents: (1) the international federation model (2) the national federation model (3) the harmonise national legislation model and (4) the collective bargaining model.

6.2 The scenarios take previous studies into consideration: in March 2018, a study commissioned by the European Commission further identified issues which arise from the de-regulation of the intermediary market. The study concludes that “representatives of players (FIFPro) and agents (e.g. EFAA) should be involved in improving this regulation in the future.” Such involvement could potentially lead to a Collective Bargaining Model for players’ agents’ regulation akin to that found in American Basketball. Those concepts will be considered in detail.

6.3 In the General Conclusions presented in the Interim Report, it has been pointed out that Member States and the EU could move beyond a complementary role by adopting binding legislation and thus set up national or EU-wide licensing systems. It must be recalled that in Piau, the European Court established that any regulation of the intermediary market may only impose qualitative, as opposed to quantitative, restrictions on the market.

6.4 Model 1: The “International Federation Model”

6.5 In 2009, an independent study on sport agents carried out on behalf of the European Commission concluded that the sport movement should continue to play a leading role in the implementation of regulations applicable to sports agents. At the same time, the study advocated a complementary role for states. Similarly, the recommendations on the supervision of the activities of agents and on transfers of players adopted in December 2013 by the EU Expert Group on Good Governance affirmed 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”.

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13 “States must play a complementary role by supervising the measures implemented by national federations and imposing criminal penalties for offences against public order”. Ibidem, at p. 172.
6.6 Under the international federation model, FIFA would retain the competence for regulating the conditions of licensing and qualification of agents and national federations would implement the Regulations in their domestic settings. Traditionally, football agents have been regulated under this model although, with the 2015 RWWI, “FIFA receded from any attempt to regulate the access to the profession of intermediaries at global level”. Nevertheless, even now, FIFA establishes minimum conditions that must be applied at national association level. In principal, a devolution of competence from FIFA to the Continental Confederations is also possible.

6.7 Our study has highlighted deficiencies in terms of how the international federation model has traditionally been negotiated with stakeholders. When introducing the RWWI, FIFA’s consultation with stakeholders was limited and consultation between national associations and national stakeholders at implementation level was deficient. Should the international federation model be retained, which is a central recommendation of this study, stakeholder consultation must be improved. In this regard, the research team note positive developments in terms of stakeholder engagement within the context of the FIFA Transfer System Task Force and FIFA’s Football Stakeholders Committee.

6.8 The advantages of the international federation model are:

- Longstanding experience of this model operating in football.

- As football is a global sport, the model helps establish a consistent harmonised system designed at improving professional standards and ethics, which, if flexible enough, could respect national associations’ margin of appreciation to take into account possible domestic specificities and reconcile practical and legal differences.

- Should agents be subject to uniform rules, and not just the transaction they facilitate, the model acknowledges agents as part of the football system and recognizes that agents have rights and responsibilities within the football eco-system.

- Taking into account the cross-border nature of the market, should uniform regulations be applied, the model allows easier movement of agents and their services.

6.9 The disadvantages of the international federation model are:

- The existence of state legislation applicable to agents in some countries (e.g. France and Italy) could complicate its general application.

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- At European regional level, FIFA Regulations should take into account EU law obligations imposed upon Member States.

- Our stakeholder meetings have raised concerns regarding the legality of a re-introduced licensing and qualification system by FIFA/the national FA in some national contexts (e.g. Spain).

- Improper implementation by member federations may not solve the issue of differing standards and may uphold the fragmentation of the market.

- Stakeholders and the public have lost confidence in the current regulations (albeit a hybrid between the international federation model and the national association model). New regulations need to regain this confidence and be materially different to the RWWI.

6.10 Model 2: The “National Federation Model”

6.11 Under this model, national associations are instructed by FIFA to implement a licensing and qualification system that best suits their national settings. Thus, national systems would take the form of regulations adopted by national football associations. To a large extent, this has been the practical result of the current FIFA RWWI, since, as our study has revealed, the approaches of national associations to intermediary regulation vary considerably across the territory of the EU.

6.12 The advantages of the national association model are:

- The model acknowledges agents as part of the football system and grants sanctioning power to the national associations.

- As the responsibility of issuing a license and establishing professional standards would rest with the national associations, they would have the possibility of considering limits or conditions imposed by state legislation to avoid possible difficulties.

- It is clear that under the current RWWI, some national associations have developed extensive and well-functioning agent regulations, such as in England. National specificities can be taken into account.

6.13 The disadvantages of the national association model are:

- Given the globalised character of football and the volume of international transactions, it seems contradictory to regulate the profession of agents at national level.

