

Towards a global regulation of the football industry

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Abstract

The author talks about the evolution of the football system from the perspectives of the markets, sport, and its centrality in a state's economy and internationally. The paper analyzes its exponential growth, which makes a financial change and improvement to respond to important competition costs and, in general, economic operations increase with the realization of a global regulatory harmonization. In fact, there is the implementation of a rules system that want to strengthen the transparency in these operations. Also, the author finds to examine the new regulation effective from 2023 and related sanctions. Another thematic here are multi-club ownerships (MCO), which are always more central and frequent; as the "sui generis" role of the sports agent and the development of the illegal practice of third-party ownership.

Keywords: Football, UEFA, clubs, MCO, agent.

Sommario

L'autore affronta in primo luogo l'evoluzione del sistema calcio dal punto di vista dei mercati, dello sport e della sua centralità nell'economia di uno Stato e a livello internazionale. Analizza la sua crescita esponenziale, la quale comporta un cambiamento ed un miglioramento finanziario per rispondere ad un incremento altrettanto forte dei costi di competizione e, più in generale, di operazioni economiche importanti, mediante la realizzazione di un'armonizzazione regolamentare globale. A tal proposito, vi è la realizzazione di un sistema di regole finalizzate a rafforzare la trasparenza di tali operazioni. Inoltre, si analizza la nuova normativa in vigore dal 2023 e le relative sanzioni. Un altro tema è quello delle pluriproprietà delle società di calcio professionistiche (MCO), un fenomeno sempre più centrale e frequente; così come quello, in conclusione, della figura "anomala" dell'agente sportivo e lo sviluppo dell'istituto illegale del third-party ownership.

Parole chiave: Calcio, UEFA, società, pluriproprietà, agente.

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1. Football between Sport, States and Markets

In the last 30 years, football has had a real “genetic mutation” starting from an activity of an ideal and playful nature, born as completely amateur and becoming a very important industrial sector, in the entertainment and show business segment. This profound “genetic mutation” has undermined not only the rules of international legal systems, which are unsuitable for the profound transformation, but also the models of governance, highlighting the inadequacy of the management of insiders that it has often produced in crisis situations, despite the adoption of models and codes of self-discipline that have proved to be completely useless. National and supranational institutions have not remained indifferent to a reality that is now objectively linked to public interests, especially in the sphere of external controls.

In the category of professional team sports, it is undoubtedly the one that attracts the greatest interests and determines the most relevant social and even geopolitical implications. Just think of China’s stadium diplomacy or the Arab football of the superchampions, which has been chosen as the main tool in the process of affirming the new Saudi and pan-Arab identity. Uefa and Fifa, which are private associations of companies based in Switzerland and which pursue their own interests (*pecunia non olet*) and are supporting these processes of globalization, sponsoring the rise of Saudi Arabia and that of the United States, where the next World Cup will be held. And this is also because the Court of Justice will soon rule on the Super League affair and in particular on the compatibility of their monopoly on international competitions.

In any case, except for the areas of information technology, no sector of the economy has experienced growth rates comparable to those of football in recent years. Yet the situation of the clubs has worsened in terms of assets and finances as the appearance in the sector of large multinational groups has increased the costs of competing, but without investments capable of increasing revenues. In England, investments in sports and commercial facilities, atypical activities, merchandising, licensing, digital activities, have at least allowed the growth of turnover, which is no longer even comparable to those of other countries.

For a long time, the United Kingdom had favoured access to the listing of sports clubs, both on the London Exchange and on the Alternative Investment Market with the creation of a real sector of football club shares and the development of significant experience of analysts and investors in the valuation of clubs. For years, British companies have been planning to diversify their sources of revenue (ownership of stadiums, consequent advertising, collateral activities, shopping malls, merchandising) which reduced the risks

associated with revenues from “sports results”. However, the Premier League also earns a lot but spends more and the debt of English teams is £ 4.1 billion, with two-thirds of clubs making structural losses.

In order to operate a “turnaround”, a global regulatory harmonization of football is necessary, as on some issues a comparative normative elaboration of phenomenology is absolutely necessary. The picture outlined highlights the urgent need to separate first the amateur sport from the professional one and from that of football in particular, which suffers from critical issues due to contradictions and ambiguities already highlighted by the jurisprudence.

Companies have been forced to take on excessive debt in order to compete and in order to have an economic return in the short to medium term that will raise their financial capacity and achieve a surplus. Such a situation has produced a situation that is often worrying, especially when combined with the effects of the notorious Bosman judgment of the Court of Justice of the European Community, of 15 December 1995, which held that art. 48 of the EEC Treaty, which establishes the free movement of workers within the European Union, also with regard to sporting activities such as those of professional footballers.

The Court also affirmed that this rule precludes the application of rules issued by sports associations (national, supranational and international), according to which a professional footballer, a national of a Member State of the European Union, at the end of a contract binding him to a club, may be engaged by a club of another Member State upon payment, to the company of origin, an allowance by way of transfer, training and promotion.

