Promoting and Supporting Good Governance in the
European Football Agents Industry

INTERIM REPORT –
CONCLUSIONS ON PROFESSIONAL STANDARDS:
INTERMEDIARIES AND MINORS

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1. Introduction

1.1. It is widely accepted that young football players are particularly vulnerable and therefore deserve special protection. This applies in particular to minor players, meaning players that are younger than eighteen years old. The interest of protecting minor players is for example recognized in FIFA’s Regulations on the Status and Transfer of Players (RSTP). As a general rule, minor players may not be the subject of international transfers (Article 19 RSTP), although a significant and increasing number of exceptions to that general rule are made. As explained by FIFA, this policy is based on a generalized idea about the interest of and risks to minor players: “[w]hile international transfers might, in specific cases, be favourable to a young player’s sporting career, they are likely to be contrary to the best interests of the vast majority of players as minors.” Another example of such a rule is the requirement that football clubs that operate academies must report all attending minor players with the national football association (FA) to which it belongs (Article 19bis RSTP).

1.2. The vulnerabilities and needs of minor players raise a number of issues specifically pertaining to the role and regulation of agents. Much of the importance of intermediaries as well as the need for regulating intermediaries stem from the fact that football players in general have limited experience and bargaining power, and young players are by definition inexperienced and generally tend to have limited bargaining power and this places them at risk. Young players that move abroad to train and compete are particularly vulnerable in this regard.

1.3. The special rules governing intermediaries and minors reflect an ambivalent view of intermediaries: some provisions treat the intermediary as someone that protects the player, others as someone that the player needs protection from. As highlighted by FIFA’s 2015 Regulations on Working with Intermediaries (RWWI 2015), agents play a central role with regard to the conclusion of employment contracts between players and clubs and player transfer agreements between clubs (Article 1.1) and therefore have a central role in protecting the minor player’s interests in relation to clubs. The athletes’ need for intermediaries have increased over time as the amount of money involved in sports has increased, and with it the complexity of navigating the market and negotiating agreements. Minors also enjoy special protection in terms of working conditions.

1.4. However, at the same time, intermediaries are seen as posing a separate threat to minor players. According to the Commission, “[t]here are reports of bad practices in the

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1 For example, the UN General Assembly has underlined the dangers faced by young athletes “including, inter alia, child labor, violence, doping, early specialization, over-training and exploitative forms of commercialization, as well as less visible threats and deprivations, such as the premature severance of family bonds and the loss of sporting, social and cultural ties”. UN Resolution 58/5, 17 November 2003, Sport as a means to promote education, health, development and peace, available at http://research.un.org/en/docs/ga/quick/regular/58 (accessed 18 April 2019).
activities of some agents which have resulted in instances of corruption, money laundering and exploitation of underage players.\textsuperscript{6} For example, independent intermediaries are believed to play a central role in the trafficking of young players from third countries.\textsuperscript{7} Although there is limited data on the prevalence of such “bad agents”, the fear that they exist and pose a risk to minor players gives rise to an ambivalence is key to understanding the regulatory field.

1.5. The signing or transfer of an adult player typically involve three types of actors: the player, agents and clubs. Situations involving minor players typically also involve a fourth central actor, the player’s legal guardian(s), and guardians therefore frequently appear in the regulations.

2. Banning Representation by Intermediaries

2.1. One possible, effective approach for the purpose of reducing the risk that intermediaries pose to minors is to ban intermediaries from representing all minor players or, alternatively, players under a certain age. This approach is used in some sports. For example, the rules governing amateur golf players provide that a minor player may not enter into a representation contract without permission from the SGB\textsuperscript{8} and the rules governing handball forbid players younger than fifteen years old from entering a representation contract.\textsuperscript{9}

2.2. RWWI 2015 allows intermediaries to represent minor players, regardless of age. Similarly, a majority of the FAs, including in many of the largest football markets (e.g. England, France, Germany, Spain and Italy) do not apply any direct ban on representation under a certain age, opting for regulating rather than banning.

