

***Promoting and Supporting Good
Governance in the European Football
Agents Industry***

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Our Events



Football Agents



What does an agent do...

Can act for a player and/or a club:

- Negotiate players' contracts.
- Negotiate player's marketing, sponsorship and image rights contracts.
- Scouting.
- Financial planning.
- Career planning.

Why regulate agents...

- Expansion of activities following *Bosman* judgment.
- Reports of bad practices, high commissions, need to protect young vulnerable players.

The EU Dimension

- Regulation of economic activity (*Walrave*).
- Scrutiny of international transfer system (*Bosman, Piau, FIFPro* complaint).
- Scrutiny of governance standards (*Meca-Medina, ISU*).
- EU policy papers prioritise agent regulations (*White Paper 2007, Communication on Sport 2011, EU Work Plan 2011-14*).
- Support for structured and social dialogue (EU Sectoral Social Committee for European Professional Football).

1994 FIFA Regulations

- 1994: FIFA Regulates Football Agents (Players' Agents Regulations – PAR).
- Agents needed a license issued by national association (NA).
- To receive a license the agent: took an interview, no criminal record, deposit bank guarantee, max two year representation contract.
- Certain individuals were exempt: family members & lawyers.
- Clubs & players could only engage licensed agents.
- Agents, clubs and players faced sanctions for breaches.

The *Piau* Case

- French agent lodged complaint to European Commission: Licensing requirements were anti-competitive and restricted provision of services.
- FIFA made some adjustments and introduced the 2001 PAR: introduced ‘impeccable reputation’ requirement and replaced interview with exam. Commission dropped its investigation.
- Piau maintained his complaint: CFI raised some concerns: FIFA’s legitimacy to regulate agents is “open to question” (*Piau* para. 76) & 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 CFI endorsed FIFA's rule making authority in this area 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).
- CFI: 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.
- On appeal, and dispensed with by Order of the Court, the European Court of Justice upheld the judgment of the Court of First Instance.

2008 FIFA PAR

- Licensing system retained: impeccable reputation, exam, etc.
- Soon after, FIFA looked at reforming the regulations again.
- Why...

- Inefficient licensing of players' agents, resulting in the conclusion of many international transfers without the use of licensed agents (only 25-30% by licensed agents – FIFA).
- 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

2015 Regulations on Working with Intermediaries (RWWI)

- The RWWI no longer speak of 'agents' but refer to 'intermediaries'. Clubs and players (the transaction) are the subject of the RWWI, not the agent.
- 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 (3%).
- 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.
- National Associations must implement these minimum FIFA requirements through the enactment of NA regulations

FIFA Transfer System Task Force

- Sept 2015: FIFPro lodged transfer system complaint with the European Commission.
- Nov 2017: FIFA and FIFPro concluded 6 year co-operation agreement following settlement of the complaint.
- 2018/19: A number of meetings held and reform proposals on the transfer system and agent regulation discussed, including a number of 'consultative workshops' with agents.
- New regulations expected to be implemented 2020.

The Agents Reform Package

“New and stronger regulations for agents to be established with agreement on the principle of introducing compensation and representation restrictions, payment of agents’ commissions through the clearing house and licensing and registration of agents through the Transfer Matching System.”

FSC 2018

Study: Main Findings

1. Good Governance
2. Models of Regulation
3. Uniformity of the Regulations
4. Professional Standards
5. Conflicts of Interest
6. Remuneration
7. Working with Minors
8. Sanctions & Dispute Resolution

1. Good Governance

- Limited evidence of wide stakeholder consultation in 2015 RWWI – especially at national implementation level.
- Need for agents to be consulted but important that agents collectively organise themselves.
- Agents (EFAA) should be a stakeholder – with responsibilities and rights (such as right to effective dispute resolution).

2. Models of Regulation

- Regulation under national law
- Regulation under EU law
- Regulation under international law
- Regulation through collective bargaining
- Regulation by the international federation (FIFA): favoured.

3. Uniformity of the Regulations

- Varying cultures of compliance across member associations.
- Varying approaches to: registration requirements, remuneration, protection of minors, dispute resolution etc.
- Need for adoption of high level harmonised approach.

Access to profession...

- Exam: Denmark (for certified intermediaries), Czech, France, Italy.
- Interview: Spain, Slovakia.
- Liability insurance: Czech, Portugal.
- Degree: Bulgaria

Registration process...

- All intermediaries must be registered each time they are involved in a transaction.
- Registration each transaction: Croatia, Cyprus, Greece.
- Yearly registration: Bulgaria, England, Netherlands, Poland, Romania.
- Dual Registration (for I and each transaction): Denmark, Spain.
- Costs: from zero to €0000s

Impeccable reputation...

