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Regulation of Football Agents in Europe: A Comparative Law and Economics Analysis

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REGULATION OF FOOTBALL AGENTS IN EUROPE: A COMPARATIVE LAW AND ECONOMICS ANALYSIS

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I. INTRODUCTION

Sports, and especially football, are extremely prominent in the EU. An important role in the football world is played by football agents or intermediaries.[1] Football in general, but more particularly football agency, constitutes a sector of increasing economic value. In England, for example, roughly £980 million has been paid by the 92 professional English football clubs to football agents[2] since the 2008/2009 football season, and this does not include the huge sums estimated to be paid by the players themselves to the agents.[3] According to the Global Transfer Report, between 2011 and 2016, $1.396 million was spent by clubs to pay intermediaries' commission for their roles in international transfers.[4] And in recent years the amounts have only multiplied, with $1.59 billion being paid as commission to club agents from January 2013 to 2019.[5] One of the reasons for the upsurge in remuneration paid to football agents is obviously that transfer fees themselves have increased.[6] The total number of official sports agents registered in the EU was estimated at approximately 3,600 in 2009.[7] The actual number may be substantially larger, however, since this only represents the officially registered sports agents. Moreover, after the introduction of the *Fédération Internationale de Football Association* (FIFA) Regulations on Working with Intermediaries (RWI) of 2015, which,

1. These professionals were initially referred to as football agents, but in the latest FIFA Regulations on Working with Intermediaries (2015) they are referred to as football intermediaries. The use of the latter term is criticized inter alia by Gregory Ioannidis, *Football Intermediaries and Self-Regulation: The Need for Greater Transparency Through Disciplinary Law, Sanctioning and Qualifying Criteria*, 19 INT'L SPORTS L.J. 154 (2019).

2. Giambattista Rossi, Agents and Intermediaries, in Routledge Handbook of Football and Business Management 138 (2019).

3. *Id*.

4. *Id*.

5. *See* Ioannidis, *supra* note 1, at 158–159.

6. The sums invested in the transfer market for the top 5 football leagues in Europe have increased from €1.5 billion in 2010 to €3.8 billion in 2015 after the introduction of the 2015 FIFA Regulations the sum further increased to €5.9 billion in 2017. RICHARD PARRISH ET AL., PROMOTING AND SUPPORTING GOOD GOVERNANCE IN THE EUROPEAN FOOTBALL AGENTS INDUSTRY 5 (2018, available at: https://www.edgehill.ac.uk/law/files/2019/10/National-Associations-Report.pdf.

7. KEA EUROPEAN AFFAIRS ET AL., STUDY ON SPORTS AGENTS IN THE EUROPEAN UNION 36–38 (2009), available at https://ec.europa.eu/assets/eac/sport/library/studies/study-sports-agents-in-eu.pdf.

as we will see, amounted to a deregulation of the profession, the number has increased even more.[8] In fact, in recent European football history, there have been two decisive moments that explain the rise in the number of football agents. A first important step occurred with the *Bosman* ruling of the European Court of Justice in 1993.[9] That judgment enabled players in the EU to transfer to another club without a fee at the end of their contracts, while at the same time prohibiting the quota restrictions on foreign players that previously applied to clubs, thereby facilitating the freedom of players to move between clubs. The *Bosman* ruling had the effect of raising the number of football agents, as it was a profession with easy access (in the sense that the requirements to enter the profession were minimal) and a potentially high remuneration to be gained from being involved in the increasing number of player transfers that would take place.[10] Then, after initially setting up a licensing system, FIFA deregulated agents in 2015, which again provided an impulse to make the profession very attractive.[11]

Football agents can perform a variety of different roles and functions and their roles have also evolved over time. Whereas originally agents were mostly scouting and intermediating for clubs (resolving potential conflicts between clubs and players),[12] from the early 1960s to the mid-1990s, they acted increasingly as representatives of football players, in a time where clubs could (pre-*Bosman*) still tie a player to the club.[13] Especially after the Bosman ruling, agents increasingly started playing a role in the transfer market, although still today they perform many other functions as well, inter alia by providing general (marketing, legal) advice to players.[14] As the number of agents increased and their role, especially in the transfer market, expanded as well, this was met with increasing criticism concerning various aspects of their intervention. On the one hand, there were stories of abuse of players by agents (e.g., not providing players with accurate information to improve their situation, but rather maximizing their own monetary gains; charging excessive commission and fees, etc.). Yet there were also concerns that the role being played by agents may affect the quality of the professional game itself (by preventing players from moving to the club where they would fit best, and instead selecting transfers that could achieve the greatest

8. Ioannidis, *supra* note 1, at 158.

9. Case C-415/93, *Union Royale Belge des Sociétés de Football Association asbl v. Jean-Marc Bosman*, ECR I-04921 (1995).

10. Ioannidis, *supra* note 1, at 158.

11. *Id.* at 159–160.

12. Rossi, *supra* note 2, at 131.

13. Rossi, *supra* note 2, at 132–133.

14. Ioannidis, *supra* note 1, at 155 (summarizing the many functions that sports agents could perform).

financial returns for the agents themselves). Other concerns included a fear that the intervention of football agents could give rise to societal problems (such as inter alia facilitating money laundering and even facilitating organized crime). Some Premier League managers even referred to football agents as "parasites, vermin of the worst kind" and "mafiosos."[15] According to those interviewed managers, football agents only have their own interests at heart and not their clients' and generally damage the image of the sport, creating a reputational risk for the different stakeholders involved.[16]

These concerns surrounding the role of football agents explain why there has been an increasing demand for regulation of their activities – this regulation of football agents, particularly in Europe, is the central focus of this Article. The reason for this focus is that the nature of the regulation in question, as well as the legal sources on which it is based, exhibit several features that merit further research into this domain. The starting point is the regulations laid down at an international level, not emerging from an international treaty, but from what is in fact a private organization — namely FIFA. Next, there is the domestic level at which the FIFA Regulations have to be implemented, where there are a variety of different models. In some countries in the EU, there exists formal legislation (partially to implement private regulations issued by FIFA), which is often in place in addition to private regulations of the national football associations. In other EU Member States, private regulations are promulgated by the national football associations at the domestic level. Furthermore, in between the FIFA and the Member State level is the regional EU level, which plays a limited role for the simple reason that the formal EU competence in the domain of sports (including football) is limited.[17] In fact, EU involvement with the regulation of football agents mostly derives from the perspective of the internal market (guaranteeing the free flow of persons and services) and from competition policy.[18] That implies that EU Member States actually have a conditional autonomy to regulate sports agents, as long as they respect basic principles of EU law, as well as (obviously) EU legislation.[19] That includes inter alia respecting the so-called Services Directive,[20] which does have relevance for

15. *Id.*

16. *Id.*

17. Serhat Yilmaz, The EU & Players' Agents: A Theoretical Analysis of the EU's Intervention into the Regulation of Players' Agents in Europe 23–28 (Dec. 2015) (Ph.D. thesis, University of Westminster), available at: https://westminsterresearch.westminster.ac.uk/download/40cb50c8edf0f116070e4f186 835ab5d7fbd5d2889ee7f462 10c76b6228ab754/2951335/Yilmaz_Serhat_thesis.pdf.

18. *Id.* at 196.

19. *Id.* at 197.

20. Directive 2006/123 of the European Parliament and of the Council of 12 December 2006 on services in the internal market, *OJ* L376, 27.12.2006.

the regulation of the services provided by sports agents.

The regulation of football agents is of high economic importance (simply looking at the amounts of commission paid to them), and there is also a societal interest in regulating football agents (given the potential negative effects for the sport, risks of money laundering, etc.). Additionally, the topic is of significant interest from a comparative law perspective, given the differences in regulation between the various European countries. Also, the multi-governance aspect of the regulation is of interest, as there is private regulation at the international (FIFA) level as well as domestic regulation in the specific European countries, which (if they belong to the EU) still have to take into account the requirements of EU law.[21] Moreover, the regulation of sports agents exhibits interesting features of legal pluralism, as private and formal regulation co-exist at different levels of governance (between FIFA and formal legislation in Member States), and sometimes even within one EU Member State (where regulations of the national football association can co-exist with public rules). In order to keep the analysis within reasonable limits, we will not devote a great deal of attention to EU law, since, as we already indicated, EU law is of less relevance in this domain.[22] But we will provide a critical analysis of the regulation of sports agents in the EU, focusing both on the international (FIFA) level as well as on regulation in a few selected European countries. An overview of regulation of football agents at a general level within EU Member States has already been provided in earlier studies.[23] By focusing instead on a selection of jurisdictions we can acquire a better insight into the detailed working of the regulations. In order to provide a critical analysis of the regulations, we will employ a law and economics framework, as the economic approach to regulation has examined extensively the need for regulatory interventions with respect to professional services, but also to the type of instruments that would be appropriate to regulate such services.[24]

The structure of this contribution is as follows. First, we provide a theoretical framework concerning the need to regulate football agents and

21. Many of the domestic regulations we will discuss, including those in England, were promulgated before Brexit. After Brexit, however, England is obviously no longer bound to the requirements of EU law. However, as it is still a European country (and a member of UEFA), it remains interesting to retain England in the analysis. At the same time, that explains why we refer to European countries or jurisdictions rather than to EU Member States, since post-Brexit the United Kingdom can no longer be qualified as such.

22. For a detailed account of the EU intervention in the regulation of players' agents in Europe, see Yilmaz, *supra* note 17.

23. *See* Parrish et al., *supra* note 6.

24. *See* Anthony Ogus & Qin Zhang, *Licensing Regimes: East and West*, 25 INT'L REV. L. & ECON. 124–142 (2005) ; Niels Philipsen, *The Law and Economics of Professional Regulation: What Does the Theory Teach China, in* ECONOMIC ANALYSIS OF LAW IN CHINA 112-150 (Thomas Eger, Michael Faure, & Naigen Zhang eds., 2007).

the appropriate instruments. Second, we present the evolution of the regulation at the international level of FIFA. This is followed by our examination of the regulatory framework in a few selected European jurisdictions. Lastly, Section V provides a critical comparative analysis, and Section VI concludes.

II. A THEORETICAL FRAMEWORK FOR THE REGULATION OF FOOTBALL AGENTS AND THEIR RESPECTIVE INSTRUMENTS

As was just mentioned in the introduction, we will use the economic approach to law to first discuss whether there is a need for regulating the services provided by sports agents. Then, we will address the different types of regulation, distinguishing between entry regulation and conduct regulation. Finally, we will briefly address the relevant literature, which focuses on potential relative advantages of private versus public regulation.

A. The Need for Regulation

The economic theory of regulation has advanced a number of reasons to regulate professional services in this space. Some of those arguments can also explain why a need to regulate the football agent may emerge.[25] The economic justifications for regulation usually depart from the concept of market failures. Even though the relationship between a player and an agent (or between a club and an intermediary for that matter) is in principle a contractual one where parties could maximize their own interests by negotiating an optimal contract for a variety of reasons, that ideal picture of the market may not always emerge. The failures of the market mechanism are then advanced as an argument for intervening and, in other words, not leaving it entirely to the parties themselves to determine with whom they wish to contract and to what terms they are subject. Regulation theory distinguishes four types of market failures, three of which could apply to the case of football agents.[26]

i. Information Asymmetries

The most likely candidate in terms of economic justifications for regulatory intervention is connected to the main reason why agents are needed by players in the first place, namely the existence of information asymmetries in player transfer and employment dealings. Players usually do not have substantial knowledge related to the transfer market. The same is the case for the specific conditions of employment. Certainly, if one

25. *See generally* Philipsen, *supra* note 24, at 112–150.

26. *See generally* HENRY M. BUTLER, CHRISTOPHER R. DRAHOZAL & JOANNA SHEPHARD, ECONOMIC ANALYSIS FOR LAWYERS 17–33 (3d ed., 2014).

compares the knowledge level of players with the clubs, it is clear that the informational advantage lies with the clubs. As a result, the players are undoubtedly in a disadvantageous position. One way for the players to remedy this information asymmetry is to retain an agent.[27] Compared to players, agents may have superior knowledge. They may be better at negotiating contractual conditions with clubs. Moreover, agents could have better information (at least than players) of the average salaries offered to players in the market. However, players do not only have insufficient information in their relationship toward the club. The same may obviously also apply in their relationship with the agent. In other words, the relationship between the player and the agent may also suffer from asymmetric information. This information asymmetry is not unique to the relationship between players and either clubs or agents. In the literature, it has been indicated that in many situations where professionals (like lawyers, accountants or architects) advise clients, there may be information asymmetry.[28] The main reason for this information asymmetry arises from the fact that judging the quality of the services to be provided by a professional may be extremely difficult for a client.[29] One reason is that a client can often be considered as a so-called "one-shotter," rather than a "repeat-player."[30] For most people, the use of the services of a professional (for example, an architect or a notary) happens only occasionally and for some even just once in a lifetime. As a result, most people do not have the opportunity to learn from repeated interactions. That is the principal reason why the information asymmetry in the professional relationship persists. The services offered by a professional are also referred to as "experience goods." This is a concept developed by Nelson, by which he referred to the fact that the quality of that particular good can only be assessed after the service has been delivered.[31] The fact that the relationship between the player and an agent can be characterized by information asymmetry has specific consequences.[32]

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27. *See* William Bull & Michael Faure, *Agents in the Sporting Field: A Law and Economics Perspective*, 22 INT'L SPORTS L.J. 17 (2021).

