

THE FIFA AGENT REFORM, A NEW DECEPTION TO CONCEAL AND PERPETUATE ILLICIT PRACTICES IN THE MARKET OF PLAYER TRANSFERS

BY PHILIPPE RENZ¹



The business model of players' agents in football is based on illicit practices that have been set up as a system for decades. Indeed, by being paid by the clubs and not by their clients, the players, and/or by legally binding themselves to the clubs within the framework of transfer agreements concerning their players, agents put themselves in a position of conflict of interest prohibited by FIFA regulations and Swiss law. Since collusion between agents and clubs is the rule in the player transfer market, it is the primary source of the systemic criminality that undermines this market.

FIFA is the main body responsible for this area of lawlessness, an organization which continues today to conceal and perpetuate these practices in order to favour and protect a certain «elite» of the football world who plunder part of its financial resources. The current FIFA agent reform project, which aims in particular to codify the illicit practices of dual representation, where an agent represents both a club and a player in a single deal, and to launder them through a clearing house, is proof of this. As FIFA is perennially incapable of self-reform, only external intervention can force it to re-establish its governance and bring the global transfer market into line with the legal order, in particular by putting agents back in their place alongside their players.

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ILLEGAL CONNIVANCE BETWEEN AGENTS AND CLUBS...

FIFA, as an association under Swiss law, has an obligation to itself respect and ensure respect for this law in the development of its regulations and in their implementation. Swiss law therefore applies to the global market through these regulations. FIFA violates this law when it shapes its regulations in such a way that systemic unlawful practices can be perpetuated, as it did in 2015 with its regulations on intermediaries, and as it is again attempting to do with the current agent reform project, which does not aim to eliminate conflicts of interest but only to restrict them to a small extent. FIFA is also violating this right and its own regulations because its jurisdictional bodies have never prosecuted and sanctioned the systemic conflicts of interest of agents, nor all those within FIFA who conceal and perpetuate them.

However, such conflicts of interest are prohibited. First of all by Article 19 of the FIFA Code of Ethics which is applicable to agents in their role as «intermediary» within the meaning of this code and the FIFA Regulations on Working with Intermediaries (hereinafter «RWI»). This prohibition is also reflected *a contrario* in the RWI, Article 8 of which allows an intermediary, and not an agent, to ignore or remove a conflict of interest in certain circumstances. Indeed, unlike an intermediary who only intervenes occasionally in the context of a transaction, an agent is bound to his player over time by virtue of his management services in his favour and he cannot therefore derogate from his legal obligation to protect the interests of his player resulting from this management relationship. Such an obligation to protect the interests of the represented by his representative is provided for and recognised not only by the Swiss law of Agency Contract (Articles 394ff. of the Swiss Code of Obligations) but also by most other legal systems at international level.²

However, agents always put themselves in an unlawful position of conflict of interest when clubs pay their commissions for the management of their players, and/or when, without the knowledge of their players, they receive more money from clubs than they would receive if they were remunerated by their players, and/or when they receive money from clubs under dual or triple representation practices, and/or when they legally bind themselves to clubs to negotiate transfer agreements for their players and are remunerated for these purposes. It is all of these collusive practices between agents and clubs that have been the illicit business model of agents for decades and which FIFA has been turning a blind eye to, while trying to perpetuate it by hiding its reality and illegality from the world.

There seem to be two main reasons behind FIFA's headlong rush. The first is a FIFA that does not know how to say no to a handful of big clubs with bottomless pockets and thus enables them to continue to secure the commitment of the best players by paying their agents handsomely for this purpose. The second is a FIFA that fears that bringing the system into compliance will bring its systemic criminality to the surface, with the consequences for all those who have been illicitly enriched over the years. According to an estimate³, between 2018 and 2019, agents pocketed an estimated USD 2 billion in excess through their illicit practices due to conflicts of interest.

² See www.check-your-agent.football for the respective legal obligations of an intermediary and an agent.

³ Based on statistics from the International Centre for Sports Studies (CIES).

... IS THE PRIMARY SOURCE OF SYSTEMIC CRIMINALITY IN THE MARKET OF PLAYER TRANSFERS

Unlawful collusion between agents and clubs is the primary source of the systemic criminality that undermines the player transfer market, an area of lawlessness that has been reported in numerous publications in recent years, particularly following the publication of *Football Leaks*⁴ data that has taken a number of the market's stakeholders to court.

