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# SPORTS LAW


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MLGTS Sports Team in major international football transfers.

# Exclusions on the right to deduction in sports activity

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The general rule of the function of VAT is based on the deduction mechanism of the tax levied, in order to prevent its incorporation in a hidden way in the price of goods and services, giving rise to the emergence of cumulative effects, which are contrary to neutrality, which is its main characteristic.

Therefore, all the tax levied on purchases of goods and services is subject to deduction provided that such goods and services will be effectively used in the context of a professional or commercial activity.

However, as is known, due to administrative reasons related to the impossibility of strict control of the diversion for private consumption of certain goods and services, the Portuguese legislator felt the need to exclude input tax on certain acquisitions from the right of deduction.

This is the case, with the expenses concerning tourism vehicles, transports and trips, accommodation, food and drinks, among others, which are expressly excluded from the right of deduction as envisaged by paragraph 1 of Article 21 of the Portuguese VAT Code.

These expenses, essential to the activity of sports institutions, have a substantially relevant penalizing effect; thus there is no justification, as per the ease of demonstration of the allocation conferred on them, for the literal application of the above-mentioned Article 21.

Indeed, similar to the openness (albeit partial) that the legislator granted in relation to the organization of events activities, sports activity is also, given its publicity and notoriety, worthy of a similar framework, since there is no real danger of diversion of the expenses at issue for private consumption.

The draft of the Portuguese VAT Code clearly reveals that "the limitation of the right of the taxable person to deduct VAT on expenditures in question, was justified by the National Tax Administration only by the difficulty in controlling with precision the division between the professional and private portion of costs concerning this type of goods and by the risks of fraud or abuse that arise from there".

The position of the Portuguese Tax Authorities has remained faithful to a literal interpretation of the rule contained in Article 21 of the Portuguese VAT Code, which means that, irrespective of the existence of unequivocal evidence of an exclusively business use, the deduction is not allowed.

Meanwhile, national case law is not abundant in cases related to exclusion on the right to deduct, taking into consideration that the economic players themselves, whether or not sports related, conform to the literal interpretation of Article 21 of the Portuguese VAT Code.

Even in cases in which the Portuguese Supreme Administrative Court was asked, within the context of appeal proceedings, to decide on this issue, it adopted its decisions always in a perspective of interpretation of concepts, that is, the court tried to understand if the expenses incurred by taxable persons fit into the rules that set aside the exclusion on the right to a tax deduction.

At the European Union level, paragraph a) of Article 168 of Council Directive 2006/112/EC, 28 November 2006, establishes that, in so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct from the VAT for which he is liable the VAT due

> Considering, *inter* alia, the Court of Justice case law related to the right of VAT deduction, we are of the opinion that there should be no legal restrictions on the exercise of this right in the context of sports activity, taking into account that it is common knowledge that expenditures related to accommodation, food and travel, including road tolls, are exclusively used within sports activity and are not diverted for private consumption.

1 *Princípios gerais do anteprojecto IVA*, Núcleo do Imposto sobre o Valor Acrescentado, Lisbon, 1984, pp. 38 *et seq*.

European Court of Justice case law is abundant and settled in what regards the understanding that VAT deductions should be immediate and full, provided that the goods and services purchased are used within a taxable person's activity.

or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person.

The provision in question allows us to conclude that the full and immediate tax deduction is the general rule in what regards expenses of a professional or commercial nature.

The general rule of full and immediate deduction can only be set aside in cases of expenses that are not strictly professionally related, such as expenditures on luxuries, amusements or representation expenses, as well as in cases in which, for cyclical reasons, Member-States may fully or partially exclude from the deduction regime some or all of capital goods or other goods (Articles 176 and 177, both of Council Directive 2006/112/EC of 28 November 2006). Outside of the two aforementioned situations, Member States have also the possibility, until the adoption of European legislation which regulates the procedure for deduction, to keep in force the exclusions on the right to deduct laid down in the respective national legislation on January 1, 1979, or on the date of accession to the European Union (Article 176, paragraph 2 of referred Directive).

European Court of Justice case law is abundant and settled in what regards the understanding that VAT deductions should be immediate and full, provided that the goods and services purchased are used within a taxable person's activity.

Even in cases in which the exclusion of the right of deduction is justified for reasons related to tax fraud and evasion, namely resulting from diversion for private consumption of expenses that contain VAT that was subject to deduction, as in the case of accommodation, food and travel expenditures, the truth is that the Court of Justice has considered that a risk does not exist if it appears from the objective elements that the expenses were used for strictly professional purposes.

