THE FIFA REGULATIONS ON WORKING WITH INTERMEDIARIES
IMPLEMENTATION AT NATIONAL LEVEL

Michele Colucci (ed.)

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INTRODUCTION

On 1 April 2015 the new FIFA landmark regulations on intermediaries entered into force.

They define the intermediary as
“a natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract, or represents clubs in negotiations with a view to concluding a transfer agreement”.

Now, anyone with a “self certified” impeccable reputation and no conflict of interest qualifies as an Intermediary.

Targeting the widely recognised need for improving transparency in transfer of players, FIFA has established a new two-steps registration procedure: first comes a registration of the intermediary with the relevant national association; second follows a systematic formal registration of each transaction carried out by the intermediary.

This radical change in FIFA’s approach focuses more on monitoring the transaction activities rather than the formalities of the access to the profession.

In doing so, the FIFA regulations aim to better protect the integrity of football and the interests of sports stakeholders. Indeed, footballers engage intermediaries in order to wrangle for the best contracts while clubs’ managers rely on them to get the best players at the best conditions.

In this new legal context, the FIFA rules set minimum standards to be implemented by the national associations, which are free to adopt even stricter requirements, if they wish to.

Eventually, differing implementation of national regulations shall lead to a great variety of different measures for each national association in governing the exercise, the remuneration and the monitoring of the same intermediary activity.

Therefore, those who are interested in transferring a player to a given country are obliged to know the regulations of the relevant national association.

This book offers an in-depth analysis of the FIFA regulations and takes into account clubs’, players’ and agents’ perspectives. It also contains 33 country reports followed by a comparative analysis reviewing the national implementing measures.
Finally, it underlines the discrepancies but above all the best practices in order to offer added value to the FIFA national associations and valuable guidance to all sports stakeholders.

Brussels, 1 October 2015

*Michele Colucci*
THE IMPLEMENTATION OF THE FIFA REGULATIONS IN UKRAINE

by Anton Sotir*

1. Introduction

The adoption of the new Regulations on Working with Intermediaries (“FFU Regulations”)1 by the Football Federation of Ukraine (“FFU”) led to significant changes of the entire system of intermediary / agent services in Ukraine.

Since FIFA has identified only a framework of a new system, allowing national associations to self-regulate such activity in more detail, it seems that the FFU decided to combine previously existing rules with the ones formally required by FIFA. It is interesting to see what outcome will be after such discretion granted by FIFA to national associations is finally implemented worldwide in practice and how intermediary activity, being also internationally-oriented, deals with all national particular regulations and rules.

The above analyses of the FFU Regulations will shed the light on how the new system is supposed to work in Ukraine, what possible challenges it may face and how it may influence on the international market of provision of the intermediary services in general.

2. Relevant national law

The legislation of Ukraine does not specifically regulate any activity of sports / football intermediaries, granting a wide discretion to sports associations to deal with such matters. Therefore, the only document regulating an activity of football intermediaries in Ukraine is the FFU Regulations on Working with Intermediaries finally adopted and approved on 17 April 2015 by the FFU Executive Committee.

The FFU Regulations are generally based on the FIFA Regulations on

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1 Full text of the regulations may be accessed within the following link (in Ukrainian): www.ffu.org.ua/files/ndocs_686.pdf.
Working with Intermediaries ("FIFA Regulations"), albeit having a lot of particularities and imposing stricter requirements on the persons willing to undertake intermediary activity and register the transactions with the FFU. They are composed of four chapters, totalling to 23 articles, and two annexes being the intermediary declarations applicable to natural and legal persons respectively.

The scope of the regulations is limited to the Ukrainian market only, covering any intermediary activity aimed on a (re)negotiation of the employment contract with Ukrainian club or transfer of the player to Ukrainian club. Such activity relates to the players and the clubs. Negotiation with or on behalf of the coach does not fall under the scope of the regulations. This corresponds to the scope provided for in par. 3 and 4 of article 3 of the FIFA Regulations.