- The absence of a global regime would lead to normative heterogeneity, lack of uniformity and possibly varying levels of rigour in the application of the rules, thereby
further partitioning the market for agents’ services. Disparities between national systems could make the work of an agent more difficult or less attractive in some markets.\textsuperscript{16} This may also be construed as a restriction on the freedom of establishment and provision of services within the EU. Forum shopping is a negative consequence of this model as standards in some markets are lower than in others.

- As indicated in the General Conclusion of the Interim Report, “a lack of uniformity risks increasing the administrative burden on stakeholders (national associations, leagues, clubs, players and intermediaries) but it is unclear if this effort is proportionate to the benefits secured”.\textsuperscript{17} The administrative burden would be particularly challenging for small associations.


6.15 In the EU, the regulation of employment relations and access to a profession is a matter for national legislation.\textsuperscript{18} In football, some Member States regulate the activity of sports agents through national law. For example, under French Law,\textsuperscript{19} an agent must hold a license which is obtained under strict conditions, they must comply with certain good practice rules and they must submit to the disciplinary procedures of the sport association. The system devolves authority to the French FA to regulate the profession of football agents, facilitating sanctioning and enforcement.\textsuperscript{20} However, whilst the adoption of national law on the regulation of intermediaries may be effective in increasing transparency, quality and enforcement, the adoption of law by individual countries may cause further fragmentation on the European market and a lack of uniformity. Thus, a harmonised national legislative approach might be considered in which all EU/European countries adopt legislation with similar requirements.

6.16 At EU level, Article 165(4) TFEU specifically excludes the harmonization of national laws applicable to sport but Article 114 TFEU could be employed as a harmonizing tool

\textsuperscript{16} As has been said: “It is unequivocal that FIFA’s RWI advent has had as a main repercussion the deregulation of the industry, or better put, the granting of autonomy to the FAs to regulate said industry using the minimum standards as the cornerstone. The case study, though, evidences that important disparities exist between crucial provisions of the various European FAs’ RWI, which leads to compounding practical and ethical problems and to higher risks of forum shopping”: Roumeliotis, P. (2018), Football intermediaries: Would an European centralized licensing system be a sustainable solution? Asser International Sports Law Blog, available at http://www.asser.nl/SportsLaw/Blog/post/football-intermediaries-would-a-european-centralized-licensing-system-be-a-sustainable-solution-by-panagiotis-roumeliotis (accessed 20 January 2019).


\textsuperscript{18} Under Article 153 TFEU, the Union has only the competence to support and complement the activities of the Member States.

\textsuperscript{19} Loi No. 84-610 du Juillet 1984 relative à l’organisation et à promotion des activités physiques et sportives.

should harmonization of agent laws be considered necessary for the establishment and functioning of the internal market.

6.17 The advantages of the harmonized national legislation model are:

- It solves issues regarding the legality of regulating the agent profession.

- Transparency, quality and the effectiveness of enforcement are enhanced under national legislation.

- A harmonised approach across the EU/Europe establishes a common market and provides no incentives for forum shopping.

6.18 The disadvantages of the harmonized national legislation model are:

- The prospects of this model being adopted are remote. The model requires considerable political action and will. The adoption of binding EU law is complex, time consuming and requires the agreement of many different political actors.

- EU legislation only applies within the territory of the EU. The UK, being one of the major markets, will, subject to the Brexit outcome, not be bound by such legislation in the future.

- Football stakeholders are not willing to shift authority to state actors. This is reflected in the result of our stakeholder survey. On the question of whether “Member States of the EU should regulate intermediaries through national legislation”, only 22.5% strongly agreed or agreed whilst 50% disagreed or strongly disagreed. A higher percentage (42.5%) either strongly agreed or agreed that “the EU should regulate intermediaries through EU legislation” whilst 30% either disagreed or strongly disagreed with this statement. In turn, 90% of respondents either strongly agreed or agreed that “The football stakeholders should find solutions to issues concerning intermediaries (self-regulation)”.


6.20 The European Commission report “An update on change drivers and economic and legal implications of transfers of players”\textsuperscript{21} indicates the regulation of the National Basketball Players Association (NBPA) as a ‘best practice’ example to regulate players’ agents and to administer a licensing and qualification system. Under the Collective Bargaining

Agreement signed between the players’ union and the league, the NBPA has power to regulate agents.

