Towards an anti-money laundering legal framework for professional football? An inductive inquiry on the basis of the Belgian case

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Executive summary

The new Belgian 'Preventative Anti-Money Laundering Law' ('PAML'), recently amended in transposition of the Fifth EU Anti-Money Laundering Directive ('AMLD'), is momentous from a footballing point of view, insofar as the Belgian legislator decided to explicitly subject the professional football sector to the obligations contained therein in response to a fraud and money laundering scandal in Belgian football. The Belgian legislator has thereby gone beyond what the Fifth AMLD requires. Since its entry into force in July 2021, the amended PAML is to apply to 'professional football clubs', 'players' agents in the 'football sector', and even the Royal Belgian Football Association (RBFA) itself, as 'obligated entities'. The PAML therefore brings the professional football sector within the scope of the accompanying 'preventative' anti-money laundering ('AML') framework for the first time. This has significant implications for the above-mentioned actors in the industry, not least the RBFA, given that it is concerned both as a governing body and as one of the obligated entities under the expanded Belgian PAML.

Thus, research on this topic is pressing. Given the significance of this decision, this research report seeks to map this legislative initiative, the goals it is designed to achieve and its possible effects, as is explained in the first part of the report. Specifically, this study addresses the central research questions of what the primary legal implications of this decision are, along with what the main effects of this decision can be expected to be. In so doing, this report aims to provide a preliminary evaluation of the decision of the Belgian legislator to include the Belgian professional football sector in the scope of the preventive anti-money laundering framework and to gauge the effectiveness of this decision as a tool for tackling money laundering and generating financial transparency. Ultimately, on the basis of this preliminary evaluation, the goal is to formulate recommendations and identify best practices as regards the setup and the functioning of the Belgian anti-money laundering legal framework with respect to the professional football sector.

Accordingly, it is envisaged that this research will be of substantial value first and foremost to the RBFA, as it is intended to elucidate the legal ramifications of the PAML for the RBFA's role and duties, as well as its consequences for the RBFA's recently established clearing system. Secondly, the project is of interest to the Belgian professional football sector in its entirety.

Thirdly, since the PAML is the first of its kind in the European context more broadly, and could therefore serve as a blueprint for similar initiatives in other European countries, this study is also of potentially great importance to national football associations, clubs and player agents across the European Union and possibly even to the EU itself, as both the European Commission and the European Parliament acknowledge the need to combat money laundering in the professional football sector.

The second part of the report is dedicated to the wider context behind this initiative of the Belgian legislator, and particularly to the EU dimension of anti-money laundering legislation. This part looks not only at the EU's critical role in the development of the anti-money laundering legal framework and the European legal instruments that have been adopted and proposed in this area, but also at the longstanding recognition of the money laundering risks in professional football within the EU. Indeed, while the EU itself has not (yet) included professional football within the scope of any of its existing AML directives, EU institutions have long been aware of the vulnerability of professional football to money laundering.

It is against this background that a general overview of the AML framework as applied in Belgium is then provided in the third part of the report. This overview covers a number of key aspects of the Belgian PAML. First and foremost, the material and personal scope of the PAML is elucidated, focusing in particular on the definition of 'money laundering' in the PAML and the obligated entities to which it applies. Secondly, the legal consequences the PAML entails for obligated entities are presented, including the obligations it imposes on these entities on both the organizational level and the level of individual client relationships. Thirdly, this part outlines the role of the supervisory authorities in the legal framework, as well as the role of the Belgian Financial Intellgience Unit (FIU); the 'Cellule de Traitement des Informations Financières – Cel voor Financiële Informatieverwerking' ('CTIF-CFI').

After having described the essential content and requirements of the PAML, the fourth part of this study examines the application of the PAML to the Belgian professional football sector from a doctrinal perspective. As part of this appraisal, the report looks at the motives and institutional context behind the decision to subject the Belgian professional football sector to the Belgian preventive anti-money laundering framework, before considering the specific actors in professional football who are subjected to the framework, and providing an in-depth analysis of how exactly the PAML applies (or can be expected to apply) to these actors. This analysis necessitates a clarification of the meaning of certain key concepts in the PAML as applied to professional football, such as the (likely) interpretation of the terms 'client' and

'business relationship' within the law, with a view to discussing its practical application particularly in respect of Belgian professional football clubs and the RBFA (bearing in mind that the law has not yet entered into force in respect of player agents). In addition, this part of the report addresses a series of additional questions raised by the application of PAML to professional football. These include the territorial scope of the PAML (i.e. the fact that this is limited to Belgium, and what the implications of this could be in the broader European context); different possible approaches to the client concept; the possibility of an exemption for certain categories of clients; the concern that the obligations imposed by the preventive money laundering framework may interfere with the football transfer windows in Belgium; and potential barriers to the exchange of information between FIUs. Lastly, the operation of a 'learning period' in practice is highlighted.

Then, in the fifth part of the report, the current state of knowledge in the literature on anti-money laundering is reviewed, focusing on the question of the effectiveness of AML regulation. The field of law in question is characterized by a conspicuous knowledge gap, because while studies have been carried out on AML and its effects, these have been focused mostly on the banking and financial system, rather than on the specifics of the professional football business and its particular multitude of stakeholders (such as e.g. the role of the federations). As part of this literature review, questions of methodology are explored, along with the significant variables of compliance and enforcement and the issue of available data on AML, as a precursor to exploring the overall effectiveness of AML, particularly in the financial sector. This review then moves to investigate the academic debate on the effectiveness of AML regulation in other sectors, including the art sector as well as ultimately the football sector, with a view to extrapolating theoretical and methodological insights of relevance for the research topic of the present study, and particularly the application of the Belgian PAML to the professional football sector.