28. Philipsen, *supra* note 24, at 114.

29. *See* Benito Arruñada, *Managing Competition in Professional Services and the Burden of Inertia*, in EUROPEAN COMPETITION LAW ANNUAL 2004: THE RELATIONSHIP BETWEEN COMPETITION LAW AND (LIBERAL) PROFESSIONS 52 (Claus-Dieter Ehlemann & Isabela Atanasiu eds., 2006).

30. This distinction goes back on the seminal paper by Mark Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC. REV. 95 (1974).

31. *See* Philip Nelson, *Information and Consumer Behavior*, 78 J. POL. ECON. 311 (1970); *see also* Philipsen, *supra* note 24, at 114.

32. *See* Bull & Faure, *supra* note 27.

A first problem that may arise is referred to as "adverse selection." Adverse selection was first pointed to by Akerlof, who referred to this in his famous paper "The Market for Lemons".[33] Akerlof showed that in case of information asymmetry a provider of high quality services may not be able to signal to a consumer the high quality of the particular services (or goods). As a result, a customer cannot reward a provider of services of a higher quality with a higher price. This follows from information asymmetry. Clients may not be able to recognize high quality services and would therefore not be willing to pay a higher price for those. By consequence, only low-quality services (and products) appear on the market, as a result of which the "market for lemons" emerges. This problem may especially appear in the case of professional services, as clients may not be able to recognize high quality services and service providers may have incentives to overstate the quality of their services. This is a problem that equally may emerge in the market for sports agents. This information asymmetry can therefore lead to adverse selection - players may not be able to distinguish good from bad quality services, resulting in the market mainly offering lower quality services over time.[34] Therefore, by virtue of adverse selection, a danger arises that a player could conclude a contract with an agent who may not be able to provide the high quality services on which the player counts. This problem is especially conceivable since the player (often being a so-called "one-shotter," rather than a "repeat-player") may not be able to distinguish good from bad services. The literature indicates that information asymmetry in the market for sports agents could lead to a widespread market failure because, in that particular market, "the potentially good quality sports agent does not have the incentive to be a good quality sports agent," with the possible consequence that "[t]he quality will decrease to the point, where all the sports agents have the same low-quality services."[35] The major problem with adverse selection (referred to as the lemon market) is that, by the end of the competitive process, low quality services (or products) could drive out high quality services. The result would be that only professionals offering low quality services would remain in the market. When players are not able to distinguish good from bad quality services, this results in players not rewarding good quality agents (offering high quality services) with a higher reward. It is for that reason that the literature has argued that market failure related to adverse selection is an important reason for regulation. The goal of the regulation would then be to remedy the lemon market (which leads to

33. George A. Akerlof, *The Market for Lemons: Quality, Uncertainty and the Market Mechanism*, 84 Q.J. ECON. 488 (1970).

34. *See* Mark Smienk, *Regulation in the Market of Sports Agents: Or No Regulation at All?*, 3-4 INT'L SPORTS L.J. 70, 87 (2009).

35. *Id*.

only low quality, low-price services being provided). Minimum quality regulation could potentially result in better quality services being offered at a reasonable price.[36]

A second issue that can arise as a result of information asymmetry is moral hazard.[37] Whereas adverse selection rather causes a problem before the conclusion of a contract, moral hazard is an issue that arises *after* the contract has been concluded. It has especially been developed within the context of insurance. A risk-averse individual may demand coverage from an insurance company, but the fact that risk is removed from the insured (as a result of insurance coverage) may lead to a change of behavior that actually results in an increase in the probability of the risk materializing.[38] It is therefore related to the basic economic insight that when an individual is itself no longer exposed to risk, there will be no incentives to take precautionary efforts. The basic reason why moral hazard emerges (and that immediately shows the connection to the role of agents) is that there is a conflict of interest between a principal (the player) and the agent. In this particular relationship, the conflict of interest relates to the fact that the agent is supposed to promote the interests of the player (for which the contract is concluded), but at the same time, the agent also has their own interests to pursue. The bottom line is that the player will have an interest in the agent performing high quality services at a reasonable price, whereas the agent may try to extract the maximum amount of compensation for his services while performing a minimum effort. The fact that there is information asymmetry between the player and the agent may precisely facilitate this moral hazard, i.e., the agent not fully performing in furtherance of the player's interests. The moral hazard may not only lead to a situation whereby the agent would not fully act in the interest of the player (by engaging his best efforts); it could, for example, also lead to a situation whereby the agent would try to lure the player into concluding a contract with a club with which the agent has particular connections, even though that may not be optimal for the player. The problem arises when the agent starts pursuing his own interest, the consequences of which are not felt by the agent, but by the player (for example, a deal being concluded which is not in the interest of the player). In other words: "[t]he sports agent can earn money by making a good deal, but cannot lose any money (no risk involved). The risk of the failure of a contract is born [sic] by the athlete (principal). It could lead to more risk taking by the sports agent."[39]

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36. *See* Philipsen, *supra* note 24, at 114.

37. *Id.*

38. The phenomenon has been described in detail in relation to insurance by Steven Shavell, *Moral Hazard and Insurance*, Q.J. ECON. 541-562 (1970).

39. Smienk, *supra* note at 34, at 86; *see also* Bull & Faure, *supra* note 27, § 3.2.

The question as to whether there actually is a serious information asymmetry between the player on the one hand, and the agent on the other hand, is of course an empirical issue and may depend on particular facts and circumstances. Some players may be more knowledgeable (or could be repeat players in the transfer market), as a result of which information asymmetry should not necessarily be a major issue. In that case, they should be able to control the behavior of the agent and to monitor whether the agent is indeed acting in the interest of the player. One should therefore avoid general statements.[40] In this particular case, however, and particularly in situations where the players engage the agent first, the players may suffer from a lack of information. On the other hand, the agents are professionals specialized in this transfer market and thus have an information advantage. The danger of an information asymmetry is therefore profound. Moreover, the literature also indicates that there is a substantial danger of information asymmetry in the principal-agent relationship between the player and the agent. Ioannidis, for example, indicates that, in some cases, a contract between an agent and a player resulted in no benefit for the player, as common law principles of contract and employment law were ignored in the provision of advice by the agent.[41] It will be recalled that, as was mentioned in the introduction, several club managers argue that the agents would appear to have only their own interests in mind, rather than the interests of their clients.[42] Given those rumors, there indeed seems to be a serious problem of asymmetric information, which may justify regulating the profession of football agent.

ii. Negative Externalities

Information asymmetry is not the only market failure that could justify regulation. Another argument often advanced in economic theory in favor of regulatory intervention is the risk of a so-called negative external effect, also referred to as externalities.[43] An externality is generally the problem that a particular actor may engage in socially beneficial activities, whereby the activity could cause side effects that are not felt by the actor itself, but by third parties. To the extent that those negative effects for third parties impose costs rather than benefits on them, they are considered negative externalities. The question arises whether this risk of negative externalities could equally arise in situations where sports agents provide low-quality services. Theoretically, this could certainly be possible. One could imagine a scenario

40. *See* Philipsen, *supra* note 24, at 115.

41. Ioannidis, *supra* note 1, at 155.

42. *See id.*

43. *See generally* ANTHONY I. OGUS, REGULATION: LEGAL FORM AND ECONOMIC THEORY 18–19 (1994).

where the sports agent performs so poorly that a transfer occurs which not only has negative consequences for the player itself, but for the sport as a whole. Suppose that a wealth-maximizing transfer of a star player to a top club could take place but does not occur because of malpractice by the agent. In that case, it could be argued that it is not only the player that suffers, but also supporters of the clubs involved and potentially everyone who enjoys the sport. Even though this may theoretically be a possibility, it sounds indeed rather farfetched and theoretical. In the given example, one could imagine other remedies to make sure that the wealth-maximizing transfer would still take place. Moreover, if it did not take place, it is obviously not a given it would be due to poor performance on the part of the sports agent. Even if the sports agent were to (hypothetically) underperform, in such a high-profile case, others may intervene to make sure that a wealth-maximizing bargain still occurs between the player and the club that values the player most.[44] A problem may only arise if that bargaining would be impossible, for example, in the case of prohibitive transaction costs or high information costs. Only if one could show that there would indeed be a serious danger of the type of negative external effects described above, would there be an argument in favor of regulation. The regulation would in that particular case aim at improving the quality of services to be performed by the agent, in order to avoid negative external effects.[45]

Again, there are some rather alarming voices in the literature regarding how the behavior of football agents would negatively affect third parties as well. Sports agents who attempt to induce players to breach their existing representation agreements are of particular concern, as are those who engage in tax evasion and other questionable practices, which have the potential to harm the reputations of other parties.[46] That being so, there could indeed be strong arguments in favor of regulating the profession of football agents, also from this perspective.

iii. Restrictions on Competition

Another market failure that could potentially justify a regulatory intervention relates to restrictions of competition. Again, the question arises whether that is of any relevance for the area of sports agents. In theory, sports agents may conclude a (price) cartel, which could obviously constitute a serious restriction of competition. However, there is to the best of our knowledge no empirical evidence that those types of cartels have been concluded between sports agents. Moreover, even if there were evidence of

44. It is an application of the famous theorem developed by Ronald Coase, *The Problem of Social Cost*, J.L. & ECON. 1 (1960).

45. *See* Philipsen, *supra* note 24, at 115.

46. *See* Ioannidis, *supra* note 1, at 155.

those types of restrictions of competition, that should not necessarily be an argument in favor of a regulation of the professional services provided by a sports agent. The usual answer to restrictions of competition would be provided via competition law and policy.[47] This does not mean that there would not be any hindrance to competition on the market for football agents. Economic research in fact indicates that there is a large degree of concentration on the market, meaning that only a relatively limited number of sports agents always appear in most (important) transactions. Research has indicated that 50% of the entire representation market in the five major leagues in Europe is managed by 83 individual agents or agencies.[48] There ar only few agents that de facto play a significant role and attempts to enhance competition in the representation market have thus far failed.[49] But, again, this would be an argument in favor of competition law, rather than an argument in favor of professional regulation. There is, however, a reverse question that arises in some cases, which is whether professional regulation prescribing specific rules, for example, with respect to remuneration (like the recommendation in the FIFA 2015 RWI to cap fees at 3%), would be violating competition law.[50]

iv. Summary of Market Failures in Favor of Regulation

Information asymmetries, negative externalities, and restrictions of competition constitute the market failures that are considered to be the classic arguments in favor of regulation. This assumes, however, that a regulatory solution to remedy those problems would be drafted in the public interest. Another theoretical approach to regulation starts from a different assumption. In the so-called public choice theory, it has been assumed that special interest groups seek advantages ("rents") by demanding regulation in their interest from wealth-maximizing politicians.[51] This is also known as the economic theory of regulation.[52] The politicians would, on this view, draft regulation on a quid pro quo basis that benefits the interest groups in exchange for political support leading to their re-election. Olson has explained that special interest groups will be particularly successful if the

47. Philipsen, *supra* note 24, at 115–16.

48. RAFFAELE POLI ET AL., FOOTBALL AGENTS IN THE BIGGEST FIVE EUROPEAN FOOTBALL MARKETS 76, CIES Football Observatory (Feb. 2012), available at https://football-observatory.com/IMG/pdf/report_agents_2012-2.pdf.

49. *Id.* at 77.

50. Yilmaz, *supra* note 17, at 52.

51. *See generally* JAMES M. BUCHANAN & GORDON TULLOCK, THE CALCULUS OF CONSENT (1962).

52. *See* Sam Peltzman, *Toward a More General Theory of Regulation*, 19 J.L. & ECON. 211 (1976); Richard Posner, *Theories of Economic Regulation*, BELL J. ECON. 335 (1974); George J. Stigler, *The Theory of Economic Regulation*, 2 BELL J. ECON. 3 (1971).

information costs for the public at large (to find out that the regulation is the result of lobbying by interest groups) are high, whereas the transaction costs (for the group to get organized) are low.[53] One important instrument in this economic theory of regulation is that interest groups will try to use regulation as a barrier to market entry for competitors, a point stressed especially by Nobel Prize Winner George Stigler.[54] Both the public interest and private interest perspectives are useful in being able to provide an explanation for the regulatory landscape. The public interest theory can be used to explain that particular market failures (for example, information asymmetries or negative external effects) could be a valid reason for a regulatory intervention. At the same time, the private interest theory of regulation may point at the danger that the regulation that is introduced does not necessarily serve the public interest but may serve the private interests of specific lobby groups. This perspective is also useful to analyze the regulation of sports agents. Indeed, we did argue that there may be strong reasons (particularly the information asymmetry between the player and the agent) to regulate the profession of sports agents. However, private interest theory may point at the fact that the contents of the regulation go beyond what is necessary to remedy the market failure (for example, by imposing overly stringent requirements in order to create barriers to market entry). Often, the problem is indeed that there may as such be a public interest reason for regulation (finding its foundation in a market failure), but the content of the regulation also serves the interests of a specific lobby group.

