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Sports Law

France

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NFALAW

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FRANCE

Law and Practice

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1. REGULATORY

1.1 Anti-doping

Doping Sanctions

The use of doping products has not been criminally sanctioned since 1989. However, the detention of forbidden substances, without any duly justified medical reason, remains punishable by one year of imprisonment and a fine of EUR3,750 (art. L.232-25 to L.232-31, French Code of Sport).

On 25 September 2020, the French Council of State confirmed the sanction imposed by the French Anti-Doping Agency on an athlete who had been guilty of tempering with his girlfriend's anti-doping control, Clémence Calvin, by trying "to obstruct, mislead or engage in any fraudulent conduct to alter results or prevent normal procedures from occurring".

Doping Products and Methods

Pursuant to a decree of 28 December 2020, the 2021 list of prohibited substances and methods adopted by the World Anti-Doping Agency (WADA) following its annual review process has been implemented into French law (see L.232-9 French C. of Sport). The decree distinguishes the substances and methods that are prohibited at all times, in and out of competition, those that are prohibited in competition, and those that are prohibited for particular sports. The list is not limited, in order to keep up with the evolution of doping methods. It does not apply to athletes who have a therapeutic use exemption or a duly justified medical reason.

A substance or a method is included in the list when it meets at least two of the three following criteria:

- it has the potential to enhance or it actually enhances sport performance;

- it represents an actual or potential risk to the athlete's health; and
- it violates the spirit of sport.

French Anti-Doping Agency

This independent public authority created in 2006 is responsible for laying down and implementing anti-doping measures regarding athletes who participate in sports competitions., anti-doping controls, analysis of samples, issuance of therapeutic use exemptions, regulation of disciplinary proceedings, advice, and public health protection. Almost 8,000 urine and blood samples were carried out in 2019.

Harmonisation of Laws

French law is being progressively harmonised with the World Anti-Doping Code (see Laws of 5 April 2006, 3 July 2008, and 1 February 2012). In December 2020, the French Minister for Sport submitted a bill enabling the government to take "any measure necessary to ensure the compliance of French law with the World Anti-Doping Code's principles and reinforce the efficiency of the fight against doping".

Under the provisions of the World Anti-Doping Code (Articles 10.1 to 10.8) and of the French Code of Sport (Article L232-23), there are various kinds of sanction for doping violations, such as:

- invalidation (disqualification) of the results in the event during which a doping violation occurred;
- suspension (ineligibility) in case of presence, use, attempt to use, or possession of a prohibited substance or method;
- invalidation (disqualification) of the results obtained in competitions subsequent to the sample collection or to the commission of an anti-doping rule violation.

In December 2019, Clémence Calvin was sanctioned with a four-year suspension by the French Anti-Doping Agency. Since October 2019, she has also been the subject of a judicial investigation by the public health division of the Marseille Public Prosecutor. An investigating judge has been appointed to investigate, in the context of “a judicial information against X”, the following offences: “acquisition, detention, transport, prescription, offer, and sale” of doping products, as well as “the offer and sale of substances classified as poisonous”.

1.2 Integrity Manipulation Sanction

In addition to the “traditional” criminal texts (corruption, forgery and use of forged documents, etc), the Law of 1 February 2012 has enacted two offences of sport corruption (active and passive) in order to ensure the normal and fair conduct of competitions, which are punishable by five years of imprisonment and a fine of EUR500,000 (Article 445-1-1, French Criminal Code). This provision is currently the subject of a Preliminary Ruling on Constitutionality before the French Constitutional Council to check whether it infringes the principle of presumption of innocence.

Ethical Charter

The Law of 1 March 2017 has inserted into the French Code of Sport an obligation for the delegated federations to establish a charter of ethics and deontology in accordance with the principles laid down in the charter issued by the French National Olympic and Sports Committee (CNOSF). This charter is binding upon the licence holders.

For example, the Football Federation has set up a federal disciplinary committee which is competent to decide, in particular, upon incidents of indiscipline, facts relating to the security of an event or moral or ethical infringements.

1.3 Betting

In France, a general principle of the wrongfulness of organised gambling has long prevailed (Law of 21 May 1836). In response to the insistence of the European Commission, France has finally implemented a controlled liberalisation of its online gambling market (Law of 12 May 2010).

The French National Gambling Authority (NGA)

The NGA (formerly the Regulatory Authority for Online Games, or ARJEL) is an independent administrative authority that has been set up with the object, in particular, of issuing approvals to online betting operators, subject to compliance with binding specifications. The NGA decides which sports competitions may be subject to betting and the types of bets that are authorised. In August 2020, the President of the NGA had the opportunity to prohibit bets on a Europa League football match because of serious and consistent evidence of manipulation.

The NGA asks the organisers and operators to inform it without any delay of any anomaly related to the bets placed on one or more phases of a competition (amounts and distribution of bets, unusual or inexplicable changes in odds); a warning system has also been put in place.

Illegal Betting Sanction

Under French law, those involved in sports competitions (athletes, referees, agents, managers, etc) are prohibited from making sports forecasts (Article 131-16, French Criminal Code).

In 2015, the Civil Court and then the Court of Appeal of Montpellier found the Karabatic brothers (famous French handball players) guilty of fraud and condemned them to a two-month suspended prison sentence (final sentence).

Under French law, any online gaming operator is prohibited from having any direct or indirect

control over an organiser of a sports event and vice versa.

1.4 Disciplinary Proceedings

Federal Regulations

Federations are competent to start disciplinary proceedings against their licence holders who have infringed the law. Pursuant to Article L.131-8 of the French Code of Sport, authorised federations must adopt a disciplinary regulation complying with a standard regulation available in appendix I-6 of that Code. As a result, the disciplinary body of first instance must give its ruling within a maximum period of three months from the start of the proceedings (ten weeks in doping cases), while the disciplinary body in an appeal must give its ruling within four months from the same date, in compliance with the principles of protection of the right to a defence and of an adversarial procedure. The decisions rendered must be reasoned, executed, and then duly notified to the party concerned.