Finally, on the basis of all of the above analyses, this exploratory study concludes with a provisional assessment of the application of the PAML to professional football and its effectiveness as a regulatory tool for tackling money laundering and enhancing financial transparency in the football sector. Here, the most important findings of the study are summarized. In turn, on the back of this assessment, a number of recommendations are formulated that can be of interest not only to the Belgian legislator but also to any jurisdiction contemplating the extension of its anti-money laundering framework to professional football,

as well as for interested stakeholders from the field of professional football, not least national associations and UEFA.

These recommendations relate to (i) the formulation of the envisaged aims of the application of AML legislation and the necessity to assess whether these aims can be (best) reached by the application of anti-money laundering legislation, (ii) the need to tailor the anti-money laundering framework to the specifics of professional football, preferably in consultation with the sector, (iii) the need for a regulatory level playing field in the EU and even beyond, (iv) ensuring the qualify of enforcement, (v) the benefits of an institutionalized 'pilot project' and (vi) the need for increased attention regarding data collection and research on the effectiveness of AML, in both professional football and other sectors.

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I. Introduction

A. Problem statement and state of the art

A sector vulnerable to money laundering

In modern times, the sector of professional sports has proven to be a large and growing sector of the European and even the global economy. For example, sport has been deemed to account for more than 2% of the GDP and roughly 3% of the employment within the European Union.[1] Professional football, which is the biggest and most popular global sport[2], holds a central place within this sector. To illustrate, even though the football market contracted for the first time since the financial crisis of 2008 due to the COVID-19 pandemic, the overall revenues of the European football market represented €25.2 billion in 2019-2020.[3] In the preceding year, the football sector's market revenue represented €28.9 billion.[4] Football is played by more than 265 million people around the world, of which 38 million are registered as professional players.[5] According to a study commissioned by the European Leagues with KPMG, European Club revenues rose from 11.7 billion EUR in 2009 to 21 billion EUR in 2018.[6]

Due to the ongoing transformation of football from a sport into a global industry with a large economic impact, the sector has become increasingly susceptible to crime and corruption, such as match-fixing, tax evasion and money laundering.[7] To illustrate, in 2009, a research report of

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[1] EUROPEAN COMMISSION, "Sport in the European Union", https://ec.europa.eu/assets/eac/sport/library/documents/eu-sport-factsheet_en.pdf (accessed 31 March 2022); EUROPEAN PLATFORM FOR SPORT INNOVATION, *Position paper on the impact of the COVID-19 crisis on the sport sector*, https://euoffice.eurolympic.org/files/position_paper_COVID-19%20final_revision.pdf, p. 1 (accessed on 31 March 2022); R. HOUBEN, A. VAN DE VIJVER, N. APPERMONT, G. VERACHTERT, *Taxing Professional Football in the EU. A Comparative Analysis of a Sector with Tax Gaps*, Publication for the Economic and Monetary Affairs Subcommittee on Tax Matters (FISC), European Parliament, Luxembourg, 2021, p. 13.

[2] NIELSEN SPORTS, *World Football Report 2018*, 5; GLOBALWEBINDEX, *Sports Around the World 2018*, https://iccopr.com/wp-content/uploads/2019/03/Sports-Around-the-World-report.pdf, p. 7 (accessed 31 March 2022).

[3] DELOITTE, *Annual Review of Football Finance*, July 2021, p. 12 available at: https://www2.deloitte.com/uk/en/pages/sports-business-group/articles/annual-review-of-football-finance.html (accessed on 31 March 2022).

[4] DELOITTE, *Annual Review of Football Finance*, June 2020, p. 8, available at: https://www2.deloitte.com/ch/en/pages/technology-media-and-telecommunications/articles/annual-review-of-football-finance.html (accessed on 31 March 2022).

[5] EUROPEAN COMMISSION, "Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities", COM(2019) 370 Final, p. 223.

[6] EUROPEAN LEAGUES, "The Financial Landscape of European Football", KPMG, 2020, https://europeanleagues.com/wp-content/uploads/REPORT-THE-FINANCIAL-LANDSCAPE-OF-EUROPEAN-FOOTBALL.pdf, 21 (accessed 31 March 2022).

[7] This finding was also confirmed by a research report for the European Commission on corruption in sport in Europe in general. In the report, it is estimated that more than 90.05 billion EUR is laundered through sport annually. See: ECORYS, A.E. MANOLI, "Mapping of Corruption in Sport in the EU. A Report to the European Commission", 2018, p. 3, 14 and 25, available at: https://op.europa.eu/en/publication-detail/-/publication/71c67c33-1dff-11e9-8d04-01aa75ed71a1/language-en (accessed 31 March 2022).

the Financial Action Task Force ('FATF') identified professional football as being especially susceptible to the risk of criminal activity in the form of money laundering, citing e.g. the transfer market as one that is prone to various forms of misuse, '*such as tax evasion, insider fraud and also money laundering*'[8]. According to the 2009 FATF report, the football sector displays some clear vulnerabilities regarding criminal activity in the form of money laundering, depending on the specific (governance) structure of the football sector on an international, national and local level. The report mentions several reasons for this particular susceptibility to money laundering.[9] For example, the market is quite easy to penetrate, as barriers to entry are not always very high. Furthermore, football stadiums are meeting places of different members of society, including government and corporate officials, but also members of the criminal world. Additionally, the football sector comprises a complex network of stakeholders that is characterized by particular interdependence, as is the case with for example players' agents[10], and a diversity of legal structures such as corporate entities, non-profit entities, foundations, etc. In addition, many football clubs experience (periods of) financial need, due to the volatility of the specific market in which they operate and many revenue streams being contingent on sportive results. Moreover, due to the important societal role of football and the reverence many people hold for football players and high level football officials, illegal activities may be less likely to be reported, whereas the special societal status of the industry and its stars may attract criminals who are seeking to enhance their status.[11]

According to the FATF report, therefore, the susceptibility of the football sector to money laundering consists of a combination of factors, such as ownership and investment structures, the sector's specific financial structure and vulnerabilities and societal and cultural characteristics of the sector.