- Certificates: Croatia, Netherlands.
- Stringent character test: England
- Proof of good conduct: Germany
- Authorisation to investigate: Spain

Dual representation...

- RWWI permit it.
- Forbidden: Bulgaria, France, Portugal.

Remuneration cap...

- No cap: Belgium, Netherlands, Czech, Portugal.
- 3% recommendation: Denmark, Italy, Poland.
- 3% mandatory: Cyprus.
- 7%: Bulgaria.
- 10%: Croatia, France.
- 14%: Germany

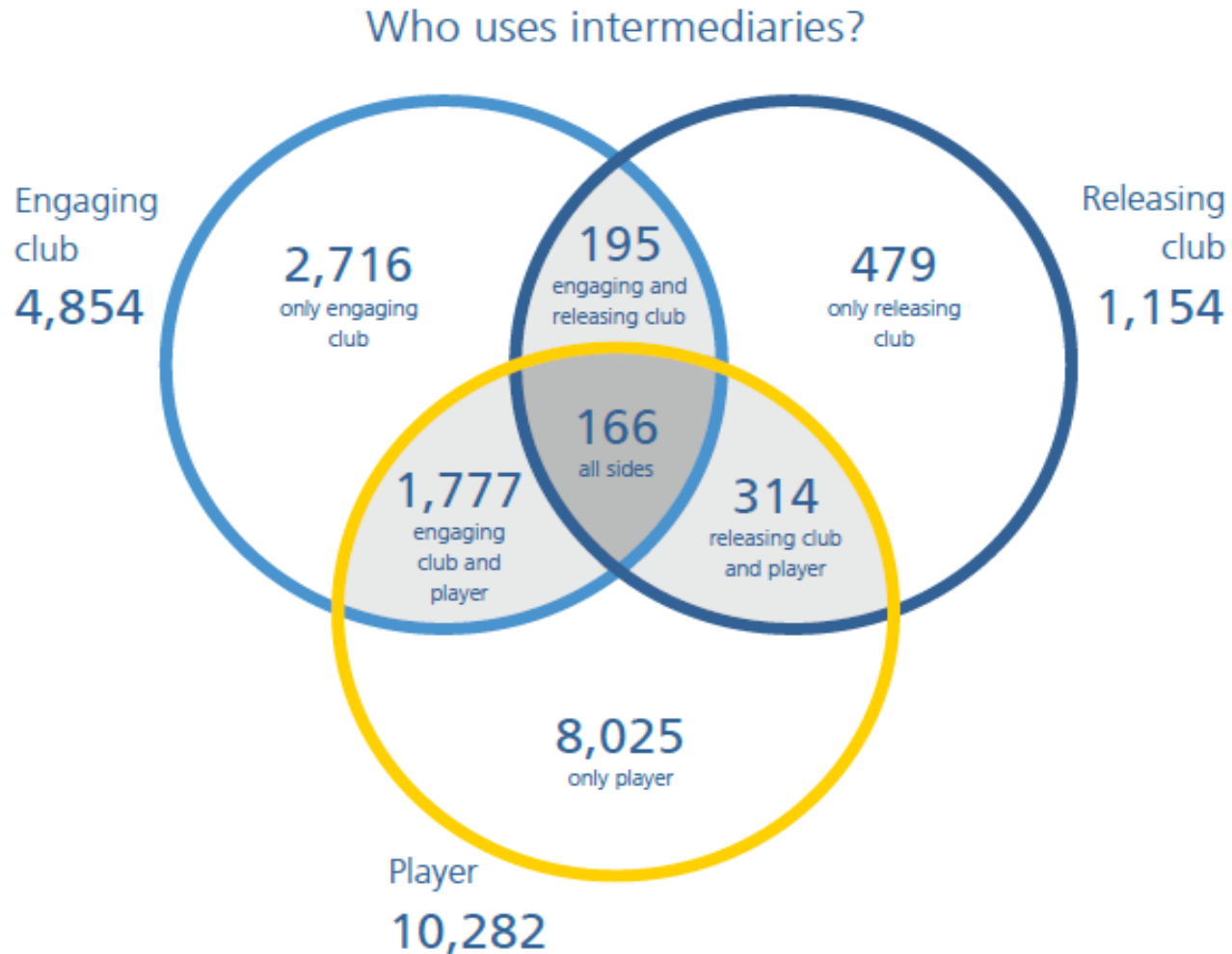
4. Professional Standards

- No evidence of improving standards since 2015 – in fact the reverse.
- Need to re-introduce licensing system with examination to improve standards.
- Need for ongoing permanent education for agents (and players).

5. Conflicts of Interest

- Dual Representation permitted under 2015 RWWI.
- Is dual representation an inherent conflict requiring prohibition?
- Should FIFA be more pragmatic and explore ways of mitigating conflicts?