The Court of Justice has also considered that national legislation which excludes from the right to deduct the expenses mentioned above without the possibility for the taxable person to demonstrate the absence of fraud or tax evasion in order to benefit from the deduction does not constitute a proportional mean for the objective of fighting fraud and tax evasion and excessively affects the objectives and principles of the Sixth Directive.

In light of the foregoing, we are of the opinion that there should be no legal restrictions on the exercise of the right of deduction in the context of sports activity, taking into account that it is common knowledge that expenditures related to accommodation, food and travel, including road tolls, are exclusively used within sports activity and are not diverted for private consumption.

Even if considering that the exercise of such right needs to be demonstrated, the truth is that, in the current context, no deadline is granted to any sports entities to prove the allocation of the expenditures at issue. ■

# Partial Tax Residence – a new tax concept especially useful in international player transfers for tax efficiency

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The announced Tax Reform on Portuguese Personal Income Tax (IRS Reform) – under discussion in the National Parliament, with entry into force in 2015 – among other measures includes a new concept: the Partial Tax residence.

According to current internal rules, a tax resident in Portugal is considered a person who (i) stays in the country for more than 183 days during the relevant year or (ii) has, on 31 December of the relevant year, a place that he or she intends to use as a habitual residence.

Someone who is considered a tax resident in Portugal is obliged – as indeed in most States – to pay taxes based on all income, including income obtained in other countries (called «taxation on worldwide income»).

The IRS Reform Commission points out that «growing globalization has increased the number of situations in which during the same tax year individuals are resident in two or more countries»[1]. Football players and other sports practitioners that change their club and country by international transfers are frequently in this situation.

As a general rule, the change of residence in the middle of a tax year creates two main tax problems. The first problem results from a tax residence conflict –athletes are considered residents for tax purposes in the country from which they come if they have stayed in that country more than 183 days, and they are also considered residents for tax purposes in the destination country because they will have a place there that they intend to use as their habitual residence. While it is true that in the case of Portugal it is possible to use the Tax Treaties for the Avoidance of Double Taxation (Double Taxation Treaties – DTT)[2] to determine in which of the countries an athlete will be considered resident for tax purposes in a specific tax year. However, it is also true that a tax residence conflict often generates a slow, complex and bureaucratic procedure. The second problem is linked to the «taxation on worldwide income» rule – which provides that athletes should pay taxes based on total annual income in the country where they are considered a resident for tax purposes; this means that the income obtained before or after a transfer, according to each case, will be taxed in the country of destination or in the country of the club from which an athlete comes (depending on where he or she is considered resident for tax purposes). Typically, transferred athletes are confronted with double taxation – the one suffered in the country where the income was obtained and the other one occurs in the destination country.

Precisely in these situations of conflict of tax residences and double taxation of income, the application of DTT with domestic law is important. Even if it is not possible to completely eliminate the tax charge increased due to the change of country, the DTT competes, at least, for its mitigation.

The introduction of a partial tax resident concept, proposed by the IRS Reform Commission, is in line to solve and simplify these difficulties. According to the solution proposed, a person will be considered a tax resident in Portugal if stays in the country more than 183 days during the related year or has, on any day of the relevant year (and not only on 31 December), a place that he intends to use as his habitual residence. The innovation will be, expressly, that anyone who is considered resident (because of both criteria, the 183 days and the habitual residence place) becomes a resident since the first day of a stay (and not before) and ceases to be a resident after the last day of a stay in Portuguese territory. One can be, therefore, a tax resident in Portugal only for a part of the relevant year.

For example, this new concept allows an athlete – we could isolate examples of athletes – who plays for Real Madrid in the 2014/2015 season and is transferred to Portugal in August to represent a Portuguese Club in the 2015/2016 season, is considered a tax resident in Portugal only for the period between August and December of 2015, and not in the period between January and July of the same year of 2015. As a consequence, on the one hand, the athlete will not have to declare in Portugal the revenues paid by Real Madrid (and other income) for the period between January and July, 2015, but, on the other hand, he must declare the income for the period between August and December of 2015 (in this case, the origin of the income is not relevant). Otherwise, if the transfer occurs from a Portuguese Club to Real Madrid, the income related and paid after the change of country will no longer be declared or generate taxes in Portugal.

> The Tax Reform on Portuguese Personal Income Tax will introduce the new concept of Partial Tax residence that represents a particularly relevant legal solution in cases of the international transfer of athletes, since it simplifies, decreases bureaucracy, and introduces fair personal tax treatment on the operations of international transfers.