In addition to the FFU Regulations, on 3 June 2015 the FFU issued a separate ruling containing further requirements concerning the formal exam for candidates intending to obtain the status of the permanent intermediary (the “FFU Order”). Although the FFU Order formally is not a part of the FFU Regulations, its actual function is to specify in more detail the general provisions, imposing additional requirements and obligations on the potential intermediaries, practically becoming an addendum to the initial regulations, which will be discussed below.

Besides specific rules within the football realm, the Commercial Code of Ukraine generally regulates an agency activity for commercial transactions. This legislation does not directly influence on the FFU Regulations or the FFU in general, but being obligatory in Ukraine may indirectly influence on the sports intermediary activity in Ukraine. In any event, the FFU Regulations (and its previous editions regarding player’s agents) do not refer to the application of the Commercial Code of Ukraine, which is also not used by the judicial bodies of the FFU when resolving disputes involving player’s agents / intermediaries.

Important note about national legislation is that any agency activity aimed on earning profit (sports intermediary activity falls under such definition) is a type of commercial activity and requires the compliance with national rules, including corporate and tax regulations. In other words, the person undertaking intermediary activity in Ukraine shall not only adhere to the specific regulations of the FFU and/or FIFA, but also follow the mandatory provisions of the national law existing separately from the sporting rules, failure to which may lead to an administrative offence or even a criminal conviction. For the sake of example, the natural person may conduct the agency activity only if he or she is duly registered as self-employed person in the State registry or through an established company, and only provided that specific taxes are paid deriving from such activity. Therefore, a foreign player or a club working with Ukrainian intermediary is advised to check about his intermediary’s legal status in Ukraine and insert into a representation contract the relevant provisions on the representations and warranties about the compliance of the intermediary’s business to the Ukrainian legislation.
3. **Principles**

The main principles of the intermediary activity in Ukraine under new regulations are set forth mostly in article 2 of the FFU Regulations and correspond to the principles mentioned in article 2 of the FIFA Regulations with additions and peculiarities. Among them the most significant are the following:

- **Parties’ autonomy**, enabling players and clubs to either engage the intermediary services or act by themselves on their own behalf.
- **Due diligence**, requiring a club or a player engaging intermediary services to ensure that intermediary signed the intermediary declaration, the representation agreement and obtained the relevant permit from the FFU.
- **Transaction registration**, requiring any transaction negotiated with involvement of an intermediary to be mandatory registered with the FFU.
- **Personal restriction**, forbidding FIFA officials (point 11 of the Definitions section of the FIFA Statutes) and football players to act as intermediary.
- **Freedom of choice**, forbidding anyone to condition the conclusion and/or validity of the transfer agreement or employment contract to the compulsory involvement of a particular intermediary in the transaction.
- **Disclosure**, requiring anyone within the scope of the FFU or FIFA who becomes aware of any violation of the FFU Regulations, including the involvement of intermediaries without permission from the FFU or failure to mention the actual amount of the transaction, to report such violation to the FFU, failure to which may lead to imposition of disciplinary sanctions.
- **Protection of minors**, forbidding intermediaries to receive commission arising from the transactions involving minors and restricting the representation agreement with a minor to one year only.
- **Publicity**, requiring the publication of all relevant information about intermediaries and transactions they are involved into on the FFU’s website.

4. **Definitions**

As a matter of convenience, the FFU Regulations in its first chapter listed definitions and shortenings that are used across the regulations. Among general definitions like CAS, FFU, FIFA, football player, club, transfer and other basic terms that have common meaning in football realm around the world and conform to the definitions according to the FIFA Statutes and other regulations, the FFU Regulations contains specific terms.

“**Intermediary**” has almost identical meaning as in the FIFA Regulations, additionally requiring that the representation of players and/or clubs must be in accordance with the FFU Regulations.