Equally argued in the relevant literature concerning football agents, is the view that regulation is necessary. For example, Yilmaz equally discusses both economic and other arguments to justify regulation of sports in the EU.[55] In that respect he refers inter alia to the work of Sunstein, arguing that there are also substantive non-economic arguments for regulation.[56] In that respect he also cites the socio-cultural functions performed by sports, having the potential to deliver collective goals that enhance the general welfare of society.[57] Additionally, the aforementioned 2009 KEA Report advances several reasons for regulating sports agents' activities, distinguishing between, on the one hand, the aim of providing sports agents' activities with a legal basis and, on the other hand, the aim of protecting the image and reputation of the sport.[58] Even though the argument of protecting the

53. MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION (1971).

54. Stigler, *supra* note 53.

55. *See* Yilmaz, *supra* note 17, at 59–73.

56. *See id.* (citing CASS SUNSTEIN, AFTER THE RIGHTS REVOLUTION: RECONCIEVING THE REGULATORY STATE (1990)).

57. Yilmaz, *supra* note 17, at 62.

58. *See* KEA ET AL., *supra* note 7, at 66–68.

reputation and image of the sport is formulated differently, it aligns with the economic argument of preventing negative externalities. In sum, there are strong arguments to regulate the profession of sports agents, both from an economic perspective and from others.

B. Licensing, Certification, Conduct Regulation

Even when there may be well-founded (economic) justifications for regulating the activities of football agents, the question of what type of regulation would be required still needs to be answered. The most far-reaching regulatory intervention is to require the football agent to obtain a license in order to be allowed access to the profession; a less far-reaching intervention is certification, which merely protects the title of football agents. In addition to rules regulating access to the profession of football intermediary, the conduct of the profession can also be regulated.

i. Licensing

One possible instrument to be used in order to regulate the quality of services provided by a professional is licensing. Requiring a license from a professional could be an instrument to demand particular professional qualifications. Thus, licensing could fit into the public interest framework, as it could increase the quality of the services provided by a professional. From that perspective, licensing has been advanced as a solution to particular market failures such as adverse selection, moral hazard, and negative externalities.[59] However, licensing may equally create specific problems. The quality requirements that have to be met in order to obtain a license could lead to a price increase for the professional services. That price increase always entails a danger that clients will escape the licensed activity in order to look for cheaper alternatives or even resort to non-licensed activities on the black market.[60] There is empirical evidence showing that licensing does lead to higher prices but also to higher profits for the licensed professionals.[61] This confirms the hypothesis that licensing is often serving the interests of the regulated profession. Concerning football agents, the question arises as to what extent requiring a license from an agent would lead to higher quality of the services to be performed. In fact, it is doubtful that only requiring a license could remedy the mentioned problems of adverse selection related to information asymmetry. The problem is indeed that empirical evidence equally seems to indicate that licensing as such does not

59. Niels Philipsen, *Professional Licencing and Self-Regulation in Europe and China: A Law and Economics Perspective, in* COMPETITION POLICY AND REGULATION 207 (Michael Faure & Xinzhu Zhang eds., 2011).

60. *Id.*

61. Philipsen, *supra* note 24, at 121.

affect the quality of the professional services performed.[62] One could argue that in the case of sports agents requiring a license, this could remove the "crooks" from the market (as they would not be able to meet the standards required for a license). One can, however, question whether merely requiring a license for a sports agent would necessarily lead to a higher quality of their services. This is exactly what FIFA did with the Players' Agents Regulations 1991, which created a system of compulsory licensing. Whether that would be an appropriate remedy as such to cure a market failure is therefore doubtful.

In this respect, it should also be recalled that, according to private interest theory, there are various interest groups that can benefit from licensing. This is certainly the case for the incumbent professionals who worked in the profession before licensing requirements were implemented, as they are usually "grandfathered," meaning that they do not have to comply with the new and stringent licensing requirements. However, politicians and the bureaucrats involved in the licensing mechanism could also benefit from the administrative requirements related to licensing insofar as it increases their power.[63] Moore therefore argues in an article titled "The Purpose of Licensing" that this purpose really is the creation of barriers to market entry.[64] Licensing protects incumbents and makes market entry for newcomers more difficult.[65] Some concerns include whether licensing creates barriers to market entry which are too high, as well as proportionality concerns. If there is indeed, as argued above, a market failure in the relationship between the football agent and the player (which could constitute a public interest argument for regulation), the question arises as to whether regulation should necessarily take the form of licensing.

ii. Certification

Another way of regulating professional services is certification. Certification does not necessarily require a license; it rather refers to the protection of a title. Only professionals who are certified can use a particular title. Licensing is often criticized by economists on the grounds that it creates barriers to market entry and therefore restricts competition. From an economic perspective, certification is less problematic. Certification does not necessarily reduce the number of players on the market (as does licensing). The main difference is that licensing controls the entry into the profession (thus limiting the number of professionals and creating serious

62. *Id*.

63. *See* Anthony Ogus & Qing Zhang, *Licencing Regimes East and West*, 25 INT'L REV. L. & ECON. 138, 141 (2005).

64. *See* Thomas G. Moore, *The Purpose of Licencing*, 4 J.L. & ECON. 93 (1961).

65. *See id.*

entry barriers), whereas certification only requires a professional to have particular qualifications in order to be certified without limiting entry into the profession.[66]

From an economic perspective, certification is therefore often preferred to licensing, on the condition that certification can remedy a particular market failure.[67] This could apply to the case of football agents as well. A certificate could in theory convey information that the certified professional has a particular level of training and capacity. In that sense, it could send a signal of trust to the potential clients and remedy the information asymmetry issue. At the same time, certification would have fewer restrictions on competition.

iii. Conduct Regulation

The earlier two measures discussed (licensing and certification) are referred to as entry regulation. These instruments control the entry into the profession (albeit, as just mentioned, licensing more strongly than certification). In addition, it is possible that regulation relates to the conduct of the profession. This is referred to as quality regulation or conduct regulation. These rules prescribe the conduct that is expected of a particular professional. In theory, conduct regulation would be less restrictive of competition than entry regulation (such as licensing) as it does not limit the entry to the profession. But clearly, in the case that conduct regulation would impose very stringent conditions upon the professional, it could be restrictive of competition as well. From an economic perspective, the question arises as to whether the quality regulation is of such a nature that it is needed to remedy a specific market failure (like information asymmetry) and whether it is proportional.[68] Quality regulation could take many different forms. One very far-reaching instrument is the regulation of the prices of the professional services. Price and fee-regulation constitute a severe restriction of competition. Economists are often critical of price regulation for the reason that it may be disproportionate compared to the market failure it is supposed to cure.[69]

C. Private or Public Regulation

One important element in regulation theory, and relevant not only from a theoretical but also a practical perspective, is whether the rules should be made by the government or by private entities. Self-regulation is usually considered as regulation by the regulated community itself. In the relevant

66. *See* Carl Shapiro, *Investment, Moral Hazard and Occupational Licencing*, 53 REV. ECON. STUDIES 843 (1986).

67. Philipsen, *supra* note 60, at 205–06.

68. *See* Philipsen, *supra* note 24, at 118.

69. *Id.* at 118–19.

law and economics literature, several arguments have been presented in favor of self-regulation. One argument is that the regulated community often has the best information and could therefore be better able to regulate the quality of the services to be provided. The regulated community itself is often better able than the government to assess the risks involved with services and the appropriate regulatory response.[70] That argument could easily be applicable in the case of regulation of sports agents as well. After all, it may be very difficult for public authorities to acquire accurate information needed to set optimal regulations for the quality of the services to be provided by sports agents. Another argument in favor of self-regulation is that it might be less costly. Since the regulated community can obtain the information at lower costs, enforcement may also be easier, as spontaneous compliance could follow.[71] However, there are also substantial dangers involved with self-regulation. These are more particularly related to the above-mentioned private interest theory. The point is indeed that the regulated community could, via self-regulation, serve its own interests, rather than the public interests. One of the problems that may equally arise is that the regulated profession may not always have adequate incentives to effectively enforce stringent standards upon its own members. There is also evidence that in many cases self-regulatory organizations do not effectively monitor or enforce professional standards.[72]

After having sketched the theoretical starting points with respect to the regulation of football agents, we will now first address the actual regulations imposed upon sports agents at the international level by FIFA (III) and then in selected European Member States (IV).

III. REGULATION BY FIFA

It is worthwhile to start by sketching how the position of the football agent has been regulated at the international level through private regulation by FIFA. Although FIFA has regulated the profession de facto since the 1990s, there have been several important developments in the contents of this regulation since, including a deregulation in 2015; a development that is seriously criticized in the literature.

A. FIFA and Its Regulations

FIFA oversees international competition among the members of national football associations and, as such, it derives its regulatory powers from these

70. *See generally* James C. Miller, *The FTC and Voluntary Standards: Maximizing the Net Benefits of Self-Regulation*, 4 CATO J. 897 (1985).

71. *See* Philipsen, *supra* note 60, at 210.

72. *See* Roger Van den Bergh & Michael Faure, *Self-Regulation of the Professions in Belgium*, 11 INT'L REV. L. & ECON. 165 (1991).

same associations, which agree to grant this body the authority to set ground rules for all to follow and to adjudicate in disputes between members. Accordingly, football clubs and, in turn, the players who join them are required to consent to be subject to the regulations promulgated by these governing bodies, and to abide by them. Hence, they also submit themselves to the disciplinary and sanctioning powers of their national association and FIFA; and if they refuse or fail to do so, they are liable to be excluded from exercising their profession.

Unlike players, football agents do not fall directly under FIFA's regulatory powers, since neither this body nor its member associations have a pre-existing contractual relationship, whether direct or indirect, with football agents. Any regulations adopted by such bodies in respect of agents are applicable to – or, more precisely, enforceable against — them only to the extent that the agent submits to the FIFA or the national regulatory regime in the first place. It is possible, of course, for FIFA to enforce regulations against the football players and clubs who use agents that do not comply with them, but nevertheless FIFA does not exercise any direct authority over football agents. This is also the case for football associations at the national level. The regulations of national football associations have been of relevance to football agents because, as is stated in FIFA's Regulations on Working with Intermediaries of 2015, national associations retain the right to go beyond the minimum standards/requirements when implementing and enforcing the FIFA regulations, as they are contractually bound to do.[73] Conversely, continental confederations, such as the Union of European Football Associations (UEFA) in Europe, are not members of FIFA, though membership of a confederation constitutes a prerequisite for membership of FIFA. Their primary role is to represent their national member associations, as well as to organize and administer club (as well as international) competitions, including the regulation of those particular competitions — but their regulatory authority does not extend to the sport in general.

The first attempt by FIFA to regulate the football agents' profession dates back to the early 1990s, when it promulgated the FIFA Players' Agents Regulations 1991, which introduced a compulsory FIFA agents' license for the purposes of obtaining access to the profession. Any person who wished to act as a representative of a footballer or football club would in principle have to be in possession of this license in order to be entitled to legitimately carry out that activity (with a few exceptions for qualified lawyers and players' relatives). Initially, applicants had to undertake an interview process that would test their knowledge and ability to carry out this type of business. Later, after revisions to the regulations in 1994 and 1995,

73. *See* Art. 1(3) of the current FIFA Regulations on Working with Intermediaries 2015.

applicants were required to pass a qualifying exam assessing their technical competences (in terms of their knowledge of the sport as well as relevant rules and regulations).[74] The licensee also needed to satisfy particular ethical conditions and to provide financial guarantees.[75] As noted by Yilmaz, the European Commission objected to these FIFA Regulations on the ground that they would limit access to the profession,[76] and it went as far as to state that the ban on using unlicensed agents and the exclusion of legal persons from player representation may violate competition law.[77] In response, FIFA eliminated a number of these restrictions in its 2001 Players' Agents Regulations. When subsequently confronted with a dispute surrounding the legality of these regulations that had been initiated by the French agent Laurent Piau, the erstwhile European Court of First Instance declared in a judgment of 2006 that the FIFA Regulations did not infringe EU competition rules and also affirmed FIFA's entitlement to lay down qualitative restrictions on agents, [78] which had met approval in the literature.[79]

The 1991 regulations established that the license was conferred centrally by FIFA itself. This was changed in 2001, when the revised regulations required players' agents to obtain the license directly from the respective member associations, which for their part were under the obligation to implement and enforce the FIFA Regulations.[80] The aim of the 1991 regulations was to allow FIFA to extend its reach to football agents, insofar as license-holders would be subject to the private standards on which the granting of the license was conditional, and particularly ethical rules governing the relationship with their clients and the exercise of their activities. Infringements of these standards by licensed agents could be sanctioned, for instance, by the imposition of a fine on the agent, if not the withdrawal of their license altogether.[81] In addition, clubs and players could be subject to a number of sanctions if they engaged unlicensed agents to assist them in their dealings.[82] However, the new regulations fell short of their aim, since a large majority of international football transfers continued to be conducted by unlicensed agents,[83] who, being unlicensed, were not

74. *See* GIAMBATTISTA ROSSI ET AL., SPORTS AGENTS AND LABOUR MARKETS: EVIDENCE FROM WORLD FOOTBALL 15 (2016).

