

Cours de 4<sup>ème</sup> année Sport  
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M1

# Sports Agents and Contract Law

**DROIT DU SPORT**

Négociation de contrats

**GESTION DE  
CARRIERE SPORTIVE**

Agent sportif et manager

Mis à jour au 19/02/2019

## **Session 2 - Introduction to the sports Agent**

The judicial organization in France  
The constitutional organization in France  
Presentation of the history of sports agents  
Supervision according to the main disciplines

## **Session 2 - Introduction à l'Agent sportif**

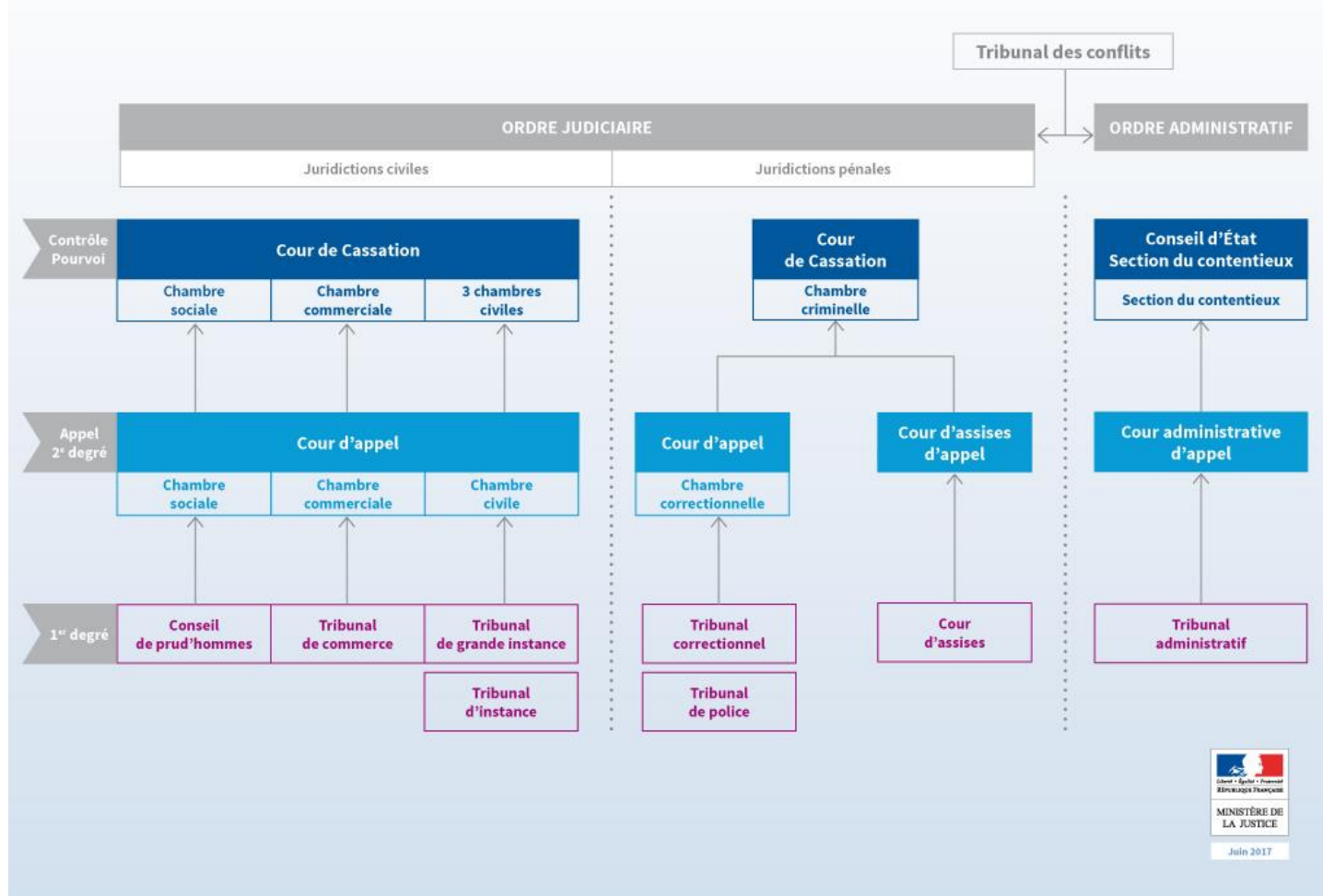
L'organisation judiciaire en France  
L'organisation constitutionnelle en France  
Présentation de l'histoire des agents sportifs  
L'encadrement selon les principales disciplines

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## THE JUDICIAL ORGANIZATION

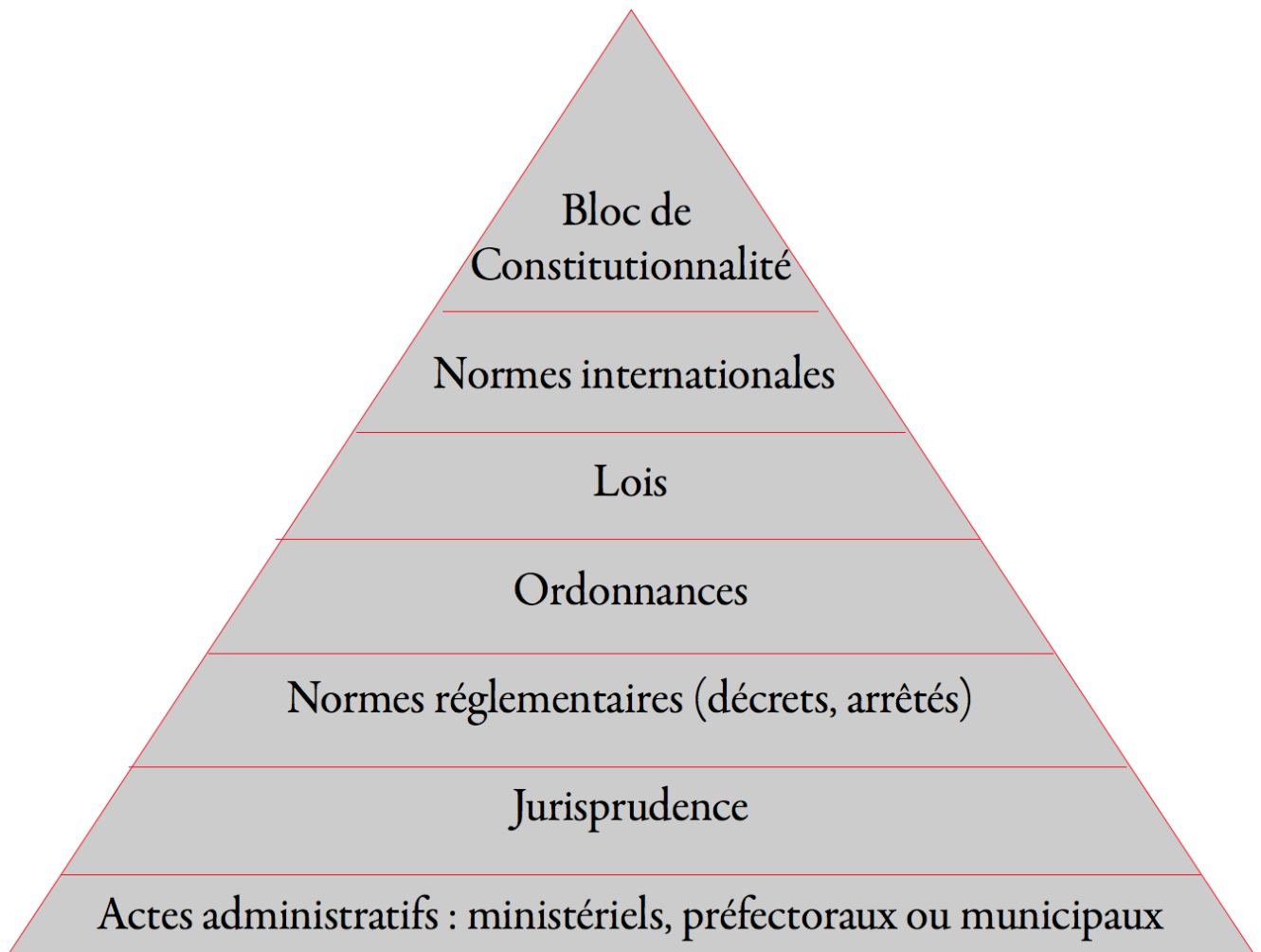
Mis à jour au 14/02/2019

### Organisation de la Justice française



## THE CONSTITUTIONAL ORGANIZATION

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## PROFESSION: SPORTS AGENT - CONTRIBUTION TO A THEORY OF PROFESSIONAL MODELS

(Source Thèse de doctorat - Adriana Sekulovic – PARTIE III- le terrain des agents sportifs  
Chapitre VI)

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### CHAPTER VI - SUPERVISION OF THE PROFESSION OF SPORT OFFICER ACCORDING TO SPORTS DISCIPLINE

#### 6.1 Supervision of the profession of sports agent

The sports agent profession is subject to specific regulation by several national and / or international federations. Although it is true that the sports agent is involved in most sports, to date only five international sports federations have adopted a regulation on sports agent activity: the International Athletics Federations (IAAF), basketball (FIBA), cycling (UCI) football (FIFA) and rugby (IRB). Some federations, such as the International Volleyball Federation (F.I.V.B.) or the International Handball Federation (I.H.F.) refer to the sports agent in their respective regulations. F.I.V.B. refers to the Athletic Agent in its Player Transfer Regulations stating that the name of the agent must be mentioned on the International Transfer Certificate (ITC) 156, a mandatory document for any transfer. The IHF stipulates that "*continental federations have the right to include in their internal regulations supplementing this Regulation, stipulations regulating the rights and obligations of so-called players' agents*" 157, which has resulted in the creation of specific regulations by the German, Austrian, French and Portuguese national federations.