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2 A natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement.
“Transaction” is a conclusion, amendment or renegotiation of the employment contract for a player or of the transfer agreement for a club with the involvement of an intermediary.

“Registry of Intermediaries” is an electronic database of persons who are permitted to conduct intermediary activity.

“Certificate” is a Permanent Intermediary Certificate (will be explained below).

“Temporary permission” is a permission to perform one-time intermediary activity (will be explained below).

5. Requirements and conditions

In order to be able to act as intermediary in Ukraine pursuant to the FFU Regulations certain mandatory conditions were implemented though significantly toughen the approach of a simple registration of the transactions created by FIFA.

Article 3 of the FFU Regulations stipulates the exhaustive list of persons capable to provide intermediary services:
- Natural persons who obtained the Permanent Intermediary Certificate (“PIC”).
- Legal entities that obtained the PIC.
- Natural persons who obtained the Temporary Intermediary Permission (“TIP”).
- Legal entities that obtained the TIP.
- Natural persons who act on behalf of the player exclusively if they are player’s parents, siblings or spouse, on the basis of documents proving family connection.

Assignment of the right to provide intermediary services to any person is forbidden.

As it is prescribed by the FIFA Regulations, players and clubs shall act with “due diligence” while choosing an intermediary. This implies that they shall use reasonable endeavours to check the reputation of the person (or the relevant firm, company), to ensure the absence of possible conflict of interest, to be able conclude a valid and effective representation agreement and to make sure that intermediary has signed the intermediary declaration.3

Other important requirement concerns the representation agreement entered into between the intermediary and a player or a club. Besides essential terms and conditions that parties are obliged to insert into such agreement,4 its duration may not exceed two years period that cannot be prolonged automatically and such agreement is subject to mandatory registration at the FFU. The representation agreement with a minor may not exceed one year, must be approved

3 The templates of the intermediary declaration for natural persons and legal entities are contained in Annexes 1 and 2 to the FFU Regulations.
4 Most of the essential terms are taken from par. 2 article 5 of the FIFA Regulations, supplemented with other conditions like exclusivity/non-exclusivity of the agreement, dispute resolution clause, and obligation to register the transaction at the FFU, information about the PIC or TIP of the intermediary.
by one of the player’s parents, may not be of an exclusive nature and should not provide for any intermediary commission. Furthermore, the intermediary is restricted directly or indirectly to offer the player or the club any reward (money, gifts) aimed on entering into the representation contract with him, preserving the principle of the freedom of choice and the parties’ autonomy.

Additionally a person being within the scope of a football system and being under the jurisdiction of FIFA and/or the FFU, shall compulsory notify the FFU of the transaction, which is committed in violation of the FFU Regulations. In other words, if someone somehow learned that a club or a football player signed a contract with a participation of an intermediary (or person acting as intermediary), but have not registered such transaction at the FFU, or that the intermediary received money beyond the rules, such person is obliged to report such violation to the FFU. Otherwise, FFU Regulations provide for disciplinary sanctions for “concealment” of such information by any person.

6. **Impeccable reputation and registration**

FIFA’s requirement that national associations shall make sure of impeccable reputation of the intermediary caused a lot of questions. In fact, to know about completed transaction with involvement of the intermediary (or a person actually acting as intermediary) the federation could only *post factum*, i.e. after it has been concluded. Cancelling the transaction only because intermediary, who was involved in it, was lacking of “ideal, impeccable” background, seemed too radical (and actually forbidden by the FIFA Regulations\(^5\)). It is better to prevent a breach rather than to sanction for its commitment. Therefore, in order to ensure that the intermediary is *bona fide*, acts in good faith and can be trusted with the transaction, the FFU has decided to introduce the institution of a preliminary registration of intermediaries.