Fig. 1: Number of international transfers with intermediaries since 1 Jan 2013



Source: FIFA TMS 2017

6. Remuneration (Source: TMS 2017)

Fig. 8: Spending on club intermediary commissions

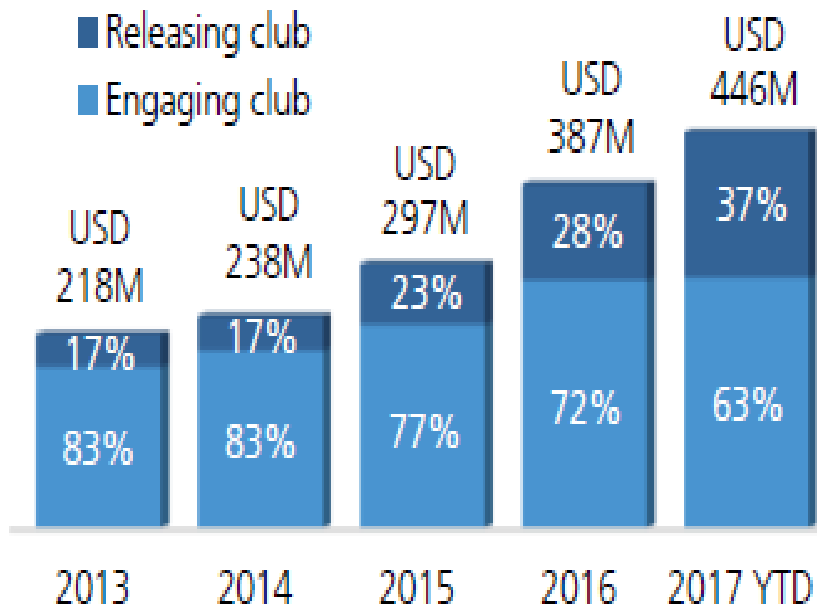
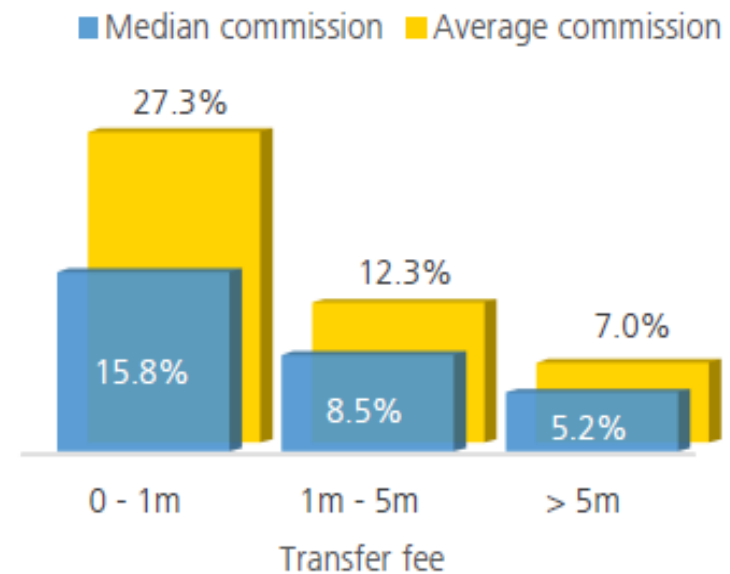


Fig. 11: Average commission as percentage of transfer fee for intermediaries representing the engaging club, since 1 Jan 2013, by transfer fee



Fee Cap: The Case For

- Agent spending is 'too high'.
- Agent spending is out of balance with solidarity and training compensation payments.
- Agent commissions foster speculative activity and it damages contract stability.
- Agents are 'too powerful'.
- A cap protects players.

- 'Player Pays' model?
- Payment through a 'Clearing House'.
- Practical and legal issues connected with adopting a fee cap.

7. Working with Minors

- Agents can be both a source of protection for a minor and a threat to the welfare of the child.
- Representation bans should be avoided but contracts should be limited.
- Regulation of intermediary remuneration when representing minor players is preferable to an outright ban.
- Relatives should not be fully exempt from agent licensing requirements.
- Good practice suggests that agents should be required to be in possession of 'special qualifications' in order to represent minors.
- Education for agents, minors and guardians is important.

8. Sanctions and Dispute Resolution

- Under PAR 2008, domestic disputes heard by national arbitration whilst FIFA heard international disputes.
- Under 2015 RWWI: no FIFA jurisdiction.
- But inconsistency under the RWWI at NA level: agents not members of some NAs and so no dispute resolution system.
- Need for FIFA dispute resolution body supported by FIFA Disciplinary Code.

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