International regulations by their universal scope because they apply de facto to all the national federations and by extension to all the actors concerned, whatever the country, are thus substituted for the State by providing a framework of the profession.

Like the regulations of state law, the regulations established by the international sports federations constitute very heterogeneous sets. They are the product of the sporting and cultural history of the sports disciplines concerned. The FIFA regulations, very precise and detailed, served as a model for other sports federations. Overall, national regulations are adapted to the particularities of the sports disciplines to which they apply.

#### Table 6.1: Regulations of International Sports Federations Governing Sports Agent Activity

Sport	Fédération	Réglementation
Athlétisme	Fédération internationale International Association of Athletics Federations (IAAF)	Réglementation de l'IAAF pour les représentants des fédérations / athlètes Règles des compétitions 2009 : Règle 7 (représentants d'athlètes)
Basket-ball	Fédération Internationale de Basket-ball (FIBA)	Internal Regulations 2008 : Rules H governing players, coaches, support officials, and player's agents – Rule H.5 Players' agents.
Cyclisme	Union Cycliste Internationale (UCI)	Règlement d'Agent de Coureurs
Football	Fédération Internationale d Football Association (FIFA)	Règlement Agents de joueurs (2008/2014)
Rugby	International Rugby Board (IRB)	Règlements internationaux : Règlement 5 - Agents

We will conduct an analysis of the various regulations emanating from international federations in order to put into perspective the general context in which they emerged, on the one hand, and to better understand the issues, on the other.

## 6.2 The sports agent in football

### 6.2.1 The sports agent and the football governance

The figure of sports agent is present in football since the creation of the first competitions and transfers between clubs. During the time of amateurism, its visibility was very limited, and its role was reduced to that of a wise adviser who is asked to intervene in delicate situations. In this context it is appropriate to speak of a certain professionalization of the sports agent profession in football. The transition from the term profession to that of the profession implies a strict definition and regulation of the roles, duties and responsibilities of the individual practicing the profession in question.

Before the regulations concerning him he could exercise with impunity and without legal constraints even if we have very little empirical data concerning the nature of the activities and the modalities of remuneration of the intermediaries in the sport before the years 1980. The first regulatory measures relating to the exercise of the activity of the agents of players were taken by FIFA during the 1990s. In France, the legal framework regulating the profession of intermediaries was born with the amendment of the law of 16 July 1984 on sports activities by the law of 9 June 2010 which is entirely devoted to it. It outlines the legislative framework intended to regulate *"the activity consisting in linking the parties concerned to the conclusion of a contract relating to the paid exercise of a sports activity"* 158. Under this law, the term sports agent becomes officially used to describe sports intermediation activities. Looking closely at Article 15.2, the proposed framework for coaching the sports agent is based on that relating to the commercial agent with the obligation for each sports agent to have a license. Today, the latter is issued by the competent federation for a period of three years. Prior to this amendment, any individual wishing to become a sports agent was required to interview an official of the F.F.F. and deposit a financial guarantee intended to cover any damage that may result from the exercise of its activities. F.F.F. has been issuing the Sports Agent License since 1995 following the adoption on 20 May 1994 by the F.I.F.A. a by law regulating the activity of agents that was amended on December 11, 1995 before coming into force on January 1, 1996.

This first initiative of the F.I.F.A. is considered as the initial regulation to which the entire profession must submit. It will be used as a prototype from which the member federations of the F.I.F.A. and so the F.F.F. seek to adapt their legislation.

A return on the history of the regulations relating to the exercise of the profession of agent is necessary in order to better account for its evolution. The initial regulation subjects the exercise of the profession of player agent to the holding of a license issued by the competent national federation and limits the activity to natural persons only. F.I.F.A. also requires all candidates to adhere to a number of principles, especially those relating to incompatibility and ethics. The main purpose is to ensure that the future officer does not have a criminal record for criminal offenses and that the sporting agent's activity does not create conflicts of interest. Before granting the license, F.I.F.A. makes a preliminary interview obligatory during which the candidate's legal and sports knowledge must be tested. The latter must also deposit a bank guarantee of 200,000 Swiss francs <sup>162</sup>. As stated above, this bank guarantee is primarily intended to cover the costs that the agent would have to pay in the event of a conflict with the player or the regulator. In reality, it is a matter of erecting one of the main barriers to market entry and undermining the free competition of service providers. By restricting access to the sporting agent profession, the F.I.F.A. inevitably creates situations of discrimination. A contract must obligatorily bind the agent to the player and the duration of the latter must not exceed two years renewable.

F.I.F.A. also provides for disciplinary measures against clubs, agents and players in the event of a breach of the rules. The penalties that the agent incurs range from a simple admonishment, a reprimand, or a warning to the payment of a fine, the amount of which is not specified, or even the withdrawal of the license <sup>164</sup>. As far as the clubs and the players are concerned, in the event of non-compliance with the rules they are liable to fines of up to 100,000 and 50,000 Swiss francs respectively. Footballers may also be suspended for a maximum of twelve months. F.I.F.A. it allows itself to inflict penalties on clubs for the suspension of international competitions or the prohibition of transfers and recruitments. Recently several clubs have been subject to such a ban following the non-compliance with the said rules on the occasion of the transfer as was the case of A.S. Rome concerning the transfer of the Frenchman Philippe Mexes after AJ Auxerre brought the case to justice <sup>166</sup> the player also subject to a suspension of six weeks. F.I.F.A. delegate to the "Commission for the Status of the Player" the task of ensuring compliance with the regulations, which makes it a supervisory and decision-making body <sup>167</sup>. It should be noted that the Regulation does not offer any appeal or appeal possibilities following any decisions and sanctions.

This initial regulation quickly becomes very controversial. The European Commission is seized as early as 1996 of complaints from citizens of different member countries who denounce the incompatibility of the regulations of agents with Articles 81 EC and 82 EC <sup>168</sup>. The European Parliament declares admissible petitions concerning this same regulation and presented by the German nationals on October 29, 1996 and the French nationals on March 9, 1998, following which the European Commission starts a procedure within the framework of the regulation n ° 17 of the Council, of 6 February 1962, which it notifies to FIFA by way of a statement of objections of 19 October 1999. It mentions that the original regulation constituted an association decision of undertakings within the meaning of Article 81 EC and undermined the compatibility with its provisions of the restrictions contained in in the regulation in question as regards the compulsory nature of the license, the prohibition of its attribution to legal persons, that made to clubs and players to use unlicensed agents and the requirement of bank guarantee and disciplinary measures.

F.I.F.A. sends a reply to this communication on 4 January 2000. In line with its line of action, it challenges the classification of association decisions that is attributed to the original regulation. It invokes its right to the moralization and the legitimization of the profession of



sports agent claiming that the said regulation was entitled to an exemption under Article 81 (3) EC. Commission initiative brings F.I.F.A. to adopt a new by-law on December 10, 2000, which will come into force on March 1, 2001, before being amended on April 3, 2002, which will be replaced in 2008 by the one currently in force.

Meanwhile, professional players, through the International Union of Professional Players, told FIFPro of their interest in seeing the emergence of strict regulations for the sports agent profession.

The amendment of the initial regulation owes a great deal to Laurent Piau who, by filing a complaint on 23 March 1998 with the Commission, initiates the administrative procedure. In his complaint, he accuses the original regulation of being contrary to the European treaties in force. On 3 August 2001 the Commission sent her a letter complying with Article 6 of Commission Regulation (EC) No 2842/98 of 22 December 1998 in which she stated that her intervention with the F.I.F.A. had contributed to the annulment of the main restrictive aspects of the regulations governing the activity of players' agents and that there was no longer any Community interest in continuing the procedure. Mr Piau replied to the Commission on 28 September 2001 in which he stated that he was maintaining his complaint.

Before examining the reasons which led Mr Piau to want to continue the procedure, it is necessary to look at the changes made to the original regulation. The new regulation reaffirms the obligation to exercise the profession of sports agent, which is still reserved exclusively for natural persons, to hold a license issued by the national association for an indefinite period. 169. The obligation to hold a license as an external sign of belonging to a profession that is a priori restricted, is one of the first signs of a social recognition of the profession.

The candidate must now have a "*perfect reputation*" 170. The immediate question is how to objectively assess a candidate's reputation, which FIFA does not undertake to answer. The great innovation of the new regulation is the introduction of a written examination 171 to which all candidates will be subjected. The examination in the form of a multiple-choice questionnaire must make it possible to check the legal and sports knowledge of the candidates. The examination conditions the obtaining of the license. The bank guarantee is replaced by the obligation for the agent to take out a professional indemnity insurance policy or, failing that, to deposit a bank guarantee of 100,000 CHF 172. With regard to the contractual relationship between the agent and the player, the written contract, the maximum duration of which is fixed at two years renewable, must, with the new regulation, specify the remuneration of the agent, which is established from the gross base salary of the player and fixed, in the absence of agreement between the parties, at 5% of said salary. The regulation is clear as regards the remuneration of the agents. Only the player is allowed to compensate the agent. In reality, the contract in question is an exclusive mandate of common interest. Once signed, a copy must be sent to the National Federation to which the agent belongs and whose records of warrants are made available to the F.I.F.A 173. The new regulation imposes a code of ethics and a standard mandate 174. The mandate, like the license, is a visible and legitimate sign of a social recognition of the profession. The code of ethics, which is an essential element of the profession, is conceived as the enumeration of the rules of its operation while dictating the conduct to be adopted by the agent in the exercise of his function. The agent is bound by the rules and by laws of the F.I.F.A. and not to approach players under contract with a club 175.