Illicit practices in the market were also the subject of a detailed study drawn up in July 2018 by the International Centre for Sports Studies (CIES) in Neuchâtel (Switzerland) for UEFA, a study never made public and of which only a summary was published in June 2019 in the *Frankfurter Allgemeine Zeitung*⁵. The summary points to the conflicts of interest and systemic criminal behaviour that occur in an anti-competitive transfer market which is in the hands of organised crime: corruption, unfair management, kickbacks, tax evasion, money laundering, and player abuse of all kinds. Players, several tens of thousands of professionals and young up-and-coming players throughout the world, are the first victims of a system that reduces them to a role of negotiable merchandise sacrificed on the altar of football business that benefits above all a tiny «elite» without faith or law. A system to which fans, taxpayers, all those who in the market refuse to «comply» with its illegal practices, and the rule of law are also victims.

However, it is easy to understand that it is the incestuous links and illicit remuneration practices between agents and clubs that constitute the source of most of this criminality today. Indeed, if the agent was linked only to his player and paid only by him, there would be no more kickbacks distributed everywhere and laundered through tax evasion channels, no more unfair management by managers towards their clubs and by agents towards their players, no more abuses committed to the detriment of players who will then hold their agents - and the services they provide - by the purse strings. This drastic reduction in crime, linked to the exclusion of agents from negotiations on transfer agreements between clubs, would also lead to a clear reduction in corruption, TPO structures⁶ and tax violations of all kinds in the market.

Therefore, the only effective way to automatically eliminate much of this criminality that is beyond the control of public authorities - but a criminality that some of them do not want to see either⁷ - is to eliminate its main source upstream, i.e. agents' practices that involve conflicts of interest, by prohibiting any form of legal link and remuneration between clubs and agents in order to put the latter back where they belong, i.e. only alongside their clients, the players.

⁴ See in particular: https://en.wikipedia.org/wiki/Football_Leaks and <https://eic.network/projects/football-leaks>.

⁵ https://dynamic.faz.net/download/2019/Geheimpapier.pdf?_ga=2.171919011.268470747.1561524996-1262706935.1559629719, in the FAZ of 26.06.2019.

⁶ For « Third-Party Ownership »: https://en.wikipedia.org/wiki/Third-party_ownership_in_association_football.

⁷ In Switzerland, the former Swiss Attorney General is currently the subject of a criminal complaint for turning a blind eye to this criminality. In Portugal, the authorities have never enforced Article 36 of Law No. 54/2017 which prohibits the dual representation practices that are at the root of this criminality (<https://dre.pt/application/file/a/107688307>). These countries are not alone.

A REFORM THAT COMPLIES WITH LAW IS...

There is no doubt that sports agents perform a necessary and important activity for their players and for the transfer market of their respective sport. Sport needs agents. However, in football, agents have become far too important and influential in the transfer market and within clubs since the Bosman ruling⁸ in 1995. Since then, they have perfected their illicit business model based on conflicts of interest and, in some cases, have expanded their activities through TPO structures and illicit club shareholdings.

In 2007, the English Football Association (FA) had tried to cut this criminal momentum by abolishing the practice of dual representation. This reform failed, with the FA backing down 18 months later under pressure from Premier League clubs, as agents were no longer interested in placing players with English clubs, preferring to continue to be paid (more handsomely) directly by clubs in other countries. The English 2nd division clubs had unsuccessfully opposed this return to a system that was anti-competitive for them.

In 2020 it is Belgian football, undermined by agent scandals, that took over. On July 1 2020, the Royal Belgian Football Association and its professional league implemented a new regulation on intermediaries⁹ which, in particular, abolishes the practice of dual representation and aims, in the long term, to eliminate all their conflicts of interest.

Only a reform that respects the legal system and the FIFA regulations - which also completely banish conflicts of interest - is conceivable. Such a reform implies, on the one hand, that agents can only be remunerated by the players they represent, and no longer by the clubs. And on the other hand, that agents should not be legally bound to clubs, especially when negotiating transfer agreements between clubs concerning their players.

Even if such a reform will have a major impact for thousands of stakeholders in the transfer market, nothing can justify today that this market continues to remain, as the CIES underlines in its report, in the hands of organised crime. Professional sports in the United States and, more recently, ice hockey countries in Europe, have adapted perfectly to a legal mode of operation. The International Basketball Federation (FIBA) is also about to take the step to bring the international basketball market in line with Swiss law and good practice. And it cannot be otherwise for football, even if initially a very strict and very controlled system of club intermediaries - limited to the strict minimum and who are not agents - could be put in place during the transition phase to the new system, in order to provide the best possible support to those clubs which are no longer used to negotiating their transfer agreements with other clubs themselves. A change of system is in the interest of football, an interest that FIFA does not protect, as its agent reform project is designed to perpetuate the current system.