Examples of the above procedure include the exclusion of Mr Aguilar from any official competition by the French Professional Football League following a third warning (decision of 20 January 2021) and the invalidation of the disciplinary sanctions imposed on the members of an association for non-compliance with the principles of impartiality and of public hearing, the president of the association being involved in the debates and in the vote while the persons being prosecuted were mainly accused of having incriminated him by letter (Pau Court of Appeal, 7 January 2021).

The Right to a Second Hearing in Disciplinary Matters

The sanctions pronounced by the disciplinary body at first instance can be appealed within 10–20 days from the date of notification. The appeal does not have any suspensory effect. When the appeal is lodged by the concerned

party only, the challenged sanction cannot be increased.

The decision taken by the disciplinary appeal body can be challenged before the court of the place of residence of the licence holder, which has jurisdiction only after the start of conciliation before the CNOSF (except in doping cases) (R.141-5, French C. of Sport).

2. COMMERCIAL RIGHTS

2.1 Available Sports-Related Rights Exclusive Right of the Organisers Regarding Their Sports Event

Article L.333-1 of the French Code of Sport provides that “Sports federations, as well as organisers of sports events, are the owners of the right to exploit the sports events or competitions they organise”. According to case law, this right covers all business related to the event, including the marketing of licensed products (merchandising).

Control over Tickets Resale

This exclusive right also covers ticketing and the sale of hospitality. It is frequently held that the resale of tickets on the secondary market, without the authorisation of the organiser of the sports event, infringes the rights of the organiser. Article 313-6-2 of the French Criminal Code provides for a fine of EUR15,000 for the sale, and the offer for sale, of “tickets to a sport, cultural or commercial event or to a live show, on a regular basis and without the authorisation of the producer of, the organiser of or the owner of the exploitation rights on this event or show”.

The purchasers of second-hand tickets may be held contractually liable for breach of the general terms and conditions of sale.

The sale and offer of hospitality are also a major issue for the organisers of sports competitions and for sports associations, so as to provide spectators with high value-added services. The provision of hospitality services is an important element of sponsorship contracts and is usually subject to extensive discussions between the parties during the negotiation of contracts.

The sale of derivative products reproducing the brand(s) of the sports association or of the organiser of the sports competition also represents a significant source of revenue. It should be noted that the merchandising activity is regularly assigned, in whole or in part, to third parties, such as equipment suppliers or companies specialised in the manufacture of sports equipment and clothing, through licence agreements.

2.2 Sponsorship

Enhancement of the Sponsor's Image

Sponsorship is one of the preferred sources of funding for sport in France (up to 50%). Sports events and competitions guarantee the sponsors unique audiences and media coverage which can encourage that audience to associate the sponsors' image with such events for advertising purposes. Sponsorship contracts, which are usually concluded for a fixed term, are largely left to contractual freedom and the provisions of ordinary law.

Counterparts

The sponsor is mainly required to pay the sponsored party, whether in kind or in cash. The sponsor then benefits from the right to use the distinctive signs of the sponsored party, in compliance with the contractual provisions (including the graphic charter set out in the licence agreement), some exposure in the stadium or in the sponsored party's institutional and/or commercial communications, hospitality and ticketing rights, etc.

For its part, the sponsored party has the obligation to display and promote the sponsor's name and brand in its communication. In many cases, the complex issue of conflicts between sponsors in relation to their respective areas of exclusivity needs to be resolved. The sponsored party may undertake to participate in some of the sponsor's public relations operations. In any case, it is essential that the sponsored party guarantees the sponsor against any negative publicity, under penalty of termination of the contract (eg, Tiger Woods).

Naming

Sponsorship can also take the form of the "naming" of sports equipment (eg, the Allianz Riviera in Nice or the Accor Arena in Paris) or of sports events (eg, Ligue 1 Uber Eats).

2.3 Broadcasting

Sale of Broadcasting Rights

Broadcasting rights, which are a necessary source of funding, include the broadcasting of competitions on television, either in full or in excerpts, live or deferred, but also the radio rights, broadcasting over the internet and via mobile phone, through video on demand (VOD), as well as on fixed media (including DVD). In order to optimise the valuing of its rights, the organiser – the holder of a property right on its sports event – proceeds to a sale by lot, to the best bidder.

As an example, the French Football League identified seven lots for the 2020–2024 period, of which the first two were the most sought after. Lot 1 consisted of one live match per matchday, broadcast on Sunday evening at 9pm, and one third-choice game as well as two pre and post-match programmes on Sunday evening. Lot 2 consisted of two live matches per matchday, broadcast on Friday at 9pm and on Saturday at 5pm, as well as one pre-match programme on Friday evening.

The sale of rights is usually done collectively and jointly by the federations or the national leagues, in the form of a transparent and non-discriminatory public tender, by lot, for not more than three or four years.

Toll-Services

In most cases, the purchaser is granted exclusive rights in a particular broadcasting mode, which enables it to make its investments more profitable, in accordance with the right to information. To this end, the acquired rights are widely advertised as a loss leader to promote its services more widely, particularly toll-services by subscription. In particular, the purchaser will have the opportunity to exploit the distinctive signs of the sports event, in compliance with the contractual provisions. It should be noted that the TV broadcasting of some events of major importance must be granted to a free-access TV channel (Article L.333-9, French Code of Sport).

3. SPORTS EVENTS

3.1 Relationships

Exclusive Property Right

France has chosen to grant protection to sports events taking place in France in the form of an exclusive property right (Law of July 13, 1992). This exclusive right enables the organisers to control the access to sports facilities, by entering into ticketing contracts with spectators, by subscription if necessary.

The Law of 10 May 2016 gives to the organisers the possibility to refuse or cancel the issuance of access tickets to people who did not comply with the provisions of the general terms and conditions of sale or with the internal regulations relating to the security of the events. Articles L.332-3 et seq of the French Code of Sport also sanction some forms of spectator behaviour.

Journalists' Access

Under the public's right to information, and subject to constraints directly related to the public and the athletes' safety as well as to the capacity of the venues, journalists, and staff of written or audio-visual information companies enjoy free access to the sports venues (Article L.333-6 French Code of Sport).

3.2 Liability

Liability(ies) of the Organiser

The organiser may be held civilly liable in cases of damage caused to participants or spectators, whether on a contractual grounds (breach of safety obligation or of information obligation) or on the ground of tortious liability under ordinary law (Article 1240, French Civil Code).

