

National Implementations - SPAIN

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Preamble

It is already known within the sports world that FIFA decided in 2014 to finish with the Football Agent's Regulations in force only since 2008.

In the Executive Committee meeting held on March 2014, FIFA approved the new regulations that will rule the activity of the Player's Agents, with the aim to *"promote and safeguard considerably high ethical standards in the relations between clubs, players and third parties, and thus to live up to the requirements of good governance and financial responsibility principles."*⁸⁹

As the Regulations themselves establish, they shall serve as minimum standards/requirements that must be implemented by each association at a national level, the latter having the possibility of further adding thereto which implies that each and every association has had to create their own regulations before the entry into force of the new Regulations, this last 1 April 2015.

The Spanish Football Federation (RFEF), published their regulations on 31 March 2015, leaving to Agents working in Spain no time to study or to react; they had to adopt the new regulations while they were already in force in order to be able to negotiate the contracts for the next summer transfer window.

The RFEF Regulations

The Regulations approved by the RFEF are divided into 17 articles and 3 annexes containing the Intermediary Statement for natural and legal persons and the Code of Ethics.

Even if the Regulations of the Spanish Federation contain six more articles, the main principles are those established by the FIFA Regulations, so before the articles, the RFEF Regulations contain the same definition of Intermediary established by FIFA⁹⁰:

"A natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement."

In the same sense, the Scope of application of the regulations is the same as the one established by FIFA; it covers the negotiation or renegotiation of an employment contract of a player with a club and the negotiation to conclude a transfer contract between two clubs.

Considering the latter as a starting point, what the RFEF has done is transposed the FIFA Regulations as if they were a European directive and increased the obligations of the Intermediaries.

For example, as a main principle, the FIFA Regulations obliges the Intermediaries to be registered before the National Association and prevents clubs and players from contracting any official (as defined in the FIFA Rules) as an intermediary. The RFEF also specifically prohibits that any transaction or contract

where an intermediary takes part could be conditioned to any representation contract signed between the player and the intermediary.

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In order to comply with the mandate of the FIFA Regulations regarding the registration of intermediaries, the RFEF has considered the implementation of the following registration rules important:

- Both natural and legal persons can be registered as intermediaries. In case of legal persons, all and any of its representatives can also be registered, the latter being the only one able to sign the contracts and carry on with the negotiations.
- Since any operation where an intermediary has taken part shall be registered before the RFEF, the intermediary itself shall be registered before the RFEF before the conclusion of the agreement.
- The RFEF establishes the same regime of incompatibility established by FIFA regarding contractual relationships of Intermediaries with leagues, federations, associations, confederations or FIFA.
- There is an important point, different from the Regulations of the FA, which is that the activities contained within the scope of the

⁸⁹ Preamble of the Regulations on Working with Intermediaries

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representation contract cannot be delegated, ceded, subcontracted, rented, sold or subjected to any kind of disposal.

In order to provide the tools needed to register contracts and operations, Article 4 of the RFEF Regulations establishes the registration procedure. What may come as a surprise is that - apart from all the documents that shall be disclosed by every applicant claiming to be an intermediary - the first step that shall be overcome is a personal interview where the RFEF will decide if the applicant is suitable to give advice to a player or a club.

The payment of an annual fee which for this year amounts to EUR 816 (in case of legal person, the fee shall be paid for each representative) is also a requisite for the registration, together with the signature of the Code of Ethics and the Annex 1 or 2.

Once the personal interview is overcome, all the documents are presented and the fee is paid, the RFEF will authorize the applicant's registration as an intermediary (Art. 5). The registration of an intermediary allows them to develop their activity within the national territory of Spain, which necessarily means that someone working in different countries will need to be registered before each and every national association governing the territory they want to work in.

It shall be noticed that unlike in other federations, the RFEF does not preclude the registration process to foreigners and does not establish the requisite of being Spanish-speaking to apply for it.

According to Article 6, the registration of an intermediary can be canceled (i) in case the intermediary fails to fulfill all the requisites established in the previous

articles; (ii) if he is sanctioned; and (iii) in case he asks for it.