6.21 Transposed into the football sector, under the CBA model, the players’ union FIFPro, or its national affiliates, would assume authority to regulate agents and issue licenses. Alternatively, another existing stakeholder or a new body could receive authority to carry out this function. For example, EFAA could, in time, emerge as a body equivalent to a bar association for lawyers. In order to become such, EFAA would require significant investment and it would need to expand its membership so as to become more representative of the agent market.

6.22 This CBA model could be agreed under the auspices of the EU social dialogue committee for European professional football with the participation of FIFPro, the ECA, European Leagues (EL) and potentially EFAA.

6.23 Alternatively, the social dialogue committee could endorse FIFA’s new agent regulations once agreed by FIFA thus, in Europe at least, closing the consultation loop, albeit without the participation of EFAA who is not a member of the committee. The committee has already been active in shaping the debate on agent regulation. As is discussed in our Interim Report, in November 2017, the EU Sectoral Social Dialogue Committee for Professional Football released a Resolution on Intermediaries/Agents.

6.24 While a collective agreement may be construed as a decision by an association of undertakings restricting the market under Article 101 TFEU, EU law exempts those agreements reached between employers and employees which aim at improving the working conditions, in light of the social policy objectives they pursue. This model would also solve the issue of FIFA’s legitimacy, as a private organization, in regulating a profession, while shifting the competence to the parties involved in the transaction (players, clubs, intermediaries).

6.25 The advantages of the CBA model are:

- Collective consultation / negotiation is an important aspect of good governance and a means of avoiding top-down governance models that can lead to conflict and litigation.

- The model follows the principles generally applied in employment relations and grants competence to the representatives of the interested parties to autonomously regulate the market. Hence, in case of legal challenge, the model might offer a better argument for the legitimacy of keeping competence within the autonomous, private football system.

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than the international federation model. The autonomy and specificity of sport is, therefore, better protected.

- Implemented on the international level, the model produces a harmonious system across Europe.

- As the model envisages a cooperation between the relevant stakeholders’ bodies, strong sanctioning and enforcement is possible.

- The stakeholders are presumed to have high interest in transparency and quality measures.

6.25 The disadvantages of the CBA model are:

- Linked to an EU social dialogue committee, the approach suffers from a Euro-centric focus.

- A complex stakeholder constellation is present as football agents represent both clubs and players, sometimes within the same transaction.

- Football is a global sport and regulating football agents through the CBA model places very burdensome administrative requirements the side of the players’ union(s) or the competent authority.

- Questions exist regarding the capacity and representativity of (inter-)national agents’ associations (out of 31 national associations surveyed, only in 12 an agents’ association exists). Currently EFAA would struggle to act in the capacity of an international trade association akin to a bar council for lawyers.

- Questions of the representativity of ECA exist (representing 230 clubs in Europe) and EL (27 leagues are full members). The World League Forum currently sits within the FIFA Transfer Taskforce.

- Potential conflicts of interest arise if the authority responsible for issuing licenses is also active in the agent services and education market.

- Measures agreed under the auspices of the EU social dialogue committee have not undergone democratic scrutiny by the EU’s legislative bodies.

7. Examples from Other Sports
7.1 In the context of this discussion, it is worth mentioning how other sports have approached this issue. While the requirements and the assessments vary considerably between sports, this overview demonstrates that at international level a range of Sports Governing Bodies have felt the need to subject the activity of a sport agent to a form of licensing.

7.2 In Handball, the candidate must pass a multichoice questions test, aiming at assessing the knowledge of the Handball Regulations, and in particular those related to the transfer of players, and national law of the candidates’ country. The test is composed by 30 questions to be answered in 60 minutes. The Regulations, however, leaves open to national associations the possibility to impose further professional requirement.

7.3 In Basketball, FIBA Regulations prescribe that the candidate must undertake a personal interview and a test in which he will have to demonstrate knowledge of Basketball Regulations and his suitability as an agent. Once licensed, the Agent must attend FIBA Seminars in order to remain up-to-date with developments concerning Agents’ activities. Finally, FIBA exempts from licensing requirements those individuals who hold a licence to practice law in the country of permanent residency.

7.4 In the US, under the National Basketball Players Association (NBPA) Regulations on Agents the candidate must hold a university degree, although relevant negotiation experience may be considered equivalent. Furthermore, the candidate must pass a written examination, focusing on the key provisions of the Collective Bargaining Agreement, the Agents Regulations and any other relevant matters. Prior to this, the NBPA offers preparation courses for the applicant, and candidates are allowed to bring prepared notes in the exam. The exam is open book and composed by 50 multiple choice questions and must be completed in three hours. While the NBPA Regulations do not formally prescribe attendance to Seminars and on-going education, it is expected that the Agents achieve and maintain knowledge of the NBPA’s structure, the economics of the industry, the applicable Collective Bargaining Agreement, basic negotiating techniques and relevant areas of law.