2.3. Many FAs have however banned or severely restricted intermediaries representing minor players. The most severe example is Hungary where the FA regulations ban representation contracts with any minor player. It is more common that the national FA regulations forbid representation contracts with players younger than fifteen (Czech Republic, Denmark, Latvia, Poland and Sweden) or sixteen (Bulgaria, Romania).

2.4. As a separate issue, some FAs allow intermediaries and minor players to enter into a representation contract but the intermediary cannot, as a matter of law, act on behalf of the player (Portugal).

2.5. It is unclear what role bans on intermediary representation play in the protection of minor players, if any. Whereas a complete or partial representation ban may protect players from exploitation by intermediaries, it increases the unrepresented player’s exposure to exploitation by clubs. Thus, a representation ban is suitable if the risks of the player being exploited by the intermediary outweighs the risks of club exploitation and there are no viable options for changing that balance, such as intermediary regulations. An

\textsuperscript{6} Commission 2007, p. 15. See also Commission 2011, p. 15.
\textsuperscript{8} Rule 2.2b of the Rules of Amateur Status.
\textsuperscript{9} IHF, Regulations for Players’ Agents, Article 10.2.
intermediary representation ban can also be justified if there are other actors, such as family members, who are trustworthy and capable of protecting the player against club exploitation. We are doubtful that either of those conditions are fulfilled and therefore, consequently, question the appropriateness of representation bans. In any case, it is difficult to understand why the risk balance would shift at a certain age.

3. Guardians Representing Minor Players vis-à-vis Intermediaries

3.1. Because minors have limited legal capacity, most legal systems require the guardian to sign the representation contract on the player’s behalf in order for it to be valid. This is the case in the majority of the responses in the Interim report. On a national level, the requirement for guardian involvement seems to be stated either in special legislation or follows from general legal rules in the country in question. Thus, guardian involvement is in practice necessary regardless of the content of the relevant sports regulations.

3.2. RWWI 2015 nevertheless makes it explicitly clear that a representation contract between a minor player and an agent must be co-signed by the player’s legal guardian(s) in accordance with national law (Article 5.2). Football is not unique in this regard; the same is for example true in handball. This is mirrored in the FA regulations.

3.3. Guardian involvement is an essential element of protecting minor players in relation to intermediaries. One national expert (Italy) describes the requirement as the only real threshold for agents and minor players, stating that “the intermediary does not have to satisfy any further requirement in order to represent a minor, apart from obtaining the signature of his parents.”

4. Relatives as Intermediaries

4.1. A related but distinguishable issue is the involvement of guardians and other relatives acting as intermediaries. The FIFA regulations governing intermediaries before 2015 provided for an exemption for parents, sibling and spouse of the player. These individuals did not need licensing and their activities fell outside FIFA’s jurisdiction (Article 4 PAR 2008).

4.2. RWWI 2015 contains no comparable provision, in part because the need for such a provision was significantly reduced after the abolition of the licensing requirement. Nevertheless, FA regulations take different approaches as to whether relatives fall under the intermediary registration requirement: while some FAs exempt guardians and/or relatives from parts of the registration regulation (e.g. Latvia, Slovenia and Sweden), others explicitly include relatives and legal guardians in the registration requirements (e.g. Croatia). FAs that require intermediaries to have special qualifications for representing minors (see below Sec. 7) also tend to exempt guardians and other relatives from this requirement (e.g. Sweden). There is no indication in the Interim report that existing relative exemptions are causing any major issues, nor that FAs that lack relative exemptions are experiencing significant issues from that.

10 IHF, Regulations for Players’ Agents, Article 10.2.
4.3. Any movement towards stricter intermediary requirements, including but not limited to the reintroduction of a licensing requirement, will raise the question whether such requirements apply to players’ guardians and other relatives. There are practical realities that heavily favour some relative exemptions, at least with regard to guardians. It is more doubtful whether it is necessary to extend this to other close relatives.

4.4. The family exemption in the PAR 2008 seems to be the underpinned by the assumption that guardians and close relatives are generally going to be loyal with the minor player and act in the player’s best interest. Although this appears a reasonable assumption, it should, at the same time, be acknowledged that this is not always the case.