Since the Regulations establish that not only the persons claiming to work as intermediaries shall be registered, but also the operations, and considering that the latter is the real goal pursued by FIFA, Article 7 establishes when and how an operation has to be registered before the RFEF:

- In case the operation involves the negotiation of an employment contract between a player and a club, if the player hired the services of the intermediary, he shall be the one having to send all the documents to the RFEF in order to register the operation. If the negotiation carried out is about the conclusion of a transfer contract, the club that hired the intermediary has to send the documents to the RFEF;
- The communication to the RFEF of the statement included in Annex 2 or 3 shall be done each and every time that an activity included within the scope of Article 1 takes place;
- The communication shall have the employment or the transfer contract annexed and signed by the intermediary;
- In order to register the player with a team, the RFEF has to have the representation contract between the intermediary and the player. Without the representation contract, the player shall not be registered;
- The register of intermediaries shall be public and shall include all the operations they participate in.

With the intention to establish a standard framework, the RFEF has decided that the Representation contract referred to in Article 7.4, regulated in Article 8, will have to contain some requisites:

- To represent a club or a player, the intermediary shall have concluded a contract of representation duly signed by the parties;
- The scope of the contract shall specifically include the exact activities the intermediary shall perform;
- Some data shall be mandatorily included: names of the parties, scope of the services, period of time, amount to be paid to the intermediary, day of start and termination clauses;
- The maximum time allowed is two (2) years;
- If the player is a minor, his tutor must sign the representation contract;
- The contract shall be presented before the RFEF within the next 10 days after the signature of the contract, regardless the date when it comes in force;
- Any amendment to the contract shall be registered before the RFEF;
- The performance of the activities included in the scope of the contract cannot be delegated, ceded, subcontracted, sold or subjected to any kind of disposal;
- The jurisdiction in case of disputes shall correspond to the Jurisdictional Committee of the RFEF.

All the documents signed between intermediaries and clubs or players shall be disclosed to the RFEF, according to Article 9, together with all the payments made to them, in order to allow the RFEF to publish every month of March the list of all the registered intermediaries and the operations in which they participate during the previous year with the

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total amount paid by clubs or players to all the intermediaries.

This article incurs a systematic contradiction with the object of the Regulations. In the first paragraph of the Article, is established the obligation of players and clubs to communicate the details of all remuneration or payments of any kind that have been cleared or will be made to an intermediary, which is blatantly a nonsense, given that the purpose of the regulations is limited to the operation of Article 1.1 *i.e.* negotiation or renegotiation of contracts and closing operations of transfer between clubs. Does the RFEF have the power, or is it even lawful, to force a player or a club on ground of a contract signed with an intermediary in order, for example, to negotiate advertising contracts? Being outside the scope of the Regulations, and therefore being only subjected to the ordinary or arbitral courts of Spain, or directly to the Court of arbitration for Sport (CAS), what would be the consequence of not reporting that contract?

The same Article 9.1 establishes a new twist to the systematic contradiction of these Regulations:

"At the request of the competent organs of the RFEF, players or clubs shall, for research purposes, provide all contracts, agreements and records with intermediaries that are related to activities linked to these provisions." (emphasis added)

According to the first sentence of the article, there is an obligation to report any compensation paid to an intermediary, whatever their nature, notwithstanding that, at the request of the competent organs, players or clubs will only have to disclose to those bodies the contracts, agreements and records of intermediaries that are related to activities linked to these provisions,

i.e. negotiation or renegotiation of contracts and closing operations of transfer between clubs.

Hence, should we interpret the obligation to report any remuneration paid to an intermediary in a systematic manner, and only disclose those related to the scope of the regulations, or do we have to consider it as an additional obligation? Unfortunately, only time, and certainly the decisions of the organs of the RFEF and FIFA resolving the conflicts which I am sure we will meet, will determine the response to this question.

Those payments are also regulated in the new system to theoretically avoid abuses, in this sense; the RFEF has also used the FIFA Regulations to control how the intermediaries are going to get paid, by transposing the regulations but not limiting the amount to be paid to the 3% that FIFA decided to establish.

One point in Article 10 is a transposition of the FIFA Regulations regarding the payment to intermediaries. It establishes that they may not receive compensation for the negotiation of a contract of employment or a transfer by any club or by the player himself if the player is a minor under RETJ.

The latter paragraph does not mean that a player under 18 cannot hire an intermediary as a representative, but only that the intermediary will not be paid in connection with the negotiation of the employment contract or the transfer, leaving intermediaries in the position of having to work for free for the minor without the guarantee that upon reaching the age of majority, the minor will continue working with them.