2. Football economic and financial sustainability: An overview

To curb these problems, since 2004, a system of rules has been introduced for clubs participating in European competitions to obtain the so-called UEFA licenses. The UEFA Club Licensing System: overview of Implementation and Application across Europe was the first document on the functioning of the licensing system with the collection of the history since the first application of the legislation. UEFA introduced the system with the aim of defining a set of regulatory and administrative standards and creating a homogeneous regulatory framework. In order to participate in the Champions League, the Europa League and the Conference League, it is necessary to obtain a license, i.e. a certification that confirms compliance with all the minimum criteria, under penalty of exclusion from competitions. The affiliated Federation or League acts as the licensor and evaluates each request according to the five criteria of sport, infrastructure, personnel and administration, and profiles.

Each club must comply with the accounting principles of its own legislation and listed companies are required to prepare their financial statements with reference to IAS/IFRS international accounting standards. The main aim was to strengthen the transparency of the clubs' economic and financial operations in order to make the system more stable and the related market more attractive to investors.

In addition, UEFA's Executive Committee, as early as September 2009, issued the Financial Fair Play Concept, a set of rules in force since 2012 that had to be observed by teams participating in European competitions. The objectives were to incentivise clubs to operate on a self-managed basis on the basis of their revenues, introduce greater rationality into the accounts and protect the teams' creditors in the prospect of potential crises. After a suspension of the regime in the Covid era, on 7 April 2022 the UEFA Executive Committee in Nyon launched the new "UEFA Club Licensing and Financial Sustainability Regulations" which was approved on 28 June 2023 in the latest version (2023 Edition) and which replaces the UEFA Club Licensing Regulations and the Fair Play Concept.

Uefa's goal is solvency, stability and above all greater control of clubs' costs and the new parameters are an evolution "of the existing break-even requirements and will bring greater stability to the club's finances. To facilitate implementation, the calculation of football earnings becomes similar to the calculation of the draw result...». On the other hand, with regard to the part relating to the maximum allowed for each club's expenses, the biggest innovation is the introduction of a rule on 'team costs', in order to achieve 'better control in relation to players' salaries and transfer costs. The regulations limit spending on agents' salaries, transfers, and commissions to seventy percent of the club's revenue. Assessments will be carried out in a timely manner and violations will result in fines and predefined sporting measures".

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The changes will be implemented gradually over three years, to allow all clubs to adapt and are structured in four macro-areas.

The ‘solvency’ (no overdue payables rule) i.e. the obligation to pay all debts to other clubs, employees, tax authorities, social authorities and UEFA within 90 days, subject to four checks per year. The rule is intended to ensure greater solvency and protect the integrity of competitions. Checks are carried out every quarter, with less tolerance for defaulters.

The ‘stability’ (football earnings rule), i.e. the setting of a maximum deficit (acceptable deviation) of €60 million over three years and for clubs with accounts in the order of €90 million (€10 million for each reference period in the monitoring period), while considering expenditure, including those for young people and facilities previously excluded.

The “squad cost rule” aimed at establishing that no more than ninety percent of turnover can be spent on salaries, market and commissions for agents for the next season, eighty percent for the next and seventy percent when fully operational from the 2025-2026 season. The rule is contained in art. 92 entitled “Calculation of squad cost ratio” which deals with the calculation and in art. 93 entitled “Squad cost rule” which deals with setting the limit.

The system of “fixed sanctions” at the end of the checks, i.e. the provision of predetermined sanctions in relation to violations that leave no margin of discretion, including progressive fines in relation to both violations and recidivism, sporting sanctions (prohibition of fielding players, exclusions from tournaments, relegation from one cup to another) and economic sanctions.

The system of financial sustainability is applied through a process called ‘club monitoring’ and applies to teams participating in UEFA competitions. More than 230 clubs (UCL, UEL, UECL) are observed throughout the season by the UEFA Club Financial Control Body (CFCB), which is a financial control body that can impose disciplinary measures in the event of non-compliance with the Regulations.

The final decisions of the CFCB can only be appealed to the Court of Arbitration for Sport (CAS) in Lausanne. It is a supervisory body with judicial functions that has the power to determine whether licensors (national federations or the affiliated league) and applicants/licensees (clubs) have met the criteria for licensing or financial sustainability requirements and to decide on a club’s suitability for competitions. The Control Body is composed of a First Chamber (of first instance) and an Appellate Section, with two different and independent presidents. The First Chamber, in the event that defendants violate the obligations set out in the Club Licensing and Financial Sustainability Regulations, may enter into settlement agreements or impose disciplinary measures exhaustively defined within the procedural rules governing the CFCB.

The Appeals Chamber of the Club Financial Control Body hears appeals against decisions of the First Chamber of the CFCB.

Disciplinary measures include, but are not limited to: warning; formal appeal; fines, deductions of points, freezing of revenue from UEFA competitions; a ban on signing up new players; limiting the number of players that a club can register for European competitions, including a financial cap on the total total cost of players registered in List A per club; disqualification from current competitions and/or exclusion from future competitions; the revocation of a title or award.

The penalties for non-compliance with the “No overdue payables rule” have been strengthened, while in the event of a breach of the ‘Football earnings rule’ there will be the possibility of concluding settlement agreements. These are the so-called “Settlement Agreements” which, together with the “Voluntary Agreements”, are part of the peculiar sanctioning procedure already provided for by the previous system.