The sanctions regime for agents, clubs and players brings some innovations compared to the original regulation 176. It provides for the suspension or even withdrawal of the license for any agent violating the regulation 177. The maximum suspension the player incurs is set at twelve months 178. The suspension and prohibition of transfers for which clubs are liable for at least three months remain in force 179, as are the fines that may be imposed on the various actors. The new regulation does not specify the amount of fines for players' agents, like the

original regulation, and provides for players and clubs a minimum amount of CHF 10,000 and up to CHF 20,000 respectively 180. All penalties are cumulative 181. Disputes fall within the jurisdiction of the national federation on which the agent or the "commission for the status of the player" 182 depends. The new regulation introduces transitional measures allowing the validation of licenses granted under the old scheme 183.

The amendments made to this Regulation on 3 April 2002 stipulate that nationals of the European Union (EU) or the European Economic Area (EEA) send their application for a license to the national federation of their country or domicile without condition duration of residence and that the insurance policy subscription can be made in any EU and EEA country. The regularization of the profession of sports agent was made under a lot of disputes and the Piau case can highlight some of them.

### **6.2.2 A strongly disputed settlement, the Piau case**

Upon entry into force of the original F.I.F.A. and then with its amended version, the provisions governing the activity of sports agent arouse many reactions. First, we must understand the context in which the F.I.F.A. initiates the implementation of these regulations. At the same time as the F.I.F.A. introduces the initial regulation another decision is preparing to upset the football landscape. This is Bosman. At the end of his contract with the Belgian club of Liège, Jean-Marc Bosman wishes to join the French club of Dunkirk. However, the latter refuses to pay the Belgian team a transfer fee for the player. Faced with this impasse, Bosman addresses the European Court of Justice on the basis of Article 48 of the Treaty of Rome, which guarantees the free movement of workers in the Union. The European Court agrees with Bosman in its judgment of 15 October 1995. It also sets out two principles that are about to shake the world of sport and football, in particular. First, by that decision the Court precludes the application of the rule according to which, at the end of the fixed-term employment contract which binds him to a club, a professional football player of a Member State may be employed by the club of another Member State only if the latter pays the club of origin a transfer allowance. Secondly, the judgment repeals the "clauses" of nationality imposed by U.E.F.A. to limit the number of "community" foreigners per club in the competitions it organizes. On February 19, 1996, the Executive Committee of U.E.F.A. decides to bring its regulations into line with the Community provisions. The Court of Justice, applying a double principle, that of the free movement of workers, on the one hand and non-discrimination on the other, endorses the gradual establishment of a single market for professional sports. Before 1996 clubs were not allowed to play more than three foreign players. Henceforth, there is no longer any restriction on the number of community players while the limitation of the number of non-EU players is left to the discretion of the national authorities.

The consequences of the Bosman judgment are immediate. We distinguish five main ones. The first is in the end of the geographical barriers on the European sports markets. The second is a gain in player bargaining power over clubs. The third is related to the financial management of clubs, which are forced to use new sources of funding. The fourth raises the question of the training of young players but also of their protection. Finally, the fifth is directly linked to the sports agent insofar as the Bosman decision leads to a sharp increase in their number. When it creates the Sports Agent Regulations, the F.I.F.A., seeks to prevent and limit the consequences of the Bosman judgment that has just emerged.

However, these regulations are not satisfactory and are immediately challenged. The Piau case symbolizes this challenge. From his first complaint lodged on 23 March 1998 with the Commission, in which he questions the original regulation, Piau seeks to reform it even if these reasons are not very clear. First of all, he accuses him of being contrary to Article 49 et seq. Of the EC Treaty on the free competition of services involving, on the one hand, restrictions on entry to the profession by means of opaque examinations and by the

requirement of a surety and, on the other hand, the control and sanctions provided for. The second point of his argument seeks to show that the new rules are likely to lead to widespread discrimination between the citizens of the Member States. Finally, in his third point he emphasizes that the Regulation does not include any appeal or appeal against the decisions and sanctions applicable.

The Commission had already been seized beforehand on 20 February 1996 by a Danish sports management agency, Multiplayers International Denmark, which questioned the compatibility of the same regulation with Articles 81 EC and 82 EC after having been informed of the petitions formulated by the German and French nationals declared admissible by the European Parliament. The Commission sent a letter to Mr Piau and Multiplayers International Denmark in 2001 informing them that his intervention with the F.I.F.A. led to the repeal of the main restrictive aspects of the Regulation and that there was no longer any Community interest in the continuation of the procedure. In response to the Commission's letter, Mr Piau informed the Commission on 28 September 2001 that he was maintaining his complaint. It is, according to it, motivated by the infringements of Article 81 (1) EC still present in the amended FIFA Regulation and in particular with regard to examination and professional assurance and that new restrictions had appeared in the form of rules of conduct, model contract and in the determination of remuneration. Mr Piau challenges the exemption of these restrictions on the basis of Article 81 (3) EC 184. In his reply Mr Piau also draws the Commission's attention to the fact that it did not examine the contested regulation under Article 82 EC.

The Commission dismisses the complaints and appeals of Mr Piau one by one. It bases its decisions on the lack of sufficient Community interest for the continuation of the procedure in view of the repeal of the most restrictive provisions. It also asserts that the compulsory nature of the license could be justified and as to the remaining restrictions in the Regulation, the Commission considers that they can benefit from an exemption under Article 81 (3) EC while the Article 82 EC does not apply in this case. F.I.F.A. had asked to intervene in support of the Commission's conclusions and was pleased to see the latter at the beginning of 2006 put an end to the Piau case.

Mr Piau's arguments deserve an analysis. The main thesis of his motion suggests that F.I.F.A. is in a dominant position on the football market and is abusing its dominant position in the related player services market. Following this hypothesis, the F.I.F.A. would be an association of companies and the amended regulation would constitute a business association decision. In representing the interests of all economic demand, the F.I.F.A. arises as a monopsony, a single buyer imposing his rules on the offerers. As a result, abuse of a dominant position is an inevitable consequence of the mandatory provisions of the Regulation. If we continue in this logic we can, moreover, go so far as to think that the licensed agents benefit, in their turn, from a collective dominant position made legitimate by the regulation of the F.I.F.A. and which they abuse in the same way. Consequently, the market for the services of sports intermediaries would be reserved for members of the association of undertakings and unlicensed sports agents would be excluded. Although it is true that many transfers are carried out by agents who do not have a license and therefore are out of control, it becomes difficult for licensed agents to have a collective dominant position and even less to abuse it. .

The secondary thesis of its development concerns the exemption which the Commission grants to the regulation on the basis of Article 81 (3) EC and which is irrelevant according to Mr Piau since no conditions covered by this provision are not satisfied. We may ask ourselves whether the restrictions in question are proportionate, adequate and unavailable. Mr. Piau thinks no. The regulation would go so far as to eliminate competition, only the F.I.F.A. being authorized to grant a license. Mr. Piau echoes the assumption that, behind the stated intention of the F.I.F.A. to protect the players and to moralize the profession of sports agent hides, in

fact the intention to control the entire profession to the detriment of the principle of non-discrimination and that of freedom of enterprise.

However, we could hardly accept the idea that the F.I.F.A. exercise a dominant position because it is not an association of undertakings in so far as the latter (professional clubs) constitute only a minority of the members of the national associations, which constitute the members of FIFA. It also deserves to be qualified because in exercising its regulatory power, which Mr. Piau and others question, the international organization denies itself to engage in economic activities directly related to the transfer market. At the same time, the exercise of regulatory power over economic actors (sports agents) in a market (transfers) does not mean that F.I.F.A. has interests in this market if we consider that the latter does not represent the players or the clubs in their relations with the agents. However, even if professional clubs are in the minority, the unilateral qualification, by an association or a sports federation, of sportsmen or clubs as "amateurs" is not in itself such as to exclude them from carrying on economic activities within the meaning of Article 2 EC 185.

Mr Piau's most disputable argument is that the principle of specificity in sport which gives rise to a derogation from Community law can not be relied on in this case because the activity in question is not directly related to sport. This position is difficult to defend since it is precisely a sports service that constitutes the very object of the economic relationship. On the other hand, the binding nature of the regulation, which Mr Piau also contests, as well as the penalties it provides are inherent in the very existence of a regulation. On the other hand, it is possible to consider a reflection on the normative power available to a private organization of Swiss law such as the F.I.F.A. and whose main mission defined in its statutes is to promote football in the light of national laws and principles common to the Member States.