For this purpose, the FFU decided to keep the old system of controlling the access to intermediary activity simultaneously implementing the mandatory requirements from FIFA regarding the registration of transactions. As a result, the FFU Regulations, also supplemented with the FFU Order, provide for a dual registration system: preliminary registration of intermediaries and registration of transactions.

6.1 **Preliminary registration of intermediaries**

The preliminary registration resembles the previous system of issuing licenses, but with a number of particularities. Instead of obtaining an agent’s license to be allowed to conduct the intermediary activity as was in the past, since now there would be

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5 Article 1 (4) of the FIFA Regulations: “These regulations and potential additional provisions going beyond these minimum standards / requirements implemented by the associations shall not affect the validity of the relevant employment contract and/or transfer agreement”.
two special regimes: regime of the Permanent Intermediary (person who obtains the Permanent Intermediary Certificate – PIC) and the Temporary Intermediary (person who obtains the Temporary permission for conducting intermediary activity or Temporary Intermediary Permission – TIP).

The idea behind this was to make a “preliminary verification” of the person entrusting him the negotiation between the players and clubs. Failure to suit to the FFU standards aimed on prevention of such persons being involved in intermediary activity. Thus the Temporary Intermediary Permission granted to a person for a particular transaction and valid within a limited period was designed to fit such purpose. Additionally, for persons who conduct intermediary activity on a “daily basis” and mostly (or constantly) in Ukraine the “preliminary verification” was simplified: the candidate is able to pass special exam and receive the permanent permission, being released from an obligation to get a permission for every transaction he is intended to be involved in, but only once, following a more complicated procedure.

6.1.1 Permanent Intermediary Certificate

The FFU Regulations initially established that if a person wants to become a permanent intermediary, he should apply at the FFU within the established period (as a rule, June and December each year) and be certified by the FFU, resulting to obtaining of the PIC.

The advantages of the Permanent Intermediary Certificate are as follows:
- No need to get permission from FFU for each transaction when acting within Ukraine.
- Lower and one-time-only fee comparing to the TIP.
- Name of the holder is published on the FFU website.
- It is presumed that the holder has impeccable reputation.
- Constant possibility to resolve disputes at the FFU.

This status has no expiration. Nevertheless, the possession of the PIC does not exempt from a compulsory registration of each transaction at the FFU as also required by the FIFA Regulations.

Initially it was supposed that obtaining of the PIC would not be similar to the previous procedure of receiving an obsolete players’ agent licence. FIFA’s idea was to cease the regulation of the access to the activity, and the FFU Regulations implementing this regime logically should only enable the FFU to make sure of the impeccable reputation of the person willing to act as intermediary as required by par.1 art.4 of the FIFA Regulations. However, on 3 June 2015 in anticipation of the upcoming transfer period the FFU had rendered the FFU Order,6 which stipulated the exact dates of the exams for candidates wishing to receive the PIC, deadlines for application to the exam and the requirements that candidate must conform to.

6 Text of the order may be accessed within the following link (in Ukrainian): www.ffu.org.ua/ukr/ffu/about/ffu_news/13909/.
The requirements for the candidate under the FFU Order are more specific and stricter than under the FFU Regulations. As a result the candidate for PIC can be either (1) a citizen of Ukraine with impeccable reputation who lived in Ukraine for the last three years; or (2) a legal entity with a shareholder who has already obtained the PIC (only such natural person would be able to act on behalf of the legal entity and to sign the relevant documents in its name). Among the documents to apply for the PIC the FFU required a completed application form, an intermediary declaration, a short bio, certificate from the place of domicile, certificate on the criminal record and recommendation letter from the regional football federation (region of the candidate’s domicile).

If the candidate is a legal entity, additionally the following documents are required: intermediary declarations for natural person and for legal entity, short information about legal entity, charter and other documents relating to the establishment of such legal entity. Before applying for exam the owner(s) of the legal entity must be interviewed.

Application fee for the exam is UAH 20’000 (around USD 920).