If necessary, the organiser may try to limit/exclude its liability by relying on a case of force majeure, the liability of a third party, or the fault of the victim. However, case law tends to reject clauses excluding or limiting the organisers' contractual liability in the event of a breach of safety obligation, such clauses being in addition presumed unfair with respect to consumers.

The organisation of a public sports event in an unauthorised venue is punishable by two years of imprisonment and a fine of EUR75,000 (Article L.312-14, French C. of Sport).

Criminal Liability of the Athlete

An athlete may be criminally liable for manslaughter (Article 221-6 French Criminal Code) in the case of the death of a spectator or, under Article 221-19 of the French Criminal Code, when a total incapacity for work for more than three months is caused by "clumsiness, recklessness, inattention, negligence or failure to comply with an obligation of prudence or safety imposed by law or regulation". The offence of endangering the life of others may also be considered (Article 223-1, French Criminal Code).

4. CORPORATE

4.1 Legal Sporting Structures

There are two types of sports bodies in France: sports associations and sports companies.

Sports Associations

Pursuant to Articles L.121-1 and L.131-2 of the French Code of Sport, sports associations and sports federations must be set up in the form of associations, in accordance with the provisions of the law of 1 July 1901 (except for sports associations having their headquarters in the departments of Haut-Rhin, Bas-Rhin and Moselle applying the Alsace-Moselle Civil Code).

The set-up of a sports association is subject to some provisions of the ordinary law (corporate purpose, managers, statutes, obligation of declaration to the prefecture in order to have legal personality, etc) and relies on two documents: the statutes and the internal regulations.

Some conditions of special law may also apply.

- For the purposes of approval, a federation must have adopted (i) statutes guaranteeing democratic functioning, (ii) a disciplinary regulation in accordance with the standard regulation provided for in the French Code of Sport, and (iii) a special disciplinary regulation relating to anti-doping.
- A federation may be “delegated” if it has been approved and created for the purpose of organising the practice of a single sport or of related disciplines; its internal regulation must, in particular, provide for the publication, before the start of a sports season, of an official calendar of the competitions that it organises or authorises.
- In the event of the creation of a professional league managing professional activities in the form of an association which is a “subsidiary” of the federation, Article R.132-1 of the

French Code of Sport provides for the conditions that must be met.

- In order to be approved and to benefit from state aid, a sports club set up in the form of an association must adopt statutes guaranteeing the democratic functioning of the association, the transparency of its management and equal access by women and men to its governing bodies, the rights of defence in disciplinary proceedings and the absence of any discrimination in the association’s organisation and activities.

The affiliation of the association to an approved sports federation constitutes an approval. Otherwise, the association cannot participate in sports competitions organised by the federation.

Sports Companies

In accordance with the provisions of Article L 122-1 of the French Code of Sport, any sports association affiliated with a sports federation, which usually participates in the organisation of paid sports events that provide revenues that exceed a threshold set by decree in Council of State or which employs athletes whose total remuneration amount exceeds a figure set by decree in Council of State, constitutes a commercial company governed by the French Commercial Code.

The amounts of the revenues, or of the remunerations, above which a sports association is required to create a commercial company are set respectively at EUR1.2 million and EUR800,000 (Article R.122-1 of the French Code of Sport).

The relationship between the sports association and the sports company is governed by an agreement that has obtained a prefectorial approval (Article R 122-8 of the French Code of Sport).

Historically, sports companies were set up in one of the following forms, each of which having to adopt standard statutes: one-person sports limited liability company (EUSRL), sports-related public limited liability company (SAOS) or professional sports public limited liability company (SASP).

The SASP has for a long time been the sole corporate form that was of interest to private investors, as this structure allowed them to take full and complete control and be remunerated by profit sharing.

Since 2012, sports companies can also be set up in a “traditional” form of limited liability company (SARL), public limited liability company (SA) and simplified joint stock company (SAS).

It is important to note that, in accordance with Article L 122-7 of the French Code of Sport, the same private individual cannot, exclusively or jointly, control or exercise any determining influence on several sports companies whose corporate object relates to the same discipline.

4.2 Corporate Governance

Corporate Governance

The law of 1 July 1901 relating to associations does not impose any specific way of managing on those associations.

The statutes can therefore freely determine the organisation chart. In general, an association is composed of a general assembly (in charge of general policy) and a board (composed, for example, of a president, a secretary, and a treasurer) for the association’s daily management.

Sports federations have a certain degree of autonomy in the choice of their governing bodies (for example, choice of a board of directors and a president, or a supervisory board and a management board). Pursuant to appendix I-5 of

the French Code of Sport, however, the federation will have to set up a supervisory commission for electoral operations, a medical commission, and a commission of judges and referees.

Professional leagues must, for their part, be managed by at least one governing body, the composition of which is provided for in Article R.132-4 of the French Code of Sport.

Managers’ Personal Liability

This liability can be disciplinary, civil, and criminal.

Disciplinary liability arises from the affiliation of the sports association with the involved sports federation. In the case of a breach of the federal obligations, a prior conciliation before the French National Olympic and Sports Committee may be brought, before the federation uses its disciplinary power against the manager.

The manager can also be held civilly liable (either non-contractual liability in the case of a dispute with one or more members of the association, or contractual liability in the case of a breach of their obligations in acting as representative).

The manager can be held criminally liable only if their direct or indirect participation in the offences is established.

Control Bodies

In accordance with the terms of Article L 132-2 of the French Code of Sport, the federations, which have set up a professional league, create a body, with an independent discretionary power, authorised to refer matters to the competent disciplinary bodies and whose missions are

- to ensure the administrative, legal, and financial control of sports associations and companies that are members of the federation or of the professional league, or that are

applying for membership in the federation or in the league;

- to ensure the financial control of sports agents' activity; and
- to ensure the control and the evaluation of projects for the purchase, assignment and change of shareholders of sports companies.

It should be noted that when a sports association or company is required to have its accounts certified by an auditor; it shall forward the auditor's report on its annual accounts to that body without delay.

Direction Nationale de Contrôle de Gestion

The most noteworthy example is that of the National Directorate of Management Control (*Direction Nationale de Contrôle de Gestion*, or DNCG), hosted by the French professional Football League and responsible for monitoring the accounts of professional football clubs in France.