From July 2023, some significant changes have also been provided in addition to the UEFA regulations on depreciation and capital gains, after the well-known events, especially in Italy, on fictitious capital gains with “so-called mirror cross-transactions”. It concerns operations between clubs based on agreements aimed at the exchange of players (often young talents from the youth academy), overestimating them in order to achieve fictitious capital gains without (or with minimal) financial transactions. These operations, beyond disciplinary and fiscal implications, contaminate the financial statements that should provide a truthful representation of the asset, financial, and income situation, resulting in ‘short-term’ improvements in the accounting situation but subsequently requiring the need to face higher burdens, in terms of depreciation.

The amortization of the player’s contract will be limited to five years in order to ensure equal treatment of all clubs and improve financial sustainability. In the event of an extension of the contract, on the other hand, it can be spread over the duration of the relationship, but up to a maximum of five years from the date of the extension.

However, clubs authorized by their national governing bodies to enter contracts for a period of more than five years may continue to do so. The rules do not apply retroactively to transfers that have already taken place. In the case of a player exchange, the new rule specifies that it is up to the clubs to assess whether a transfer transaction qualifies as an ‘exchange’, in which case it will have to be accounted for in line with international accounting standards. Therefore, in transactions involving the acquisition and sale of players’ multi-year rights with the same counterparty, for which there is no corroborating quantitative evidence, supported by valuation techniques,

demonstrating that the fair value can be reliably determined, the multi-year rights of the acquired players must be valued at the book value of the rights to the sports performances of the transferred players.

3. Multinational and multi-ownership groups: A pillar challenge in football

Another global issue is the phenomenon of multi-ownership groups of several professional football clubs, even when it comes to shareholdings held in different countries and in different competitions at international level, as it can also lead to the creation of “dominant positions”, such as to disturb the free market, in violation of national and EU law.

We will define below the case more properly “multi-timeshare”, as the term used in practice, derived from the experience of other countries, is “multi-club ownerships”, or more simply MCOs that as an “occasional” phenomenon arise very far in time. Around the mid-1960s, a group of companies operating in Sardinia – the most important of which was the S.A.R.A.S. oil refinery owned by Angelo Moratti, owner and president of Inter F.C. – decided to invest in Cagliari Calcio, which won the Scudetto in 1970. In more recent times, the Pozzo family, historic owners of Udinese Calcio, acquired the entire shareholding of Granada Club de Fútbol in Spain and then Watford F.C. in England. After selling the Spanish club in 2016 to the Chinese holding company Desports Group (which also owned Chongqing Lifan, and which would acquire Parma a year later), he fell back on Watford. Thanks to earnings from the English league, the Hornets have surpassed Udinese’s turnover.

In fact, the first episode of MCO proper was that of the English National Investments Company, better known as ENIC, the company of the British Joe Lewis that between 1995 and 1997 bought AEK Athens, Slavia Prague S.K. and L.R. Vicenza, constituting an authentic multinational football company. Faced with the rules of the national federations that forbade owning different teams in the same country, the solution was to buy new clubs abroad. ENIC then sold all three clubs, and today owns only one, a new one, Tottenham Hotspur F.C.

Another famous case, in the mid-2000s, involved the Russian energy giant Gazprom, which controlled Zenit St. Petersburg and also became the main sponsor of the Germans Schalke 04. Then he expanded his sphere of influence over the entire Uefa system until the Russian-Ukrainian conflict.

The real revolution was made in the 2000s by Red Bull, which after buying two Formula 1 teams, replicated the model in football, buying the New

York Metrostars (now known as New York Red Bull) in 2006 and adding it to the Football club Salzburg, taken the previous year. Within three years, the Austrian company also took control of a club in Brazil, now called Red Bull Brasil, and one in Germany, RB Leipzig. The example of Red Bull represented a real change of perspective of the phenomenon, given that Austria and especially Germany had very stringent rules that strongly limited the presence of sole owners in football clubs, to favour fan and supporters' associations: having shown that it could circumvent them, Dietrich Mateschitz's company paved the way for new investors of this type. The Red Bull model is, from a business perspective, the most innovative and functional, not only aimed at advertising the brand but at creating a pyramid in growth. Those who excel in various steps move on to Leipzig, the flagship team of the group, and from there are transferred to other clubs with significant capital gains. Throughout these transitions, Red Bull has invested little, controlling the player from a young age. High player contract prices and exorbitant agent fees have been eliminated.

In this vein, the most striking case has become that of the CFG (City football group) of the Abu Dhabi United Group, an investment company headed by Sheikh Mansour bin Zayed Al Nahyan, a holding company that has controlling stakes in at least ten clubs around the world in as many countries on four continents. In addition to holding Manchester City F.C. in England and Melbourne Heart F.C. in Australia, he is also a shareholder of the Japanese company Yokohama Marinos and co-owner of New York F.C. and a few days ago of Palermo F.C., newly promoted to Serie B.

A similar position is being acquired by the US fund RedBird, which recently acquired the majority shareholding of A.C. Milan from its counterpart and compatriot fund Elliott Management Corporation, which remained a minority shareholder as collateral for the loan that the latter made to RedBird for the same purchase. The Elliott fund owns a minority stake in Liverpool and a majority stake in Toulouse F.C., which achieved promotion to Ligue 1. The same fund has a significant shareholding position in Lille Olympique Sporting Club, French champions in 2021, thanks to which it de facto controls the club and which allowed it, a year ago, to force the sale of the majority shares of Gérard López – who also owned Boavista and Royal Excel Mouscron, and who would then buy the Football Club des Girondins de Bordeaux – to the Merlyn Advisors fund.