After all documents are submitted and accepted by the FFU, provided that the application fee is paid, the candidate takes exam composing of 15 questions held in Ukrainian language. Successful candidates will be granted the status of the Permanent Intermediary and obtain the relevant certificate.

As it is evident from the above, the Permanent Intermediary Certificate and the procedure of its obtaining is very similar (if not stricter) to the procedure of becoming the players’ agent that existed in the past. In any event, it does not cancel the regulation of the access to the activity, and goes far beyond of making sure of the candidate’s impeccable reputation only.

The involvement of the legal entities as intermediaries in Ukraine on the basis of the PIC will unlikely be realised in practise: only persons who have already obtained the PIC may get the same PIC (with the same effect and purpose) for its companies, following complicated procedure and being obliged to pay the fee again. The PIC granted to the legal entity does not allow its employees to be intermediaries, making such PIC pointless in practise.

However, for persons who are citizens or Ukraine and who undertake constantly the intermediary business the obtaining of the PIC is a most appropriate solution to continue their activity within the FFU Regulations.

6.1.2 Temporary Intermediary Permission

Regarding the second regime, a person who does not want to take exams at the FFU (or are not allowed due to, for instance, nationality requirement) and/or who does not want to be a permanent intermediary but at some point wishes to assist the club or the player to negotiate a contract, is able to apply directly to the FFU to obtain a Temporary one-time permission for a particular transaction. This option is especially useful for foreign intermediaries who may not know Ukrainian language, but who may represent foreign players in the transfers to Ukrainian clubs.
The FFU Regulations do not contain any specific requirements on how the procedure of issuing TIP is handled. There is still no additional order from the FFU addressing this issue as it was in relation to the PIC, leaving this procedure open to discussion and uncertainty.

According to the general provisions of the FFU Regulations, for a person to obtain the TIP he must be tested for his “impeccable reputation” and pay a fee to the FFU, the amount of which is still undefined. It is also possible that the FFU may impose additional requirements and documents necessary to submit to the FFU, making the process of obtaining TIP more complicated, time-consuming and even expensive.

The TIP is issued for a negotiation of a particular transaction, enabling a person to have simultaneously several TIPs for different transactions. It is also limited in time, granting a person a deadline till the end of the pending transfer period to use his intermediary empowerment. In practice the TIP will be requested by a person once he will be aware of the negotiated transaction and will know about the club and the player (or another club) whom he represents.

The limited scope of the TIP may lead to reasonable questions: what if a person has obtained the TIP and has paid the fee, but at the end was not able to negotiate the deal? The FFU Regulations are silent on such situation, leaving a room for the FFU to regulate the problem manually or through adoption of a separate order on the TIPs. As was unofficially reported by the FFU’s representatives, it might be possible that the paid fee would be returned.

Advantages of bearing the TIP are its flexibility comparing to the PIC and possibility to be obtained by foreigners, also granting a presumption of an “impeccable reputation” for its holder, possibility of publishing his name on the FFU’s website and protecting its interests by spreading the jurisdiction of the FFU to resolve any disputes involving TIP’s holder. However, a high fee for the TIP may be a serious obstacle and impediment for a person who considers it’s obtaining: if, as a way of example only, the transaction where the foreign intermediary is intended to be involved does not provide for a high intermediary commission, the fee for the TIP might be even higher than the amount actually received by the intermediary, making detrimental such intermediary activity for a foreigner with Ukrainian club or player.

In any event, the TIP can be the only instrument for the foreign intermediaries wishing to work on Ukrainian market to properly register the transaction with the FFU.