The analysis of this case inevitably raises the question of the objectivity of the Commission's assessment of the F.I.F.A. The Commission asserts that its assessment is not wrong to the extent that the restrictions imposed by the F.I.F.A. are solely for the protection of players and the duty to guarantee the qualification of the agents. In fact, in the absence of an organization internal to the profession, the international organization must provide justified, indispensable and proportionate restrictions. This legitimacy of the F.I.F.A. It comes in particular from the functions it fulfills and which does not imply the category of which it claims to rise. That is why the F.I.F.A. is presented in the collective imagination not as an organization or association of football but as an institution insofar as it is supposed to embody the highest values of football. However, the question arises as to whether, as a guarantor of respect for the values and interests not only of football but also of all the actors involved in this sport, it is not as much a guarantor of the protection of these same agents?

In fact, the agents interviewed expressed their feeling of discrimination as to the way in which the legal framework of their profession was set up. They believe that instead of providing undeniable legitimacy to the sports agent by its regulation the F.I.F.A. finds an opportunity to bring the agent of categorical judgments up to impose a professional responsibility ethic without guaranteeing a protection of the same magnitude. The example of football shows how and in what ways, under the impulse of a few individuals, the international sporting authority, in this case, the F.I.F.A. made changes to its bylaws. However, since then, the international organization has been visibly exposed to criticism and protest by international associations and professional leagues, who, on the other hand, would like F.I.F.A. further strengthens its regulation. The reminder of the context in which the first attempts at specific legislative framework of the sports agent activity came into being, allows to better understand to what extent the functionalist approach which is that adopted by the political and sports authorities by the through a rapid professionalisation of the activity does not meet the expectations of all stakeholders. Although the laws and regulations governing the exercise of the activity of



sports agent concern, in theory, only the agents having a license, it is important to be interested in it in order to better grasp the problems raised and caused by the sports agent. In addition, the F.I.F.A. recently announced its desire to redefine its management of the sports agent profession. The objective expressed by the International Football Federation is to check more systematically transactions related to transfers between clubs, that is to say, to control acts and not actors. The project provided for the liberalization of the sporting agent profession, as a result of which we would no longer speak of "agents" but "intermediaries", whose access will be granted without the prior authorization of a national federation and therefore within the reach of every individual, FIFA setting out a series of conditions and criteria that players, agents and clubs must meet to make a transfer. Initially planned for May 2010, the adoption of these new rules is still at the draft stage. Nevertheless, in the absence of a revision of the status of sports agent, the F.I.F.A. has put in place an international transfer control system called the Transfer Matching System (TMS).

### **Box 6.1: Transfer Matching System (FIFA)**

Following a proposal by the Task Force of the F.I.F.A. For the good of the game, the international federation adopted at its congress in 2007, the project of setting up a system of regulation of international transfers of professional footballers. Following the success of several pilot projects led by the member federations of the F.I.F.A. during the 2008/2009 season, the use of the Transfer Matching System (TMS) became mandatory from 1 October 2010 for all international transfers. The objective sought by the F.I.F.A. is to have a tool to collect as much information as possible on each transfer of footballer while participating in a greater transparency of financial transactions. Moreover, the system makes it possible to "trace" the transferred player and thus considerably reduces any possibility of fictitious transfers whose sole purpose is the often illicit movements of funds. Finally, the system guarantees that any payment linked to a transfer will be made exclusively from club to club. Specifically, in the context of TMS, prior to each transfer, the buying club and the seller club must, separately from each other, enter in an electronic application information relating to the transfer in question. Once this information is recorded, the system checks the perfect match of the data entered by the two clubs. If the information matches, the competent federations will be able to issue an international transfer certificate (CIT) which will be recorded and saved in a centralized database containing all transfers made between federations.

As for the sports agent, the system provides for the possibility for the various parties to use three types of agents:

- Agent licensed to a national federation
- Lawyer practicing in his country of residence

The system has a large database containing some information on the background of the dismissed agents (suspension of the agent, withdrawal of license, etc.). With regard to the commission of the agent, only the commission of the agent of the agent club applicant must be declared, which is not without problem. In other words, the system does not ensure effective control of the intervention of sports agents in international transfers. TMS does not provide sufficient protection against parallel financial arrangements that are facilitated by the intervention of unlicensed agents. Therefore, the effectiveness of the TMS in controlling the financial funds mobilized during international transfers of professional footballers should be put into perspective.

*In 2014, FIFA repealed the Sports Agents Regulation and introduced a regulation for intermediaries.*

*Except that France, in particular, maintained the status of Sports Agents, regulated in the Sport Code ...*

### **6.3. Athletic agent in athletics**

#### **6.3.1 The conceptualization of an atypical professional project**

In his view of society as a social space in which social classes, groups or other social entities struggle against each other for economic, social or political rewards, Max Weber (1995) gives special place in the group. He is interested in those individuals who, thanks to their academic qualifications, manage to settle in the labor market on a long-term basis. In this sense, the occupational group is not perceived as a mere facet of the social life of the individual but rather as an entity whose members must not only succeed in ensuring the existence of the said group, but also once this existence recognized to maintain the social position of the group within society. In other words, the occupational group must pursue a goal. A close look at the notion of a career project is similar to that of a career studied by Hughes (1958) and Freidson (1970). If the concept of career is approached from the individual and his individual aspirations in terms of professional achievement, that of professional project implies the presence of a sufficiently elaborate collective conscience to allow the professional elite to define the objectives of the career. professional group and the means available to its members to achieve them. Some individuals see the pursuit of this professional project as a source of personal fulfillment. Interviews with sports agents show a strong correlation between the awareness of his "vocation" and the development of an individual model of professional project that leads to "an institutionalization of formal knowledge" as described by Freidson 187 while regulating "competition for the monopoly of jurisdictional powers". The general hypothesis of this thesis is concerned with the way in which the limits of a new professional field are erected, the testimonies gathered from the main actors of this process must allow us to dissect the mechanisms of manufacture of homo agens. or the recognition of a specific skill.

Let's take J.D. American, septuagenarian, today trainer "by passion", it is one of the first agents in athletics. He has the particularity that he has been designated by several agents and athletes interviewed as the one who would have shaped the sporting agent profession in athletics. So when we meet him in Los Angeles in January 2012, we begin the interview with a series of questions about his beginnings in the profession. In the late 1960s, behind the scenes of a recent California road race, J.D. observed runners entering the race organizer's office to collect their "stamp". This is when he "becomes aware" of his vocation (professional): he wants to become a sports agent to help athletes maximize the economic return of their capital sports incorporated. However, the context seems unfavourable to the development of the profession of sports agent because at the time athletics remains one of the last strongholds of amateurism, strictly prohibiting any remuneration of the athlete. Professionalization is the subject of vigorous opposition from the leaders of the International Athletics Federation (IAA) and national federations. J.D. is not deterred by the hostility of sports institutions. On the contrary, the professional project he is developing will focus on two major themes: first, to contribute to the social recognition of the sports agent profession, in particular by representing "honestly" the economic interests of the athlete; and secondly, to participate in an acceleration of the professionalisation process in athletics. These two lines of action are interdependent and complementary since the social recognition of the profession can only result from the culmination of the professionalisation process. Although the athletes are paid for their participation in European meetings as soon as they are created, it is only from the end of the 1970s that the "life of the track and field circuit" takes on a professional appearance:

*"My priority has always been to do my best to get the athletes to compete in the best conditions. When I started in the business, the conditions of preparation, travel and*

*hospitality of the athletes on the circuit were years of light of what they are today. I think I contributed significantly to their improvement. I remember, for example, how I convinced meeting organizers to house athletes in hotels when they usually stayed in dormitories. It all started in the late 1970s, in Belgium, when my athletes, after twenty-five hours of travel, found themselves ten in a dormitory, sleeping on beds that would not even be worthy of a prison. I thought that was enough. People come to support and applaud champions who once the finished show are treated as low-cost labor. So I told the meeting organizer that none of my athletes will participate in its meeting if it does not host them in a hotel with all the comforts that people who trade their bodies deserve. He told me that he did not have the means and in the meantime other athletes that I did not represent also said they were withdrawing from the meeting for the same reasons. A few hours later, as we were about to leave the city, the meeting director informed us that he finally managed to get a partnership with a local hotel and we will all be staying there. After this episode, I automatically required meeting managers to have the athletes housed and fed at a hotel and be reimbursed the transportation costs in addition to the participation bonuses. And since the end of the 1980s, athletes have been staying in palaces everywhere at the expense of organizing meetings. "*

Thus, in the 1980s, an organizational structure of the international track and field circuit is set up within which sports agents form a group of actors engaged in egalitarian exchanges with the meeting directors, while maintaining solid relationships, Mutual trust marks with the athletes. The materialization of the professional project and the semi-clandestinity in which the agents exercise contribute to the emergence of a collective consciousness. From these events is gradually born a professional ideology that presents athletic agents in athletics as a "united and united" professional group composed of individuals who work together without conflicts to institutionalize their profession. Already, in the 1980s, the reality was more complex, each seeking the best financial conditions for its athletes. Such behavior is nevertheless limited by the interdependence that unites sports agents to each other: each requires the support of the group to exercise outside the standards of the sports institution and all aspire to institutionalize their function. If an agent breaks the tacit rule of "mutual cooperation", he finds himself quickly isolated and removed from the exchanges. His reputation is tarnished, tainted by athletes and organizers of meetings by negative opinions about his "way of doing business".