This new solution proposed by the IRS Reform Commission – adopted by the Government to be discussed in the Parliament – represents an important simplification of bureaucracy, as well as a fairer solution in which regards to the tax consequences of an international transfer. ■

1 IRS Reform Commission Report – September 2014, p. 49.
2 Portugal has 66 tax treaties in force – see http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/convencoes_tabelas_doclib/.

# The New Intermediaries

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The new FIFA regulation on working with Intermediaries ("Regulation"), initially approved in the framework of FIFA's Executive Committee meeting which took place between the 20th and the 21st of March, was given the green light during the organization's 64th Congress on the 11th of June 2014, wherein the amendments made to the Statutes and Rules of Application of the Statutes of FIFA, essential for the entry into force of that Regulation, were implemented.

This Regulation, applicable as from the 1st of April 2015, emerged as a result of the interest demonstrated by FIFA to reformulate the current FIFA Players' Agents system, which was originally expressed during its 59th Congress on the 3rd of June 2009.

To justify the need for this reform, FIFA has advanced the following arguments:

*(i)* Only a small percentage (25% to 30%) of players' transfers was expressly carried out by Intermediaries;
*(ii)* There were evident difficulties implementing the current system between FIFA and the national Federations;
*(iii)* Frequent conflicts between the laws of FIFA and national legislations;
*(iv)* Apparent intervention of unlicensed players' Agents; and
*(v)* Existence of clear difficulties in negotiating contracts.

WHOMEVER WANTS TO CARRY OUT INTERMEDIATION ACTIVITIES WILL NO LONGER NEED A LICENSE (THE LICENSES OF PLAYERS' AGENTS, CURRENTLY ESSENTIAL TO PERFORM SUCH ACTIVITY, WILL LOSE THEIR VALIDITY WITH THE ENTRY INTO FORCE OF THIS NEW REGULATION AND ARE REQUIRED TO BE DELIVERED TO THEIR NATIONAL FEDERATIONS), OR DEMONSTRATE KNOWLEDGE OF THE RULES GOVERNING THE ACTIVITY (THERE WILL NOT BE ANY TESTS FOR ACCESS TO THE ACTIVITY), NOR IS IT COMPULSORY TO HIRE ANY PROFESSIONAL LIABILITY INSURANCE OR PROVIDE ANY COLLATERAL.

Also according to FIFA, the change was intended to encompass the largest number of transfers, thus increasing control over the "intermediaries".

However, it happens that, in our view, the Regulation misses the mark and comes with more of a "deregulatory" effect than regulatory.

This is so, because from the outset whoever wants to carry out intermediation activities will no longer need a license (the licenses of players' Agents, currently essential to perform such activity, will lose their validity with the entry into force of this new Regulation and are required to be delivered to the respective national Federations), or demonstrate knowledge of the rules governing the activity (there will not be any tests for access to the activity), nor is it compulsory to hire any professional liability insurance or provide any collateral.

According to the Regulation, in order for an individual to perform services as an Intermediary, it will now suffice to conclude a contract of intermediation, proceed to register it with the national Federation and sign the Intermediary Declaration annexed to the Regulation (which, in practice, replaces the prerequisite of proving an "impeccable reputation" required by FIFA – Article 4, paragraphs 1 and 4 of the Regulation).

Moreover, in addition to opening the doors of intermediation activity to a greater number of stakeholders, regardless of their skills, FIFA "passed the torch" of the key role of supervision to the national Federations. It did so by requiring that they adopt internal regulations applicable to that activity, which need to meet the minimum standards laid down in the FIFA Regulations, but that can go beyond that, which means that most likely we will see, from country to country, rules significantly different for regulating the same activity. An activity that is today of an essentially international character.

On a different note, the Regulation establishes that clubs and the players (who hire new Intermediaries) will have to adopt behaviors capable of ensuring that Intermediaries comply with the rules implemented; they will be blamed when this does not happen. *Idus est,* FIFA, albeit through national Federations, resigns from its function of ensuring the proper conduct of Intermediaries in the performance of their activities, and now shifts the burden of ensuring compliance and requires the clubs and the players to make it work.

In addition to other duties, clubs and players are responsible for guaranteeing that Intermediaries sign the Declaration of Intermediation as well as a representation contract (Articles 2, paragraph 2, and 3, paragraph 2), for sending the declaration after the completion of the transaction to the relevant national Federation (Articles 3, paragraphs 3-5), for informing the national Federation of all the details and remuneration paid to Intermediaries, ensuring that these contracts allow for the full disclosure of this information (Article 6, paragraph 1), for annexing the intermediation contract to the transfer or the employment contract at the time of player registration, also ensuring that the intermediation contract is signed by the Intermediary that intermediated the contract (Article 6, paragraph 2), for guaranteeing that no form of remuneration is paid to the Intermediary when the contract of transfer or work involves a minor (Article 7, paragraph 8) and, finally, for using all reasonable means to ensure that the Intermediary is not acting in a conflict of interests (Article 8, paragraph 1).