6.1.3 Preliminary verification or full control of the access to activity?

The implementation of the FFU Order and the fact that nothing was adopted in

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7 Hopefully there would be no requirements as to the candidate’s nationality for obtaining the TIP. Otherwise, it would create the situation when only very limited number of persons might be allowed to undertake intermediary activity in Ukraine, raising the question of legality of such regulations.
The implementation of the FIFA Regulations in Ukraine

relation to the TIPs so far (additional rules as to how the TIP may be obtained and its fee) raise reasonable questions as to whether the FFU actually followed the approach implemented by FIFA wishing to control only the transactions involving intermediaries. Strict requirements to the candidates, impossibility of the foreigners to obtain the PIC, presence of a formal exam for the PIC evidence that the FFU decided to maintain the previous system of the players’ agents’ registration with some modifications.

In any event, the procedure of obtaining the PIC does not purported on the verification of the impeccable reputation only, but is a strong instrument to control the access to intermediary activity accepting the persons that only comply with a set of strict formal requirements, particularly the requirement of a candidate’s nationality. More clarification on the TIPs and procedure of its obtaining, which is expected from the FFU in the nearest future, may shed the light on this issue and make the system more flexible. So far its complexity and restrictions, particularly for the foreigners, may lead to either unwillingness to work with Ukrainian market or creating side ways to register the deals through local intermediaries who hold the PIC (implying also sharing the profit with them) or favoring the shadow market for such activity.

6.2 Registration of transaction

As was mentioned above, the FFU also implemented the system of registration of transactions, following the mandatory requirements of FIFA. According to article 4 of the FFU Regulations each transition (conclusion or prolongation of the employment contract or the transfer agreement) involving intermediary shall be duly registered at the FFU pursuant to the procedure provided for by the regulations.

The intermediary and the customer of his services (the player or the club) shall submit within 10 days after the transaction has been made the following documents:
- the representation agreement;
- the intermediary declaration;
- the copy of the relevant employment contract or the transfer agreement.

Intermediary additionally shall submit his permission (PIC or TIP). All documents shall be submitted only in Ukrainian or Russian language.

Even if the PIC was obtained by intermediary or the TIP for a particular transaction, still both player/club and intermediary must register each transaction with the FFU. The failure to register the transaction or lack of permission (TIP or PIC) to act as intermediary deem as serious violation of the FFU Regulations and lead to the imposition of disciplinary sanctions. Only a person mentioned as intermediary during the registration of transaction is entitled to be remunerated for

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8 This seems to be unreasonable and unfair when a person has negotiated the whole deal but could not obtain full compensation just because of the restrictions imposed by the FFU and lack of proper nationality or time to get the required permission.
his services, while the assignment of this right is forbidden.

7. **Intermediary’s obligations**

Article 12 of the FFU Regulations imposes the following obligations on the intermediary:

- to comply with statutes, rules and regulations of the FFU, FIFA and UEFA, to obey the laws of Ukraine;
- to ensure the conformity of each transaction concluded as a result of his activity to the requirements of the rules and regulations of the FFU, FIFA and UEFA;
- to submit all documents required for registration of the transaction;
- to promptly sign the intermediary declaration and submit it to the FFU and to his client (football player or club);
- not provide intermediary activity without being previously granted the PIC or the TIP, provided that permission is required under the FFU Regulations;
- to provide its intermediary activity to the player and the club fairly, in good faith and in their best interest;
- not induce the player to terminate his employment contract with a club without just cause;
- to represent only one party avoiding conflict of interest (with exception that when all parties concerned consented thereto, the intermediary may represent both player and club);
- at the request of the FFU and/or FIFA to provide all necessary information and documents regarding the transaction and his activity;
- to ensure that his name (or title in case of a legal entity) and signature appear in the relevant contract being the result of the intermediary’s involvement and services.

8. **Remuneration**

Unlike FIFA that has established the recommended amount of compensation to intermediaries in the amount of 3% of the contract amount, the FFU decided to establish a possible limit (“cap”) for such remuneration / intermediary’s commission. Now intermediaries cannot receive for their services more than 10% of the contract amount (calculated based on the gross income of the player during the whole period of the employment contract or the overall amount of transfer compensation agreed between the clubs under the transfer agreement). The parties may set a lower amount in the representation agreement, but anything agreed in excess of 10% will be considered invalid.