There are cases now everywhere, even in Spain, where Atletico Madrid has just acquired 35 percent of Racing Club de Lens, a French team playing in Ligue 2 after acquiring Atlético de San Luis in Mexico. Thus, Ajax is the majority shareholder of Ajax Cape Town in South Africa and Monaco is the owner of Cercle Brugge. The Duchâtelet group has acquired control of four

companies in Europe: Charlton in England, Carl Zeiss Jena in Germany, Alcorcón in Spain and Újpest in Hungary. The same goes for Vincent Tan's Malaysian group, which owns Cardiff City in the Premier League, Fudbalski klub Sarajevo in Bosnia, Kortrijk in Belgium and shares in Los Angeles FC in the USA. Among the multi-owners there is also King Power, which owns Leicester City, the Belgian club Oud-Heverlee Leuven. Canadian entrepreneur Joey Saputo, after founding Impact de Montréal in 1992, bought Bologna F.C. 1909.

These are not always success stories. Between the end of 2021 and the beginning of 2022, the "777 Partners" fund bought four football clubs in Europe and South America, with the result that Standard Liege finished fourteenth in the standings (worst result ever), Genoa C.F.C. was relegated to Serie B after fifteen seasons in Serie A, and currently Vasco da Gama is in the middle of the table in the Brazilian second division. Or there is the case of Chien Lee's NewCity Capital fund, which owns Barnsley, Nancy, Thun, Oostende, Esbjerg, Den Bosch and Kaiserslautern: seven teams put together in five years, with which it has collected four relegations.

The reasons for investments are diverse: for Red Bull, for example, it is primarily to enhance the brand of beverages produced worldwide; for Arabs, it's to invest petrodollars; for others, it's about diversifying revenue, mitigating risks, and maximizing the economic boom of modern football. Owning a football team means entering into relationships with the economy of the respective country, establishing commercial ties that go well beyond the realm of sports. It's no coincidence that in the major capitals of Western finance, clubs are mostly in foreign hands and linked to MCO (Media Company): Suning's Inter (which until 2021 also owned Jiangsu), the aforementioned A.C. Milan by RedBird, New York Red Bull, New York City FC, Rocco Commisso's New York Cosmos (who also owns Fiorentina), Paris Saint-Germain of the Qatari royal family (which, through the Aspire Academy, manages various minor teams in Austria, Spain, and Belgium), Red Star FC of the "777 Partners" fund (which also controls Genoa C.F.C., Standard Liege, and Vasco da Gama), not to mention the numerous London teams.

The reasons for the investments are varied: for Redbull, for example, it is first and foremost to strengthen the brand of beverages produced in the world, for the Arabs to invest petrodollars, for others it is to diversify revenues, amortize risks, make the most of the economic boom of modern football. Owning a football team means entering into a relationship with the economy of the respective country, weaving business relationships that go far beyond sport. It is no coincidence that in the great capitals of Western finance, the clubs are all, or almost all, in foreign hands and linked to MCO: Suning's Inter Milan (which owned Jiangsu until 2021), RedBird's

aforementioned A.C. Milan, New York Red Bull, New York City FC, Rocco Commisso's New York Cosmos (which also owns Fiorentina), Paris Saint-Germain of the Qatari royal family (which, through the Aspire Academy, manages various minor teams in Austria, Spain and Belgium), Red Star FC of the "777 Partners" fund (which also controls Genoa C.F.C., Standard Liege and Vasco da Gama), not to mention the numerous London teams.

The only thing that these realities have in common is the fact that they are football clubs that share the same owner as others, and that are experiencing very rapid growth, so much so that it is now not difficult to provide a list of all the existing ones without having to update it after a short time, also due to plots and factual situations. In 2017, when UEFA first began to feel the need to register timeshares, 26 European clubs belonging to MCO had been identified. Four years later, there were at least 56, and globally World Soccer magazine counted 117, divided into 45 groups and covering 37 countries.

It is clear that the numbers are impressive, especially in Europe where there is the richest and most developed market and in particular in the United Kingdom, which is structured on several leagues (England, Scotland, Northern Ireland and Wales with four separate federations and competitions). It is epiphanic, however, that in second place there are two "minor" nations such as Belgium and Denmark, where it is easy to buy clubs at reduced prices, without debt problems. Two realities that are experiencing a great phase of development of young talents, which can then be resold abroad in projects based on player trading, especially if accompanied by the contemporary ownership of teams playing in one of the five main UEFA leagues. It is also a strategy aimed at downsizing the role of prosecutors by arriving first on young talents, moving them from one country to another, controlling their career progression until they are mature to become assets capable of generating capital gains.