Thus, it seems inevitable but to conclude that FIFA indeed intended a paradigm shift. However, this change was not an expression of the desire to effectively control and monitor all players' transfers, but a reflection of the desire to become aware of costs incurred in connection with the intermediation activity and discredit the importance that has been attributed to the activity of players' Agents (see, for example, the end of the protection of exclusivity clauses and the prohibition of payment between clubs through agents).

We believe that the path chosen was not the best to the extent that the deregulation of this activity will harm clubs and players which now, rather than relying on the collaboration of specialized and properly accredited professionals, are "in the hands" of anyone interested in developing this activity, regardless of their competence and knowledge of the rules that govern the profession.

Still, we can only wait and see how the Portuguese Football Federation will regulate this matter, because, only then, we will be able to fully comprehend the impact it will have on the way the intermediation activity will be performed in Portugal.

Incidentally, the same will happen in other countries, and, with this new Regulation, an Intermediary acting in different countries will need to register in each of them and be subject to the different rules that each country chooses to implement.

The question that arises is the following: Does a fragmented approach to the regulation of an activity of such an international character make sense in an increasingly globalized market? ■

# TPOs: from "strategic partners" to clubs shareholders?

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Recently, FIFA president Sepp Blatter has announced that Third Party Ownership (TPO) of the economic rights of football players will be forbidden. With that decision, the debate about TPOs is probably over, but the main questions that made them possible in the first place are not.

As we know, the labor market in football is almost totally open, players can move easily during the August and January transfer windows. With fabulous transfers and unpredictable last minute loans, football´s labor market is a constant source of fantastic stories that fascinate millions of fans, who follow the last closing days of the market like it was an exciting television soap opera.

And what about the capital market? Does capital move very easily in football? Lending by banks is possible everywhere, depending on market conditions. But is it easy to buy equity, to buy a football club? In some countries, the answer is yes. In England, it is a clear possibility, if only you have the money. In the last decade, famous clubs like Chelsea, Manchester City and even United were bought.

Other countries, like France, are following this trend, and that is one of the reasons TPOs are forbidden in England and France. **If it is very easy to buy equity in a club, investors do not need to buy the economic rights of players**.

In other countries, mostly in Portugal and Spain, the situation is clearly different. Traditional clubs like Benfica, FC Porto, Sporting, Real Madrid or Barcelona, still maintain their old spirit of being run by associates and dislike the idea of being bought by exotic millionaires from Russia, Thailand or Qatar. So, capital has to search other ways of financing the business. That is why TPOs were so important in these countries in the last decade. They financed the clubs by buying players, not the clubs. Money entered the football industry by another door.

Sometimes, this created conflicts with clubs or even coaches. But overall it was, and still is, a very effective way of financing clubs. If a TPO buys the economic rights of a player, or part of them, in association with a Portuguese club, it is possible for that club to buy better players, and be more competitive.

There are risks, for the club and for the TPOs, but those will always happen, because the ownership of the economic rights is independent from the past or future performance of the player. If a player is very good, and the club can raise his market value in one or two years, the player is then sold to a bigger club in a richer market, and the benefits are shared between the club and the TPOs.

In the special case of Portugal, clubs like FC Porto and Benfica have been an excellent investment for TPOs, who helped to transform these clubs into "hubs" of talent, revealing a lot of players to Europe and selling the best ones to great clubs in England, Spain, France or Russia for large amounts. Without the capital provided by TPOs the excellent exporting performance of the two most successful Portuguese clubs would have been much more difficult, and in 2014 it would have been impossible to have 2 Portuguese clubs, Benfica and FC Porto, among the best 8 in the Champions League.

**You can say that TPOs were "strategic partners" for Portuguese clubs, because they provided additional capital that was efficiently used in a lot of cases**. For Benfica and FC Porto, and other clubs in South America, TPOs were a clear "competitive advantage", and that was probably the reason why English clubs, and others, started to protest.

Some, like Platini, argued that a transparency problem exists with TPOs, because their owners are unknown, or because illegal money is entering football. But, a lot of financial companies or hedge funds that are very active in financial markets have the same characteristics.

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What is the difference? Probably there should be a FIFA registration for TPOs, but will that change the economics of the industry? The answer is no.