This last point is certainly a surprise in terms of content, but if we consider the doubt raised when we

spoke of the duty of disclosure, and if we interpret the obligation to report any remuneration paid to an intermediary in a systematic way, a minor could hire, obviously upon the payment of a fee, an intermediary who could only be paid if it is established that the purpose of the contract is not included in the scope of the Regulations, or, even easier, if the parents of the minor hired an intermediary by signing a private agreement that will not fall at all within the scope of the Regulations, since only intermediaries, clubs and players are obligated to disclose information to the football authorities.

In an attempt to establish the rule in Article 22 of the former Player's Agents Regulations of FIFA to the intermediaries' activity, the RFEF included Article 11 to its Regulations to prevent the intermediaries from contacting and trying to convince a player who is already under a contractual relationship with another intermediary to terminate such relationship. The Intermediaries are also prevented from inducing players under contract with a club to terminate the latter contract.

From a practical point of view, the RFEF lost its opportunity to improve this FIFA rule by including a term before the expiry of the contracts (with other intermediaries) within which the intermediary could contact the player in order to offer him his services.

Another controversial point of the new Regulations is the obligation established in Article 12 regarding the Conflicts of Interests that the RFEF implemented directly from FIFA. It is certainly confusing that FIFA now pretends to impose the obligation to control the activities of the intermediaries on those who hire them, forcing clubs and players to investigate any conflict of interests that the intermediary may have, but

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it is still more confusing that since 1 April 2015, the conflict of interests can disappear in case the intermediary discloses to the parties any potential conflict and the parties agree to hire him expressly accepting such conflict on writing.

Regarding the sanctions and the Dispute Resolution Proceedings that FIFA considered important to leave under the regulations of each National Association, the RFEF established a regime hardly understandable.

Articles 14 and 15 of the Regulations establish that the Jurisdictional Committee of the RFEF shall be the body in charge of hearing the economic disputes where an intermediary is a party, as well as the requisites to bring those disputes before it.

In this sense, it is of importance to notice that only economic disputes would be admissible by the Jurisdictional Committee, hence leaving any other issues such as the termination of the contract for the non-fulfillment of the obligations of the contract out of the RFEF Jurisdiction, forcing players and clubs to bring any other non-economical dispute to Ordinary Courts.

Besides, the Jurisdictional Committee could also inhibit its jurisdiction if the parties issue an economical claim directly to the Ordinary Courts, this being a clear invitation to bring every dispute to the Ordinary Courts. To end with the nonsensical draft of the regulations, no dispute related to a contract signed with a minor will be heard by the Jurisdictional Committee, even if in the Regulations the possibility to sign a contract with a minor is allowed if the intermediary is not being paid.

Conclusion

The new Regulations of the RFEF try to impose a new regime on the intermediaries' activity by establishing a large number of obligations but without granting the proportional rights to those obligations. The agents will only have the chance to present a claim in cases of economic dispute, but does this mean that the termination of the contract by the player or the club and the subsequent request of compensation fit into the "*economical-dispute requisite*", or does this concept only refer to outstanding amounts? Are they then being under-protected by the same body that claims to control, sanction and reject their activity?

The RFEF Regulations that are actually in force are all previous to the publication of the Intermediaries regulations and do not include any provision about this new reality. However it is expected that the Disciplinary Code and the General Regulations will be modified to include new rules in this sense since Article 15 establishes that any breach of the regulations will be sanctioned according to the Regulations of the Association, but they still do not include any reference to Intermediaries.

It is more than evident that FIFA had the intention to change the rules of the game and gave the Intermediaries a new legal framework where they are forced to disclose all their activities, their remuneration, their contracts and the terms of their agreements, but left those agents (in the broad sense of the concept) of football without any kind of protection, leaving their activity under the government of every National Association. This is likely to force those with international affairs - a common situation now - to study and hire new

agents in every country where they have a client or a potential interest.

Under these new Regulations, practically entirely assumed by the RFEF, no father, even being a lawyer, will be allowed to negotiate the contract of his 18 years old son without the proper registration at least contemporary to the signature of the contract, and it will be conditioned to a personal interview where the RFEF will decide its acceptance based on some unknown criteria, since contrarily to what is provided for the intermediaries those are not disclosed in the Regulations.

In the authors' opinion, instead of clarifying the new situation created by the precipitated regulations of FIFA, drafted and published without proper reflection, the new Intermediaries Regulations leave too much shadows regarding how the intermediaries will develop their activities or protect their interests - especially when there is an international element in the operation. •