The next target country will be Brazil, where Red Bull and the 777 Partners fund have already invested. American billionaire John Textor – who already owns half of Crystal Palace and a majority stake in RWD Molenbeek – has acquired Botafogo de Futebol e Regatas and Clube de Regatas do Flamengo. In fact, the first group to carry out this type of operation was Tanzi's Parmalat at the beginning of the 90s, which after sponsoring – as a function of the expansion of the multinational company in South America – C.A. Boca Juniors, C.A. Penarol and S.E. Palmeiras, acquired the shareholding control of the latter Brazilian club, starting a decade of success with synergistic relationships with the *Parma Calcio*.

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The fact is that in 2022, MCO clubs won three of UEFA's top five leagues, and only resistance from countries such as Germany and Spain allows the comparison to be kept in balance. This is the real problem: progressively the power of football is going to converge in the hands of an increasingly small number of subjects, creating a sort of de facto Super League.

The great success of the practice of "multi-club ownerships" (MCO), unfortunately, lies in the way in which the rules are circumvented or waived by national and international institutions.

In September 2018, Salzburg and RB Leipzig were drawn in the same Europa League group and faced each other twice, without UEFA doing anything to prevent it.

MCOs have managed to make themselves unavoidable, proving to be the most effective way to attract investors capable of giving economic stability to clubs. Faced with this undoubted advantage, which theoretically minimizes the risk of bankruptcy and favors greater circulation of money, the football government has chosen to turn a blind eye at the cost of circumventing its own rules on fair sporting competition. Which is the same reason why clubs like PSG and Manchester City have violated Financial Fair Play several times without suffering any real sanctions.

Yet, art. Article 18(2) of the FIFA Statutes unequivocally states: "Each affiliate is responsible for ensuring that its affiliated clubs are able to make all decisions regarding membership autonomously and independently of any external body. This obligation applies regardless of the corporate structure of the subsidiary. In any case, the affiliate shall ensure that no person or entity (including parent and subsidiary companies) exercises control over more than one club where the integrity of a match or competition may be compromised".

The criticalities caused by timeshare are obvious, especially when it comes to contemporary shareholdings in the same country, and even more clear when it comes to the same competition. Apart from conflicts of interest in the performance of sporting activities and the violation of competition rules, there are also "anomalous" advantages in different cases, i.e. when the timeshare concerns clubs operating in different countries, as demonstrated by the circumvention of UEFA's financial sustainability rules.

In particular, in order to circumvent the rules on cost containment, a club transfers one or more players to another club in the same group, valuing them in the balance sheet according to conventional valuations, which do not correspond to the real ones, so as to be able to configure (fictitious) capital gains and losses modulated according to the rules of that country and the needs of the individual club concerned.

In this way, the parent company, if it finds itself in a state of loss, or in

any case with costs greater than profits, will still be able to reduce any loss if not, even, result in profit, in order to be able to circumvent the penalties provided for in the event of high costs (in the face of lost revenues), and therefore be able to register for the next championship. The case history is varied and articulated and often even contemplates the use of players from the youth sector or from minor leagues around the world who are improperly valued and sometimes loaned back to the same selling clubs.

4. International institutions searching for a solution

It is key to look at the international picture on multiple football club ownership and conflict of interest.

First of all, FIFA in Article 18(2) of the Federal Statute lays down, on a very general level, the obligation for world member associations to ensure “that no natural or legal person (including parent and subsidiary companies) exercises control over more than one club where the integrity of a match or competition may be compromised”.

UEFA deals with the issue of the multi-ownership of football clubs in the European logic and context in a more specific way. The recent regulations in force since the 2000/2001 sports season arise from a case, which we have talked about and which concerned the ENIC group in the acquisition of a minority shareholding in AEK Athens FC and a majority in Slavia Prague FC, sports clubs that qualified, in the 1999/2000 season, for the same European competition, the Europa League.

On the basis of the decision of the CAS (The Court of Arbitration for Sport), UEFA has ruled that a natural or legal person is in a position of conflict of interest when, having owned an absolute majority of the shares of a club, he acquires the absolute majority of the shares of another club taking part in the same UEFA competition or has “the right to appoint or remove the officers of the said club”.

The legislation was very mild and less rigid in the evaluation of positions of interest, requiring the acquisition of a high “formal” shareholding and excluding, at least so it appeared, forms of indirect participation. As a result of the obvious criticisms, UEFA has introduced an additional and flexible parameter, namely that of the exercise of “decisive influence” within the club, which is equated, in essence, to a majority shareholding, applicable according to the criterion of the specific case, which prevents the acquisition of further positions of interest.

The issue is regulated by Article 5 of the “Regulations of the UEFA Champions League”, which talks about “Integrity of the competition/multi-

club ownership". Such a situation has already occurred in the past, with Leipzig and Salzburg, companies controlled by Red Bull at the time, participating in UEFA club competitions. An in-depth investigation by UEFA, however, had led to a positive verdict: the green light for the two clubs to participate in the Champions League.

Surely, according to UEFA, Red Bull's influence on Salzburg had been significantly reduced: some people linked to Red Bull (who were also involved with Leipzig at the same time) had been removed from the board, as well as the chairman of the board, linked to Red Bull, had resigned. In addition, the sponsorship agreement between Salzburg and Red Bull had been modified (with reduced spaces and figures), as well as the collaboration agreement between the two clubs and the various existing loans. In essence, according to the Investigative Chamber of the UEFA Club Financial Control Body, the relationship between Red Bull and Salzburg, following the changes, had become a standard sponsorship relationship, thus establishing that Article 5 (concerning the integrity of competitions) had not been violated and admitting both teams to the same competition.