The fundamental issue is that football is a very interesting financial business, generating millions in revenues. So, it is expected that investors come to this business. Where they cannot buy clubs easily, they started to buy players, and the money kept flowing in, making it possible for a lot of clubs to reach higher levels of performance.

Unfortunately for some Portuguese clubs, FIFA and UEFA don't seem to share these ideas, and FIFA president has announced a prohibition of TPOs for the future with a brief period of adjustment.

How can the clubs adjust to the new legal framework? One possible solution will be to invite TPOs to invest directly in the clubs and to become shareholders. Another will be for TPOs to become similar to investment banks, and lend money directly to clubs to finance the transfers of players. Whatever the solution, money will find a way... ■

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# EU adopts a new plan for Sport

The new EU work plan for sport aims at developing the European dimension of this sector and foresees cooperation among Member States and European institutions in several topics of particular relevance for sport, notably in matters related to doping, match-fixing, sport funding, among others.

## Introduction

The Lisbon Treaty is a relevant milestone in the history of sport in the European Union (EU or Union). In this regard, Article 6 of the Treaty on the Functioning of the European Union (Treaty) foresaw EU competence to develop actions to support, coordinate or supplement the actions of the Member States in the field of sport. In addition, it was expressly provided for in Article 165 of the Treaty that the EU contributes to the promotion of European aspects of sports, carrying out actions aimed at "developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.".

In this context, subsequent to the 2011 Commission Communication on sports[1], the publication of the Council's Resolution on a European Union Work Plan for Sport (2011-2014) gave rise to "a new chapter of European cooperation on sport policy"[2].

Following the work carried out during 2011-2014 period, the EU Work Plan for Sport 2014-2017 (***Plan***)[3] was subsequently published in order to continue to pursue the development of a European cooperation framework in the field of sport. The said Plan established the priority themes, key topics, outputs and working methods and structures for the purposes of implementation of activities to be undertaken by the EU in this field, the key points of which shall be analyzed in this article.

## Development of the European dimension in sport

In line with the provisions of the Treaty, one of the central objectives of the Plan relates to the necessity to further develop the European dimension in sport. In this context, and in order to achieve this goal, the Plan foresees the following guiding principles:

(i) to promote a cooperative and concerted approach among Member States and the Commission to deliver added value in the field of sport at EU level over the longer term;

(ii) to address transnational challenges using a coordinated EU approach;

(iii) to take into account the specific nature of sport;

(iv) to reflect the need for mainstreaming sport into other EU policies;

(v) to work towards evidence based sport policy;

(vi) to contribute to the overarching priorities of the EU economic and social policy agenda, in particular the Europe 2020 Strategy;

(vii) to build on the achievements of the first EU Work Plan for Sport;

(viii) to complement and reinforce the impact of activities launched under the Erasmus+ programme in the field of sport.

Taking into account the guiding principles referred to above, it is intended, in the context of the Plan, that the Member States give priority to the themes and topics related to the Integrity of Sport, Economic Dimension of Sport and Society.

Regarding the topic Integrity of Sport, the Plan aims at addressing matters concerning

1 COM(2011) 12 final, of 18.01.2011.
2 *Cfr*: Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of the European Union Work Plan for Sport 2011-2014, COM(2014) 22 final, of 24.01.2014.
3 Comprised in the Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, of 21 May 2014, JOUE C 183/12, of 14.06.2014.

anti-doping, the fight against match-fixing, protection of minors, good governance and gender equality.

Under the topic Economic Dimension of Sport, the Plan refers to issues related to sustainable financing of sport, the legacy of major sport events, economic benefits of sport and innovation.

Lastly, with regard to the topic Sport and Society, the Plan foresees an intervention in matters related to health-enhancing physical activity, and education, training, employment and volunteering.

In accordance with the Plan, the intervention in the above identified matters and topics shall be made, *inter alia*, through the preparation of recommendations or guidelines developed by groups of experts appointed for this purpose, the exchange of best practices and/or elaboration of related guiding principles.

## Working methods, structures and other measures

Based on the guiding principles for the development of the European dimension in sport, the Plan states that, in addition to cooperation between Member States, it is relevant to ensure cooperation between the EU and the sports movement and the competent organizations at national, European and international levels.

In this setting, the Plan foresees the creation of five experts groups, appointed by the Member States, who will intervene in the following areas: match-fixing, good governance, economic dimension, health-enhancing physical activity and human resources development in sport.

Among the "Other Measures" identified in the Plan, we highlight the invitation addressed to the Member States, the Commission and the Presidencies of the Council to take into account sport in the formulation, implementation, and evaluation of policies and measures to be adopted in other fields, and to recognize the importance of the contribution of sport to the goals of the "Europe 2020" strategy, in particular regarding the potentialities of this sector for the promotion of a smart, sustainable, and inclusive growth and the creation of jobs.