75. Rossi, *supra* note 2, at 134.

76. Yilmaz, *supra* note 17, at 34.

77. Ioannidis, *supra* note 1, at 157.

78. Case T-193/02, *Laurent Piau v. Commission of the European Communities* (2005), ECR II-209 and Order of the Court of 23 February 2006, ECR 2006, I-37.

79. *See* Ioannidis, *supra* note 1, at 157; Yilmaz, *supra* note 17, at 34–36.

80. FIFA Players' Agents Regulations 1991, Art. 1.

81. FIFA Players' Agents Regulations 1991, Art. 15.

82. *See* Rossi et al., *supra* note 74, at 116.

83. By FIFA's own estimates, almost twenty years after the introduction of its

subject to the standards imposed by FIFA themselves.

B. The Regulations on Working with Intermediaries (RWI)

Once FIFA became aware of the fact that roughly ¾ of all international transfers continued to take place through unlicensed agents, it undertook a series of consultations concerning further revisions to the original regulations.[84] A reform of 2008 was followed by the reform of FIFA's Regulations in 2015, which eliminated the compulsory license and replaced it with a set of minimum standards required of agents. This version of the regulations, renamed the FIFA Regulations on Working with Intermediaries, has remained in force until January 9, 2023, when it was replaced by the new FIFA Football Agent Regulations. It marked a notable departure from the previous system, as it partially deregulated the profession of football intermediaries (as football agents would henceforth be known). Applicants no longer needed to undertake an examination but were instead merely required to register with a competent national member association.[85] This can be done by simply depositing with that association the representation contract that the intermediary concludes with a player and/or club, provided the association is 'satisfied that the intermediary involved has an impeccable reputation'.[86] The 2015 RWI therefore marked an ideological shift. The licensing requirement regulating professional access for particular people was replaced with a requirement to register the activity being carried out (that is to say, the transfer and the football agent's involvement therein).[87] This replacement of licensing by a mandatory registration of agents' involvement in individual transactions is considered as a form of deregulation in the literature.[88]

Once registered, the football intermediaries are again bound to abide by the standards in the FIFA Regulations governing the conduct of the occupation (not to mention the general FIFA Code of Ethics, which prescribes a range of rules of conduct).[89] Under the 2015 regulations, these

licensing system, around 70% of international football transfers were still being conducted by unlicensed agents. Rossi, *supra* note 2, at 135. Having said that, others have pointed out that FIFA's figures (based on its Transfer Matching System, or TMS) also show that the percentage is closer to 50% if one were to consider only those transfers involving payment of a transfer fee. Nick De Marco & Daniel Lowen, *Football Intermediaries, Regulation and Legal Disputes*, in FOOTBALL AND THE LAW 213 (Nick De Marco ed., 2018).

84. *See* Rossi et al., *supra* note 74, at 121.

85. *See* FIFA Regulations on Working with Intermediaries 2015, particularly arts. 2(3) and 3.

86. FIFA Regulations on Working with Intermediaries 2015, Art. 4.

87. Rossi, *supra* note 2, at 136.

88. Ioannidis, *supra* note 1, at 159–60.

89. Article 2(1) of the FIFA Code of Ethics of 2020 (specifying that it covers

include the duty to disclose earnings[90] and actual or potential conflicts of interest (and in such circumstances the duty to obtain the written consent of the parties before initiating negotiations),[91] which can be sanctioned by national member associations.[92]

The RWI also set a benchmark for the level of remuneration of intermediaries, '[w]hile taking into account the relevant national regulations . . . and as a recommendation', namely 3% of the player's basic gross income in the case of an employment contract, or 3% of the transfer fee in the case of a transfer agreement.[93] The 3% fee is merely a recommendation, yet the literature already warns that it could be seen as price fixing and therefore proscribed under competition law.[94] If the 3% rule were not a recommendation but rather mandatory, it would certainly violate competition law.[95]

In sum, by lowering the basic entry requirements for persons to legitimately act as intermediaries (again, in the eyes of FIFA), the FIFA Regulations of 2015 reflected an attempt to bring more football agents within FIFA's – and hence FIFA's member associations' – private regulatory authority over the conduct of the occupation. As one commentator puts it, FIFA's "decision to streamline its intermediaries came in light of the challenges it faced in attempting to regulate actors over whom the governing body had no control."[96]

C. The Critics

These changes incorporated in the RWI 2015 have been the object of substantial criticism. It has, for example, been contended that the 2015 Regulations were ineffective in the sense that they have not achieved their goals.[97] The fact that the licensing requirement was abolished also gave rise to a wide range of approaches.[98] The danger of the deregulation by FIFA is that many unqualified individuals could since enter the transfer market acting as sports agents.[99] Since access to the transfer market was made significantly

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intermediaries among others).

90. FIFA Regulations on Working with Intermediaries 2015, Art. 6(1).

91. FIFA Regulations on Working with Intermediaries 2015, Art. 8(2).

92. FIFA Regulations on Working with Intermediaries 2015, Art. 9.

93. FIFA Regulations on Working with Intermediaries 2015, Art. 7(3).

94. *See* Yilmaz, *supra* note 17, at 52.

95. Ioannidis, *supra* note 1, at 160.

96. Lisa Masteralexis, *Regulating Player Agents*, in RESEARCH HANDBOOK OF EMPLOYMENT RELATIONS IN SPORTS 99, 120 (Michael Barry et al. eds., 2016).

97. *See* MAESCHALCK ET AL., SPORTRECHT 243 (2015).

98. *See* Rossi, *supra* note 2, at 136.

99. Yilmaz, *supra* note 17, at 52.

easier (by removing most barriers), problems could arise, especially where there is a lack of imposition of sanctions, for example, if an unregistered agent were to lure a player into breaching their contract of representation with another agent.[100] There was now a danger that individuals who have no knowledge of football law (or employment/contract law), have not taken an exam, and do not have financial security (like insurance), would act as intermediaries.[101] The RWI 2015 has also been blamed for leading to a rise in agents' fees, to a lowering of standards and to a lack of uniformity, which could give rise to imbalances in the working conditions of intermediaries in different countries.[102] According to some stakeholders, the deregulation by FIFA, abandoning its license requirement for intermediaries and leaving enforcement to national associations, had the potential to give rise to something of a "wild west" in which less stringent registration requirements are frequently exploited by agents to dupe players and especially young footballers, particularly in countries characterized by large-scale corruption.[103] The fear has also been expressed that this deregulation would lead to a greater number of players signing contracts with agents who do not possess the requisite skills and qualifications, and, as a result, the potential for the youngest players being exploited.[104] The report produced by KEA and ECORYS for the European Commission in 2018 argues that "[t]he changes introduced in 2015 are in any case correlated with a sharp increase in fees for intermediaries stemming from international transfers: from USD 238 million in 2014, intermediaries' commissions reached USD 446 million in 2017, which represents an 87% increase over four years."[105] There was equal criticism of the recommended financial cap on remuneration, on the basis that this would reduce the motivations for agents to attain the most preferable terms for the players.[106]

D. Recent Developments

This primer of the 2015 RWI demonstrates that these regulations have invited significant criticism, especially from those agents who were licensed

100. Ioannidis, *supra* note 1, at 156, 159–160.

101. Ioannidis, *supra* note 1, at 161.

102. This was the result of a study by KEA EUROPEAN AFFAIRS & ECORYS, AN UPDATE ON CHANGE DRIVERS AND ECONOMIC AND LEGAL IMPLICATIONS OF TRANSFERS OF PLAYERS: FINAL REPORT TO THE DG EDUCATION, YOUTH, CULTURE AND SPORTS OF THE EUROPEAN COMMISSION (2018), available at https://ec.europa.eu/sport/sites/sport/files/report-transfer-of-players-2018-en.pdf; *see also* De Marco & Lowen, *supra* note 83, at 215.

103. *See* KEA & ECORYS, *supra* note 101, at 46.

104. *Id.*

105. *Id.*

106. KEA & ECORYS, *supra* note 101, at 46–47.

under the previous system. The result of this widespread criticism is that FIFA has not reformed these regulations again with the adoption of the new FIFA Football Agent Regulations ("FFAR"), and this latest reform marks a return to the previous licensing requirement. In any event, it should be remembered that the regulations implemented by FIFA national member associations are also applicable to those persons, whether natural or legal, who are registered with those associations. This entails that these registered persons will also be bound by any additional requirements that the national association may have promulgated, which may go beyond the minimum standards provided in FIFA's Regulations. Football agents may therefore also have to comply with domestic private regulation. Moreover, mandatory laws and national legislative norms apply to the national member associations and their implementing regulations.[107] Hence, with this in mind, we will now shift the focus to the domestic level in order to see how the FIFA Regulations have been implemented in a few selected European jurisdictions.

Before jumping into the regulation at domestic level, though, we should reiterate that the regulations, both in regard to transfers and intermediaries, have again been the subject of reform at the level of FIFA. In the fall of 2018, the FIFA Football Stakeholders Committee approved a reform package concerning the transfer system. The Committee endorsed principles that resulted, among other things, in the establishment of a "clearing house" entity, which would regulate and process player transfers. This in turn would deter fraudulent business dealings and contracting procedures, and ultimately safeguard the stability of the sport. The clearing house entity would be able to streamline and centralize payments relating to player transfers (including agents' commissions and eventually transfer fees). The Committee additionally proffered more stringent rules to govern agents with a renewed licensing and registration regime through a transfer matching system, as well as the introduction of restrictions on agent compensation and representation.[108] These proposals have recently led to the adoption of new formal rules in the form of the FFAR of 2023.

IV. REGULATION IN SELECTED EUROPEAN COUNTRIES

In various earlier studies attention has been paid to the regulation of sports agents at the domestic level. In one study, regulatory provisions in a few European jurisdictions were addressed;[109] in others, the regulation in all

107. FIFA Regulations on Working with Intermediaries 2015, Art. 1(2).

108. FIFA, *FIFA Council Makes Key Decisions for the Future of Football Development*, (Oct. 26, 2018), https://www.fifa.com/who-we-are/news/fifa-council-makes-key-decisions-for-the-future-of-football-development.

109. *See* KEA et al., *supra* note 7, at 157–165.

European Member States was sketched at a general level, more particularly regarding the implementation of the RWI.[110] We will focus on the regulation of transfer agents in four European countries, namely Belgium, England, France and Italy. Originally, all were EU Member States, but since Brexit that is no longer the case for England as a constituent part of the UK. Whereas England, France and Italy represent the larger leagues, Belgium is undoubtedly smaller and precisely for that reason, also intriguing to study. Belgium merits attention as there has been a lot of debate on the regulation of sports agents in that jurisdiction in light of the implementation of the RWI. England and France are interesting as they to some extent have opposite regimes: whereas England largely relies on private regulation via the Football Association (FA), in France the position of football agent is formally regulated in the *Code du sport*. The Italian system is again closer to the English as the intermediary is regulated in the Regulations of the Football Association, at least predominantly, while being grounded in public law. We will discuss the regulations in these four selected European countries, as they nicely illustrate the diversity of regulatory approaches to implementing the RWI 2015 that currently exists. One should, however, be slightly careful in referring to the "implementation" of the FIFA Regulations at the domestic level. As far as private regulation is concerned (for example, in England and Italy), the goal of the regulations adopted by the national football associations is undoubtedly to implement the FIFA Regulations. But in France, for example, where the intermediary profession is mainly governed through public regulation in the *Code du sport*, it certainly cannot be said that that Code constitutes an implementation of the private regulations of FIFA. In Belgium the situation is slightly mixed, insofar as the public regulations concerning transfer agents in that country do refer to the FIFA Regulations. This regulatory diversity will also allow a comparison with the theoretical framework presented in Section II.

For each of the above-mentioned jurisdictions a few general features will be sketched, after which we will discuss specific issues, such as the regulatory basis (statute or private regulation), the costs of registration, the specific reputational requirements, the regulation of fees and of conflict of interests.

A. Belgium

The various reports summarizing the regulation of football intermediaries in Europe mention that there are seven countries that have mandatory legislation specifically aimed at football agents, but do not include Belgium in that list.[111] This is probably due to the fact that, whereas there is no

110. *See* Parrish et al., *supra* note 6.