5. The abuse of position by sports agents. The Practice of Third Party Ownership

The worldwide explosion of football has been accompanied, as mentioned, by the formidable growth of economic interests related to what is now the world's most important entertainment industry. And in this complex phenomenal jumble made up of entertainment, sport, finance, communication, advertising and marketing, the figure of the sports agent has emerged, half attorney and half mediator who has progressively acquired a barycentric and in some ways anomalous role, as it is much more relevant and composite than what it should be.

The professionalization of the athlete has made it necessary for someone on the sidelines to take care of his legal, administrative and contractual interests, but he has gradually cannibalized the various operational areas of the sector, going beyond the ancient role and becoming more and more often a mediator, brasseur d'affaires and trait d'union between the parties, paid directly by the clubs on behalf of all the parties involved, as it is able to condition the choices of athletes.

The original function of "attorney", i.e. professional (similar in some ways to a lawyer) to which the player relied for the management of his typically partisan activities and interests, has in fact overlapped over time that of intermediary between the selling club, the player and the acquiring club with

a clear distortion of roles. A professional figure who should act in the interests of everyone, even the opposing parties, and who therefore in the end only serves his own business interests. In fact, the same agent often ends up taking care of the position of the players but also of the clubs, receiving commissions from both (and sometimes even from third parties) and thus giving rise to double or triple representations and mediations with consequent and obvious conflicts of interest. A sort of “de facto dominant position” that not even the so-called multi-owner groups have been able to stem.

On the other hand, if we compare the turnover of the “football market” at a global level with the amounts invoiced for various reasons by agents and with the balance sheets of most clubs, the volume of commissions received by the sector is objectively disproportionate to the point of becoming paradoxical. The FIFA indeed published on January 26, 2023, the 2022 edition of the Global Transfer Report, stating that in the year, there was an absolute record of 71,002 cross-border transfers, of which 21,764 involved professionals (to which 49,238 amateurs are to be added), marking an 11.6% increase compared to the previous year. The total expenditure reached 6.5 billion dollars, a 33.5% increase from 2021, but still below the historical peak of 2019.

These transfers involved 4,770 clubs from 182 federations, compared to the 4,538 clubs in 2021. Of the 2,843 transfers that included commissions, the first 100 accounted for half of all commissions. For the first time, the expenditure for this item exceeded the \$2 billion threshold, reaching the record level of almost \$2.2 billion.

And clearly this is reflected in a more or less specular way in all national markets, also due to the new and decisive item of commissions for players hired on a free transfer, yet another practice that is anything but virtuous that has spread in recent years and which produces extra-profits to the agent to determine the choice of the athlete.

This implies that the zero parameter is such for the club that the player leaves, but not for the new club that pays a series of anomalous bonuses and commissions, with the effect of producing yet another sectoral criticality, distorting the very purposes of the aforementioned Bosman judgment. Paradoxically, the increase in fees is directly proportional to the debt ratio of companies. This is not to mention the role of the same in the increasingly sensational cases of abuse of player trading.

The degeneration, in truth, reached its peak a few years ago with the gradual emergence, in the sector, of the practice of Third Party Ownership (so-called Third Party Ownership). TPO) originated mainly in South American and Eastern European countries. These commercial operations, which often saw direct or indirect involvement of attorneys, consisted (although in reality

they still exist under the radar) in the acquisition of a percentage of the future valuation of a player's contract. From a legal point of view, this is a phenomenon that is difficult to define. The subject matter of the transaction is not tangible property or even the right to the player's sporting performances, since the latter remain the exclusive property of the club. What is then purchased by third parties is the economic right attributable to a future revaluation of the player. The definition of Third Party Ownership appears to be misleading; in fact, it would be more appropriate to speak of Third Party Investment (thus, of investment and not ownership). It is, therefore, a real "bet," given that the player may not prove his value. Investment TPOs (or also called Recruiting TPOs) and Financial TPOs can be distinguished. Investment TPOs involve economic support – from an external investor – to a football club to conclude the acquisition of the right to the sporting performances of a player. Financial TPOs, on the other hand, consist of an economic intervention – again by external investors – to support the club's finances, through the acquisition of credit rights on future proceeds from the transfer of a player.

FIFA had left it to the individual national federations to regulate the phenomenon of TPO, thus creating a regulatory disorder whereby in some countries what was forbidden in others was allowed. The international federation limited itself to providing – in art. 18 bis of the Regulations on the Status and Transfers of Players – that "no club may enter into contracts that allow any other party or third party to interfere with employment or transfer relationships, with political choices, or with the activity of its own team". However, following a series of sensational events, on 22 December 2014 the FIFA Executive Committee finally issued Circular No. 1464 banning TPO operations as of 1 May 2015. This intervention was aimed at protecting the safety of young players (who were often the most involved) and preventing obvious conflicts of interest.

Hence, art. 18b in the FIFA Regulations has been introduced and claims: 'No club or player shall enter into an agreement with a third party whereby a third party is being entitled to participate, either in full or in part, in compensation payable in relation to the future transfer of a player from one club to another, or is being assigned any rights in relation to a future transfer or transfer compensation'. In essence, therefore, any type of agreement entered into by a club or a player with an external company which provides for assigning to third parties, rights or participation in the remuneration to be paid for the future transfer of a player, is now prohibited.