## Conclusion

The Treaty explicitly foresaw EU competence in sport related matters and has given it the "go-ahead" to develop actions intended to support, coordinate or supplement the action of the Member States in this field. The Union, on the other hand, has taken the opportunity to make use of the competence conferred by the Treaty, having undertaken the necessary efforts to take a more active role in this sphere. Accordingly, and at least since 2011, with the publication of EU Work Plan for Sport 2011-2014, the EU has carried out a systematic and coordinated action with the aim of strengthen European cooperation in matters with relevance to sport and to develop the European dimension of this sector.

This is an effort that should be praised, considering the relevance sport currently has for the European economy and society and the need to address, discuss and tackle topics with particular importance for the development of this sector, such as doping, match-fixing, funding of sport, among others.

However, it should be highlighted in this respect that, in our opinion, the intervention of the Union should be undertaken in close cooperation with the sport movement and the competent sport organizations, in order to achieve balanced results that respect the specificities of this sector.

To that extent, we will have to wait for the report on the implementation of this Plan, to be presented by November 2016, which will certainly allow us to draw conclusions about the real impact of EU action in the field of sport. ■

Based on the guiding principles for the development of the European dimension in sport, the new EU Plan for Sport states that, in addition to cooperation between Member States, it is relevant to ensure cooperation between the EU and the sports movement and the competent organizations at national, European and international levels.

# Legislation, Case Law, Acts of the European Institutions and other decisions with relevance to Sports Law – January-November 2014

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## I. Portuguese legislation with relevance to Sports

1. **Order of the Presidency of the Council of Ministers no. 9/2014**, of 17 January, approving a list of substances and methods which are prohibited within and outside sports competitions, and revoking Order no. 22/2013, of 23 January.

2. **Order of the Presidency of the Council of Ministers and the Ministry of Solidarity, Employment and Social Security no.103/2014**, of 15 May, establishing the sports results to be taken into consideration, the amount and the terms of granting of awards in recognition of the merit of sports accomplishments, pursuant to Article 32 of Decree-Law no. 272/2009, of 1 October, which determines specific measures for the support and development of high performance sports.

3. **Order of the Presidency of the Council of Ministers and the Ministry of Internal Administration no.102/2014**, of 15 May, establishing the mandatory security system applicable to entertainment shows in authorized sites in order to promote them in safety conditions.

4. **Law no. 33/2014, of 16 June,** introducing the first amendment to Law no. 74/2013, of 6 September, which creates the Portuguese Court of Arbitration for Sport and adopts its statutes.

5. **Decree-Law no. 93/2014**, of 23 June, introducing the first amendment to Decree-Law no. 248-B/2008, of 31 of December, which establishes the legal regime for sports federations and the requirements for the granting of the statute of sports public utility.

6. **Decree-Law no. 132/2014**, of 3 of September, introducing the first amendment to Decree-Law no. 98/2011, of 21 September, which creates the Portuguese Institute of Sports and Youth, I.P.

## II. Acts of the European Institutions

1. **Proposal for Strategic Actions 2014-2020: Gender Equality in Sports**, February 2014

   Following the "EU Conference on Gender Equality in Sports", in December 2013, the Expert Group on "Gender Equality in Sports" presented this proposal for strategic measures to be adopted by the European Commission, the governments of the Member-States and other relevant sports stakeholders.

   The proposals presented by the group concern several existing forms of inequality, namely at management, coaching and training, prevention of violence and media levels, and include several measures to address these phenomenon[1].

   The ideas and actions developed by this proposal of the Expert Group are intended to lead to concrete political initiatives. In fact, gender equality has already been listed as a priority in the Resolution on the European Union Work Plan for Sport (2014-2017), referred to below.

2. **Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the European Union Work Plan for Sports (2014-2017)**, of 21 May 2014

   This resolution has the objective of further developing the sports dimension of the European Union through the creation of a new work plan at EU level by establishing the methodology and work structures for that purpose.

1 Namely, *(i)* changing recruitment policies for new posts in boards and staff, including coaching staff; *(ii)* establishing apprenticeships and trainee positions in executive boards, management and selection teams for young female managers and coaches; *(iii)* implementing modules in training courses for coaches and sport administrators; *(iv)* setting up preventive programmes against gender-based violence in sport; and *(v)* developing guidelines on how sport organizations can operate with the media in order to increase and improve media coverage of (mixed) major sport events.