111. Parrish et al., *supra* note 6, at 184–97 (mentioning Bulgaria, Croatia, France,

national law at the federal level in Belgium regulating sports agents, there are regional decrees from the Brussels, Flanders and Walloon regions, as the regulatory competences in this domain have been largely allocated to the regional level.[112] The Belgian regulation belongs to the legislation related to labor intermediation. In that respect, a specific chapter dealing with sports agents was included in a Decree of 10 December 2010.[113] Separate regulations exist for the Brussels, Flemish and Walloon regions. The various regulations did require a license for sports agents, the importance of which was shown in a Decision of the Court of Appeals of Brussels of 5 May 2015.[114] A Dutch company had acted as agent for the player Boussoufa and filed the lawsuit against Anderlecht for intermediation. Anderlecht promised by contract to pay a commission to the agent of 7% of the gross wages that the club would pay to the player during the time of the labor agreement, as well as a commission in case of a transfer. As the player was indeed transferred, the agent demanded its commission. Anderlecht, however, claimed that the contract violated public order and would therefore be null and void. Anderlecht based itself on an executive order of the Brussels Region of 15 April 2004, holding that an agent needed a license to intermediate in labor contracts. The agent did not have such a license.

The court held that the Brussels Regulation aims at the protection of public interests, more particularly the protection of employees and the limitation of abuses. Given the fact that the regulation is of public order, parties cannot deviate from it by contract. The court, moreover, took the view that the agent could not call on the European Services Directive 2006/123 (to argue that the Brussels Regulation should not be applied), as the Services Directive did not exist when the contract between the parties was drafted. The agents' claim was therefore rejected.

The regulation of sports agents in the Flemish Region has a long history. A sports agent needed a registration from the Flemish Government on the basis of a Decree of 13 April 1999. The registration requirement was later abrogated as a result of the European Services Directive, which promotes the free exercise of professional services between Member States. A requirement to register as it was contained in the Decree of 13 April 1999 was considered as a restriction on the free movement of services, which could only be justified on the basis of public order, public safety, public health or environmental protection. The necessity of such a measure could not be demonstrated sufficiently with respect to service providers located in

Greece, Hungary, Italy, and Lithuania).

112. Maeschalck, Vermeersch & De Sadeleer, *supra* note 97, at 231–36.

113. Most recently amended by a Decree of 29 March 2019 and a Decision of the Flemish Executive of 7 June 2019.

114. Maeschalck, Vermeersch & De Sadeleer, *supra* note 97, at 233.

another EU Member State. The requirement to register could have been retained for service providers located in the Flemish Region, but that would have led to the perverse result that the registration requirement would only apply to service providers active in the Flemish Region and not to those located abroad. As a result, the registration requirement was totally abolished.

As a result of the most recent changes in 2019, there is a duty to register for sports agents and an obligation to provide a financial guarantee of €25,000. The Explanatory Memorandum discusses in detail the compatibility of the requirement to register and to provide a guarantee with the European Services Directive. It argues that these measures are necessary in order to guarantee a control on the activity of sports agents. The registration is not an authorization. In other words, the administrative agency does not verify whether the sports agent meets the regulatory conditions. There is only ex post control. It is therefore argued that this regulation complies with the proportionality requirement of the European Services Directive.

The Flemish Decree concerning private labor intermediation is applicable to every service of private labor intermediation, provided both by legal entities as well as by individuals. There are a large number of conditions with which the agent has to comply, related inter alia to criteria concerning professional expertise. For a sports agent it is also required that there are no debts, fines or interest to be paid to the social security agencies.

The old Flemish regulation provided for a maximum remuneration of 7% of the total gross income of the player. That maximum was, however, removed in the Decree of 10 December 2010, as it was considered a violation of the European Services Directive, and there was resistance against it from stakeholders. The current Decree provides that a commission fee can be charged, on the condition that the fee is specifically arranged in a written contract between the agent and the player, that the player explicitly agrees to the commission and that both parties possess an original copy of the contract.[115] The amendment of 2019 introduced a prohibition on charging a commission for services of private labor intermediation for a sports player who is a minor.

In addition to these formal regulations with a statutory basis, intermediaries in Belgium are also regulated by the (private) regulations of the Royal Belgian Football Association (RBFA). Intermediaries are subject to a mandatory registration, with an annual registration fee of €500. Registration will automatically be rejected if the criminal record shows a confirmed conviction for a felony or a financial crime (such as match fixing)

115. Maeschalck, Vermeersch & De Sadeleer, *supra* note 97, at 239.

in the five years preceding the application, or a conviction for a crime with regard to a minor, or if there is a final decision issued by FIFA or by another association that prevents the intermediary from registering due to issues related to corruption or match fixing.[116]

There is a regulation of conflicts of interest providing that the intermediary cannot act, either directly or indirectly, for both the player and the club. An intermediary also cannot be involved in a transaction for both the selling club as well as the new club of the player.

As far as remuneration is concerned, the regulations provide that the remuneration paid to an intermediary by a player shall be calculated on the basis of the player's gross income for the duration of his/her employment contract.[117] The previous version of the Belgian regulations recommended, in light of the FIFA RWI, to cap the remuneration at 3%, but that condition has been removed from the latest version of the regulations. According to a national expert, the abolition of the exam for sports agents has led to an exponential increase in the number of intermediaries. The respondent fears that if there is no appropriate control and enforcement, abuses may take place.[118] The average gross income per intermediary per year amounts to €65,000 and the recommendation of a 3% cap would appear to be systematically disregarded by the sector.[119]

A study holds that the Belgian situation is complex since each region (Flanders, Brussels and the Walloon Region) has its own registration system and the conditions of interregional equivalents could be a source of uncertainty.[120] The same study holds that the Flemish Decree corresponds with Article 16 of the European Services Directive (by requiring registration only if it concerns a continuous activity). The Walloon and Brussels Regulations, however, also require complete authorization, even in the case of an occasional service provision, which may be at odds with Article 16 of the Services Directive.[121]

B. England

In England, the national member association — the Football Association (FA) — gave effect to the RWI through the FA Regulations on Working with Intermediaries, effective April 1, 2015. These abolished the FA agents' license that had existed previously and took over the RWI's minimum registration requirement for access to the intermediary profession, requiring

116. Parrish et al., *supra* note 6, at 13–19.
117. *Id.*
118. *Id.* at 18.
119. *Id.* at 18-19.
120. KEA et al., *supra* note 7, at 161.
121. *See id.* at 163.

agents to enter into a representation contract with the player or club 'prior to that Intermediary carrying out any Intermediary Activity on his or its behalf',[122] and to lodge that contract with the FA 'within 10 days of being executed and in any event no later than at the time of the registration of a Transaction by the Association',[123] after which the FA will apply a test of good character in order to assess the impeccable reputation of the agent. This test lists a series of disqualifying conditions, including any unspent conviction for a violent, financial or dishonest crime, any suspension or bad from involvement in the administration of or participation in a sport for at least six months, and any suspension or disqualification by a professional body. These conditions are ongoing, meaning registered intermediaries must confirm that they continue to meet the criteria every time that they carry out intermediary activity in relation to a transaction, and notify the FA of any change in circumstances relating to them within ten days thereof. However, the FA regulations also include a set of further conditions for the representation contract itself and duties to which intermediaries agree by registering, which are based on a body of rules that had already been cultivated and refined by the FA within its former Football Agents Regulations of 2009.[124] The intermediary will be charged £500 (plus VAT) for the first registration period of one year and £250 (plus VAT) for every annual renewal.[125] With respect to the contract itself, an agreement with a player is limited to a maximum duration of two years,[126] and a minor cannot be party to such a contract without their parent's or guardian's written consent.[127] Furthermore, with respect to duties, the FA regulations include additional, comprehensive provisions concerning conflicts of interest and duties of disclosure. With regard to the former, intermediaries are, for instance, prohibited from having an interest, such as a business or proprietary interest, in a club or in any player transfer compensation and from offering any benefits or favors in return for preferential treatment from a club or player.[128] Also, an intermediary may only act on behalf of one party to a transaction unless additional requirements regarding consent and disclosure for dual or multiple representation are met.[129] As for the latter, intermediaries must disclose inter alia any remunerated contractual or other arrangement that they may have with any player, club, club official or

122. FA Regulations on Working with Intermediaries 2015, Rule B1.
123. FA Regulations on Working with Intermediaries 2015, Rule B3.
124. *See* De Marco & Lowen, *supra* note 83, at 217.
125. Parrish et al., *supra* note 6, at 46.
126. FA Regulations on Working with Intermediaries 2015, Rule B10.
127. FA Regulations on Working with Intermediaries 2015, Rule B9.
128. *See* FA Regulations on Working with Intermediaries 2015, Rule E4-7.
129. FA Regulations on Working with Intermediaries 2015, Rule E1.

manager, not to mention any actual or potential conflict of interest they might have in relation to a transaction.[130] Beyond the FIFA benchmark for remuneration of 3%, the regulations also include other provisions regulating the means and recording of payments, which must be processed through the FA's clearing house.[131] Additionally, in England the perception is that the non-binding 3% cap is not followed in practice but has instead "been largely ignored by the market and a commission rate of 5% (and in some cases higher) remains prevalent."[132] Some national experts are, however, opposed to a stricter cap, on the basis that it would drive all the payments out of the system and therefore out of the FA's control.[133] All of these regulations are enforceable by the FA, with any breach of the private standards contained therein deemed to constitute misconduct under the FA's Rules, to be 'dealt with in accordance with the Rules of The Association and . . . determined by a Regulatory Commission of the Association.'[134] The FA may sanction agents by fines, suspensions, or even permanent bans, in accordance with the procedures set out in the FA's Regulations for Football Association Disciplinary Action.[135]

Accordingly, it is primarily the FA that regulates access to and the performance of the intermediary profession in England, which, in line with FIFA's RWI, set forth relatively low entry requirements, although with stricter conduct regulation. Beyond these regulations, certain national legal requirements also regulate the activities of intermediaries, in particular the common law of agency, which prescribes general private law duties of care, openness and good faith. Indeed, the requirement for an intermediary to act in accordance with general fiduciary duties is also recognized in the FA regulations themselves.[136] This reinforces the obligation of the intermediary to always act in the best interests of the player or club for whom they act, and therefore to disclose any realistic possibility of a conflict of interest that, if kept secret, would constitute a breach of their duty of good faith towards their client. As much was reaffirmed by the Court of Appeal in 2009 in the case of *Imageview Management Ltd v.* Jack,[137] which involved an agency company that had negotiated a contract for a client footballer with a UK club (in fact a Scottish club, Dundee United), while at the same time making a "side deal" with that club to obtain the footballer's work permit in return for

130. *See* FA Regulations on Working with Intermediaries 2015, Rule E8-10.
131. *See* FA Regulations on Working with Intermediaries 2015, Rule C.
132. De Marco & Lowen, *supra* note 83, at 222.
133. Parrish et al., *supra* note 6, at 49.
134. FA Regulations on Working with Intermediaries 2015, Rule F1.
135. *See* Parrish et al., *supra* note 6, at 49.
136. See FA Regulations on Working with Intermediaries 2015, Rule A7.
137. [2009] EWCA Civ 63.

a fee. The Court held that, by failing to disclose this side deal and resulting payment to the footballer, the agent had breached their common law fiduciary duty by reason of a real conflict of interest. To quote from the judgment of Lord Justice Jacob, "[T]he law imposes on agents high standards. Footballers' agents are not exempt from these. An agent's own personal interests come entirely second to the interest of his client. If you undertake to act for a man you must act 100%, body and soul, for him. You must act as if you were him. You must not allow your own interest to get in the way without telling him."[138] In addition, on top of such common law duties, there are the rules laid down in some legislative instruments, such as the Fraud Act 2006, the Bribery Act 2010, and the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010. However, the overall regulatory approach in England takes a minimum requirements stance, focusing more on professional conduct, particularly transparency, than on accessibility. Public standards for the profession are largely nonexistent.