7.5 Finally, the rules of the Rugby Football Union prescribe that the candidate must pass a written test and, upon request, sit an interview with the National Union registering him. Furthermore, the licensed Agent must attend a mandatory Professional Development training every year organised by the Governing Body.

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8. Recommendations

8.1 In light of the above, it is recommended that the international federation model be adopted. FIFA is encouraged to take the lead in developing a licensing system. Its role will facilitate the development of a uniform approach and central record keeping. FIFA should set the global standards and work with other bodies, particularly national associations, to ensure the effective administration of the system. The practical effect of this system is that the license is a FIFA license issued by national associations.

8.2 As previously discussed, it could be envisaged that a licensing system could be administered by FIFPro. The problem with this approach is that given that FIFPro and some prominent national players’ unions are active in the agent services market, potential conflicts of interest could arise. Court of Justice jurisprudence and Commission decisional practice has taken a dim view of regulators that use regulatory functions to advance commercial interests.28

8.3 Continental federations, such as UEFA, could also play a role within the licensing system, but for practical and constitutional reasons, the system is better administered at FIFA and national association level. The relevant football statutes would require revision in order to facilitate this and from a logistical perspective, agents would struggle to present themselves at a central testing centre at the seat of each association (for example Nyon in Europe). Continental federations could, however, be consulted in terms of the content of testing requirements (discussed below).

8.4 Other bodies are inapt at administering a licensing system. For example, EFAA is insufficiently representative of agents globally to, at this stage, play a leading role in the licensing system. It is, however, more representative of the European landscape and given its expertise, it should be consulted on the system and play a prominent role in terms of requirements to retain licenses, such as continuing competence requirements.

8.5 In order to improve standards of professionalism in the industry, to be issued with a license, an agent should be required to fulfil certain criteria including confirmation that the applicant:

- Is of good character and free from conflicts of interest. This should not simply be via self-declaration but also through formal verification such as criminal records check issued by the competent public authority.

- Has the necessary skills, verified by way of an examination, to operate as an agent.

- Has professional liability insurance.
- Has agreed to be bound by a code of conduct.

8.6 Fulfilment of these requirements can be evidenced through uploading relevant documentation onto an online portal, such as within the domestic and international Transfer Matching System (TMS). A series of green and red flags would alert parties to non-compliance with the above.

8.7 The Examination

8.8 To avoid subjective assessment, it is advisable that a written examination, as opposed to an interview, is adopted. The examination could require candidates to answer multiple choice questions, either based on short questions or short scenarios. The examination should test knowledge and understanding of all applicable FIFA statutes, regulations, codes and accompanying papers and statements that are relevant to the business of an agent including:

- FIFA Statutes
- FIFA Disciplinary Code
- FIFA Code of Ethics
- FIFA Regulations on the Status and Transfer of Players
- FIFA Agent Regulations (new version)

8.9 In order to give the examination regional specificity, a section testing knowledge and understanding of equivalent confederation (e.g. UEFA) regulations could be added. This approach would require co-ordination between FIFA and the confederations.

8.10 As a matter of quality assurance, it is questionable that the examination should test knowledge and understanding of national association regulations and law. Our study identified varying practice and cultures at national association level and in order to retain confidence in the system, the examination should be as centralised as possible. Knowledge of national association regulations and applicable national law should be acquired via a system of permanent on-going education which should be required in order for an agent to retain a license.

8.11 The examination should be taken within a globally standardised time period. Due to differing time zones and the risk caused to the integrity of the system of questions being ‘leaked’, a randomly selected percentage of a large bank of questions could be set by each national association testing centre. It would be advisable that, notwithstanding the random selection, certain topics could not be avoided, such as knowledge of transfers, working with minors, arbitration etc. Questions should be refreshed annually by
FIFA. A suitable pass rate should be established by FIFA which should be informed by qualitative considerations as opposed to establishing a quantitative limit on the number of licenses issued.