## III. Case Law of Portuguese Higher Courts relating to Sports Law matters[2]

### 1. Supreme Court of Justice

**Decision of 28.05.2014**
**Case no. 1051/11.5TTSTB.E1.S1**
(Rapporteur António Leones Dantas)
Work-related accident of a football player. The subsidies for the coefficient of general incapacity, under the terms of subparagraph a) of point 5 of the General Instructions of the Table of Incapacity due to Work-related Accidents, are not applicable to a professional football player that, at the age of 22, was reintegrated in the workplace in which he was employed previously to the accident.

**Decision of 12.03.2014**
**Case no. 870/10.4TTMTS.P1.S1**
(Rapporteur Melo Lima)
Unilateral termination of the sports employment contract without just cause is illicit. The fixation subsidy, agreed between the parties in the contract, constitutes a financial aid which is not taken into consideration as part of the remuneration.

**Decision of 20.03. 2014**
**Case no. 396/2000.L1.S1**
(Rapporteur Martins de Sousa)
Changes occurred during the validity of the coach sports employment contract, especially with regard to the unilateral termination by the employer, do not affect the sports agent and do not collide with the obligation to pay the commission fee, agreed between those parties.

### 2. Oporto Court of Appeal

**Decision of 07.04.2014**
**Case no. 918/12.8TTPRT.P1**
(Rapporteur Paula Maria Roberto)
Work-related accident of a football player. The suspension of pending actions provided by Article 17-E(1) of the Portuguese Insolvency and Corporate Recovery Code (CIRE), in relation to the corporate recovery and revitalization process, does not apply to pending damages actions for work-related accidents.

### 3. Lisbon Court of Appeal

**Decision of 15.01.2014**
**Case no. 4776/05.0TTLSB.L2-4**
(Rapporteur Jerónimo Freitas)
Invalidity of a contractual clause for non-compliance with general rules applicable to employment contracts. Illicit termination without cause.

## IV. Other decisions with relevance for Sports

### 1. Lausanne Court of Arbitration for Sport[3]

**Guillermo Olaso v. Tennis Integrity Unit (TIU)**, of 02.10.2014
The case concerned the appeal of the Spanish tennis player Guillermo Olaso to the CAS to overturn a decision issued by TIU in which he was sanctioned with a five-year period of ineligibility and a fine of USD 25,000, for irregularities, namely match-fixing, during a match played on 3 November 2010 at the ATP Challenger Presidents Cup tournament. The CAS Panel dismissed the appeal and confirmed the challenged decision in its entirety.

**Luis Suarez, FC Barcelona & the Uruguayan FA v. FIFA**, of 14.08.2014
The CAS Panel has found Luis Suarez guilty of an act of assault to another player during the match between Italy and Uruguay played on 24 June 2014 at the 2014 FIFA World Cup Brazil but partially upheld the appeal against the FIFA decision. Even though the sanctions imposed on the player by FIFA were generally confirmed, the CAS decided that the 4-month suspension will apply to official matches only and not to other football-related activities (such as training, promotional activities and administrative matters).

**Josip Simunic v. FIFA Appeal Committee**, of 12.04.2014
The CAS has rejected the appeal filed by the Croatian football player Josip Simunic against the decision of the FIFA Appeal Committee issued on 21 February 2014. The CAS thus confirmed the sanctions imposed by FIFA against the player for having yelled with a microphone to the fans, before the beginning of a play-off qualification game for the FIFA World CUP 2014, words identified with the Croatian pro-Nazi regime during World War II.

**Case CAS 2013/A/3395, "Deco" v. CBF + FIFA**, of 27.05.2014
The case concerned the appeal of a decision of the Brazilian Sports High Court which applied a 1 year suspension to the football player for the alleged violation of anti-doping rules. The parties in the case (the player, the Brazilian Football Confederation and FIFA) reached an agreement, for which the CAS issued a consent award, recognising the non-violation of anti-doping rules by the player and the lifting of the imposed suspension.

**Case CAS 2012/A/2857, Nationale Anti-Doping Agentur Deutschland v. Patrick Sinkewitz**, of 21.02.2014
Confirmation of the decision of the Nationale Anti-Doping Agentur Deutschland (NADA), which imposed a sanction of eight years of ineligibility for cycling competitions to cyclist Sinekewitz for violation of anti-doping rules.