After a review of the situation of these clubs, the DNCG may take sanctions regarding:

- a club's size (eg, partial or total ban on recruiting new players, controlled recruitment with limitation of the estimated budget or of the estimated payroll, etc); and
- a club's participation in competitions (downgrading it to a lower division, ban on accessing the higher division, or exclusion from competitions).

4.3 Funding of Sport

General Principles

Sport funding in France can be both public and private, with an important distinction between amateur sport (which depends heavily on public funding) and professional sport (which is mainly based on private investors).

Public Funding

Public funding of sport is mainly based on the collection of various taxes and levies, whether directly or indirectly, on sports events.

There are for example some levies related to sports betting (eg, levies on *Française des Jeux* or on online betting companies), or the contribution on the assignment of broadcasting rights for sports events to a television service (Article 302 bis ZE, French General Tax Code).

Public funding of amateur sport

Amateur sport is mainly based on public funding (ie, aid from the State and from local authorities), which is divided between, on the one hand, national agreements on objectives (concluded between approved associations and the Ministry of Sports) and, on the other hand, the actions of the National Agency for Sport (*Agence Nationale du Sport*).

Created in 2019, the purpose of the National Agency for Sport is "to define and achieve common objectives in terms of development of sports practice in France and of high level as well as of high performance, particularly in view of the Olympic and Paralympic Games in Paris in 2024".

The purpose of this Agency is thus to develop sports practices, by supporting projects aimed at developing access to sport for everyone throughout France and overseas, by stimulating new dynamics related to sport.

Public funding of professional sport

The legal regime for the funding of professional clubs is provided for in Articles L.113-1 to L.113-3, and L.122-11 of the French Code of Sport. These texts only apply to groups composed of a sports association and a sports company.

In accordance with Article L.122-11 of the French Code of Sport, sports companies are excluded from the economic interventionism of local authorities.

However, sports companies may conclude, under some strictly defined conditions:

- grant allocation agreements, pursuant to Articles L.113-2 and R.113-1 of the French Code of Sport; and
- service agreements, pursuant to which local authorities may purchase advertising space and tickets.

Private Funding of Sports Associations

For amateur sport, funding is mainly based on members' subscriptions, on ticketing, as well as on one-off actions such as refreshment bars, lotteries and raffles (under conditions).

Private funding can also take the form of donations, gifts (only for associations declared to be of public utility), and patronage.

Professional clubs funding

There are various sources of funding, such as:

- marketing of intellectual property rights (eg, the valuation of brands and related rights);
- property rights to a sports event and related rights;
- sports betting; and
- sponsorship contracts under which benefits are granted to the sponsor in return for the payment of a specified amount of money (eg, advertising on jersey, exposure in the stadium and communications, hospitality and tickets, etc).

In team sports, transfer agreements for professional athletes are also a source of revenue.

COVID-19

The financial consequences of COVID-19 on the world of amateur and professional sports are considerable. For example, the president of the DNCG estimated in a recent speech that the losses of professional clubs should reach EUR800 million.

4.4 Recent Deals/Trends

In recent years, several professional football clubs have been acquired by foreign investors.

In addition to Olympique de Marseille or Girondins de Bordeaux, it is interesting to note the recent takeover of the Ligue 2 club, Troyes, by the City Football Group, which is already at the head of many professional clubs, including Manchester City.

5. INTELLECTUAL PROPERTY, DATA AND DATA PROTECTION

5.1 Trade Marks

Protection through Registration

Filing must be made with a national (the National Institute of Industrial Property in France), regional (eg, European Union Intellectual Property Office) or international (World Intellectual Property Organization) office. The ten-year registration can be renewed indefinitely. The granted protection is limited to products and services identical or similar to those designated in the registration.

Distinctiveness

The criterion for protection by trade mark law is distinctiveness. The sign applied for must therefore neither be necessary, generic, or common to designate the goods or services concerned, nor be descriptive of the goods or services covered, nor consist of the shape of the product resulting

from the nature or function of the product itself or giving its substantial value to the product.

Scope of Protection

The exclusive right conferred by registration is not absolute but is governed by the principle of speciality (the monopoly is limited to the products and services that are identical or similar to those referred to in the registration) and the principle of territoriality. With that proviso, the trade mark owner has a monopoly of exploitation on the sign and can therefore oppose any identical or similar use by a competitor if there is a likelihood of confusion. The more well-known a trade mark is, the broader its scope of protection.

For example, the newspaper that owns the “*Bal-lon d’Or*” trade mark opposed with success the registration of the “Golden Balls” trade mark. On 14 May 2019, the Paris Civil Court (*Tribunal de Grande Instance de Paris*) pronounced the invalidity of a “Neymar” trade mark filed in fraud of the famous footballer’s rights.

Olympic Trade Marks

In accordance with the provisions of Article L.141-5 of the French Code of Sport, the French Olympic Committee is the owner of trade mark rights on the signs “*Jeux Olympiques*” (Olympic Games), *Olympiade* (Olympiad) and *JO* (OG), as well as on the expression “city + year” referring to the previous Olympic Games; the Olympic Committee has obtained, on numerous occasions, the condemnation by courts of companies that used these signs without authorisation.

The delegated sports federations, for their part, hold exclusive rights on the use of the expressions “*Fédération française de*”, “*Fédération nationale de*”, “*Equipe de France*” and “*Champion de France*” followed by the name of their sports disciplines (Article L.131-17, French C. of Sport).

For example, on 18 December 2020, the Paris Civil Court cancelled the “*Championnat de France VTTAE*” trade mark applied for by a sports federation that did not have any approval for that discipline.

5.2 Copyright/Database Rights

Original Work

The author of an intellectual work has, by the mere fact of its creation, an intangible property right that is exclusive and enforceable against all (Article L.111-1, French Intellectual Property Code). Unlike patents or trade marks, the acquisition of a monopoly on the work does not depend on any filing. However, it is up to the author to establish the existence of an original intellectual work (ie, bearing the imprint of their personality).

For example, it was judged that the World Cup trophy or a piece of choreography benefits from copyright protection; however, it is firmly judged that a sports event as such does not benefit from copyright protection.