[8] FINANCIAL ACTION TASK FORCE, "Money Laundering through the Football Sector", Paris, 2009, FATF/OECD, 21. See also the statement on p. 36 of the Report "*Clubs have large financial needs and considerable sums are often involved, especially in the international transfer market, often with an apparently irrational character, whereas control of origins or destination of payments is weak or even absent.*"
[9] *Ibid*, p. 14-16.
[10] KEA – CDES – EOSE, *Study on Sports Agents in the European Union*, November 2009, https://ec.europa.eu/assets/eac/sport/library/studies/study-sports-agents-in-eu.pdf (accessed 31 March 2022), p. 111.
[11] See also H. NELEN, "Detection and prevention of money laundering in professional football" in H. NELEN, D. SPIEGEL (eds.), *Contemporary Organized Crime. Developments, Challenges and Responses*, Cham, Springer, 2021, 124.

The structure and business dealings of the football sector may lend themselves to money laundering activities in different respects. Image rights contracts[12], advertising contracts and sponsorship contracts can be used as tools for money laundering, especially when sums of money are transferred to accounts held in (high risk) third countries that are not EU Member States.[13] Further, the value of players can be inflated in order to achieve money laundering purposes, such as placing a high value buy clause in a player contract, well above the player's actual value, to receive a payment from another club by transferring the player thereby covering up a covert deal apart from the transfer itself.[14] In addition, investments in clubs that experience financial difficulties or opaque ownership structures may involve funds of illegal origin.[15] Other possible methods are buying empty spectator seats, inflating income from ticket sales and property development near stadiums as well as over- and undervaluation of football players on the transfer market.[16]

More recently, several football clubs have entered the market of virtual assets by issuing digital 'Fan Tokens', which fans of the club are able to buy or obtain via a football club. These tokens can be held by fans for their (fluctuating) monetary value, to buy certain services from the football club or procure discounts on merchandising, or even allow for involvement in minor club decisions.[17] Although the risk of money laundering via the use of these tokens is deemed to be rather low, due to the limited market capitalization and low exchange liquidity[18], it is no secret that the virtual assets market as a whole bears strong money laundering risks.[19]

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[12] KEA – CDES – EOSE, *Study on Sports Agents in the European Union*, November 2009, https://ec.europa.eu/assets/eac/sport/library/studies/study-sports-agents-in-eu.pdf (accessed 31 March 2022), p. 113.

[13] EUROPEAN COMMISSION, "Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities", COM(2019) 370 Final, p. 233.

[14] S. CINDORI, A. MANOLA, "Particularities of anti-money laundering methods in football", *Journal of Money Laundering Control* 2020, 888.

[15] FINANCIAL ACTION TASK FORCE, "Money Laundering through the Football Sector", Paris, 2009, FATF/OECD, p. 18 and p. 20.

[16] A. MEHDI, "Unfit, improper ownership in UK football clubs" in TRANSPARENCY INTERNATIONAL, *Global Corruption Report: Sport*, Oxford, Routledge, 2016, 109; KEA – CDES – EOSE, *Study on Sports Agents in the European Union*, November 2009, https://ec.europa.eu/assets/eac/sport/library/studies/study-sports-agents-in-eu.pdf (accessed 31 March 2022), p. 111.

[17]); R. HOUBEN, A. VAN DE VIJVER, N. APPERMONT, G. VERACHTERT, *Taxing Professional Football in the EU. A Comparative Analysis of a Sector with Tax Gaps*, Publication for the Economic and Monetary Affairs Subcommittee on Tax Matters (FISC), European Parliament, Luxembourg, 2021, p. 38.

[18] MINISTRY OF JUSTICE OF THE GRAND DUCHY OF LUXEMBOURG, "ML/TF Vertical Risk Assessment: Virtual Asset Service Providers", December 2020, https://mj.gouvernement.lu/dam-assets/dossiers/blanchiment/ML-TF-vertical-risk-assessment-on-VASPs.pdf, p. 35 (accessed 31 March 2022).

[19] See generally, FINANCIAL ACTION TASK FORCE, "Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Providers", FATF/OECD, 2021, https://www.fatf-gafi.org/media/fatf/documents/recommendations/Updated-Guidance-VA-VASP.pdf (accessed 31 March 2022). This is also the reason why the European Commission has proposed a legislative instrument specifically aimed at

Therefore, in the criminological literature, it is stated that the world of professional football matches the profile of a 'crime facilitative system' in more than one way.[20] As was already illustrated by the strong growth of the football economy in Europe since 2009, we can assume that the risks regarding money laundering remain significant, due to the growing influx of funds into this economic sector.

Example 1 – Operation Matrioskas 2016

In May 2016, the Portuguese Police, supported by Europol, dismantled a transnational organized criminal group mainly composed of Russian citizens who were using the football sector for money laundering purposes. The money laundering operation was linked to the Russian mafia.

The group operated by identifying and contacting EU football clubs in financial distress and infiltrating them via benefactors who provided short-term donations or investments. After an initial trust-based relationship was established, these benefactors organized the purchase of said clubs. These purchases were effected through front men for opaque structures involving holding and shell companies registered in offshore tax havens, thereby concealing the real ultimate beneficial owners of the clubs and the origin of the funds used to make the purchase.