**Case CAS OG 14/03, Maria Belen Simari Birkner v. Comite Olimpico Argentino & Federacion Argentina de Ski y Andinismo**, of 12.02.2014
Appeal to the CAS *ad hoc* Division of a decision of the Argentinian Olympic Committee pursuant to which the athlete Maria Brikner was prevented from participating in the Winter Olympic Games. The athlete alleged that she was discriminated by the Committee due to her family affiliation. The CAS *ad hoc* Division considered it had no jurisdiction to decide the issue but submitted that the appeal would be unsuccessful, regardless of the lack of jurisdiction, given that the alleged discrimination was not proven.

**Case CAS 2013/A/3258, Besiktas Jimnastik Kulübü v. UEFA**, of 23.01.2014
CAS dismissed the appeal by the football club Besiktas Jimnastik Kulübü against the UEFA decision for the disqualification of the club from the 2013/2014 Europa League competition due to the agreement on the outcome of the Turkey Cup with that club and I.B.B. Sport.

### 2. UEFA Financial Fair Play (*FFP*)

In May 2014 the Club Financial Control Body (***CFCB***) Investigatory Chamber

2 All decisions listed in this section are available online atwww.dgsi.pt.
3 All decisions listed in this section are available online atwww.tas-cas.org.
4 The settlement agreements concluded between UEFA and the clubs referred above are available athttp://www.uefa.org/disciplinary/club-financial-controlling-body/cases/index.html.

signed individual settlement agreements[4] with the following nine clubs, for which investigations were opened following non-compliance with Financial Fair Play (FFP) regulations: *(i)* Bursaspor (TUR); *(ii)* FC Anji Makhachkala (RUS); *(iii)* FC Rubin Kazan (RUS); *(iv)* FC Zenit (RUS); *(v)* Galatasaray AŞ (TUR); *(vi)* Manchester City FC (ENG); *(vii)* Paris Saint-Germain (FRA); *(viii)* PFC Levski Sofia (BUL); e *(ix)* Trabzonspor AŞ (TUR).

The above agreements are aimed at ensuring that each club complies with the FFP break-even rules and, in general, impose some or all of the following provisions:

a. Break-even measures: *(i)* maximum break-even deficit thresholds; *(ii)* restrictions on the level of employee benefit expenses (total wages and benefits) incurred in the relevant reporting period(s); and *(iii)* restrictions on the level of revenue from sponsorship/ inter-company transactions with relevant parties;

b. Sporting measures: limitations on *(i)* the number of players included on the 'A' list related to UEFA competitions, and/or *(ii)* the registration of newly-transferred players on the 'A' and 'B' squad lists related to UEFA competitions; and

c. Financial contributions: withholding of money from revenues earned from participation in UEFA competitions

The clubs will be subject to on-going monitoring, and any case of non-compliance with the terms of their agreement will be automatically referred to the CFCB Adjudicatory Chamber.

According to the statements of the UEFA President, Michel Platini, in June 2014, "*since the implementation of Financial Fair Play, there has been a huge decrease in overdue payables by European clubs, from €57m in June 2011 to €1.8m in September 2013. Regarding the total losses made by top-division clubs, these were also reduced from €1.7bn in 2011 to €1.1bn in 2012.*"[5]

## 3. Third Party Ownership

In June 2014 during its 64th Congress, FIFA decided to create a dedicated working group under FIFA's Players' Status Committee to study third party player agreements "*with the aim of analysing all possible regulatory options and making preliminary suggestions to the FIFA Executive Committee next September for the latter to decide on the preferred and most adequate future approach so that the working group may subsequently further elaborate on the technical details*"[6].

The first meeting of this working group took place at September 2, 2014; many options were discussed, "*from transparency measures, to establishing specific requirements and limitations in terms of quality and quantity, to a prohibition of third-party ownership*"[7] and FIFA maintained that it was its intention to reach a solution that would best protect football.

However, during FIFA's last Executive Committee meeting on September 26, 2014, FIFA surprisingly announced that: "*In order to protect the integrity of the game and the players, the Executive Committee took the decision of general principle that third-party ownership of players' economic rights (TPO) shall be banned with a transitional period. The matter is now back in the hands of the TPO working group, under the chairmanship of Geoff Thompson, for the relevant technical regulations to be drafted. The draft will be submitted to the Players' Status Committee and then to the Executive Committee for approval*".

This means that FIFA has decided to abandon its initial position of not prohibiting TPO (but 'better' regulating it instead), to a position where TPO will be completely prohibited, as UEFA always demanded. ■

5 "Michel Platini proud of UEFA's efforts", available at http://www.uefa.org/about-uefa/president/news/newsid=2113955.html
6 http://www.fifa.com/aboutfifa/organisation/bodies/congress/news/newsid=2363108/.
7 http://www.fifa.com/aboutfifa/organisation/footballgovernance/news/newsid=2435566/.



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