*"Bad sheep, there have always been in this trade, but they always ended up either by being completely excluded from the trade, or by entering the right path. The agents talk to each other and the athletes melt alike. One day in 1990, after a Swiss meeting, one of my athletes came to tell me that such an athlete had obtained \$ 30,000 for his participation in the meeting. For my part, I knew that his agent had negotiated a \$ 60,000 stamp. In other words, the agent had just pocketed a 50% commission without his athlete's knowledge. Very quickly, the whole circuit was aware of his practices, meeting managers did not want to negotiate with him anymore and the athletes he represented no longer trusted him. "*

The relationship to money reflects the complexity of social bonds and the economic structure of athletics. Money constitutes "a form of reciprocity of action between men", presenting itself as a source of liberation and alienation from the individual. This duality seems all the more reinforced as negotiations, transactions and economic arrangements take place "under the mantle", in all discretion. A veil of mystery surrounds monetary issues in the sports area: between them, agents, athletes and meeting directors do not reveal the exact amounts of their income, nor who pays what. If everyone knows the amount of the official grading premiums and the agent's commission, which is 20% of the athlete's income, the net income of the agent is difficult to estimate because it is the result of various compensating or cumulative arrangements and are generally dependent on the event, context and athletes represented. In this respect, J.D. brings his testimony:

"You will not believe me if I tell you that I have never taken a percentage of the premiums of my athletes. The rule in athletics was always 20%, but I negotiated my stamp directly with the meeting director. Making me pay by the meeting director made more sense to me. On the other hand, regarding sponsorship contracts, I applied the percentage rule. "

The official amateurism of athletics having forced meeting directors to pay athletes in cash, this practice is still widespread. Several American athletes interviewed as part of our research told us to return to the United States, at the end of the European season, with suitcases filled with money. The agents interviewed and J.D., in particular, do not fail to point out a certain "hypocrisy" of the national federations in the face of the "underwater" professionalism of athletics. While the national federations formally denounce professional sports, behind the scenes, they put pressure on the sports agents so that part of the athlete's earnings are paid back to them. The dissensions between the national federations, on the one hand, and the meeting organizers and the sports agents, on the other hand, are therefore not only the result of disagreements on the respect of the rules of amateur sport. The athletes, very opposed to the idea of having to yield to their national federation a part of their incomes finally acquiesce, understanding that if the federations came to prohibit the presence of the sports agents on the circuit, their remuneration will, without doubt, be reviewed on the decline. So, everywhere, and in the United States in particular, sports agents will pay a percentage of the athlete's earnings that they represent to the national federation of athletes until the official recognition of professionalism by the I.A.A.F. in the early 1990s. Unhappy to see part of the cash flow reinjected into the politico-institutional sphere of athletics, the agents quickly develop the technique of "double contract":

"As the athletes kept complaining that it was a shame on the part of the national federation to want to tax their income, the agents found ways to reduce the commission paid to the federation by rewriting the contracts. The federation had asked each agent to submit in writing the details of the bonuses and fees of each athlete, competition by competition and then to pay them between 10 and 20% of the figures presented. Then the agents began to rewrite the contracts with the collaboration of the directors of meetings to reduce to the minimum the sums paid to the federation. Let's say that an athlete's stamp is \$ 100,000, his agent, instead of paying \$ 20,000 to the National Athlete Federation, writes a bogus contract stating that the athlete has received 10 \$ 000 for his benefit, and now the federation is receiving \$ 2,000. "

Leaders suspect the existence of the dual contract technique, but turn a blind eye to such practices, choosing not to intervene for two major reasons. First, if the national federations, committed to defending the ideology of amateur athletics, openly claimed their "right" to receive their share of any income generated by the professional practice of their sport, this would not only recognize the legitimacy of the sport. professional model but also to become implicitly a spokesperson for professionalism. Secondly, tackling the cunning techniques of the sports agents proved to be just as complex given the omerta that surrounds the financial transactions carried out by them, to become reprehensible, the "irregular" practices imperatively to be proved and not to rest. only on a presumption of guilt.

The analysis of the emergence of the sports agent's professional project in athletics highlights the vagaries of the process of legitimizing an activity that was initially illegal and which, for reasons of convergence of interests of the players involved, becomes a problem. indispensable economic regulator. The professional and social recognition of the sports agent "profession" as well as its official institutionalization did not have a considerable impact on the daily practice of the "profession", the professional model erected under the amateurism having never been handed over in question. The balance of power and various forms of conflict and tugging that characterize the tripartite relationship in some sports are limited in athletics because the relations between the actors of this social space obey the principles of convenience, cooperation and reciprocity. We will now look at the events that preceded the institutionalization of the sports agent profession in athletics.



### 6.3.2 The culmination of a long process of legitimization

In athletics, as stated above, the first expressions of a desire to regulate the sports agent profession appear from the 1980s and come from athletes who tired of their amateur status claim the right to be officially represented by an adviser who would negotiate the price of their performance. Before the 1980s, the position of the I. .A.A.F. was very radical. As a guarantor of respect for amateurism, the body forbade any athlete to use a sports agent and generally to derive any income from their participation in sports competitions or even to use their image of athlete to obtain sponsorship contracts. However, the agents are present in athletics as soon as the organized competitions appear. Their role was often twofold, that of event organizer and sports intermediary. With the proliferation of athletic races, athletes quickly realize the need to surround themselves with an agent capable of placing them in competitions. the most prestigious while claiming their right to be paid for their sports performance despite the amateur status of their sport. The 1980s were marked by virulent conflicts between athletes and national and international sports bodies around the question of the professionalization of athletics. As for the defense of the values of amateur sport, the athletes accuse their national federation, and thereby the I.A.A.F, of having a dual position. On the one hand, the sports authorities oppose the remuneration of the athletes, and on the other hand agree to be the managers of these same remunerations. Indeed, I.A.A.F. authorizes an athlete's remuneration if it is paid to the national federations who decide how to dispose of this money.

In 1981, Alberto Salazar, then marathon world record holder, protesting against the ban on athletes receiving "prize money", in other words a financial reward for their participation in competitions, attacks the American federation. athletics, then The Athletics Congress (TAS) has since become Unites States Track and Field (USATF): "Why should TAC have control over my money? They want to act as agents? Why do they insist? I think TAC is afraid of losing power. They want to control the athletes. But they have no right to do that. It's just a bunch of hypocrites and thieves! 191.

All the athletes share Salazar's position. However, in Europe, athletes from communist countries face additional difficulties, mainly related to greater political interference in sport. The position of I.A.A.F. becomes difficult to defend with the introduction of the professional circuit from 1984. And yet, in 1985, at the time of an annual session, while reminding that only the national federation of the athlete has the right to negotiate , organize or haggle the activities of the athlete, the IAF. decides that any athlete who uses an agent would be immediately suspended. It should be thought that I.A.A.F. will show some tolerance for what looks like "brown amateurism". Since 1984 and the introduction of the professional circuit, some athletes do not hesitate to evoke what they call "enlightened amateurism 192" or brown amateurism. The same year an argument arose between Edwin Moses and Carl Lewis about the presence of American athletes on the European circuit. The two athletes each have an agent and Moses says that the best athletes of the time can be considered as professionals of the remuneration received "under the table" during the European meetings. According to him, this "enlightened amateurism" suits all parties. The existence of "brown amateurism" was an open secret and to speak publicly about it exposed the athletes to very heavy penalties. In 1976, Guy Drut was banned for life by I.A.A.F. after confessing in the press that he had received money to compete in athletics. He was forced to put his career as an athlete in brackets at the age of 26, just months after winning his Olympic title in Montreal, before finally getting permission to re-enter the competition in 1980. During his suspension of official competitions organized by the IAAF, Drut had joined the United States and their professional circuit with the help of Mark McCormack, founder and former president of the International Management Group (IMG), the world's leading management agency in sport, modeling, film or music.

The apparent tolerance of certain illegal practices with regard to existing regulations, does not discourage athletes to want to impose the idea of a progressive professionalisation of athletics to leading sporting bodies. Faced with a categorical refusal of I.A.A.F. to change its rules, athletes and agents decided in 1989 to challenge the I.A.A.F. by opposing it with a counter-power in the form of a union of athletes' representatives, I.A.A.R. (International Association of Athlete Representatives). The agents grouped within the IAAR explain that their main motivations are "to abolish amateurism", to bring I.A.A.F. to consider athletes as professional sportsmen while stressing that it is important for the international body to "live in its own time" 193, amateurism becoming obsolete.

In the face of IAAR lobbying, the International Federation recognized, on the occasion of its 37th Congress held in Barcelona in September 1989, for the first time, the existence of sports agents in athletics and decided to regulate the activity of agents or "managers" of athletes called today "representatives of athletes". Three years later, in 1992, the Council of I.A.A.F. approved an "Information Note" for IAAF member federations, amended in 1993 to become a statutory "regulation" for the activity of athlete representatives. The latter was amended several times in 1997 and supplemented by Rule 7 of the I.A.A.F Competition Rules. 2009 which was also modified during the 47th Congress of I.A.A.F. held in Berlin on August 12, 2009.

Specific regulations for Athlete Representatives, "IAAF Athletes Representatives Regulations" 194, were adopted at the IAAF Council held in Doha in March 2010 and entered into force on 1 May 2010.

Regulation I.A.A.F. authorizes an athlete to use the services of an "authorized athlete representative" who may only be a natural person 195, to assist him, in cooperation with the National Federation, in the planning, organization and negotiation of his competition program. The I.A.A.F. specifies that the regulation applies only to individuals who represent the interests of athletes ranked in the TOP 30 of the I.A.A.F classification. without prohibiting athletes who are not among the 30 best athletes in the world in their discipline, to use the services of an agent. The I.A.A.F. publish on its site next to the name of any athlete ranked in the TOP 30, the name of its representative.