Once the clubs were brought under the control of the organization, several mechanisms would be used to launder dirty money, such as via the over- or undervaluation of football players involved in transfers or television rights deals. Moreover, betting activities were being used to launder dirty money or generate even more illegal proceeds via match-fixing.

These working methods were also applied to organize the purchase of a club that had competed in the top Portuguese football league until it faced financial difficulties and was relegated to a lower division.

Ultimately, an investigation was launched in light of the high living standards of the suspects, who used high value assets registered under the names of third parties. Large sums of money were being imported from Russia into Portugal in violation of EU Law. All the while, the beneficial owners of the clubs remained hidden through the use of shell companies that were incorporated in offshore tax havens.

Source: Europol – "Police Dismantle Russian Money Laundering Ring Operating in the Football Sector", 4 May 2016.

generating more transparency in transfers of funds and certain crypto-assets, see: EUROPEAN COMMISSION, "Proposal for a Regulation of the European Parliament and the Council on information accompanying transfers of funds and certain types of crypto-assets (recast)", COM(2021) 422 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0422 (accessed 31 March 2022).
See specifically, p. 3: "*Until now, transfers of virtual assets have remained outside of the scope of Union legislation on financial services, exposing holders of crypto-assets to money laundering and terrorism risks, as flows of illicit money can be done through transfers of crypto-assets and damage the integrity, stability and reputation of the financial sector, and threaten the internal market of the Union as well as the international development of crypto-assets transfers.* […] *Given that virtual assets transfers are subject to similar money laundering and terrorist financing risks as wire funds transfers, it is to requirements of the same nature they must also be submitted and it therefore appears logical to use the same legislative instrument to address these common issues.*"

[20] H. NELEN, "Detection and prevention of money laundering in professional football" in H. NELEN, D. SPIEGEL (eds.), *Contemporary Organized Crime. Developments, Challenges and Responses*, Cham, Springer, 2021, 133.

Example 2 – Money laundering by player agents in Spain

As of 2018, the Spanish Guardia Civil had been investigating two football agents linked to one of the most important player representation agencies in Europe. In February 2020, several raids were carried out across Spain of properties linked to the suspects. The operation ultimately led to five prosecutions.

The investigation uncovered that prominent football agents had organised fictitious transfers of football players via a football club in Cyprus in order to launder money and evade taxes. The transfers only existed on paper in order to evade taxes on profits made in the course of the agents' business. These funds were then turned into assets owned by the agents through a complex network of shell companies in order to conceal their identity. The funds were then invested in Spanish luxury assets, such as real estate and yachts. The investigation uncovered that the football agents were part of a larger criminal network, which manages football clubs in several countries, including Belgium, Cyprus and Serbia.

Source: Europol – "Corrupted Football Officials Cornered in Spain", 25 February 2020

Because of the aforementioned risks of money laundering, and the fact that money laundering is seen by some as one of the main threats to the integrity of sport[21], the European Commission and the European Parliament have drawn attention to the substantial risk of money laundering occurring within the football sector. A Resolution of the European Parliament of 29 March 2007 on the future of professional football in Europe emphasized the need to ensure full compliance with transparency and anti-money laundering ('AML') legislation on the part of entities involved in the football sector.[22] A decade later, in a Resolution of 2 February 2017, the European Parliament reaffirmed its attention to this problem with regard to '*bad practices linked to agents and players' transfers'*.[23] In its 2007 White Paper on Sport, the European Commission stated that 'it would continue to monitor the implementation of EU anti-money laundering legislation in the EU Member States'.[24] Furthermore, in 2018, the Commission and UEFA adopted a cooperation agreement, noting 'a shared ambition to prevent the football sector being used for money laundering purposes'. For its part, UEFA expressed its desire to commit to helping the Commission in assessing money laundering risks in the football sector.[25]

[21] OXFORD RESEARCH, "Examination of Threats to the Integrity of Sports", April 2010, https://www.kennisbanksportenbewegen.nl/?file=1359&m=1422882871&action=file.download, p. 15 (accessed 31 March 2022).
[22] EUROPEAN PARLIAMENT, "European Parliament resolution of 29 March 2007 on the future of professional football in Europe", 2006/2130(INI), consideration 28.
[23] EUROPEAN PARLIAMENT, "European Parliament resolution of 2 February 2017 on an integrated approach to Sport Policy: good governance, accessibility and integrity", 2016/2143(INI), consideration Z.
[24] EUROPEAN COMMISSION, "White Paper on Sport", COM(2007) 391 Final, p. 16.
[25] Arrangement for Cooperation between the European Commission and the Union of European Football Associations (UEFA), p. 4. This Arrangement can be accessed through the following link:

Ultimately, however, neither the sports sector in general nor the (professional) football sector in particular were included within the scope of the Fourth[26] and Fifth[27] EU Anti-Money Laundering Directives ('AMLD'). Nor is the football sector included in the proposed EU Regulation on money laundering.[28] Still, in its bi-annual follow-up of the Fourth AMLD of 2019, the Commission acknowledged that the risks associated with sport have long been recognised at EU-level and that sport is seen as a '*fertile ground for the use of illegal resources'*, and recommended that "*Member States should consider which actors should be covered by the obligation to report suspicious transactions and what requirements should apply to the control and registration of the account holders and the beneficiaries of the money*".[29] In the accompanying Staff Working Document, the level of 'money laundering threat' was deemed to be 'significant'.[30]

Application of AML law to professional football: the case of Belgium

In its transposition of the 5th AMLD in July 2020, Belgium chose to go beyond the obligations laid down in this Directive and explicitly subject the professional football sector to the Belgian 'Preventive Anti-Money Laundering Law' ('PAML').[31] According to the drafters of this law, this measure was inspired by the so-called '*Operation Clean Hands*' instigated by the Belgian Federal Prosecutor's Office, which focused on organized crime and money laundering in Belgian football.[32]

https://editorial.uefa.com/resources/0242-0f842d5d2fe8-0bc0116a4b42-1000/arrangement_for_cooperation_uefa_ec_-_2018.pdf

[26] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

[27] Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

[28] EUROPEAN COMMISSION, "Proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing", COM(2021) 420 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0420 (accessed 31 March 2022).