4.5. More commonly and therefore more importantly, relatives frequently lack necessary knowledge and experience to provide the player with good advice and relative exemptions therefore undermine measures taken in order to provide players in general and minor players in particular with high-quality counsel. This is supported by football stakeholders representing different interests who largely appear to agree that parent or other close relative representation is not in the players’ best interest. Thus, while some exemptions for guardians are probably necessary, they should be construed restrictively.

5. Banning Remuneration

5.1. While bans on intermediary representations are relatively limited (see above Sec. 2), RWWI 2015 contains a ban on intermediaries receiving remuneration in a transaction that involves a minor player. This applies to all parties and regardless of who the intermediary represents (Article 7.8). This remuneration ban is clearly mirrored in almost all of the national FAs’ regulations. Considering the clear and mandatory nature of the rule in RWWI 2015, we are surprised to find that some FAs apply a remuneration ban with a lower age limit than eighteen, such as fifteen (Slovakia) or sixteen (Czech Republic).

5.2. Remuneration bans have severe workability problems. While some FAs prohibit intermediaries from doing any paid work for minor players, such as representing them in sponsorships agreements (France), most do not. There may be legal ways to circumvent rules on non-remuneration. For example, as the Scottish national expert points out, a representation contract may include a clause allowing the intermediary to receive remuneration after the player reaches maturity, thereby simply postponing the payment rather than preventing it.

5.3. Even if remuneration bans were effective, they are not advantageous. It is hardly realistic to expect competent intermediaries to represent minors for free. In our opinion, remuneration bans are likely to dissuade intermediaries to offer their services to minor players which, in turn, (i) deprives the players of qualified counsel, (ii) increases their reliance on non-transparent side-agreements and/or (iii) the use of non-registered intermediaries. None of these are in the players’ best interest.

5.4. Remuneration bans also raise issues regarding reciprocity of rights between stakeholders. For example, a football club can monetize its relationship with a minor, through a transfer or training compensation sum, but under the current RWWI, an intermediary cannot.

5.5. For the above stated reasons, we advocate stricter regulation of intermediary remuneration when representing minor players over an outright ban.
6. **Limits on the Representation Contract Period**

6.1. As discussed above, the remuneration ban may negatively affect players’ access to qualified representation. For the intermediary, the main economic incentive for proving unpaid services is the prospect of subsequent compensated work. By conducting non-remunerated work, the intermediary can build a relationship with the player that may translate into remunerated work after the player reaches maturity. This is however far from certain. Intermediaries therefore have strong incentives to enter long-term representation contracts that stretch beyond the player’s eighteenth birthday.11

6.2. RWWI 2015 contains no limits on the contract period. Approximately half of the studied FAs restrict the representation contract length generally, and such restrictions obviously apply to minor players as well. In these cases, representation contracts are limited to a two-year (e.g. England, Italy, the Netherlands) or three-year period (Czech Republic). There are however many FAs, including, ones with an established intermediaries’ industry, that has no such restrictions (e.g. Spain).

6.3. Additionally, various FAs’ regulations contain rules particularly governing minor player contracts. The most extensive of these is the clean-slate provision under which a contract between a minor player and an intermediary can never extend beyond the player’s eighteenth birthday (Bulgaria). Thus, when the player turns eighteen he or she is not bound to any representation contract entered as a minor.

6.4. Finally, various FAs’ regulations provide minor players with increased flexibility when it comes to terminating a representation contract compared to other players. This is only subject to the observation of a period of notice that can be three months (Denmark and Scotland) or even shorter (Latvia).

6.5. There are compelling reasons for making it easy for players to terminate representation contracts entered as a minor, including both above-mentioned examples, both because of possible youthful ignorance and that the player’s guardian(s) likely exerted significant influence over its content. While such exceptions reduce intermediaries’ interest in conducting unpaid work for minor players, we believe that this should be resolved in a different manner (see above Sec. 5).