⁸ Bosman ruling and its consequences: https://en.wikipedia.org/wiki/Bosman_ruling.

⁹ See Article 4.2 of the Regulations on Intermediaries:

https://belgianfootball.s3.eu-central-1.amazonaws.com/s3fs-public/rbfa/docs/pdf/reglement/bondsreglement_reglement_federal/URBSFA_re%CC%80glement-fe%CC%81de%CC%81ral_Livre_B_Titre8_Interme%CC%81diaires.pdf.

WITH ITS AGENT REFORM PROJECT, FIFA IS MAKING NEW OUT OF OLD

While FIFA has accustomed the world to its repeated high-profile corruption scandals, it deceives its world in a very subtle and silent way when, through its regulations, it maintains and conceals the agents' practices involving conflicts of interest, practices that are at the root of the criminality of the market.

It is well known that the devil is sometimes hidden in the detail, in this case in the 2015 RWI where FIFA only dealt with the issue of conflicts of interest of intermediaries, whereas it is the conflicts of interest of agents that are the problem. However, more than 95% of the intermediaries in the market are also and above all agents subject to a much stricter obligation to protect their players. FIFA should therefore have regulated the conflicts of interest of agents, not those of intermediaries. It is through this sleight of hand that FIFA has been able to perpetuate the illegal system of conflicts of interest of agents from 2015 to the present day. Neither seen nor known.

The new reform of the agents' field, a draft regulation¹⁰ which was recently put out for consultation by FIFA, is also smoke and mirrors intended to make new things out of old things. Indeed:

- These regulations still do not settle the 95% of conflicts of interest in the market, those of agents. Indeed, even if these regulations seem to be addressed to «agents», in fact they only regulate them from the point of view of their activity as intermediaries and completely conceal their activity as managers, which makes all the difference in terms of conflicts of interest.
- FIFA shows that it is prepared to continue to violate Swiss law and its own regulations when it indicates that it only wants to «limit conflicts of interest», while accepting those resulting from the practices of dual representation that it wants to perpetuate. Indeed, both Article 19 of its Code of Ethics and Swiss law of Agency Contract completely prohibit practices that constitute conflicts of interest, such as those of dual representation. Furthermore, FIFA is also at odds with certain public law legislation which explicitly prohibits practices of dual representation, as is the case in Portugal, for example.
- FIFA claims to want to protect the players when the latter are the main victims of dual representation, illicit practices that it now wants to codify (!) after having turned a blind eye to them for years.
- The various proposals for capping the remuneration of agents by clubs, as set out in the draft regulations, are a non-debate. Indeed, this remuneration is unlawful because it results from unlawful practices of remuneration of agents by clubs or of dual representation, which constitute conflicts of interest.
- FIFA intends to put in place a large administrative machinery, including a clearing house, to give the impression that it controls the system and the legality of the financial flows that will transit through it. However, while this clearing house will certainly make it possible to prevent the commission of a certain type and number of offences, it will also serve to launder

¹⁰ Draft of FIFA «Football Agent Regulations»:

<http://renz-partners.ch/wp-content/uploads/2020/11/FIFA-Football-Agent-Regulations-proposal.pdf>.

the money flows resulting from the illicit practices of remuneration of agents by clubs and of dual representation, which themselves constitute or are the source of systemic crimes (unfair management, tax evasion, money laundering, kickbacks, corruption, etc.). Crimes that will continue to be committed on a large scale in the future on the fringes of transfer-related transactions and whose financial flows will take place outside the clearing house.

Through these draft regulations, which are yet another high-flying deception, FIFA demonstrates for the nth time since 1995 its inability to put the player transfer market on track to legality. Its leaders prefer, despite their fine promises never kept, to continue to conceal and perpetuate the illicit practices of agents, thus fully accepting the fact that these practices are at the root of the systemic criminality that undermines this market.

The responsibility of FIFA and its leaders is therefore extremely serious and only external intervention will make it possible to establish and maintain good governance at FIFA over the long term and to stop the excesses of its transfer market. Given the tens of billions that this market stirs each year throughout the world, the sooner the better.

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