[29] EUROPEAN COMMISSION, "Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities", COM(2019) 370 Final, p. 5 and p. 19.

[30] EUROPEAN COMMISSION, "Commission Staff Working Document on the Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities", SWD(2019) 650 Final.

[31] Law of 18 September 2017 relating to the prevention of money laundering and the financing of terrorism and to limit the use of cash money, *Belgian Official Gazette* 6 October 2017, as amended by the Law of 20 July 2020 containing miscellaneous provisions regarding the prevention of money laundering and the financing of terrorism and to limit the use of cash money, *Belgian Official Gazette* 5 August 2020.

[32] Bill containing miscellaneous provisions regarding the prevention of money laundering and the financing of terrorism and to limit the use of cash money, Amendments, Chamber of Representatives 2019-2020, *Parl.St.* nr.

Example 3 – Operation Clean Hands/Operation Zero

In 2018, the Belgian Federal Prosecutor's Office conducted over 40 searches across Belgium and abroad. Searches were also conducted in respect of numerous clubs competing in the Belgian first division, the Jupiler Pro League. Several club officials, (ex-) coaches, player agents and even official referees were detained and questioned.

Operation Clean Hands (or 'Operation Zero') focuses on cases of match-fixing, financial fraud, tax evasion and money laundering. One player agent in particular, Mr. D. Veljkovic, was suspected to have undertaken steps to prevent a football club playing in the first division from being relegated to a lower division, at the expense of another club. Additionally, Mr. Veljkovic and another influential player agent, Mr. M. Bayat, are, among others, being investigated for financial fraud and money laundering. Several other leads are being investigated as well, such as the narrow ties between the aforementioned player agents and referees, the setup of tax evasion schemes between football players, clubs and player agents, off the books payments between football clubs and a former coach, etc.

Interestingly, for the first time in Belgian history, one of the player agents involved, Mr. Veljkovic, has made use of a new repentance scheme in Belgian criminal law and has entered into a plea bargain with the Belgian judicial authorities. He will receive a reduced sentence in return for confessions and information on other parties involved. On 25 November 2021, the Antwerp Court of Appeal approved of the plea bargain.

In January 2022 the Belgian judicial authorities communicated that no less than 56 persons are indicted, among whom club officials, (former) officials of the RBFA, player agents, coaches and referees. According to the list of indictments, 12 Belgian professional football clubs are involved.

According to the authorities and based on declarations made by Mr. Veljkovic, one money laundering method consisted of drawing up false contracts for scouting activities which in reality did not take place. Invoices were paid on the basis of these contracts to corporate structures abroad. That money was subsequently rerouted back to Belgium and collected in cash in order to pay secret commissions to club executives, coaches and other actors, thereby evading taxes. Another method consisted of presenting expensive watches to club officials as a gifts in order to arrange player transfers.

Source: Sporza - https://sporza.be/nl/categorie/voetbal/onderzoek-belgisch-voetbal/

55-1324/003, p. 5; Bill containing miscellaneous provisions regarding the prevention of money laundering and the financing of terrorism and to limit the use of cash money, Amendments, Chamber of Representatives 2019-2020, *Parl.St.* nr. 55-1324/007, p. 7-8.

Example 4 – The Henrotay Investigation

In September 2019, Christophe Henrotay, a well-known player's agent was arrested in the Principality of Monaco on suspicion of money laundering, transfer bribery with fraudulent retrocommissioning, criminal conspiracy and forgery. Among the clients of Mr. Henrotay were several well-known Belgian professional football players such as Romelu Lukaku, Thibaut Courtois and Youri Tielemans.

During the searches, the police seized 7 million EUR, 3 luxury sports cars, a yacht and two flats. In 2019, Mr. Henrotay was released from investigative detention after paying a bail of 250,000 EUR. The case is currently still pending.

Source: Sporza - https://sporza.be/nl/2022/01/19/wat-was-de-zaak-rond-henrotay-ook-alweer/

The Belgian implementation of the European AMLD framework now applies, as of 10 July 2021, to (as defined within the law) 'top professional football clubs', 'players' agents in the football sector' and the Royal Belgian Football Association (RBFA). These persons and legal entities will now be considered to be 'obliged entities' under the PAML.[33] However, the amendment to the Belgian PAML has not yet entered into force with regards to player agents, as the Belgian federal government first needs to conclude a cooperation agreement with the Belgian Regions, due to the constitutional division of powers within the Belgian State. [34] At the time of writing, this cooperation agreement has not yet been concluded.

Since the exact definitions of the first two concepts are left rather vague, the Belgian legislator left it up to the executive branch to formulate the exact rules and criteria governing their registration by Royal Decree. At the time of writing of this report, only one of these Decrees has been adopted, relating to the registration of professional football clubs with the FPS Economy.

To be sure, the general penal provision in the Belgian Criminal Code dealing with money-laundering (Art. 505 CC) is of general application. However, for the first time, the Belgian professional football sector will be subjected to the accompanying 'preventive' anti-money laundering framework, which has its roots in European Union Law.

[33] Art. 32, 31°/3 – 31°/5 of the PAML.
[34] See art. 173 *in fine* of the Law of 20 July 2020.