Scope of Protection

Anyone who represents or reproduces, without authorisation, the main characteristics of an original work is guilty of infringement, unless one of the legal exceptions to copyright can be relied on (family circle, private copy, press review, short excerpts, parody, exhaustion of rights, etc). The prerogatives resulting from the author’s moral rights (including the right to be named, the right of integrity of the work, and the right of disclosure) may also be infringed.

Databases

Databases can benefit from copyright protection, as long as the criterion of originality is met. Producers of databases also enjoy sui generis protection, as a reward for their investments (Article L.341-1, French Intellectual Property Code).

5.3 Image Rights and Other IP

Personality rights (rights relating to the image of a person) are not expressly protected by the law. However, referring to Article 9 of the French Civil Code and on the basis of Article 1240 of the same code, French case law has established the protection of the “right to one’s image” as one of the components of “personality rights”. “[E]very person has an exclusive right over his/her image, which is an integral part of his/her personality, and which allows him/her to oppose its reproduction.”

The national collective agreement for sport clearly provides that athletes can freely assign their image rights. Athletes can also oppose any unauthorised commercial use of their image and bring legal action to stop such infringements and be compensated.

It is up to the athletes to inform their clubs of the various advertising actions they intend to carry out. The employer can also, in the employment agreement, prohibit their employee from concluding advertising contracts that compete with their partners.

It should be noted that the Law of 1 March 2017 has enshrined in the French Code of Sport the possibility for sports clubs to conclude a contract with the athletes they employ to use their associated individual images. The use of the collective associated images of athletes is, for its part, often governed by collective agreements.

5.4 Licensing

Licences

Sports actors frequently use their rights (brand/image) by concluding licences as part of partnerships that provide them with a significant source of revenue. These licences are left to contractual freedom. While, in principle, the existence of a written document is not required as a condition of validity, it may be necessary

to make the contract enforceable against third parties, after publication in the relevant Industrial Property Registry.

Legislative Frameworks

Some areas are regulated. For example, communication for betting sites requires the insertion of a warning message; the Evin Law of 10 January 1991 prohibits propaganda or direct or indirect advertising in favour of tobacco and strictly regulates advertising in favour of alcohol. Furthermore, any sponsorship operation whose object or effect would be to propagandise or advertise in favour of tobacco/alcoholic beverages is prohibited.

Trade Mark Assignment by an Association

Assignment must be recorded in writing otherwise it will be considered null and void. The association may assign the distinctive signs it owns to a sports company. A third party may also acquire these rights.

Any agreement pursuant to which a sports association or a sports company seeks to assign its name, its trade mark or any other distinctive sign, or seeks to grant a licence to use to another legal entity, governed by private law requires a prior filing with the prefecture (Article R.122-5, French C. of Sport).

5.5 Sports Data

Sports Data

Sports data is becoming increasingly important. From a purely sporting point of view, it allows the analysis of athletes’ performances in competitions and the assessment of their development, and even the analysis of sequences of games in order to identify possible frauds. The live broadcasting of data and statistics also represents an added value for viewers in the broadcasting of sports events, particularly in football, rugby, tennis or cycling; hence, it can be an additional source of revenue. However,

issues around the ownership of sports data are the subject of debate.

Personal Data

Article L.332-1 of the French Code of Sport authorises the automatic processing of personal data regarding persons that are banned from entering stadiums. The use of such data thus contributes to the security of the event.

5.6 Data Protection

In accordance with EU Regulation 2016/679 (the GDPR), the French regulation resulting from the Law of 20 June 2018 is based on several key elements, including the consent of the individual to the collection and processing of their data, the confidentiality and security of the data collected, and the right to erase personal data.

Athletes' and spectators' data is no exception, as their collection requires a positive act of authorisation. Besides, any further commercial use of the collected data must be expressly authorised at the time of collection.

The mission of the CNIL (National Commission on Information Technology and Liberties) is to verify compliance with French legislation in this area.

6. DISPUTE RESOLUTION

6.1 National Court System

The exhaustion of domestic remedies rule requires that the successive remedies provided for in federal regulations be applied for before bringing a case before the competent courts (Council of State, 13 June 1984). Failing that, the judicial remedy is held inadmissible.

A non-remedy clause prohibiting access to the courts would be null and void. Their jurisdiction cannot be ousted.

6.2 ADR, Including Arbitration Conciliation before the French National Olympic and Sports Committee (CNOSF)

Participants in disciplinary disputes (except for those having to do with doping offences) must have made recourse to conciliation before the CNOSF before being able to lodge a jurisdictional, judicial, or administrative appeal. This compulsory preliminary procedure, created by the Law of 13 July 1992, is codified in Articles L.141-1 et seq of the French Code of Sport.

The implementation of a preliminary conciliation procedure does not exempt potential litigants from exhausting all domestic remedies before lodging any judicial appeal.

Arbitration

It is also possible to use arbitration (Article 1442 et seq., French Code of Civil Procedure), in particular before the CNOSF Sports Arbitration Chamber or before the Court of Arbitration for Sport in Lausanne.

6.3 Challenging Sports Governing Bodies

As a private entity holding a public service concession, a sports federation can enact its own rules. All licence holders agree to be subject to the sanctions set out by their federation in case of violation of federal rules.

The disciplinary commission is a body emanating from the federation whose mission is to pronounce these sanctions (warning, blame, fine, suspension, etc). Internal remedies must be provided for, according to the right to a second hearing in disciplinary matters.

7. EMPLOYMENT

7.1 Sports-Related Contracts of Employment

Employment Contracts

Payers' contracts are most often concluded with clubs; some federations, such as those overseeing football and rugby, also offer federal contracts.

In addition to the conclusion of the employment contract governing the traditional aspects of the contractual relationship, the club is required to conclude a transfer contract involving the purchase of the player's sports rights.

Remuneration

As part of the wage negotiation, the employing club must comply with the legal or conventional minimum as well as with the possible cap on the payroll that may be decided by the relevant federation (Article L.131-16, French C. of Sport). Although the salary cap mechanism was validated by the Council of State in December 2019, only the National Rugby League currently uses it (which it has been doing since 2010).