C. France

The applicable regulatory framework in France stands in stark contrast to that in England, primarily because the sports intermediaries' profession in France is governed in the main by statutory law laid down in the *Code du sport*. This special codified law, which is long-established, contains various articles applicable to sports agents under national law. It is true that the French national football association, the *Fédération française de football* (FFF), has also formulated specific rules regulating football agents (the *FFF Règlement des agents sportifs*), but for the most part these regulations reproduce the state law regulating sports agency set out in the *Code du sport*, while also adding certain particulars at the technical level. In fact, being mandatory public laws, the collection of provisions applicable to sporting intermediaries in the *Code du sport* takes precedence over any private regulations.[139] This explains why the RWI were not actually been implemented in the French jurisdiction, and instead the FFF has notified FIFA of the RWI's inapplicability in France.[140]

The relevant articles of the *Code du sport* lay down strict requirements and standards on sports agency, including notably the mandatory requirement "that the agent (i) hold an official licence to operate a business as a sports agent (the conditions for obtaining which are very strictly detailed); (ii) comply with certain good practice rules; (iii) submit to the

138. Imageview Management Ltd v. Jack [2009] EWCA Civ 63, at 6.

139. Indeed, as much is acknowledged in the FIFA Regulations on Working with Intermediaries 2015, Art. 1(2).

140. See Parrish et al., *supra* note 6, at 58.

disciplinary procedures of the sports association."[141] In this sense, the pertinent national legislation in France (which applies not only to football but to all sports) clearly goes further than the base standards provided by the RWI, insofar as it obliges intermediaries to obtain a license from the FFF Sports Agents Commission, thereby coupling standards of professional conduct with a relatively stringent precondition for access to the profession. In order to be so licensed, the applicant must pass a written examination, which is composed of both a general and a specific part, testing awareness and understanding of relevant legal and sporting rules, including specifically in the footballing domain.[142] The FFF Sports Agents Commission also determines, on an annual basis, the registration fees payable by applicants for the license, which at the time of writing amounts to €1,000.[143] There are strict "conditions of integrity that prohibit access to the profession, for instance, to persons responsible for acts giving rise to a criminal conviction that are contrary to the honor, probity or rules of morality."[144] The same is true for "persons affected by personal bankruptcy or a ban on management . . . ."[145] Additionally, the legislation also prescribes several rigorous transparency and reporting obligations and conflict of interest-related requirements that licensed agents must comply with, some of which are significantly more restrictive than those provided by the RWI.[146] The former includes professional and accounting reporting obligations,[147] as well as obligations of contractual transparency, particularly in the form of the duty to transmit the agency contract to the federation.[148] The latter includes, for example, an outright prohibition of the so-called *double mandat* (i.e., dual representation), meaning a sports agent may only act on behalf of a contracting player or club, but not both simultaneously.[149] While comparable in essence to the interdiction that is contained in Article 1161 of the *Code civil*, the corresponding provision of the *Code du sport* goes further

141. Parrish et al., *supra* note 6, at 57.

142. *Code du sport*, Art. L.222-7 and *FFF Règlement des agents sportifs*, Art. 3.4. See also GRÉGORY SINGER, *Ethique et transfert du sportif*, in L'ÉTHIQUE EN MATIÈRE SPORTIVE 36 (Delphine Gardes & Lionel Miniato eds., 2016).

143. *FFF Règlement des agents sportifs*, Art. 3.3.

144. Parrish et al., *supra* note 6, at 62. *Cf. FFF Règlement des agents sportifs*, Art. 3.1(6).

145. Parrish et al., *supra* note 6, at 62.

146. *See* Frédéric Buy, *Les Intermédiaires Sportifs*, *in* L'INTERMEDIATION PROFESSIONNELLE: DE LA DECOUVERTE D'UNE MYRIADE DE DROIT SPECIAUX (PATENTS) A LA RECHERCHE D'UN AUTHENTIQUE DROIT COMMUN (LATENT) 44 ff. (Moussa Thioye ed., 2016).

147. *Code du sport*, Art. R.222-31.

148. *Code du sport*, Art. R.222-32.

149. *Code du sport*, Art. L.222-17.

in this respect insofar as it offers no escape, since any agreement between the parties to the contrary is deemed null and void.[150] If licensed agents do not comply, they risk disciplinary fines as well as temporary suspension or permanent revocation of their license. Meanwhile, unlicensed agents who carry on the occupation of sports agency regardless can be held criminally liable, with punishment including not just a hefty fine of at least €30,000, but even two year's imprisonment and this may be accompanied by a temporary or permanent ban on exercising the profession.[151]

French law caps the remuneration of sports agents at "10% of the amount of the contract signed by the parties it has brought together."[152] A legislative change of 2012[153] allowed delegated sports associations (including the FFF) to set a cap which is less than 10%.[154] But questions are being asked with respect to the legitimacy of the state's regulation of the price of this service.[155] One national expert contended that "[t]he remuneration of a service such as sports intermediaries must be freely determined by the laws of supply and demand," and therefore not by a price cap.[156]

Thus, the French regulations with regard to sports agents stand in stark contrast to those of England because they are derived predominantly from rules of public origin, and because those rules focus on high standards for access to the profession as much as professional conduct.

D. Italy

By means of a 'Budget Law' of 2017, adopted after a protracted campaign by Italian football agents, the Italian Parliament enacted a new regulatory framework for sports agents, including football agents, which entered into force on January 1, 2018.[157] This Act requires all sports intermediaries in Italy to be registered with the National Olympic Committee (the *Comitato Olimpico Nazionale Italiano*, or CONI), who need to do so in order to be allowed to register, in turn, with the relevant national sporting federations, including the football association (the *Federazione Italiana Giuoco Calcio*, or FIGC). For this purpose, applicants must pass a habilitation exam designed to determine their suitability (unless they already passed the exam that existed before the 2015 deregulation by FIFA).[158] Only CONI-

150. Buy, *supra* note 148, at 42.
151. *Code du sport*, Art. L.222-20 and L.222-21.
152. Parrish et al., *supra* note 6, at 64.
153. *Loi n. 2012-158 du 1er février 2012.*
154. *Code du sport*, Art. L.222-17.
155. Parrish et al., *supra* note 6, at 64–65.
156. Parrish et al., *supra* note 6, at 70.
157. *Legge 27 dicembre 2017 n. 205*.
158. *Legge 27 dicembre 2017 n. 205*, Art. 1,373.

registered intermediaries, or intermediaries exempt from the new regime on the basis of other legally recognized professional competences (such as lawyers), are allowed to conduct sports agency activities, meaning that professional sportspeople and companies affiliated to a professional sporting federation, including the FIGC, are prohibited from making use of non-registered (and non-exempted) agents – and therefore that any contracts entered into by such parties with non-registered agents shall be deemed null and void.[159] In order to be eligible to take the qualifying examination and eventually be registered by CONI, applicants must hold Italian citizenship or that of another EU member state, as well as a secondary school diploma or equivalent as a minimum and be free from criminal conviction for five years.[160] While the Budget Law of 2017 lays down the legal framework for recognized professional sports agents, however, it left the promulgation of the specific substantive and procedural requirements for registration, via prime ministerial decree, to CONI itself.[161] Hence the particular conditions for registration in the CONI register have been laid down by CONI in its Sports Agents Regulation, first adopted in 2018.[162]

Similarly, the specific obligations of the registered football intermediary are not defined in formal legislation, but rather in regulations of the FIGC.[163] "The parties involved in the transaction must sign the relevant representation agreement and the intermediary must be registered prior to entering into the transaction process."[164] In order to register, the football intermediary must pass both the general CONI habilitation test, which assesses their knowledge of fundamental principles of civil and administrative law, followed by a special test supervised by the FIGC (i.e., the respective national sports federation under which the intermediary wishes to operate), which focuses on FIGC statutes, codes and regulations, including the FIGC's Sports Agents Regulation.[165] An annual registration fee of €500 applies,[166] as well as €150 for each individual representation contract.[167] The intermediary must also

159. *Id.*

160. *Id.*; *see also* De Marco & Lowen, *supra* note 83, at 215.

161. *Id*.

162. *Regolamento degli Agenti Sportivi, approvato con deliberazione del Consiglio Nazionale n. 1596 del 10 luglio 2018*.

163. *Regolamento Agenti Sportivi FIGC, approvato con delibera del Consiglio Federale n. 125A del 4 dicembre 2020.*

164. Parrish et al, *supra* note 6, at 89.

165. *Regolamento Agenti Sportivi FIGC, approvato con delibera del Consiglio Federale n. 125A del 4 dicembre 2020*, Art. 11; *see also* Parrish et al, *supra* note 6, at 88.

166. *Regolamento Agenti Sportivi FIGC, approvato con delibera del Consiglio Federale n. 125A del 4 dicembre 2020*, Art. 5(3)(a) and 6(3)(a).

167. See further Parrish et al., *supra* note 6, at 88.

declare that he has no conflict of interest and that he consents to be bound by the statutes of FIFA and of the football association.[168] There do not seem to be detailed requirements concerning the "impeccable reputation" other than that the intermediary must make a declaration (filed along with the registration) wherein he affirms to have full legal capacity and no previous criminal record for match fixing, no previous criminal convictions and no life-time ban.[169]

Remuneration of intermediaries can take the form of a single amount or a certain proportion of the amount of the transaction.[170] The FIGC recommends the FIFA limit on the sum paid of no more than three percent of the fee for the transfer.[171] Along with general principles of honesty, diligence, transparency and the like,[172] there are further detailed rules to avoid conflicts of interest.[173] In particular, football intermediaries are prohibited from holding an interest, be it direct or indirect, in the future transfer of a player, or in any economic advantage in relation to such a transfer.[174] The intermediary can, however, represent both the club and the player in a transaction if this is clear from the representation contract and parties have previously given their explicit consent in writing to that extent.[175] Some individuals (members of the football association, managers, players or technical staff members) are prohibited from registering as intermediaries.[176]

In terms of the sanctions for breaches of the FIGC regulations, the applicable regime provides for a number of different possible sanctions, depending on the gravity, duration and eventual recurrences of the violation.

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168. *Regolamento Agenti Sportivi FIGC, approvato con delibera del Consiglio Federale n. 125A del 4 dicembre 2020*, Art. 5(6).

169. *Regolamento Agenti Sportivi FIGC, approvato con delibera del Consiglio Federale n. 125A del 4 dicembre 2020*, Art 5(1); *see also* Parrish et al, *supra* note 6, at 88.

12; *see also* Parrish et al., *supra* note 6, at 89.

170. Parrish et al., *supra* note 6, at 90.

171. *Id.*

172. *Regolamento Agenti Sportivi FIGC, approvato con delibera del Consiglio Federale n. 125A del 4 dicembre 2020*, Art. 15(2).

173. *See Regolamento Agenti Sportivi FIGC, approvato con delibera del Consiglio Federale n. 125A del 4 dicembre 2020*, Art. 16. Rules on incompatibility and conflicts of interest are also provided in the CONI regulations, *Regolamento degli Agenti Sportivi, approvato con deliberazione del Consiglio Nazionale n. 1596 del 10 luglio 2018*, Art. 18.

174. *Regolamento Agenti Sportivi FIGC, approvato con delibera del Consiglio Federale n. 125A del 4 dicembre 2020*, Art. 16(6).

175. *Regolamento Agenti Sportivi FIGC, approvato con delibera del Consiglio Federale n. 125A del 4 dicembre 2020*, Art. 21(5).

176. *Regolamento Agenti Sportivi FIGC, approvato con delibera del Consiglio Federale n. 125A del 4 dicembre 2020*, Art. 16(3).

These range from a fine, through suspension for up to three years, to striking off from the register, and may also be imposed in combination.[177]

Thus, while not reverting to a formal licensing system of the kind abolished by FIFA with the adoption of its RWI 2015, the Italian legislator has reintroduced the requirement of a habilitation exam for the purpose of registration, after initially deregulating in line with the RWI 2015. According to one national expert, the deregulation of FIFA (and subsequently of the FIGC) led to a perceived reduction in the standard of football agency being provided in Italy, since the possibility of registering as an intermediary without any prior test to assess applicants' knowledge and suitability opened up the profession to individuals lacking competence and knowledge. And it was inter alia for this reason that the Italian government stepped in to reintroduce a qualifying examination to be passed in order to become a sports intermediary.[178]

V. COMPARATIVE ANALYSIS

We already indicated in the introduction that there have been earlier comparative studies concerning the regulation of football agents. For example, in a 2018 study, Parrish et al. have compared the national regulations and also concluded that there is a wide variety between the EU Member States in the applicable legal rules.[179] A second KEA/ECORYS study (from 2018) equally addressed the implementation of the 2015 FIFA Regulations. They concluded that only six EU Member States have formal legislation governing football agents.[180] The Parrish et al. study mentions seven Member States[181] and if one were to (as we argue one should) add Belgium, there would be a total number of eight. Equally though, there are differences, for example, in the definition of and registration costs for football intermediaries, as well as significant differences in the regulation of payments to football intermediaries. It is striking that, notwithstanding the 3% recommendation in the FIFA 2015 RWI, many EU Member States have

177. *Regolamento Agenti Sportivi FIGC, approvato con delibera del Consiglio Federale n. 125A del 4 dicembre 2020*, Art. 20(3); *see also* Parrish, et al., *supra* note 6, at 92.

178. Parrish et al., *supra* note 6, at 92.

179. *See* Parrish et al., *supra* note 6, at 184–97.

180. KEA/ECORYS, *supra* note 101, at 40–44.

181. Parrish et al., *supra* note 6, at 184 (mentioning 7 Member States: Bulgaria, Croatia, France, Greece, Hungary, Italy and Lithuania). We have doubts as to whether Italy really has a statutory system, as most of the applicable rules are contained in the regulations of the football association. But we would surely add Belgium. Therefore, depending upon one's interpretation, there are 6-8 Member States with a formal framework.

no financial cap at all.[182]

We have used the Parrish et al. studies to describe the regulation of sports agents in the countries in the previous section; yet, for the four countries we selected, we have attempted at the same time to provide a more detailed analysis, which will also allow us to test the regulations in the jurisdictions we analyzed against the theoretical framework provided in Section II. For now, it is important to recall that the different studies all come to the same conclusion, namely that since the deregulation by FIFA with the RWI 2015, the contents of the regulations reveal a huge diversity between the European countries.[183] We will now briefly compare the four countries we discussed in the previous section with respect to a few key features (A); then we test the legal arrangements in the different jurisdictions of our sample against the theoretical framework (B) and we briefly ask the question to what extent the diversity we found may give rise to an intervention at the European level (C).