Rationale for the research project

As was already indicated, the RBFA is concerned both as a governing body and as one of the obliged entities under the expanded Belgian PAML. Accordingly, this research is of **significant value to the RBFA and Belgian professional football clubs**, first and foremost in elucidating **the legal ramifications with regard to their role and duties** within the newly-established anti-money laundering framework, as well as the implications of the latter vis-à-vis the clearing system that the RBFA introduced in July 2020.

Bearing in mind that the legislation that has been adopted in Belgium is the first of its kind in Europe, the significance of the study also **extends to European football in general**, insofar as it aims to map and evaluate an initiative that could serve as a **blueprint** for similar initiatives in other European countries, or even the EU. Hence, research on this topic is both **pressing** and (potentially) of interest to **football associations, clubs and player agents** in different (EU) countries.

The entry into force of the new Belgian legislative framework on money laundering also comes at an interesting time, as FIFA is currently, since 2017, in the process of reforming the global player transfer market, and is planning to create a 'clearing house' to process international player transfers and new agent regulations.[35] At the moment of writing, the proposed FIFA reforms are not yet final. Interestingly, the proposed clearing house initiative should secure full traceability of all international player transfers and ensure that all parties involved in financial transactions via the clearing house comply with national and international obligations concerning international payments sanctions, anti-money laundering legislation and counter terrorism financing.[36] However, in the initial state, only training rewards and solidarity

[35] FIFA, "Football stakeholders endorse landmark reforms of the transfer system", 25 September 2018, https://www.fifa.com/legal/football-regulatory/stakeholders/fifa-fund-for-players/media-releases/football-stakeholders-endorse-landmark-reforms-of-the-transfer-system (accessed 31 March 2022).
See also: COUNCIL OF EUROPE, "FIFA Transfer System Reform. Analysis and Recommendations. Expert Report", Strasbourg, 31 March 2021, https://rm.coe.int/fifa-transfer-system-reform-analysis-and-recommendations-expert-report/1680a28ad7 (accessed 31 March 2022); COUNCIL OF EUROPE, "Football Governance: business and values", Report for the Committee on Culture, Science, Education and Media, 10 January 2022, https://pace.coe.int/pdf/16a601c83cb93799c64dda4f126ba2eeb11e74eaa8ae3bd9cd778c32ff9a052f/doc.%20154 30.pdf (accessed 31 March 2022); A. CATTANEO, R. PARRISH, *Sports Law in the European Union*, Alphen aan den Rijn, Wolters Kluwer, 2020, 126 ff. and 132 ff.

[36] COUNCIL OF EUROPE, "Football Governance: business and values", Report for the Committee on Culture, Science, Education and Media, 10 January 2022, https://pace.coe.int/pdf/16a601c83cb93799c64dda4f126ba2eeb11e74eaa8ae3bd9cd778c32ff9a052f/doc.%20154 30.pdf, 24 (accessed 31 March 2022); For an explicit referral to the anti-money laundering goal of the proposed FIFA Clearing House by FIFA itself, see: FIFA, "Historical Record and Achievements Football Stakeholders

contributions[37] would be paid via the clearing house[38], and only in a later phase would agent fees and transfer sums be channelled through this system.[39]

B. Objectives of the research and research questions

The **objective** of this research report is to **map** the Belgian initiative, by carrying out an **exploratory study** which will, firstly, examine the **legal implications** of the new Belgian legislation ('first sub-objective') and, secondly, **sketch the (possible) effects** of the application of the current anti-money laundering initiative in the football sector ('second sub-objective').

The study departs from the following **main research questions**:

RQ1: "*What are the primary legal implications of Belgium's decision to include professional football clubs, players' agents in the football sector and the RBFA within the scope of anti-money laundering legislation?"*

RQ2: "*What are the main effects of the application of the Belgian preventive anti-money laundering legal framework to the professional football sector?* "

RQ1 aims to shed light on numerous legal questions arising from the Belgian legislator's decision to include professional football clubs, players' agents and the RBFA in the preventive anti-money laundering framework. Such questions include:

- How can or should the legal concepts of 'professional football club' and 'player's agent in the football sector' be defined?
- What can or should be the role of the RBFA?
- Which transactions or client relations will be targeted and why? Who can be considered to be the 'clients'[40] of these obliged entities? Are these players, sponsors, club boards, etc.?

Committee", https://digitalhub.fifa.com/m/f6c4450d706291da/original/vbykzozs9uhtlgzvfsaa-pdf.pdf, 3 (accessed 31 March 2022).

[37] See *infra*, p. 49.

[38] See: https://www.fifa.com/en/legal/football-regulatory/clearing-house (accessed 31 March 2022).

[39] COUNCIL OF EUROPE, "Football Governance: business and values", Report for the Committee on Culture, Science, Education and Media, 10 January 2022, https://pace.coe.int/pdf/16a601c83cb93799c64dda4f126ba2eeb11e74eaa8ae3bd9cd778c32ff9a052f/doc.%2015430.pdf, 24 (accessed 31 March 2022).

[40] In this study we will use the term 'client' and 'customer' interchangeably. While the European AMLD's normally refer to the concept of 'customer', the Belgian PAML opts for the term 'client'.

- Could the imposition of more stringent obligations give rise to exit strategies on part of player agents? Could player agents circumvent these obligations by relocating to other EU Member States?
- Can the Belgian model serve as an example for regulations on the EU-level?