The concept of "authorized athlete representative" is preferred to the term "sporting agent" given the specific nature of the agents' athletic activity. The I.A.A.F. does not address the contractual relationship between "the authorized representative" and "the athlete" outside the placement activity. We will return later to the specificity of the sports agent's work duties in athletics.

#### **6.4 The regulation of FIBA**

The International Basketball Federation (F.I.B.A.) begins in 1997 to think about the best way to provide a legal framework to the exercise of the activity of agents. However, it will be necessary to wait until 2006 to see the regulation 196 governing the activity to see the day. It was on 1 September 2006 that an amended version of the Internal Regulations of the F.I.B.A., containing a regulation on players' agents (Rule H.5), came into force.

The definition of the sports agent of the F.I.B.A. The Athlete Agent is defined as a natural person representing and / or protecting the interests of players, coaches or clubs. Unlike F.I.F.A., and taking into account the mobility of technicians in basketball, the International Federation has authorized the use of coaches in the services of agents. For example, the Italian Volleyball League 197 has a specific regulation for the exercise of the activity of the agents and in which the definition of the sports agent is identical to that of the F.I.B.A. Sports agents 198 have been involved in the drafting of the regulations concerning them.

The provisions of this regulation are quite similar to those of the F.I.F.A. With regard to national transfers, the regulation states that "any affiliated federation which deems it necessary may draw up its own rules governing agents ..." (Article H.5.2) National Basketball Federations therefore have no obligation to implement place regulations specific to sports agents.

## **6.5 The regulations of the International Rugby Board (IRB)**

Following the increased professionalization of rugby, which officially became a professional sport in 1995, the IRB set up a working group, "Game Regulations Working Party", to consult the national member federations of the I.R.B. on the issue of recent changes affecting rugby. The group handed over to I.R.B. a report containing proposals for the revision of the regulations in force at that time. Following the expertise provided by the working group, the I.R.B. has introduced a new regulation, more suited to professional rugby. For the first time, the sports agent is mentioned in a regulation on sports agents in rugby. According to the regulations of the I.R.B. Regulation 5, each federation has the power to: "authorize and regulate the activity of agents acting on behalf of its members (or persons subject to its jurisdiction) and agents operating in the jurisdiction of that federation. The text further states that "each federation shall fix the appropriate rules governing and authorizing the activity of the agents, and deposit them with the I.R.B. ". In addition, it is stipulated that these rules must contain the general principles defined in Articles 5.1.1 to 5.1.10 of the I.R..B Regulation. The national member federations of the I.R.B. are therefore in principle obliged to adopt regulations concerning the activity of sports agents involved in their field. As regards the content of these regulations, subject to a few general recommendations imposed by the I.R.B., the national federations are left free to set up national regulations according to their assessments of their free will.

## **6.6. The sports agent in cycling**

### **6.6.1 The underside of a late legitimization of the activity**

The activity of sports agent, in the sense of a relationship between a cyclist and a professional team for the conclusion of a contract of employment, is institutionalized in cycling rather late in the 2000s. The reasons for this late official legitimization of the activity are to be found in the socio-professional structure of the bicycle "cosmos" 200. In cycling, like boxing, where managers, agents, bookmakers and other intermediaries work side by side, several standard agents share the segments of the sports intermediation function. Of these typical agents, three in particular (manager, sports director and sports agent) are distinguished by the nature of the professional tasks they perform in that they are used to mediate between the rider and a third party .

In cycling, historically, the activity of sports agent was until the mid-1980s exercised exclusively by the manager. His professional work was organized around two main tasks: representation of the interests of the cyclists, on the one hand, and organization and assembly of the trays for the directors of the criteriums, on the other hand.

The emergence of the figure of the cycling manager seems closely linked to the history of this sport and its relations with the state. The popular enthusiasm and the multiplication of competitions that accompany the increased democratization of cycling, in the aftermath of the Second World War, attracted "extra-sport" investors to cycling. In France, the press, the French Cycling Federation and the cycling industry welcome this arrival with great distrust because it bodes the establishment of a new economic order of the cycling market. Cycling

competitions are increasing and each race director is looking for a good place in the calendar for their race as well as the participation of the best riders. The means of communication being limited, at the time, some riders committed to participate in two races at once provoking the anger of the race directors.

The liberation of the bicycle market comes in the absence of intervention or regulation by the state or sports institutions. Meanwhile, as competitions multiply, the number of professional cyclists decreases which contributes to the creation of a group of elite professional cyclists. In the 1950s, professional cycling in France revolved around the criterium system. These elite runners are asked by the organizers of the criteria to participate in their race and the best of them are already offered a formal employment contract, attached to the collective agreement of the sponsoring company. However, the absence of a mechanism for controlling financial exchanges in the cycling economy and the anarchy that characterizes this market, at the time, contribute to the creation of a socio-economic context favorable to the emergence of a new professional group capable of providing optimal solutions to the problems posed by the liberation of this same market. This is how, in France, in the early 1950s we witnessed the empowerment of the management profession in cycling.

With his double cap, that of race organizer and that of runner's representative, the manager quickly asserts himself as a privileged regulator of the cycling economy. Far from worrying about the conflict of interest that potentially exists when the same individual is in charge of two functions with conflicting and divergent interests, the race directors are delighted by the arrival of managers in the cycling landscape to whom they are quick to entrust the "full powers". Although the sports directors could act as intermediaries on behalf of the riders in the sense that they are responsible for prospecting and recruiting the riders for their team, their function did not allow them to intervene in the management of the career the cyclist outside the contract that binds him to the team led by the sports director. The racing directors quickly understand that entrusting the managers with setting up the trays enables them to create quality posters and to provide additional guarantees regarding the participation of cyclists in their competition. The assembly of the trays is not entrusted to any manager, but to the one who represents the greatest number of successful cyclists. This approach will result, in France, the installation of a duopoly that will see two managers Daniel Dousset and Roger Piel dominate the bicycle market for more than twenty years.

In 1950, Daniel Dousset, former cyclist, tired of seeing the riders "deceived" by the sports directors of the professional teams or race officials because they do not always respect their contractual commitments, decides to become a sports agent. Initially, he is a sports agent and manages the careers of some great cycling names such as Jacques Anquetil, Fausto Coppi, Louison Bobet, Roger Rivière or André Darrigade among others.

However, in a few years, the monopoly he holds on the sports intermediation market allows him to conquer another area of specific professional competence which is that of organization and assembly of racing trays. Thus, he adds to his activity of sports agent that of manager. He is in charge of the Dauphiné Libéré and Baracchi Trophy trays. The success of Dousset fascinates his former cycling colleagues, many of whom try their hand at sporting agents. One of them, Roger Piel, who became an agent in 1954, emerges as Dousset's only major competitor. The two men exercised a duopoly on the bicycle market since the end of the 1950s to the extent that they hold, together, almost all of the offer. This situation places them in a situation of domination over the riders who, to have access to the cycling competitions, must be represented by one of these two manager-agents. Dousset and Piel engage in a fierce struggle to conquer the largest part of the cycling market. Their opposition will shape the structure of French professional cycling for more than two decades. The players involved in the cycling market are divided into two clans: Dousset pro- and 201 pro. The footprint of these two agents on cycling is such that even foreign riders who wish to take part in competitions on the territory French authorities must engage the services of one of these two agents.

Professional competition also moves on the sports ground where the impact of the rivalry between the two men takes all its measure. In 1959, while Henry Anglade was well placed to win the Tour de France, under the jersey of the regional team "Center-Midi", he suffered the rivalry of the riders of the French team who refused to help to get ahead of Spain's Federico Bahamontes in the alpine stages. The Spanish rider wins the Tour de France and Anglade finishes second in front of the French Jacques Anquetil and Roger Rivière. This lack of solidarity of the tricolor runners towards their compatriot can be analyzed through the prism of the "war of the clans". Henry Anglade is represented by Piel while all the riders of the Team of France as well as Bahamontes are part of the "stable Dousset 202". For the latter, patriotism has no place in professional sports. Runners managed by the manager-agents must serve the financial interests of the latter to the detriment of sports interests. Raphaël Gémiani<sup>203</sup>, the sports director of Jacques Anquetil reports having had in 1964 before the start of the Tour de France a conversation with his rider during which the latter told him to have been approached by Roger Piel, then agent of Raymond Poulidor. Piel would have made it clear to Anquetil that he would have no interest in winning a fifth Tour de France. On the other hand, if Poulidor finally came to win his first Tour, it could arrange Anquetil's business and help make it more sympathetic to the public. Moreover, in the event of Poulidor's victory, Piel would have promised Anquetil fifty well-paid contracts on the circuit after the Tour de France and fifty thousand francs. Anquetil refuses Piel's offer and wins the 1964 Tour de France.

While they had taken advantage of the liberation of the cycling market to have their competence and expertise in sports intermediation recognized, from the end of the 1970s, the professional autonomy and the validity of the managers' professional project were handed over. because of increased inter-professional competition. In cycling, the competition has the particularity that the border between the tasks that belong to each of the professions, here professional functions competing in the division of labor seems very fine. Competition between the different functions of sports intermediation is made possible by the fact that the different functions can offer different solutions to the same problem. The duopoly installed by Dousset and Piel on the professional cycling market guaranteed for more than twenty years, a protection of their "professional territory" (Abbott, 1988) against the onslaught of the interpersonal competition and the evolution of the borders of this one. But, as Abbott shows, the boundaries of the territories of the professions are not intangible. The sponsors, the leaders of the cycling teams and especially the sports directors of these teams begin to question the relevance of the solutions brought by the profession of manager (Abbott, 1988) thus leading to a weakening of his professional power that Abbott defines as the ability of a profession to maintain control over a territory (ibid., p.136-137).