A. Comparison of Key Features

As far as the four countries discussed in the previous section are concerned, the differences could be sketched in the following table.[184]

182. Richard Parrish et al., *Promoting and supporting good governance in the European football agents industry. Final report*, October 2019, co-funded by the Erasmus program of the European Union, available at: https://www.edgehill.ac.uk/law/files/2019/10/Final-Report.pdf, last consulted on 26 January 2021, at 48.

183. It is equally the conclusion reached by Rossi, *supra* note 2, at 136.

184. Note that Parrish et al. equally provide a comparative table listing differences in key features (Parrish et al., *supra* note 6, at 184–97). We have, however, preferred to design our own table based on the analysis in the previous section.

Table 1: Comparison of four European jurisdictions on Key Features

	Belgium/ Flanders	**England**	**France**	**Italy**
Type of regulation	Statutory basis in Decrees of Regions + FA regulations	Only FA regulations	*Code du sport* (not RWI)	Statutory basis, but FA Regulations
License or registration	Registration	Registration	License	Registration
Costs of registration	€500 annual registration fee	£500 (+ VAT) initial registration fee and £250 (+ VAT) for every annual renewal	€1,000 initial registration fee	€500 annual registration fee and €150 for each individual representation contract
Reputational requirements	No criminal record No FIFA decision prohibiting registration	Test of good character	Written exam + no criminal record	Self-declaration of no criminal record + no life-time ban
Regulation of remuneration	Was max. 7%, now free	Recommended cap of 3% + payment made via FA clearing house	10% cap	Recommended 3% cap of FIFA
Conflicts of interest	Not work for club and player Not for selling and buying club	Prohibition of interests in the club + disclosure duty of dual representation	Strict prohibition of dual representation	Declare no conflict + particular parties cannot work as intermediary + dual representation allowed with prior written consent

In fact, this table confirms what we also found in the other studies providing a comparative analysis, which is that there is a wide variety between the different jurisdictions, as also evident in the four jurisdictions examined in this Article. Already starting from the type of regulation, it is striking that two jurisdictions (Belgium and France) have a statutory basis (in regional decrees in Belgium; in the *Code du sport* in France). And even as between these jurisdictions there is a striking difference, since France explicitly states not to have implemented the RWI, whereas such a statement

is not made in the regional decrees in Belgium, the contents of which have by contrast been adapted after the amendment of the FIFA Regulations in 2015. England and Italy do not have specific statutory bases for the regulation of football agents, but rather rely on disciplinary rules (regulations) of the football associations. Belgium, England and Italy all have a registration system (following the FIFA 2015 RWI), but France kept to the requirement of a license. Remarkably, the only system we found where a license is required (France) does not charge particular costs, whereas the systems based on registration do have costs attached to it, at least a one-time cost for the registration itself. In the case of Italy, there is an additional cost for each representation contract that is registered. Furthermore, the way in which reputational requirements are described reflects significant differences. Obviously, all systems rely to a larger or smaller extent on the basic requirement of not having a criminal record or a FIFA decision prohibiting registration. But in England, for example, this is rather vaguely described as a test of good character, whereas in France the agent will be subject to a written exam in addition to the absence of a criminal record.

Differences also apply as far as the remuneration is concerned. Only England and Italy follow the FIFA recommended 3%, to which England then adds the requirement of a payment via a football association clearing house. In France a 10% cap applies, whereas in Belgium (at least in the Flemish Region) the previous cap of 7% has been abrogated and the agent is now free to determine its remuneration. Finally, as far as conflicts of interest are concerned, one can again notice remarkable differences. In France, for example, there are clear statutory prohibitions laid down in the *Code du sport*. In Belgium (Flanders) there is again a prohibition on engaging in particular relationships which could constitute a conflict of interest (like working both for the club and the player or both for the selling and buying club). But this dual representation is seen less as a problem in Italy, on the condition that there is disclosure and even explicit prior consent of the parties in writing.

Let us now examine how some of the different features of the regulation of football agents we discovered compare in the light of the theoretical framework we presented in Section II.

B. Analysis

We will now pick up the various elements identified of importance in Section II and discuss those in the light of the regulation of football agents presented in the previous section.

i. The Need for Regulation

Section II (A) started by observing that there may be strong arguments in

favor of regulation of sports agents. The strongest argument is probably the fact that there may well be information asymmetries, especially between a player and an agent, which could constitute a market failure. There is a danger of abuse by experienced agents with superior information vis-à-vis potentially weaker (especially young) players. Moreover, there is equally a risk of so-called negative external effects; in other words, negative effects for third parties not involved in the initial contractual relationship between an agent and the player. The point is indeed that malpractice by a sports agent could well lead to a large social loss, for example, if players were not allocated to the club that would maximize their talents and preferences. That could, more particularly, occur in the case that the sports agent has incentives to serve their private interests (for example, because of prior engagements with particular clubs) rather than serving the interests of the player or even the public interest. Moreover, abuses by football agents could be damaging for the sport of football in general and therefore negatively affect stakeholders other than the agents involved. It is thus apparent that there is a need for regulation and, as we could identify, all countries on which we specifically focused do indeed have some type of regulation, although the nature of that regulation may differ. As we have indicated in the previous section, there are many jurisdictions where the legislator has initiated rules with respect to the activities of football agents. The nature of those rules is, however, largely diverging. In some cases, it is the entry into the profession which is regulated (either through licensing or certification), whereas in other cases legislators did not initiate specific rules aiming at the sports agents. In that case, the jurisdictions rather rely on the application of general rules, such as employment law and/or contract law. The four jurisdictions on which we specifically focused all had specific regulations concerning access to the profession.

ii. License or Certification?

We indicated in II (B) that a traditional instrument for regulating access to the profession is licensing. Even though licensing may be an adequate instrument to regulate services provided by professionals, there has also been criticism related to licensing in general, being that it may serve the private interests of the licensed profession and would raise prices and profits of the professionals.[185] In particular, there are doubts surrounding the effectiveness and proportionality of licensing. The question arises as to whether merely requiring people to obtain a license would as such guarantee a particular quality and resolve the information asymmetry and negative externality problems that the regulation was intended to address in the first place.

185. Philipsen, *supra* note 24, at 121.

Empirical evidence shows that, as mentioned earlier, licensing or business practice restrictions do not have any influence on the quality of the services performed by the professional.[186] Given the way in which the licensing requirements are drafted, it could be argued that they could at best have the effect of excluding the real crooks from the market. However, as we already indicated above, one can seriously doubt whether the requirement to have a compulsory license (introduced by FIFA in 1991) will lead to a higher level in the quality of the services performed by the agent.

These general problems mentioned in the law and economics literature may also arise in practice. It can certainly be argued in the case of football agents that strict licensing requirements do create barriers to enter the market. This is more particularly the case with the compulsory licensing initiated by FIFA, but especially for the legislation in France. The problem is, moreover, that one can wonder whether the stringent regime of licensing is able to remedy the market failure, more particularly the information asymmetry. After all, the main public interest justification for licensing would consist in the information asymmetry between the player and the sports agent. As (compulsory) licensing would not necessarily remedy that problem, it is doubtful that there is any public interest justification at all for this stringent licensing requirement. One could argue that this licensing can probably be explained from the private interest theory of regulation. It seems to be an instrument that very well protects the interests of the incumbent sports agents (the so-called grandfathers) by making new entry into the profession more difficult.

We already indicated in the theory section that economists advocated a different instrument to regulate entry into the market, namely certification. Certification would have the advantage that it does cure the information asymmetry. If a sports agent were to be certified, it would signal particular information to customers (in this particular case players) with respect to the human capital investments made by the agent. It signals, for example, a certain level of training, but also the required educational level. Certification has the advantage of curing an information asymmetry without having the negative effects of restricting competition, like licensing.[187] Recall, that the FIFA Regulations of 2015 were changed to the extent that the compulsory licensing (introduced in the FIFA Regulations in 1991) was eliminated. The FIFA Regulations 2015 henceforth only required a minimum registration. To some extent, this modification in 2015 could be considered as a transition from the earlier licensing instrument (in the 1991 Regulations) towards certification (in 2015). The minimum requirement for football agents was

186. *Id.*

187. *See* Carl Shapiro, *Investment, Moral Hazard and Occupational Licencing*, 53 REV. ECON. STUDIES 843 (1986).

then to merely be registered with a competent national member association. As a result, the barriers to enter the market for football agents were substantially lower than with licensing. In that sense, the modifications brought in the FIFA Regulations in 2015 are more in line with the economic theory. However, we will show below that to an important extent this modification did also serve the FIFA interests. Moreover, there are now serious questions raised by many stakeholders as to whether the way in which the deregulation took place ultimately still provides for an adequate remedy against information asymmetries and negative externalities. It seems that the move to certification without sufficient quality control on the agents applying for the certification flung open the doors to the profession without adequate controls on the required capacity, knowledge and expertise.

The problem today is probably not the reliance on a certification as such, but that the certification, as we could see from the description of the selected European jurisdictions, largely relies on self-reporting with no ex ante verification. In other words, anyone could feasibly expect to meet all the (reputational) requirements in the declaration and to be of good character. In a certification system of this kind there is no verification of the declaration of the candidate as such, which opens the door to individuals being registered as agents who may not actually meet the reputational requirements.

iii. Conduct Regulation

In the jurisdictions we examined, we could equally notice that there is not only entry regulation, but also regulation concerning the quality of the services performed by football agents, in other words conduct regulation. This conduct regulation relates to various aspects of the services of the football agent. Often it concerns the contents of the contract of representation between the agent and the player; the goal of the conduct regulation is often aimed at avoiding conflicts of interests. Specific rules can often be found concerning the case where the players are minors and concerning the fee to be paid to the agent. As far as the remuneration is concerned, the FIFA RWI 2015 recommends a 3% cap on the fee of the agent. Many of the regulations in the domestic jurisdictions we examined also contain rules regulating the fee of the sports agent which go beyond the standard introduced by FIFA. Other regulations, including the FIFA RWI 2015 themselves, contain a duty of the sports agent to disclose their earnings. In England, the rules provide a duty to disclose potential conflicts of interests, whereas the rules of conduct in France relate to transparency requirements and contain reporting obligations. Most of those specific rules can be explained as serving the public interest. They could more particularly be considered as a cure for the market failure related to information asymmetry and adverse selection. In this particular domain, it is especially conflicts of interests with the agent that may constitute a serious issue. For

players, it is often difficult to detect that there may be a conflict of interest with the sports agent (for example, because he would have previous engagements with a club); such a conflict of interest could seriously endanger the interests of the player. These conduct rules, especially those aiming at preventing a conflict of interest, can undoubtedly be justified from a public interest perspective. The question, however, arises to whether in addition to those conduct rules, it is still necessary to control the entry into the profession as well (as is currently the case). In fact, in most jurisdictions there are not only (justified) conduct regulations, but entry regulations too. Such a combination could potentially not be proportional.[188] Take the case of France; in addition to the conduct rules, France equally has heavy conditions as far as the entry into the profession is concerned. It could be doubted whether those entry requirements have any added value compared to the existing conduct regulation. It is not likely that entry requirements lead to an increased quality of the services provided by the agent. As we already mentioned, from an economic perspective, fee regulation is always problematic. Patently, a regulation of fees seriously restricts competition, as it is often on the basis of differing fees that sports agents would compete.[189] A specific problem with the regulation of fees is also that it neglects the fact that there is a large variety between different transfer agreements. The very fact that there is no homogeneity between transfer agreements between the player and the agent may explain the existence of different fee agreements that could well differ from the 3% rule recommended by FIFA.

Conduct regulation is potentially restrictive insofar as it is also not always clear to which extent it is actually effective in curing market failures in this domain. An important element creating this doubt is that some of the conduct regulation does not emerge from public regulation (with an adequate sanctioning system), but from disciplinary rules (private regulation) whereby the sanctioning powers are considerably weaker.

iv. Public or Private Regulation?

A third aspect we discussed in the theoretical framework is that the need to have regulation does not necessarily imply that it should be public regulation issued by the government. In the domain of sports, and more particularly football, both the access to the profession and the conduct of the activity could be regulated by professional associations.