7. **Special Qualifications for Representing Minors**

7.1. RWWI 2015 and virtually all studied FA regulations require intermediaries to have an impeccable reputation in order to be allowed to perform their services. If functioning well this requirement also helps ensure that intermediaries working with minor players meet a certain minimum standard. In a similar way, any system that increases the quality of intermediary services generally, for example through education and/or licensing (see e.g. Czech Republic and France), also increases the quality of intermediary services offered

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to minor players. This aspect of protecting minor players is therefore closely related to
the issue of licensing and qualifications addressed in separate interim report.\footnote{See Interim Report – Conclusions on Professional Standards: Licensing and Qualifications.}

7.2. One can however argue that it is particularly important that intermediaries working with
minor players are honest, professional and qualified. Adult players can generally be
presumed to have greater ability than minor players to evaluate the qualities of
prospective intermediaries and minor players are therefore more reliant on formal
assessments and qualifications when selecting intermediaries. Measures that seek to
ensure a minimum quality of the services offered by intermediaries thus seek to protect
minors from making ill-informed decisions.

7.3. Consistent with this, a number of FAs have made use of the possibility under RWWI
2015 of posing special requirements for intermediaries to be allowed to offer his or her
services to a minor player. Such measures can be grouped into two categories.

7.4. A first category consists of checking the intermediary’s personal suitability to work with
minors. Several FAs require that intermediaries must be approved by the FA to work with
minor players following an enhanced background check conducted by a public body
specifically intended to assess someone’s appropriateness for working with minors
\cite{Belgium, England, and Wales}, and in \emph{Ireland} all intermediaries are subject to similar
checks. The most extensive version of this can be found in the Regulation of \emph{Croatia}
where intermediaries working with minors must have court approval as a matter of
national law.

7.5. A second category consists of requirements that the intermediaries undergo special
training \cite{Ireland}. An extended version of this is requiring repeated participation in
an enhanced training program where the intermediary after examination becomes an FA
Certified Intermediary \cite{Denmark and Sweden}. This essentially amounts to a
reintroduction of the pre-2015 licensing system on basis that is voluntary for general
intermediary work but mandatory for working with minors.

7.6. There is near general consensus that the regulatory and institutional framework does not
adequately ensure that intermediaries are sufficiently professional and knowledgeable
and this report has identified different approaches for general improvements in this
regard. Such general improvements will obviously also have to consider the situation for
minor players.

7.7. We are not able to assess the efficacy of measures geared specifically towards raising the
qualifications of intermediaries representing minors. Neither the national experts’ reports,
the stakeholders survey, nor (as far as we are aware) existing research has assessed the
impact of measures such as those identified and discussed above.

7.8. In the face of lacking knowledge, it is easy to favour taking precautions. However, it is
important to remember that access to intermediaries is in the minors’ interest. As
discussed, minor players are particularly vulnerable and dependant on intermediaries
when entering employment and transfer contracts and they are therefore particularly
harmed by the fact that most such transactions are conducted without intermediaries’
involvement. While it is important to raise intermediaries’ qualifications and to protect
minor players against “bad agents”, one should consider how measures that seek to further these goals impact minors’ access to representation and to weigh the measures’ qualitative benefits against possible reduction in representation.

8. Summary

8.1. To summarise, this report makes the following general conclusions and recommendations:

- Representation bans should be avoided,
- Guardians representing minor players vis-à-vis intermediaries are both required by law and appropriate for protecting minors,
- Guardians representing minor players as intermediaries may for practical reasons need to be exempted from certain intermediary requirements, but such exemptions should be construed restrictively,
- Regulation of intermediary remuneration when representing minor players is preferable to bans,
- It should be easy for players to terminate representation contracts entered as a minor, and…
- While all measures that enhance the quality of intermediary services particularly benefit minor players, any resulting reduction in access to intermediary services particularly harm minor players.

8.2. It should be noted that any regulatory approach is likely to leave minor players exposed to certain risks. Educating minor players and their guardians are central in order to further reduce those risks. The FAs as well as organisations representing players play a natural roll in providing such education.