In 1977, Cyrille Guimard, sporting director of the Gitane-Campagnolo team which, after the purchase of cycle manufacturer Gitane, became Renault-Gitane-Campagnolo, denounced what he called abusive percentages on the contracts of the riders taken by Dousset and Piel as well as as their management of the calendar of criterias after Tour. Guimard, who was managed by Piel during his racing career, seems to be expressing himself in an informed way. In the process, he informs the press that from now on there will be managers' services which means that to win contracts, the riders will no longer be obliged to call on a manager. Specifically, Guimard, and other sports directors quickly follow his example, negotiates directly with the rider the terms of his contract with the cycling team and once signed the contract, the cycling team becomes the employer of the rider. The denunciation of Guimard results in a rapid dismantling of the duopoly installed by Dousset and Piel. The withdrawal of these two managers from the cycling market benefits sports managers who start to take care not only of the recruitment of runners but also of the management of their sports career, a task hitherto accomplished by the manager-agents.



*"In the days of Dousset and Piel, the cyclist was owned by the manager and when the sports directors refused to work with the managers, the first thing the managers did was to threaten that they would withdraw their runners of the races. This is to say their domination! They behaved like macros204. "*

The lack of institutional mediation that accompanied the liberation of the cycling market contributed to the emergence and then to the assertion of the managerial function which benefited from a very wide autonomy of its field of action. While the autonomy of managers seems very great because of their domination of the cycling market, it does not allow them to escape the dependence of their function in the economic market 205. The professional power of managers is threatened as soon as there is a change in the distribution of financial flows. The economic capital of the managers-agents decreased considerably when the latter were deprived of the right to negotiate contracts on behalf of the runners in the late 1970s. In cycling, the loss of autonomy of a function is translated into the autonomy gain of another. The abandonment of the agent function by the managers-agents to devote themselves exclusively to the function of manager, that is to say that of race organizer, brings out the figure of the sports director. Until the end of the 1980s, the sports director will be the dominant function of sports intermediation in this sport.

Then, in the 1990s, we witnessed the development of "American-style" sports agent models, including Bill Stapleton, Lance Armstrong's agent. A former Olympic-level swimmer who became a lawyer, Stapleton introduced cycling into a model of sports representation that places the runner at the center of the tripartite relationship (runner-agent-club). Until then, the runner's economic capital was limited by the unequal distribution of (economic) power in cycling. The structure of the cycling space, organized through a complex set of relationships with multiple categories of actors and the presence of a dependency from one group to another, is reminiscent of ordinary forms of social dependency like paternalism or wage exploitation. The shift from one function to another remains widespread in cycling and is motivated mainly by financial considerations. It also testifies to the dependence of the group made up of individuals practicing in the field of sports intermediation in the face of the economic market.

*"I can count on the fingers of one hand sports agents who have not been sports director or cyclist. Cycling is a very closed environment. It's always the same people who deal with team management and rider management, it's just that they do not do both at the same time. They pass from one to the other. And that's understandable because it is only since the early 1990s that one can earn a living by exercising only the activity of sports agent. The salaries of cyclists are still very far from the salaries of footballers. A commission of 10% on an annual income of 30,000 euros, for the agent in cycling, on the one hand, and a commission of 10% on a transfer of several million euros, for the agent in football on the other: this is a good illustration of the fact that even if we do the same job as our colleagues in football, we do not have the same salary. "*

The sports intermediation market in cycling is characterized by high barriers to entry as a direct result of the lack of institutional oversight. The entry fee on the cycling market is calculated according to the quality of the candidate's relational networks. For the latter, the entrance fee decreases with the development of the quality and stability of relations with the various categories of actors present on the bicycle market. However, the duopoly installed by Dousset and Piel and the domination of the sports director seem to have left their mark on the cycling market where the transition from monopolistic or oligopolistic situations to a context of "liberation" from the intermediation market is not forthcoming. Today, in France, Belgium or Italy, to name only these three countries, we observe a concentration of the offer of sports intermediation services. Because of this concentration; in many countries, a few agents or even one (Michel Gros in France, Alex Carrera in Italy, Paul de Geyter in Belgium) are in a situation of monopoly in a weakly regulated market. It is in this context that the Union

Cycliste Internationale (U.C.I.) decided in 2011 to introduce into its statutes a regulation on the activity of sports agent.

### **6.6.2 Regulations of the International Cycling Union (U.I.I.)**

While professional circuits exist in cycling since the 1880s, it is only in 2011 that the Union Cycliste Internationale incorporates into its statutes on cycling sport a regulation concerning the exercise of the sporting agent profession. . The Regulation of Running Agent 207 came into force on January 1, 2011 to respond to the reality of an activity that operates in cycling from the first professional competitions. Late supervision intervenes to set the conditions for the exercise of the intermediary activity. The regulation defines the rider's agent as "a natural person who, for remuneration, pays a rider and a UCI ProTeam / a professional U.C.I continental team. / an organizer for the conclusion of a professional cyclist / criterium contract. ". Like similar provisions at the national level or in other sports, the U.C.I. provides for the creation of a U.C.I. for runners issued to individuals who have passed a U.C.I. ". The lawyers, parents, brothers, sisters and spouses commissioned by the rider are exempt from this examination. The U.C.I regulation specifies that it does not apply when the activity of agent of runners (AC) is not remunerated. If this precision seems, at first glance, useless, it is justified by the existence on the cycling circuit of intermediaries "volunteers" which it is very difficult to control the activity.

To be admitted to the examination, the candidate must have never committed a violation of the rules of doping. In addition, if specific national legislation regulates the AC activity, the candidate will also have requirements formulated by the U.C.I. "Have met all the legal requirements applicable to such a national activity before submitting an application for admission to the U.C.I. ". The U.C.I. issue a certificate valid for four years to successful candidates. The certificate is renewable upon request to U.C.I. and after the study of the AC activity of the previous exercise, the objective being to certify exclusively the individuals able to justify the effective exercise of the AC activity. Obtaining the U.C.I. authorizes the successful candidate to apply for a CA license from his National Federation after having subscribed to "a professional liability insurance policy with an insurance company recognized by his federation" 208. Thus, the national federations remain solely responsible for the control of the CA profession as well as for complying with the regulatory and legal requirements related to the exercise of the activity and "in particular with respect to liability insurance, both during the granting of the license only for the duration of its validity "209.

As for the rights and obligations of dismissed CAs, they are entitled to "represent or manage the interests of a rider only if he has the benefit of a written mediation contract signed and previously registered with the national federation. ". It is interesting to note that the licensed CA is authorized to "contact any rider who is not or no longer under contract with a team or for the conclusion of a contract for the period after the expiry of his contract current ". In other words, the CA is granted the right to contact contractually bound riders provided that the negotiated contracts start after the termination of their current contracts. The U.C.I. is, therefore, the only sporting authority to officially authorize the sports agent to offer his services to contracted athletes. The CA can only be paid by its principal and be:

(a) by a single lump sum payment payable at the beginning of the period covered by the contract between the licensed CA and the runner.

(b) by a split payment in two installments payable at the beginning of the period covered by the contract and at the beginning of the second half of the period covered by the contract. 211

The CA is authorized to carry on its activity in the form of a legal entity while the activity of its employees is limited to administrative tasks. In addition, the licensed CA must regularly communicate to his federation the list of his collaborators, on the one hand, and the names of

the riders he represents, on the other hand. In addition, the U.C.I. introduced in its regulation a series of ethical obligations stipulating in particular that the agent must "respect the rights of the negotiating parties and third parties and in particular refrain from any collaboration in a breach of contract. It is presumed, until proven otherwise, that any dismissed CA representing a rider breaking his contract without just cause is involved in the breach of contract. " In addition, the officer must "discourage his principal from using a substance, method or technique prohibited by U.C.I. And "in the event of evidence that his principal committed breaches of the U.I. Anti-Doping Regulations. : give up the representation of his principal and report the potential breach to the U.C.I. " The International Federation clearly expresses its desire to make the CA more accountable on the issue of doping.

In case of conflict between an agent and a rider it is at the Arbitral College of U.C.I. to settle disputes in accordance with the procedure laid down in Title 12 of the UCI Regulations, Discipline and Procedures.

U.C.I. licenses have been issued by the national federations since 1 January 2012.

### **6.7 The regulations of national federations**

Where they exist, the regulations issued by the national federations are essentially intended to transpose into the national regulations, provisions contained in the regulation on the sporting agent activity of their international federation. We observe a correlation between the existence of national regulations and the economic weight of their sport. As a result, more than 90% of FIFA member countries, 17 national athletics federations, 22 basketball federations, 10 rugby federations, 7 handball federations and 6 volleyball federations have national regulations governing the activity of sports agent. In athletics or basketball, most national regulations strictly reflect the provisions of the regulations issued by their international federation.