RQ2 aims to provide an initial assessment of the Belgian anti-money laundering legislation by examining the most likely effects of its application to the actors concerned, particularly in terms of the degree of effectiveness that may be expected of this policy instrument in combating money laundering and generating financial transparency in the Belgian football market. This will involve an analysis not only of the benefits of such legislation but also its potential cons or, alternatively, 'side effects'. This entails a number of questions of its own, including:

- Is AML regulation an effective tool to combat money laundering? What is or are the main goal(s) behind AML regulations?
- Does an increase in reporting duties and supervisory scrutiny lead to greater financial transparency?
- Does greater bureaucracy ultimately affect only (or at least mainly) those actors who do not and are not inclined to engage in money laundering activities?
- Is there a risk that such bureaucracy might significantly impede the smooth functioning of the football transfer market?

The current research report therefore aims to provide a preliminary evaluation of the decision of the Belgian legislator to include the Belgian professional football sector in the scope of the preventive anti-money laundering framework and gauge the effectiveness of this decision as a tool for tackling money laundering and generating financial transparency. On the basis of this preliminary evaluation, recommendations can be formulated as regards the setup and the functioning of the Belgian anti-money laundering legal framework with respect to the professional football sector. Additionally, best practices and possible pitfalls can be identified, which might be of interest to other EU Member States, their national football associations and even UEFA and FIFA. The report thus aims to help to inform the discussion of such an initiative possibly being taken on a European level, especially to the extent that actions at the level of individual EU Member States may give rise to exit strategies on the part of players' agents in order to evade their AML obligations.

C. Research design and method

A distinct but intertwined research method will be employed in order to provide an answer to each of the aforementioned research questions.

Regarding **RQ1**, the methodology will be founded on **classical legal desk research** using the three main sources of law (legislation, case law and legal doctrine). Furthermore, special attention will be dedicated to the parliamentary history of the new Belgian legislation. The research will focus mainly on **Belgian law**, while taking into account the important **EU-dimension** of the preventive anti-money laundering legal framework across the European Union. Furthermore, where appropriate, reference will be made to relevant regulations adopted by various football associations, such as FIFA, UEFA and the RBFA, including documentation on the ongoing FIFA reform of the global transfer market.

In turn, **RQ2** will be addressed by means of an inquiry into existing studies examining the effects of anti-money laundering legislation and its application in different sectors, including notably the corporate and financial sectors. This **multidisplinary literature review** will provide a theoretical framework for the analysis of anti-money laundering regulation, particularly from a law and economics perspective, with a view to assessing the costs and benefits of such regulation in the football sector and the likely effects of the new Belgian legislation. The basis for this framework will be a formal model wherein the effects of anti-money laundering regulation are analyzed according to the extent to which such regulation may mitigate economic damage caused by money laundering, counterweighted against the economic burdens it may produce on the functioning of the system and actors it regulates.[41] This will allow not only for the conceivable benefits of more stringent financial reporting duties and deterrences of criminal activity in the market to be analyzed, but also for the potential costs and deficiencies of such rules and obligations to be taken into account – while at the same time considering the particularities of the football sector – in forecasting the overall effectiveness of the regulation.

Finally, both **RQ1 and RQ2** benefit from a consise series of **semi-structured interviews** that have been conducted in December 2021 and January 2022. These interviews served to test the application of the Belgian PAML to professional football in practical terms by means of a

[41] A model of this kind has been employed in the economic assessment of anti-money laundering in other areas, including notably the financial and banking systems; see for e.g. D. MASCIANDARO, "Money Laundering: the Economics of Regulation", *European Journal of Law & Economics* 1999, 225-240.

qualitative empirical component based on interviews with a select number of key stakeholders from the field.

The following six interviews have been conducted in the course of the research project:

- Interview with Mr. Pieter De Beus (Compliance Officer at the RBFA);

- Interview with Mr. Koen Verstringe (AML Compliance Officer at Club Brugge KV);

- Interview with Mr. Wouter Georges (AML Compliance Officer at KAA Gent);

- Interview with Mr. Steven Matheï (Belgian MP and co-sponsor of the bill which led to the inclusion of the Belgian professional football sector in the PAML);

- Interview with Mr. Christian Bourlet (Representative of the Belgian Ministry of Economic Affairs), Mr. Olivier Loiseau (Representative of the Belgian Ministry of Economic Affairs) and Mr. Hans Van Hemelrijck (Member of CTIF-CFI, the Belgian Financial Intelligene Unit);

- Interview with Mr. Stijn Francis, Stirr Associates (Registered Players' Agent).

Due to the diverse roles of the interviewees, questions were tailored to each interview. However, the aim of each interview was to inquire as to how the interviewees see their (institution's) role within the Belgian preventive anti-money laundering framework, their expectations regarding the practical and legal consequences of the amended PAML and how they evaluate the new Belgian preventive anti-money laundering framework. The interviewees have been carefully selected to represent different stakeholders concerned by the application of the PAML to Belgian professional football. The interviewees have diverse backgrounds in both the public (regulatory) and the private football sector and take up diverse roles within professional football and its regulatory oversight within the context of the Belgian anti-money laundering system.

The findings from these interviews supplement the theoretical exploratory research undertaken with regard to RQ1 and RQ2 and have been integrated in the relevant part of the present research report.

Due to the public health situation, all interviews have been conducted via the videoconferencing tool Google Meet. All interviews were recorded, with prior approval from each individual interviewee. These recordings were subsequently used to transcribe the interviews. The interviewees were informed that, after their definite approval of the text of interview, these recordings would be permanently deleted. All of the interviews were conducted in English (save one, with Mr. Steven Matheï, which was conducted in Dutch and then translated to English). After approval of the transcription of each interview by all individual interviewees, the recordings were permanently deleted. The text of the interviews has been added to this research project in Annex I.