In 2016, the Court of Arbitration for Sport recognized the full compatibility of the prohibition provided for by art. 18b with the Community competition rules. Finally, as of June 2019, the FIFA disciplinary committee

clarified that players should not be considered as a “third party agent” and are entitled to hold a percentage of their card, and therefore to derive any gain from the value of their transfer.

Despite this, the Centre for International Sport Studies (CIES), in an analysis commissioned by UEFA, highlighted that at the heart of the control exercised by super-agents there are still TPOs which, although made illegal by FIFA, “are still a well-established reality and allow the most influential agents substantial control over the careers of players and greater decision-making power than that exercised by clubs”.

6. FIFA regulations and the prospect of a global regulation of the phenomenon

The matter of agents must be regulated globally, as transactions are now increasingly international. The differences between the different national regulations have created enormous asymmetries in the labour market, favouring by far those countries that apply substantial deregulation to the detriment of the professionalism and ethics of aspiring agents and in fact encourage predatory behaviour.

On the basis of this unavoidable need, the Council of the Fédération Internationale de Football Association, held in Doha on 16 December 2022, finally approved the new Football Agent Regulations (FFAR) in force from 9 January 2023 for the general provisions concerning the issuance of the licence necessary to provide agent services (Articles 1 to 10 and 22 to 27) and from 1 October 2023 with regard to all other rules. These include the obligation to practise the profession exclusively by official FIFA licence holders (after passing an exam), the introduction of a cap on fees and limits on multiple representation to avoid conflicts of interest.

This is aimed at strengthening contractual stability, improving the training of young players, protecting minors, limiting situations of conflict of interest, protecting the integrity of the transfer system, safeguarding the integrity of competitions, protecting the market, setting adequate professional and ethical standards for agents and ensuring maximum transparency (financial).

The scope covers all representation agreements with an international dimension, related to the transfer of the worker from one federation to another or to an international transaction between clubs belonging to different Federations. Where, on the other hand, there is no international dimension, the internal regulations dictated by the national Federations will apply, which by 30 September 2023 will have to adopt regulations in accordance with the FFAR.

In particular, the Federations – as provided for by article 3 – without their own Regulations, they will be required to draw it up incorporating the provisions of art. 11 and 21 of the Regulation and to provide for references to any mandatory element of national law and to confer competence on an internal body for the settlement of any disputes and the adoption of disciplinary measures. FIFA, in Article 24 entitled ‘Recognition of national law licensing system’ is, in essence, without prejudice to national licensing systems, provided that eligibility conditions are met and that a qualifying examination has been passed.

Article 4 of the Regulation provides that in order to become an agent (a term that is reintroduced in place of an intermediary) a natural person must submit an application through the electronic platform set up by the International Federation. By applying, the interested party also undertakes to comply with the FIFA Regulations, the Statute, the Code of Ethics and the so-called RSTP (Regulations on the Status and Transfer of Players).

In addition, the candidate must meet the requirements at the time of application and maintain them following the issuance of the license. Finally, except in cases of exemption, it is necessary to pass the qualifying exam at the National Sectoral Federation. An obligation of continuing professional training, which is necessary for the maintenance of the licence, is also introduced.

FIFA has in fact followed the Italian legislation, providing training courses to combat the phenomenon of the so-called football trafficking. In a mirrored way, the agent is allowed to request a temporary suspension of his license which does not expire and is in no way transferable.

Paragraph 3 of Article 11 provides for the possibility of practising the profession of agent in the form of a company. However – with an even more stringent provision than the Italian one – the employees of the club who have not obtained the agent’s license cannot carry out any service related to the profession of agent of players.

Article 12 – entitled “Representation” – regulates the content of the representation agreement, also in terms of minimum requirements, which must be filed on the platform to be valid and take effect within 14 days. Paragraph 8 prohibits, on the Italian model, double representation, except in the case where there is express written consent of the parties involved (club and player/coach). Any clauses in the agreement that penalise or limit the ability of a player/coach to negotiate and conclude an employment contract independently without the involvement of an agent are null and void.

Representation contracts between football agent and player/coach will be valid for a maximum period of two years and may not contain automatic renewal clauses; On the other hand, for agreements between agent and

company (transferor or buyer) there is no maximum duration and more than one representation agreement may also be signed with the same clubs, provided that they refer to different transactions.

In the case of underage players, the agent – provided that he has attended the appropriate FIFA course for the representation of minors – may enter into an agreement no earlier than 6 months after reaching the age at which the minor can sign his first professional contract, in accordance with the provisions of the applicable law in the country in which the young person will be employed. In any case, the negotiation must have the written consent of the minor's guardian who must sign the contract with him.