It should be noted that in football, UEFA (the administrative body overseeing football in Europe) imposes the so-called financial fair play rule in order to prevent clubs from spending more than the revenues they generate. These provisions have a direct impact on professional clubs, particularly in the decision-making related to remuneration.

Self-Employed Status

When an athlete is not under any legal subordination in the exercise of their activity, they are presumed to be free from any employment contract with the organiser (Article L.222-2-11, French C. of Sport). This is most often the case with an individual athlete who performs services

on their own account and who bears all resulting gains and losses (tennis, athletics, etc).

7.2 Employer/Employee Rights

Specific Fixed-Term Contract

Given the particularities of their activities, the Law of 27 November 2015 created a fixed-term contract specific to salaried athletes and derogating from the ordinary law; this contractual form is not optional but imposed on athletes. In principle, these contracts cannot either be shorter than the duration of a sports season (12 months) or exceed five years. The provisions of the ordinary law from the French Labour Code remain applicable, except in case of derogations expressly provided for in the French Code of Sport.

Homologation

The regulation of the sports federations or, where appropriate, of the professional leagues may provide for the homologation of the fixed-term employment contract of the professional athlete and of the coach (L.222-2-6, French C. of Sport).

Athletes' fixed-term contracts are also subject to a special regulation regarding their termination. For example, Article L.222-2-7 of the French Code of Sport provides that "the clauses for the pure and simple unilateral termination of the fixed-term employment contract of the professional salaried athlete and coach are null and void".

7.3 Free Movement of Athletes

Bosman Ruling

The issue of international transfers changed radically in 1995 with the European Court of Justice's decision in the Bosman case. Based on the freedom of movement, this ruling put an end to the practice of quotas for foreign players (from EU member states) within the European Union. It is the same for athletes from countries with

which the EU has concluded association agreements, as the Council of State reiterated in a decision of 30 December 2002.

The scope of the decision is limited to the EU; France is also bound by the Cotonou agreements, which allow the recruitment of African players without limitation in terms of number. Federations therefore retain the possibility of limiting the number of non-EU players in French clubs (Article 553 of the professional Football Charter). The quotas that then apply are frequently circumvented by using athletes with dual nationality.

Article L.131-16 of the French Code of Sport provides that federal regulations may contain provisions aimed at encouraging the local training of players, in particular by forcing clubs to train a part of their players, regardless of their nationality.

8. ESPORTS

8.1 Overview

The esports global market exceeded USD1 billion in 2020. France has been contributing for several years to the development of numerous esports disciplines and has the fourth highest number of professional players in the world.

Entities are more and more professionalised, as demonstrated by the economic development of structures such as Team Vitality, whose reputation is global.

The development of electronic sport is supported by public authorities. In October 2019, the Ministries of the Economy and of Sports jointly presented their 2020–2025 national E-Sports Strategy, which aims at making France the European leader by 2025.

In 2018, France had more than 30 professional teams, more than 800 esports associations and more than 2 million casual players.

This development is also reflected in the involvement of high-level professional athletes within these structures, such as Tony Parker and his partnership with LDLC (an esports team) to create, within the TP Adéquat Academy, a training course dedicated to esports.

Traditional professional sport clubs, such as Paris Saint-Germain, also have structures dedicated to esports and host several teams performing on different platforms.

In France, the France Esports association was created to bring together esports players (players, creators-publishers, promoters) and offer them an efficient collaboration platform. However, to date, this association has not been recognised as a sports federation by the CNOSF.

Finally, COVID-19 has necessarily impacted the holding of physical competitions (LANs) all over the world, including in France, as well as, in general, the holding of training sessions during boot camps.

9. COVID-19

9.1 Impact of the Pandemic Sporting Upheaval

The COVID-19 pandemic has disrupted the French sports sector at all levels. Sports competitions, both professional and amateur, were either cancelled (Paris Marathon) or postponed for several months (Ligue 1, the Tour de France, the French Open). The various collective championships (eg, Ligue 1) were suspended, before being resumed behind closed doors.

Financial Crisis

The pandemic has had a very heavy financial impact due to the collapse of ticketing revenues and the withdrawal of sponsors. Amateur sport, financed by professional sport under a principle of solidarity (Article L.333-3, French C. of Sport), has also been weakened. This financial crisis has been further aggravated in football with the failure of the broadcaster Mediapro, the assignee of 80% of Ligue 1 games for EUR780 million for the 2020–2024 period. This forced the Football League to urgently seek funding/broadcasters and to launch a new tender in January 2021.

In this context, the French sports stakeholders met under the banner of the CNOSF and addressed an “SOS” to the President of the Republic on 26 October 2020 in the form of an open letter co-signed by 95 sports federations, deploring the lack of consideration from the State.

10. REGIONAL ISSUES

10.1 Overview

As the United Kingdom benefited from a transitional period during which the country remained subject to European Union regulations, Brexit has only been effective since 31 December 2020.

From now on, the country is no longer a member of the single market and British athletes are considered as non-EU recruits. Conversely, transfers of French athletes have been made more complicated by the requirement to obtain a points-based work permit (Governing Body Endorsement) and by the rule limiting to three the number of foreign players under 21 years old who can be recruited per transfer window and per club.

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FRANCE LAW AND PRACTICE

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The logo for nfalaw, featuring the lowercase letters 'nfalaw' in a bold, blue, sans-serif font.

Trends and Developments

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Legal Protection of Sporting (and Other) Events

Sports events taking place in France are protected under French law by an exclusive property right, which was enshrined in the Law No 92-652 of 13 July 1992. It is now codified in Article L.333-1 of the French Code of Sport and constitutes, as commonly accepted, a *sui generis* intangible property right (“Sports federations, as well as the organisers of sports events referred to in Article L.331-5, are the owners of the right to exploit the sports events or competitions they organise”).

Previously, this exclusive property right had already been established not only by contractual practice and usage but also by case law, which recognised the economic value that the sports event represented, resulting from the efforts made by its organiser. The provisions of the French Code of Sport have therefore consolidated and enshrined in French law a pre-existing property right, which was necessary for the legal security of its exploitation and protection. Indeed, the French legislature considered that the preservation of sports events implied the protection of the organisers’ rights to allow them to maintain a control over said events but also to make a legitimate profit from the economic flows they generate.