According to international experience in relation to remuneration for agency services, some agents sometimes abused their monopoly position with respect to certain players and clubs, and the amount of their fees sometimes even exceed
the salaries of the players they dealt with or the amount of the transfer to be received by the club. Therefore, for a more transparent and fair regulation of such relations, in order to prevent the excessive enrichment of intermediaries the FFU set the maximum amount of intermediary’s possible remuneration, considering it as a fair and reasonable “cap” for intermediary services.

As was mentioned above, intermediary activity of the Ukrainians or Ukrainian companies are subject to mandatory provisions of the legislation on corporate and tax issues. Particularly, every person obtaining income from his activity is considered as entrepreneur and his business should be registered in a particular way, while his income is subject to taxation. It is not common for intermediaries in Ukraine to regulate tax issues in the representation contract and, as a rule, the clients (players or clubs) are not burdened with an obligation to additionally cover intermediary’s expenses related to conducting agency business. However, given that the FFU Regulations do not address this issue very deeply, the cap of 10% does include possible taxes the intermediary will be obliged to pay afterwards, but may not be charged extra.

An innovation for the Ukrainian football has become the provision of the FFU Regulations on late payments of the intermediary’s commission. If the club or the player has not paid the intermediary’s commission on time, for the period of delay until actual payment interest at rate of 5% per annum will accrue. This regulation is aimed on “motivation” of clubs and players to pay intermediaries in a timely manner. Before the adoption of the FFU Regulations no interest applied, leading to the situation when the debt was not different as on the moment it occurred until the actual payment date, allowing some players or clubs to abuse the credibility of the player’s agents and delay payments without any consequences.

Regarding minor players the FFU Regulations (like the FIFA Regulations) prohibits the payment of intermediary’s commission as a result of transactions where minors are involved. Given that the process of obtaining the PIC or the TIP and registration of the transaction requires time and separate actions, it is likely that transactions involving minors will not be registered at the FFU at all.

9. Conflicts of Interests

Article 19 of the FFU Regulations establishes main provisions on the conflict of interest, whereby it is required that prior to engaging the services of an intermediary, players and/or clubs shall use reasonable endeavors to ensure that no conflicts of interest exist or are likely to exist either for the players and/or clubs or for the intermediaries. If the intermediary discloses in writing about any actual or potential conflict of interest he might have with one of the other parties involved in the transaction, it is deemed that no conflict of interest exists, provided that all other parties involved grant express written consent thereto before negotiations are started.

It is possible that both club and player want employ the services of the same intermediary within the same transaction. In such event both must grant
express written consent and determine which of the parties will pay the intermediary’s commission. The parties shall inform the FFU of any such arrangement and accordingly submit all the aforementioned written documents within the registration process of transaction.

The provisions are very similar to the provisions of article 8 of the FIFA Regulations.

10. Disciplinary powers and sanctions

The FFU Regulations implemented two levels of sanctions for all stakeholders: for direct users of the intermediary services (players and football clubs), and for intermediaries themselves. While the possibility to have disciplinary powers through its internal judicial bodies over the people being within the scope of the FIFA Statutes (i.e. players and clubs) is clear and justified, legality and jurisdiction of such judicial bodies to render decisions in respect of the persons who act as intermediary is rather questionable. Nevertheless, the FFU found the mechanism of influence on the intermediaries, foremost, being able to verify their “impeccable reputation”, which may be not fully in compliance with the established standards when a person acted in violation of the FFU Regulations, and also having full control of access to the intermediary activity and being able to restrict it (not to grant the PIC or the TIP) when any breach was established.