The world of the regulation of sports agents is indeed a peculiar one, as the primary organization promulgating the rules in this domain, namely FIFA, is in fact a private organization. FIFA apparently also had its own

188. Bull & Faure, *supra* note 27, section 4.5.

189. *Id.*

incentives to regulate the domain of transfer agents. FIFA apparently noticed that many transfers occurred through agents that were not licensed (even though the 1991 FIFA Rules required compulsory licensing). As a result, many transfers evaded the application of the FIFA rules altogether. It is for that reason that FIFA decided in 2015 to reform its system by no longer requiring licensing and moving to a registration (certification) system. This effectively means that entry into the profession was made easier, having the advantage for FIFA that its rules would apply to a larger number of transactions. This 2015 change is in fact slightly ambiguous. On the one hand, the transfer from licensing to registration could be justified on public interest grounds as less interventionist; at the same time, the 2015 change clearly served the (private) interests of FIFA by creating a means to ensure that a larger number of transfers would come within its scope.[190]

In domestic regulation we noticed a variety of different models. One could roughly argue that England and Italy largely rely on private standards, while Belgium and France make a stronger use of public regulation. The approach followed in England (where private standards apply) is that mere minimum requirements are imposed. Strikingly, those do not relate to the entry into the profession, but rather focus on the quality of the services of the transfer agent and on the necessary transparency of the transfers. To a large extent, as we indicated, this approach corresponds to the public interest justification for regulation. This is a striking difference with France. France combines very strict and detailed licensing rules controlling the entry into the profession with conduct regulation. An explanation for this difference could be that the profession of intermediaries in France might have been more successful in creating barriers to market entry. The French profession apparently convinced the French legislator to impose strict requirements for licensing in addition to conduct rules included in public regulation (more particularly the *Code du sport*). Obviously further research would be needed to examine whether it was indeed effective lobbying by the profession that explains this far-reaching regulation in France. But at first blush it seems to be in line with the private interest explanation of regulation. As explained above, that theory holds that a profession that has low transaction costs and can lobby effectively will strive to protect itself through entry regulation. France goes very far in this respect, as exercising the profession of sports agent on the French territory without a license can even give rise to criminal liability. These very stringent rules in France can hardly be explained by the public interest theory (as a remedy for a market failure), but rather seem to be the result of an effective lobbying by the interest group concerned. Of course, a further study of the precise role of the profession in the creation of

190. *Id.*

the French legislation could shed more light on this. However, using the economic theoretical framework, it seems that the approach followed in England (with private standards aiming at conduct regulation) is more in line with public interest theory than the French approach (of using strict public regulation, both of entry into the profession and conduct regulation).

v. Summary

What are the main lessons of the economic approach applied to the regulation of football agents? The starting point is that some type of regulation is evidently necessary from a public interest perspective, as there could be serious information asymmetries and negative externalities if football agents were not subject to any control at all. Yet, even though there is a case for regulation, the private interest theory signals that there is always a danger that regulation may be abused by interest groups so as to create barriers to market entry and thus improve their market position. Private interest theory equally indicates that there could be a disproportionate regulation, worse than the market failure it is supposed to correct. Private regulation may have important advantages (of better information and flexibility) compared to public regulation, but at the same time it may have as a major weakness that its enforcement capacity is limited. That was clearly shown in the case of FIFA. As a private regulator it launched a system of licensing but did not have the capacity to enforce this rule upon its members, as a result of which clubs continued to a large extent to use unlicensed agents. That led FIFA to deregulate (from a licensing to a certification system), which was then followed in the examined European jurisdictions (with the exception of France), possibly opening the floodgates for a large number of (potentially) unqualified football agents and increased remuneration. To some extent conduct regulation may remedy those drawbacks, but again enforcement is often in the hands of the football associations (in this model of private regulation) and therefore potentially weak.

It is not the transfer from a licensing to a certification system that is necessarily the problem. It will be recalled that, from an economic perspective, certification has the advantage that it is less restrictive of competition and licensing creates much higher barriers to market entry. The question therefore arises whether it is possible to balance the need to have a system to control access to the profession (banning unqualified agents) on the one hand with the need to reduce ineffective and disproportional barriers to market entry on the other. A certification model is in theory able to reach that goal, but it requires an ex ante verification of whether the candidate meets the conditions for registration. The question is whether that is sufficiently monitored at present. If it were possible to guarantee that the strict conditions for registration are met (without the need to have an

excessively restrictive system like an exam), the most unscrupulous candidates could be banned from the market without overly restricting competition. The only query one could pose is whether football associations have the necessary independence, incentives, and sanctioning power to verify the registration or whether that should be a task for a government agency (without necessarily going back to the overly restrictive licensing system). A strong argument in favor of such government regulation is that there is apparently a real danger of negative externalities emerging for players, third parties and the sport in general as a result of unscrupulous behavior by particular football agents. These are some of the challenges for the future regulation of the profession.

C. A Formidable Task for Europe?

Although we do not have the scope to discuss a potential intervention at the EU level in this domain in a great level of detail, it is inevitable that a large divergence between the regulation of football agents in different European jurisdictions gives rise to the question of whether there should be an EU intervention in this domain.[191] Obviously, that question would only concern the EU Member States (and therefore not England) but remains relevant given that large differences in regulatory intensity were found to exist also as between the EU Member States.

There is no doubt that European law played an important role in the development of the football market in Europe. The liberation of the transfer market facilitated by the *Bosman* ruling of the Court of Justice led to a spectacular development of the transfer market, but also to an increasing prevalence of football agents.[192] The possibilities for the EU to intervene in the regulation of football agents are, however, rather limited. Traditionally the regulation of football agents could be scrutinized under EU law, either from the perspective of the internal market, or from competition law: excessively stringent domestic regulation might jeopardize free movement of services and therefore the internal market,[193] and the issue of whether the imposition of a mandatory license would violate competition law has also been raised.[194] Since 2006, domestic regulation with respect to football agents is equally scrutinized under the effectiveness and proportionality requirements incorporated in the Services Directive, as the discussion of the

191. We already stressed many times the wide variety in regulatory regimes, not only in the four jurisdictions we scrutinized, but also in the EU in general. *See* KEA et al., *supra* note 7, at 4.

192. Ioannidis, *supra* note 1, at 158.

193. KEA et al., *supra* note 7, at 157.

194. Which was denied in the *Piao* ruling of the Court of Justice. *See* KEA et al., *supra* note 7, at 5; Yilmaz, *supra* note 17, at 34–36.

Flemish regulation made clear.[195]

The issue is that the EU only has a limited competence as far as sports is concerned. This is generally the case with respect to employment law, but also specifically for sports law. The competence for the EU in the area of sports law was in fact only introduced in the Lisbon Treaty in 2009. Its scope is still very limited; the EU only has competence "to contribute to the promotion of European sporting issues."[196] Concerning employment law, the EU does have specific competences, more particularly to "take measures to ensure coordination of the employment policies of the Member States in particular by defining guidelines for these policies."[197] Until now, the EU has not used that competence to define any specific coordination measures concerning the policies of the Member States related to football agents. There was strong lobbying in the lead-up to the current formulation in Article 165(1) of the Treaty on the Functioning of the European Union (TFEU).[198] The result is that there is a so-called conditional autonomy of the Member States; they remain sovereign to legislate in the domain of sports law on the condition that they respect general principles of EU law (inter alia with respect to the internal market and competition policy).[199] Hence the introduction of the very limited wording in Article 165(1) of the TFEU in 2009 is expected to be merely of trivial influence, as it completely excludes the possibility of the EU undertaking, for example, a harmonization of the regulation of football agents, or any issue related to sports for that matter.[200] The interesting point, however, is that a number of resolutions calling for much further-reaching action at the EU level have been adopted by the European Parliament.[201]

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195. See on the relevance of the Services Directive further KEA et al., *supra* note 7, at 140.

196. Treaty on the Functioning of the European Union, Art. 165(1).

197. Treaty on the Functioning of the European Union, Art. 5(2).

198. Yilmaz, *supra* note 17, at 198.

199. *Id.* at 179.

200. *Id.* at 199–200.

201. The Parrish et al. final report (*supra* note 177, at 14) mentions inter alia a European Parliament Resolution on the future of professional football (2007) which calls inter alia for the regulation of players' agents "if necessary by presenting a proposal for a Directive concerning players' agents, which could include: strict standards and examination criteria before anyone could operate as a football players' agent: transparency in agents' transactions; minimum harmonized standards for agents' contracts; an efficient monitoring and disciplinary system by the European governing bodies; the introduction of an 'agents' licensing system' and agents' register; and ending 'dual representation' and payment of agents by the player" (OJ C27 E/232 of 31.01.2008). Many similar resolutions have followed. For example, on 17 June 2010 (on players' agents in sports, OJ C236 E/99 of 12.08.2011) calling for an EU initiative concerning the activities of players' agents that should aim inter alia at strict standards and examination criteria, transparency in transactions, minimum harmonized standards

Even though these resolutions are not binding, they constitute an important signal that at least some stakeholders within the European Union call for measures to be taken in this area. Some have observed that even though Article 165 of the TFEU provides only a very limited legal base, there might still be other possible bases for the EU to legislate, for example, on the basis of Article 114 of the TFEU on the approximation of laws relevant to the functioning of the internal market.[202] There is, in other words, a high likelihood that further action with respect to the regulation of football agents will be on the political agenda again at some point. That obviously merits further research not only into the question of what the precise legal base for such action would be, but also what the precise economic justification for that harmonization could be. That is undoubtedly a compelling point for further research.

VI. CONCLUDING REMARKS

Sports law in general, but especially the regulation of sports agents, is a fascinating research domain that extends into other areas and aspects of law to a significant extent. As we tried to develop throughout this article, it touches upon fundamental questions of regulation theory, law and economics, comparative law and competences of the European Union. Let us look at the relevance of this domain for each of these four research areas.

The domain of the regulation of football agents is intriguing first of all from the perspective of regulation theory, as one can observe that, within the scope of the EU, similar objectives are achieved in certain jurisdictions via formal legislation, whereas in others they are left to private regulation by the football associations. Moreover, in some cases hybrid forms of regulation apply, combining public and private regulation. This legal pluralism raises important questions in practice. It is generally agreed that after the introduction of the FIFA 2015 RWI, which amounted to a large deregulation, there is a serious problem. Some claim substantial abuses by agents, including luring players into breaching contracts, conflicts of interests, and even criminal activities like money laundering. Notwithstanding this now often negative image of football agents, we stressed that agents can also play an important facilitating role, potentially reducing information asymmetries between players and clubs and thus constructively supporting the transfer system. Regulation theory therefore does provide a justification for regulating the activities of football agents, but it is less clear what the specific regulatory instruments to effectively serve the public interest should be.

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for agents' contracts, an efficient monitoring and disciplinary system, the ending of 'dual representation' and a gradual remuneration conditional on the fulfillment of the contract.

202. This was discussed in the EU White Paper on Sports (COM(2007) 391 final). See the discussion in Parrish et al., *supra* note 6, at 15.

That is where the second area, the economic approach to law, steps in, as it allows for critical assessment of whether the regulation aims to pursue public interest goals or whether there is a danger that it erects artificial barriers to market entry, thereby restricting competition. Law and economics also point at the difficult trade-off to be made between the necessity to regulate in order to remedy market failures (information asymmetries and negative externalities) and the risk that the regulation itself may create undesirable barriers to market entry.

As far as comparative law is concerned, we noticed a remarkable case of multi-level governance, including at the international level with private regulation by FIFA, and large differences in regulatory intensity between the European jurisdictions. In addition, as already mentioned, there is often hybrid regulation, combining public and private regulation and thus legal pluralism.

Finally, we showed that the role of the European Union in this domain is currently remarkable in its absence, in the sense that most regulations emerge either from the international (FIFA) level or from the domestic EU Member State level. Yet, one can notice increasing attempts by the European Commission (and the European Parliament) to become active in the field, with some even envisaging the possibility of a Directive, perhaps even striving for harmonization of the regulation of football agents. Many studies have been carried out, some at the request of the European Commission, and these studies have also put forward several proposals for reforms. Some propose detailed qualification criteria, requiring agents to acquire knowledge of football law, to take an exam, and obtain a license and insurance.[203] A 2018 KEA study recommended inter alia the establishment of "a centralized and harmonized mandatory licensing system, following the example applicable to agents in US basketball."[204] And others have also suggested reforms, either for action at the EU level or for a reform of the FIFA 2015 RWI.[205] In fact, FIFA has since adopted such a reform, in the form of the FFAR 2023.

Our aim was to contribute to that debate and towards those reform initiatives by adding the perspective of comparative law and economics. Obviously, as we have indicated, much more research has to be and can be done. In the words of the specialist scholar Masteralexis, "FIFA's decision to deregulate agents and to push the regulations back is an area ripe for future research . . . . It will certainly be worthwhile research to determine if this decision by FIFA opens the door for corruption, enables a more local form of control over football agents, or leads to a different, more national or

203. Ioannidis, *supra* note 1, at 161.

204. KEA/ECORYS, *supra* note 101, at 58.

205. *See, e.g.*, Parrish et al., *supra* note 180, at 56–70.

international body to regulate the group."[206] We argued that the economic approach can help to strike the delicate balance between the need to achieve adequate regulation of sports agents in order to correct market failures and the danger that overly restrictive regulation may create barriers to market entry and unnecessarily limit competition. This is one of the major challenges that a future (European) regulation of football agents may face.

206. Masteralexis, *supra* note 95, at 120.