If, for historical reasons, the exclusive property right of the organisers of sports events has been enshrined in the law, this does not mean that the organisers of other events (eg, non-sporting ones) do not also benefit from an exclusive right of exploitation over these events. This is the outcome of an important judgment of the Paris Civil

Court of June 11, 2020, which held that WORLD CHESS EVENTS LIMITED had to be considered as the owner of the exploitation right of the 2018 World Chess Championship following the transfer of rights granted by the International Chess Federation. In other words, WORLD CHESS has the exclusive right to commercially exploit its event in all its known or future forms and, correlatively, to prohibit any exploitation by unauthorised third parties.

In that case, an internet site had retransmitted simultaneously, on a virtual chessboard, the movements of the pieces during chess matches. This allowed internet users to know in real time the combinations chosen by the players and thus infringed the exclusive property right of the organiser. Based on the provisions of civil liability under ordinary law (Article 1240 of the French Civil Code), the internet site was ordered to pay WORLD CHESS the sum of EUR50,000 by way of damages.

This decision is an important step towards the recognition of an exclusive property right of benefiting more broadly to all organisers of events, whether sporting or cultural. Regarding chess tournaments, organisers are constantly confronted with the same issues and challenges as those faced by organisers of sports events:

- financial and human investments that are often very heavy and that must be protected;
- numerous attempts of parasitism by third parties to their detriment;
- the need to prevent and fight against fraud and to preserve the integrity of the event; and

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- the need to allow the organiser to financially benefit from each exploitation that is made of the event.

It is therefore legitimate that they benefit from similar legal protection, the fact that chess is not strictly speaking a physical sport, but rather a cerebral one being irrelevant.

The judgment of 11 June 2020 is also interesting as it makes clear that even if, commercially, the primary method of exploitation of events is TV broadcasting, the right to exploitation conferred by the exclusive property right is not limited to this prerogative. The right to audio-visual exploitation is only one of the components of the exclusive right of the organiser. Thus, reproducing on a website which is not affiliated to WORLD CHESS, in real time, without any delay, the movements of the chess pieces during an international tournament (effectively exercising a right to virtual retransmission) also constitutes an exploitation of the cerebral sports event which must be authorised by the organiser. Indeed, the interest of a chess game lies mostly in the intellectual performance delivered by the players, namely the randomness of the combinations they choose and the strategies they implement until the end of the game. Ultimately, the interest of chess lies in the movement of the pieces, whether this is captured by cameras or represented on a virtual chessboard.

Brands and “Delegated Federations”

Article L.131-17 of the French Code of Sport reserves the exclusive use of the terms “*Champion de France*” (Champion of France) and “*Equipe de France*” (Team of France) to the delegated Sport Federation designated by the Ministry of Sports. These provisions have already been applied several times by courts, leading in particular to the cancellation of the “*EQUIPE DE FRANCE DE RUGBY*” trade mark at the request

of the French Rugby Federation (Supreme Court 23 November 2010).

On 18 December 2020, the Paris Civil Court had the opportunity to settle a dispute between two delegated federations, the French Cycling Federation, and the French Motorcycling Federation. Both claimed that the organisation of the practice of “Electric Mountain Biking” or “E-MTB” (in French, *VTTAE*) fell within the scope of their area of competence. However, despite a massive growth in France due to the COVID-19 crisis, E-MTB is currently not the subject of any of the ministerial delegations of the above-mentioned Federations, as specified in 2016. No regulatory text can therefore link this discipline to cycling rather than to motorcycling, or vice versa.

Each Federation put forward strong arguments. Mountain biking is already part of the field of competence of the Cycling Federation, which organised the French E-MTB Cup as well as the French E-MTB championships in 2018. On the other hand, the motorised character of E-MTB as well as the organisation by the International Motorcycling Federation of electric motorcycle competitions (known as *E-bike* in French) played in favour of the Motorcycling Federation.

The relative status quo which reigned in the absence of any decision of delegation by the French authorities broke down when the French Motorcycling Federation proceeded with the registration of 38 French brands composed in whole or in part of the terms “*VTTAE*”, “*E-BIKE*” and “*E-VTT*”. The French Cycling Federation thus served a writ of summons to the Motorcycling Federation on the basis of trade mark law and obtained the cancellation of each of the 38 registrations which were considered fraudulent. In its judgment of 18 December 2020 (currently under appeal), the Paris Civil Court noted that, in accordance with Article L.131-14 of the French Code of Sport, the Ministry of Sports had not

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designated any sports federation as delegatee in matters related to E-MTB. Therefore, the Motorcycling Federation was not competent to proceed with the registration of trade marks bearing the E-MTB (VTTAE) sign, especially since it was aware of the antagonistic claims formulated by its counterpart in cycling.

Pending the position of the Ministry of Sports, it should have refrained from registering the trade marks, regardless of whether, at the date of said registrations, the French Cycling Federation was not the more legitimate owner of the cancelled trade marks.

Reinforcement of the Fight against Piracy

According to a 2020 report of the French Authority for the Distribution of Works and the Protection of Rights on the Internet (currently known as HADOPI in French and to become ARCOM after the merger with the Audio-visual Council), more than 3.4 million people watch illegal sports broadcasts every month in France. The loss for the sports sector is estimated at EUR500 million per year for sports channels according to the Professional Football League. By structurally affecting the economics of broadcasting, piracy of sports competitions jeopardises the funding of the entire sports ecosystem, especially the solidarity mechanisms between professional and amateur sports.

In this context, French sports stakeholders came together and created, in January 2018, the Association for the Protection of Sports Programmes (APPS in French), whose main purpose is to fight against all forms of sports broadcasting piracy, in particular by making changes to the regulations in force. The APPS is composed of the main sports channels (beIN Sports, Canal +, etc) and of French federations/leagues, as well as of the French National Olympic and Sports Committee.

The fight against illegal sports broadcasting has been subject to the provisions of the draft Law relating to audio-visual communication and cultural sovereignty in the digital age. It was registered at the National Assembly in December 2019 but has been put on hold due to the COVID-19 crisis.

In January 2021, a bill aiming at democratising sport in France was proposed. The goal of this text is to dry up the resources of promoters of illegal sites or services in order to support the legal watching of sports programmes. It was inspired by the British and Portuguese models. The idea is to fight against facilitators of computer piracy rather than against the hackers themselves and to help judges both upstream and downstream.