On the whole, very few national federations took the initiative to establish a specific regulation concerning the sports agent, without being constrained by their international federation or by the state regulation, as it is the case in France . With the exception of the German, Austrian and Portuguese handball federations, the Finnish Ice Hockey Federation and the English Cricket Federation, which have issued activity-specific regulations, the national sports bodies seem reluctant to even for fear of having their national regulations declared incompetent in this respect. In 2010, the English Swimming Federation set up a system for declaring online sports agents on a voluntary basis.

In Europe, apart from athletics, it is essentially the collective sports, which have enacted specific regulations for the sports agent. Initiatives emanating from national sports bodies remain isolated and reflect the desire to give sports agent activity a frame of reference and action that allows for a combination of surveillance and control in the face of financial drifts present in the context of transfers of funds. sports.

In the United States, coaching of the profession of sports agent in professional sports is the responsibility of the professional associations of players (Players Associations). Each professional sports league, including the big four, ie, basketball, American football, baseball and ice hockey, entrusts player unions with the regulation of the activity of sports agent in their sport. These player unions are private forms of regulation of the activity of sports agent.

As exclusive representatives of the interests of professional players, according to section 9 (a) of the National Labor Relations Act of 1935, unions have the power to negotiate the terms and organization of the players' work with the professional leagues. While the unions have used this right to negotiate and obtain a series of social protection provisions for all players such as the minimum wage or other benefits, they felt that it was in the interest of the players to appeal. to a third party when it comes to negotiating an individual contract. Player unions delegate this bargaining power to sports agents for two main reasons. The first is to see the



possibility of a conflict of interests between the collective interests represented by the national player's union and the individual interests of each player, insofar as the players compete with each other as well in the field than in the transfer market. The second is the fundamental right of each player to freely choose his legal representative in the context of contractual negotiations.

The first regulation governing the activity of sports agent was enacted in 1983 by the National Football League Players Association (NFLPA) 213. This device engendered similar initiatives from the basketball players' unions (National Basketball Players Association), baseball 215 (Major League Baseball Players Association), and 216 (National Hockey League Players Association) ice hockey. Trade unions of professional league players, by virtue of their bargaining power and certification of sports agents, deviate from the role generally assigned to unions and which consists in representing collective interests with the governing bodies.

We will discuss the issue of "private" regulations in the last chapter when we will present some recommendations on the regulation mechanisms of the sports agent profession.

### **6.8 What is the legal validity of sports regulations?**

Many interviewees, agents, sportsmen, coaches, club managers and other sports officials raised the question of the competence of the national federations, governed by private law, to issue independent regulations on the profession of sports agent. While the legitimacy of the regulations of the sports federations, created as a result of ethical concerns, is not systematically called into question, the respondents point out that there is a certain incompatibility to subordinate the validity of the mandate contracts to the respect of the provisions enacted unilaterally by the federations, which are foreign to these contracts. In Europe, such interference in contractual relations is essentially a matter for the public authorities. Sports organizations, of private petrol, can not of their own accord codify and regulate a profession without first obtaining a derogation from the legislator, that is from the state. On the other hand, in the United States, as we have stated above, it is quite accepted that a private organization can regulate a profession whose exercise can not be done without the members of the private organization in question.

Thus, professional players' unions are authorized to regulate the profession of intermediary because its exercise is limited to the professional field. A multi-professional workspace makes it particularly difficult to articulate the various agreements negotiated collectively at the local level. The articulation and harmonization between the various agreements negotiated collectively, at local or national level, and the provisions enacted by the legislator in the name of the common good, are particularly difficult to obtain in multi-professional workspaces, each profession seeking to delimit its field of action by encroaching on that of the competing professions or not, but established on the same field (Abbott, 1988: 154-156).

Abbott studies professional associations as organizations made up of groups of individuals who have been formally recognized as having the right to full control over a professional field and thus a field of competence, to the extent that decisions made by professionals are not contrary to the general interest. National and international sports federations may be considered as deprived of any international authorization in the field of contract law. However, in the absence of incompatibility of their regulations relating to sports agents with the respective national legislation, there is no clear legal basis for challenging the right of an international sports federation to regulate the profession of sports agent. What seems to be a problem is not so much the legitimacy of the competence of an international federation to regulate the profession of sports agent as the unequal distribution of legal powers between the different actors. We will develop this question in the section dedicated to recommendations.

Recall, however, that in the sole case of European case law relating to sports agents (the Piau judgment), the Court of First Instance of the European Communities (CFI) expressed doubts

as to the legitimacy of a sports federation such as FIFA to create a regulation that could affect an economic activity peripheral to the sports activity, in this case that of sports agent. According to the court, *"the very principle of the regulation of an economic activity does not concern the specificity of sports or the freedom of internal organization of sports associations, by a body governed by private law without any delegation of a public authority for that purpose. can not be held from the outset to be compatible with Community law, particularly as regards respect for civil and economic freedoms "*.

In this chapter, we wanted to expose the various actors involved in the formal regulation of the sports agent profession and the links between their regulatory systems. When such regulations are enacted, they result from the will of the public authorities and sports governance to protect athletes, sports ethics and sports equity. Although there are very few specific regulations for sports agents and significant disparities between them, the power of regulation conferred on the sports movement does not appear to be disputed. We present in the appendix a summary of the regulation mechanisms of the profession of sports agent in the twenty-seven Member States of the European Union (appendix 6.2) as well as a summary of the various regulations emanating from the international sports federations and relating to the sports agent (Annex 6.3).

### Notes :

156 Art.1.6.4.3. k) de FIVB Sports Regulations, mars 2009.

157 Chapitre IV, Règlement de transfert entre fédérations, § 24, sept. 2007.

158 Alinéa I de l'Article 15.2 de la loi du 16 juillet 1984 modifiée par la loi n°2000-627 du 10 juin 2010 article 7.

159 Article 1er et 2.

160 Articles 2, 3 et 4.

161 Articles 6, 7 et 8.

162 Article 9.

163 Article 9.

164 Article 14.

165 Articles 16 et 18.

166 L'affaire Mexès constitue une première dans le football. Après la condamnation prononcée par la Commission du règlement des litiges de la FIFA le 31 août 2004, le club romain saisit le Tribunal Arbitraire du Sport lequel met fin le 5 décembre 2005 au conflit opposant l'AJ Auxerre à l'AS Rome. Voir TAS 2005/A/916 IS Roma c/ FIFA disponibles sur : <http://www.tas-cas.org>

167 Article 20.

168 Ordonnance de la Cour du 16 septembre 1997, Koelman contre Commission, C-59/96 P, point 42

- Arrêt du 13 avril 2000, Aff. C-176/96, Lehtonen, Rec. p. I-268. - Arrêt du 15 décembre 1995, Aff. C-415/93, Bosman, Rec. p. I-4921

169 Articles 1er, 2 et 10.

170 Article 2.

171 Articles 4 et 5.

172 Articles 6 et 7.

173 Article 12.

174 Annexes B et C du règlement.

175 Article 14.

176 Articles 15, 17 et 19.

177 Article 15.

178 Article 17.

179 Article 19.

180 Articles 15, 17 et 19.

181 Articles 15, 17 et 17.

182 Article 22.

183 Article 23.

184 Article 81 du traité instituant la Communauté Européenne paragraphe 3 : Toutefois, les dispositions du paragraphe 1 peuvent être déclarées inapplicables:

- à tout accord ou catégorie d'accords entre entreprises,
- à toute décision ou catégorie de décisions d'associations d'entreprises et

- à toute pratique concertée ou catégorie de pratiques concertées qui contribuent à améliorer la production ou la distribution des produits ou à promouvoir le progrès technique ou économique, tout en réservant aux utilisateurs une partie équitable du profit qui en résulte, et sans:

- a) imposer aux entreprises intéressées des restrictions qui ne sont pas indispensables pour atteindre ces objectifs,
- b) donner à des entreprises la possibilité, pour une partie substantielle des produits en cause, d'éliminer la concurrence.

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211 Le Règlement d'Agent de Coureurs d'U.C.I. point 26.

212 Le Règlement d'Agent de Coureurs d'U.C.I. point 31.c.

213 *National Football League Players Association Regulations Governing Contract Advisors* (1983), disponible sur : <http://www.nflpa.org> ( le texte énumère une liste de trente exemples de comportements interdits à l'agent sportif).

214 *National Basketball Players Association Regulations Governing Player Agents* (1986), disponible sur : [http://www.nbpa.com/downloads/NBPA\\_Regulation.pdf](http://www.nbpa.com/downloads/NBPA_Regulation.pdf) ( le règlement précise les dix-sept raisons qui peuvent donner lieu à des sanctions disciplinaires, exige des agents un niveau élevé de « compétence professionnelle » et d'intégrité morale.

215 *Major League Baseball Players Association Regulations Governing Player Agents* (1988), disponible sur : <http://www.bizofbaseball.com/docs/MLBPAREgsPlayerAgents.pdf> ( le règlement stipule que le syndicat peut suspendre la licence délivrée à l'agent si ce dernier est déclaré coupable de tout comportement considéré comme non compatible avec l'exercice de la profession d'agent sportif.

216 *Hockey League Players Association Regulations Governing Agent Certification* (2005), disponible sur : <http://nhlpa.com/About-Us/CBA/> (la liste des agents licenciés est publiée sur le site internet du syndicat des joueurs et les clubs sont autorisés à négocier uniquement avec les agents dont le nom figure sur cette liste au moment du début des négociations).



## **DEFINITIONS**

Mis à jour au 11/10/2018