We now come to one of the most articulated and critical aspects of the new Regulation concerning the remuneration of agents. First of all, paragraph 2 of art. 14, that the payment of the agent's fee must be made exclusively by the customer; The latter will not be able to authorise a third party to make the payment. Another rule, perhaps the most feared (and which will be the most fought) is the imposition of a well-defined ceiling on the commissions received complete with anti-avoidance provisions. In fact, there is a maximum limit to the fees that a qualified person can receive in the performance of Football Agent Services, understood as activities aimed at the transfer of sports services to another club or the conclusion, renewal or termination of a contract, depending on whether the same individual acts in the transaction on behalf of the player/coach (Individual) and/or the acquiring club (Engaging Entity), i.e. the selling club (Releasing Entity). In fact, if the representation is in favour of the player/coach or the acquiring club, the commission paid to the agent may not exceed a certain percentage of the gross annual remuneration (including signing bonuses and any other consideration due to the fulfilment of contractually pre-established conditions, such as variable remuneration linked to the player's performance) agreed in the employment contract, five percent up to \$200,000 and three percent on the portion exceeding that limit.

In the case of a joint assignment (i.e., activity provided for the benefit of the player/coach and the acquiring club), the maximum recognizable fee will take into account both of the aforementioned limits, increasing to ten percent for the portion of gross annual remuneration within \$200,000 and six percent for the excess part. The payment of fees must be made after the closing of the transfer window, divided into quarterly instalments for the duration of the contract signed by the player with the new club. In addition, the right to commission will only accrue if the club provides for the payment of salaries; otherwise, nothing will be due to the agent (in proportion to the unpaid salary).

If, on the other hand, the activity is lent to the selling club, the upper limit

for the commission to the agent is equal to ten percent of the transfer value (Transfer compensation), net of percentages on the future resale in favour of the transferor company. As far as the payment terms are concerned, these will follow the collection of the consideration due to the customer (transferring club). Therefore, in the case of payment in instalments, the agent's commission must also be made within the same terms.

Article 15.2 provides that the maximum amount of the agent's commission must be identified by excluding variable fees, including any sell-on fee, from the calculation basis. Given the widespread practice of subjecting significant portions of the considerations, especially in relation to transfer transactions, to future circumstances, even if they are easily verified, this provision must be carefully interpreted because the wording of the provision seems to open up the possibility of derogating from it.

Moreover, if the player/coach moves to another club before the natural end of the employment contract (or terminates it without just cause), the agent's fees not yet accrued will no longer be due. The rule is intended to discourage the practice of agents to promote the transfer of their clients in order to receive additional commissions, but risks having the harmful effect of encouraging clubs to transfer players who carry "hefty" agency fees, with the aim of getting rid of them retroactively. In addition, in the case of representation of a player, if the contract negotiated has a duration of more than one term of office, the remuneration accruing to the agent is due even after the end of the mandate, provided that the contract is still in force, but only where this is expressly provided.

All payments must be made through the FIFA Clearing House, which is a real financial clearing house, a sort of transfer bank through which both the sums of the transfers and the commissions to be turned over to intermediaries must be paid, ensuring maximum transparency also with respect to criminal cases and tax evasion. Also because the payment of the fee must be made only by the person who has signed the mandate of representation with the agent.

Regarding possible disputes, jurisdiction over representation agreements with an international dimension and international transfers – without prejudice to the right of a players' agent and a client to bring an action in ordinary court – is entrusted to the Agents Chamber attached to the Fifa Football Tribunal.

The new Regulations, which revolutionise the sector and finally put their hand to a normalisation of the hysteria, have been welcomed by a large part of the clubs, while it has been criticised by the European Football Agents Association and the international association The Football Forum, which complain about the excessive and discriminatory restrictions and, on the other hand, state that the caps would affect small agents more and not the most influential ones, to which the work of moralization would be directed.

Several legal actions have already been proposed, including a precautionary one against FIFA and KNVB (Dutch Federation) aimed at suspending the first examination session of the new course, rejected by the Utrecht Court on May 10, 2023 and then by the Central Court of the Netherlands. Another, filed by two members of the DFVV (the German equivalent of the Asso Agenti), was upheld on 24 May 2023 by the Dortmund District Court, which issued an injunction against the regulation, which consequently cannot be enforced at least for the time being in Germany, given that it is a provisional restraining order. The same happened for Spain based on the ruling of the Commercial Court number 3 of Madrid on 6 November.

On 24 July 2023, the Court of Arbitration for Sport (CAS) in Lausanne had ruled rejecting all claims of the Professional Football Agents Association and clarifying that FIFA enjoys a “technical” and “democratic” legitimacy to regulate sports agent services, not only on the basis of EU case law but also in view of the importance of harmonising the regulations of a global sport such as football.

Finally, the District Court of Mainz preferred, in the context of a similar case, to refer a question to the Court of Justice of the European Union for a preliminary ruling, proposing 12 different questions, on which it will rule in the coming months.

It remains to be seen how the individual Federations will adapt to the new course and, above all, in what timeframe, given the many open disputes and given the urgency of reclaiming such an important industrial sector not only economically, but also politically and socially. The FIGC has decided to transpose, on 28 September 2023, the changes provided for in the FIFA regulations (access to the profession, protection of minors, double representation, and cap on commissions), but to wait for the publication (and therefore the entry into force) at the end of the checks within the competence of CONI, the analysis of the international uniformity of FIFA transpositions into national regulations, the issuance by the Government of the implementing decrees provided for by Legislative Decree nos. 36 and 37, and finally the observations of the components also at the end of the aforementioned checks, with the reservation therefore of making further amendments.

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