In the event the player or the club engage the intermediary services of a person lacking the permission (the PIC or the TIP) or who is forbidden to undertake such activity at all (blacklisted), the competent judicial bodies of the FFU may take into account this fact when assessing the dispute deriving from the representation contract (any breach by intermediary of his obligations under such agreement or any other failure) and/or to impose the disciplinary sanctions on the player / the club (warning or fine).

Importantly, the FFU Regulations are silent on the sanctions when the player or the club failed to register the transaction, to register the representation contract at the FFU or to report the actual amount of the intermediary’s commission. However, this loop may be cured by insertion of the relevant additional violations and sanctions in the Disciplinary Rules of the FFU, which are expected to be amended soon.

In relation to the intermediaries, the possible violations for which they may be sanctioned and the range of sanctions is wider. According to article 13 of the FFU Regulations, intermediary who abuses the powers granted under the representation contract or who violates any of obligations provided under the FFU Regulations, may be subject to the following sanctions:
- warning;
- fine;
- suspension of the PIC;
- cancelation of the PIC;
- ban on intermediary activity.
Additionally, to combat with “dishonest” intermediaries who have committed serious violations of procedural rules and who acted not in good faith a separate list will be created with persons who are banned for a certain time to conduct intermediary activity. This list will be published on the FFU’s website and all clubs and players will be able to “verify” a potential representative checking information on the website. Transactions with involvement of such “forbidden” persons will be subject to disciplinary sanction.

The body empowered to impose disciplinary sanctions on the players or the clubs is the Control-Disciplinary Committee of the FFU (“FFU CDC”). The FFU Regulations also spread the jurisdiction of the FFU CDC to the intermediaries, though as was mentioned above, this is highly questionable and may be subject to interesting dispute. In any event, the FFU controlling the access to the intermediary activity has strong and efficient leverage to influence on the persons acting in violation of the rules, not even using the powers of the judicial bodies.

11. Conclusion

The adoption of the FIFA Regulations and consequent approval of the FFU Regulations lead to many discussions. Different associations established different rules with various peculiar restrictions regarding preliminary registration of intermediary making the intermediary activity more oriented and limited to the local market only. The provision of intermediary services in football significantly involves an international activity and requires the relevant “international flexibility”, which is substantially restricted and obstructed by various national rules. The FFU Regulations can be a good example of such restrictive regulations, particularly for the foreigners, clearly forbidding to obtain the Permanent Intermediary Certificate for non-Ukrainians and not regulating in detail the process of obtaining the temporary permission.

After careful analyses of the FFU Regulations and its additional requirements it is clear that the main aim of the implementation by FIFA of a new regime was not truly reflected in the FFU Regulations. While the FIFA’s new approach was concentrated on the tighter control and supervision of the transactions relating to transfer of football players in order to enhance transparency, completely leaving aboard the regulation of the “access to the activity”,9 Ukrainian newly adopted system is somewhere far from the purely FIFA’s approach, regulating both the transactions and persons wishing to be involved in transactions.

As a result, conducting intermediary activity in Ukraine will be difficult for some persons, while for others will not be very different from the previous regime, only additionally requiring to register the transactions. On the one hand, for people who are constantly engaged in this activity (ex-agents) more routine and paper work will be added (e.g. submitting a package of documents during the

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9 See FIFA’s position on the new regulations: www.fifa.com/governance/intermediaries/index.html.
(conclusion of each transaction). But others will have a chance to be involved in transactions without taking exams and without having a license, but just receiving a temporary permit. Nevertheless, intermediaries from foreign jurisdictions will be required to engage experienced sports lawyers or local intermediaries with the PIC in order to understand the new system and to be assisted to fill in all required documents, declarations and to register the transaction properly.

In any event, it is a matter of time how the new system will work in practice. Ukraine, like other jurisdictions, just adopted new regulations and questions about their practical implementation will be answered soon. Hopefully, the new regime with its complications and numerous requirements on national level, including Ukraine, will not extend or facilitate the “shadow market”, which was supposed to be combated by the newly adopted by FIFA system.