8.12 **On-going Education and Training (Continuing Competence)**

8.13 Retention of a license should be partly dependent on an agent satisfying on-going permanent education requirements (continuing competence). Regulated professions, such as lawyers, have been required to undergo such a scheme, for example by acquiring a minimum number of training points or hours. Whilst a number of models can be envisaged for on-going agent education, some of the following principles should be considered:

8.14 **Identifying learning needs**: It is important that agents are able to identify their learning needs. This can be established prescriptively by the relevant football bodies (FIFA, national associations, EFAA etc) or by agents themselves. For solicitors in England and Wales, the second approach is now favoured.\(^{29}\) Regardless of the method, one would anticipate a number of key skills pertinent to the activity of an agent to be identified such as client care, business skills, people skills and legal and regulatory compliance. Agents can identify their own needs (1) following specific activities, such as facilitating a transfer of contract re-negotiation (2) holistically, reflecting on his/her business activity generally (such as following the closure of a transfer window) (3) via client feedback and (4) via appraisal / performance review if the agent practices within an agency.

8.15 **Planning and addressing needs**: Once learning needs have been established, an agent must take steps to address them. First, an agent must identify which providers can satisfy the needs, for example through identifying conferences, workshops or training sessions. Minimum requirements in terms of hours could be stipulated by FIFA or an alternative assessment of training undertaken could be established, such as an auditing system. It is important that FIFA reflects on which providers are able to meet the learning needs – private providers,\(^{30}\) FIFA, continental federations, national associations, EFAA, national agent bodies, private agencies, FIFPro etc – and what type of accreditation / monitoring system should operate in order to ensure quality assurance, including who acts as the accrediting body. It seems logical that national associations are best placed to fulfil this accrediting / monitoring function, but FIFA should guard against establishing a system whereby the national association has the potential to act in both a regulatory and commercial (provider) context and possibly use this function to restrict access to the provider market or to frustrate the ability of agents to acquire necessary skills. FIFA and or the continental federations must also ensure quality assurance of

\(^{29}\) See Solicitors Regulation Authority (SRA) requirements at: [www.sra.org.uk](http://www.sra.org.uk)

\(^{30}\) The research team note a proliferation in the number of private providers offering agent education and training services.
national measures. The Court of Justice has assessed similar schemes in *Wouters*\(^{31}\) and *OTOC*\(^{32}\) under Article 101 and 102 TFEU. While the authority to regulate the profession was accepted as a means to ensure the quality of the service, it was held that the system had to allow access to the market to any provider satisfying the requirements.\(^{33}\) In particular, the Court considered that an acceptable regulation would have consisted of a monitoring system, implementing selection criteria clearly defined, transparent, non-discriminatory and reviewable.\(^{34}\)

8.16 **Recording and Evaluation:** Once the training needs have been met, an agent should satisfy recording requirements which could be achieved via uploading details of training onto an online portal, viewable by the monitoring authority and indeed the parties (players and clubs) engaging the agent. Red and green flags would alert parties to compliance. Alternatively, the agent should retain evidence of his/her training record which can be audited. The recording of training undertaken should be accompanied by reflection on the part of the agent which then feeds back into the identification of learning needs discussed in 1 above.

8.17 **Scope**

8.18 In previous iterations of the regulations, uncertainty has been caused by the existence of exempt individuals. The application of universal standards, applicable to all agents, including family members and lawyers, will help improve standards of professionalism. It is therefore recommended that no individuals should be exempt from the licensing requirements.

8.19 In order to prevent conflicts of interest, applicants for a license should not hold positions within FIFA, continental federations, national associations, leagues or clubs.

8.20 Agents licensed under the pre 2015 RWWI could be considered for an exemption from the examination, but not the continuing competence requirements. In order to promote the highest standards of professionalism, it must be considered that all agents should undertake the new licensing requirements, perhaps with former licensed agents being subject to a transitional period.

8.21 Once an agent has been issued with a license, intermittent re-examination could be considered (for example every five years) although for administrative efficiency a license could be issued for an indefinite period, subject to compliance with continuing competence requirements.

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\(^{31}\) Case C-309/99, *Wouters and others* [2002], ECR I-01577.

\(^{32}\) Case C-1/12, *Ordem dos Técnicos Oficiais de Contas (OTOC) v Autoridade da Concorrência* [2013], ECLI:EU:C:2013:127


\(^{34}\) *OTOC*, para. 99
8.22 Re-examination and/or compulsory engagement with continuing competence requirements should fall within the range of sanctioning powers of relevant disciplinary bodies. This is because, some agents have been sanctioned for technical regulatory offences as opposed to bad faith conduct.

8.23 Failure to satisfy continuing competence requirements should result in withdrawal of the license. Re-examination should then take place prior to an agent being authorised to act once again.

8.24 Previous iterations of FIFA agent regulations have suffered from an enforcement deficit. The research team acknowledge the central importance of effective disciplinary and dispute resolution measures. These are discussed in a separate set of thematic conclusions.