Article 10 of the proposed law (“Fight against illegal retransmission of sports events and competitions”) provides for concrete solutions in order to deal with the illegal watching of sports retransmissions. It allows right-holders and broadcasters to obtain from the President of the Civil Court, through a fast procedure, a dynamic order valid for up to twelve months, enabling the blocking, removing or de-referencing of pirate sites and servers in real time. The dynamic nature of the order would allow its effectiveness to be extended to pirate sites and servers that were discovered after the issuance of the order, in the context of a dialogue between the parties, in which HADOPI would act as a trusted third party. Thus, a single order issued by the judge would enable the shutting down and deregistering of pirate sites, as well as their mirror sites, during twelve months without having to frequently refer to back to the courts.

Article 9 of the same draft law would also enshrine in the Law the national platform for the fight against manipulation of sports competitions, responsible for collecting and trans-

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mitting relevant information related to the fight against manipulation of sports competitions to the appropriate authorities and sports organisations.

Financial Support Provided to Professional and Amateur Sport during the COVID-19 Pandemic

The global COVID-19 pandemic has had a severe impact on a wide range of sectors, including professional and amateur sport, which have experienced an abrupt stop to training and competition. Some federations have subsequently been able to return to training grounds and official matches under very strict sanitary conditions (closed-door, limited capacity).

These restrictive measures have had the effect of limiting, or even preventing entirely, the generation of revenues necessary to finance the costs of sports events that have continued to take place. In order to help those structures, the French government has set up a scheme allowing sports associations, sports companies, federations, professional leagues, and organisers of sports events that organised, between 10 July and 31 December 2020, a sports event or competition subject to limitation or to a closed-door restriction, to receive compensation in the form of direct grants.

The sports associations and professional clubs' financial losses have been substantial and result mainly from ticketing losses, as well as, for sports companies, from sponsorship contracts that could no longer be fully or partially fulfilled.

Thus, on 17 November 2020, the French government announced exceptional financial assistance in order to partially offset the losses in ticketing and catering directly related to the closed-door and capacity restrictions. The amount of this financial assistance is first calculated on the lost revenue from ticketing and

on-site catering (between 15% and 55% of these losses, depending on the type of beneficiary). If necessary, the amount of compensation is then adjusted downwards, in accordance with the difference between the gross operating surplus achieved by the considered event (organised between 10 July and 31 December 2020) and the one achieved over the reference period (2019). The level of grant is capped at EUR5 million per structure.

By the end of February 2021, a first payment of 70% of the grant will be made to those structures which formulated requests for compensation that were accepted by the government. The balance of the financial assistance will be paid after verification of the accounts of the concerned structures.

It is interesting to note that this governmental financial assistance scheme was authorised by the European Commission in a decision of 26 January 2021.

Sports Agent Contracts – Focus on Two Recent Decisions

In France, the activity of sports agents is strictly regulated. It can be the source of numerous disputes, both civil and criminal, if French Law provisions are not strictly complied with.

Among these disputes, one regularly finds issues related to (i) the status of the agent and their ability to work as a sports agent in France; and (ii) the agent's remuneration by the athlete or the club, particularly within the framework of a transfer contract. Two examples of recent court decisions are particularly noteworthy in this respect.

In the first case, a sports agent contract, with an exclusivity clause, was concluded between a football player and a sports agency.

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The latter sued the player before a civil court, considering that the player did not comply with the terms of his mediation contract by committing to the AS Monaco football club with the assistance of another agent. The athlete, for his part, claimed that the mediation contract was null and void since it was concluded with a sports company and not with a natural person holding a sports agent licence attributed by the French Football Federation.

On 10 January 2019, the Lyon Civil Court cancelled the agent contract, citing two key reasons.

- The contract provided that the mandate would be exercised by said company “with the assistance of its manager and sports agent Mr X”; and yet, according to the Court, it should have been written that it was Mr X who was exercising that activity within the company, in compliance with the provisions of Article L.222-8 of the French Code of Sport.
- The contract was signed by the legal representative of the company and not by that same person in his capacity as authorised agent.

The Civil Court recalls here the importance of having an agent contract signed by the licenced agent himself (with his licence number), including when he is the legal representative of the sports agency with which the athlete or the professional club enters into the contract. The agent must specify, if necessary, that he is signing in both capacities.

The second case deals with the question of the precision of a clause relating to remuneration in an agent’s contract. The professional football player Nabil Fekir concluded on 31 May 2013 an exclusive representation contract with a sports agent for a two-year period, a few days before the signature with Olympique Lyonnais of his

first professional football player’s contract for three sports seasons. The following year and through his agent, the player signed a new contract with the club on 1 July 2014 in return for higher pay. A new “exclusivity contract” was then signed with his agent on 1 September 2014, for a period of two years.

On 6 February 2015, the French international player decided to terminate the contract with his agent. The agent then sued the player to obtain compensation for his loss resulting from the abrupt termination of the contract, claiming nearly EUR1.3 million by way of damages.

In a decision dated 12 January 2021, the Lyon Court of Appeal upheld the decision of the Civil Court in its entirety, in so far as it declared the exclusivity agreement null and void on the grounds that the compensation clause was not precise enough.

As a preliminary point, it must be recalled that, under penalty of nullity, the agent contract must precisely state the amount due to the intermediary, which cannot exceed 10% of the amount of the contract concluded between the parties put in contact, as well as which party is responsible for the payment of the agent (Article L. 222-17 of the French Code of Sport). In the present case, the disputed remuneration clause was drafted as follows: “The remuneration may in no case be inferior to 7% (excluding tax) of the amount of the contract”.

In so deciding, the judges confirmed that the wording of this clause was insufficiently precise regarding:

- the agent’s remuneration – since it did not indicate whether it was calculated on the player’s gross or net remuneration, including bonuses or not; and

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- the party responsible for the payment of the agent's remuneration—as the contract indicated that the remuneration would be paid by the player or the club.

The judges thus highlighted the special attention that must be paid to the drafting and negotiation of remuneration clauses in sports agent contracts, as they constitute one of its essential elements.

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