D. Limitations of the present study

As far as the theoretical side of the study is concerned, since the bulk of the research is based on the traditional desk legal research method and a multidisciplinary literature review, there were no significant risks associated with the research. Substantively speaking, however, there are certain limitations that are important to recognize.

First of all, on the doctrinal level, as was already mentioned only the Royal Decree specifying the precise rules and criteria governing the registration of 'top professional football clubs' has been adopted at the time of writing. This not the case for the Royal Decree regarding the registration of 'player agents in the football sector'. The same holds true for the regulations which will need to be adopted by the supervisory authority clarifying the exact scope of the obligations of obliged entities in the professional football sector and the designation of their clients . In other words, the full implementation of the law that the study aims to describe and assess in terms of its effectiveness has not yet taken place. As long as this remains the case, it of course entails that the doctrinal account of the law will need to be predictive to an extent, by foreseeing the likely content of the more specific implementing rules that are to be introduced. Similarly, and for the same reason, it will also be necessary for the study to take a predictive approach with respect to the likely consequences that the extension of the PAML to the professional football sector will have, since, being still at the implementation stage, it is not possible to examine actual effects of or experiences with the application of the law to the football sector "on the ground". It would certainly be valuable to test the predictions that are made after a certain period of application, but that would be a matter of future research. Furthermore, these predictions will patently (and for good reason) be focused on the Belgian jurisdiction and the specificities of its national AML legal framework, meaning they would necessitate further testing still to determine the extent to which they could be expected to result

in other jurisdictions that may eventually introduce similar measures in their own domestic context. Nevertheless, the research will analyze the extension of the Belgian PAML in terms of expected consequences founded on solid theoretical bases that are likely to hold true, at least in part, with respect to a range of jurisdictions, and hence it is foreseen that these findings will be of significant interest to relevant stakeholders in and of themselves.

Secondly, the theoretical account underpinning the present study is also subject to a noteworthy limitation that was already alluded to, namely that the literature on which it is based is predominantly concerned with the effectiveness of AML regulation in the financial sector, as there is a relative paucity of sources dealing specifically with the application of AML legislation in the professional football sector (not to mention other sectors). This entails that it will be necessary to extrapolate insights and conclusions from the former to the latter, while taking into account the specificities of the professional football business and its multitude of stakeholders, in considering the extent to which the scholarly teachings on the operation of AML law in more 'traditional' sectors are applicable to, and may be affected by, the particular features of the footballing field.

Finally, when it comes to the empirical side of the present study, the main risk that did exist prior to the commencement of the study pertained to the eventual availability and consent of the intended interviewees, but this is now negligible in view of the fact that the interviewees that were foreseen have been confirmed in the interim. Still, it must be borne in mind that the study is based on a select number of interviews undertaken with the aim of supplementing the aforementioned exploratory research by testing the correspondence of the findings on each of the research questions with perspectives and experiences in practice. Hence the aim of these interviews is equally not to produce extensive empirical data on the new Belgian preventive anti-money laundering framework, for which a more large-scale empirical research endeavour would be required.

II. Money laundering and professional football: The EU dimension

A. The EU's critical role in the development of the anti-money laundering legal framework

Anti-money laundering legislation essentially rests upon two pillars. On the one hand, money laundering is qualified by most legal systems around the globe as a criminal offence. This is certainly the case in Belgium, where money laundering is expressly qualified as a criminal offence in Article 505 of the Belgian Criminal Code. On the other hand, the European legislator introduced a preventive anti-money laundering legal framework, which aims at uncovering (new) money laundering activities by involving private actors in what is essentially a task of public authorities, i.e. the prevention, detection, notification and the gathering of evidence surrounding (potential) criminal activity.[42] The exact mechanism by which the involvement of private actors within this system is effectuated is outlined below, but it will suffice to state at this juncture that those private actors which are deemed to be 'obliged entities' have to introduce 'customer due diligence' mechanisms that allow them to detect suspicious transactions, which they are then obliged to report to public authorities.

The first European AMLD was implemented in 1991.[43] Due to the continuing and ever-changing character of criminal activity regarding money laundering, the European legal framework has been subject to continuous changes and amendments. The original Directive was amended by the second AMLD in 2001.[44] The original Directive was replaced by the third AMLD in 2005.[45] In turn, the third AMLD was replaced by the fourth AMLD in 2015.[46] Only two years after its adoption, this directive was amended by the fifth AMLD.[47] However, on 20 July 2021, the European Commission proposed a package of legislative proposals to strengthen

[42] R. SEER, "The European AEOI: Risks and Opportunities of Anti-Money Laundering Acts" in G. MARINO (ed.), *New Exchange of Information Versus Tax Solutions of Equivalent Effect. EATLP Annual Congress Istanbul 29-31 May 2014*, Amsterdam, IBFD, 2015, p. 61; F. DESMYTTERE, J. GOETGHEBUER, "De herziene preventieve antiwitwaswetgeving als instrument in de strijd tegen (ernstige) fiscale fraude. Partners in crime?", *Algemeen Fiscaal Tijdschrift* 2021/2, p. 6.

[43] Council Directive 91/308/EEC of 10 June 1991 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering.

[44] Directive 2001/97/EC of the European Parliament and the Council of 4 December 2001 amending Council Directive 91/308/EEC on the Prevention of the Use of the Financial System for the Purpose of Money Laundering.

[45] Directive 2005/60/EC of the European Parliament and the Council of 26 October 2005 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing.

[46] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

[47] Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

the EU's anti-money laundering legal framework, including a proposal for an EU Regulation on Money Laundering[48] and a sixth AMLD[49]. This overview of (previous) legislative instruments and proposals shows that the European anti-money laundering legislative framework is characterised by an evolving and changing character, for example in response to tightened international standards such as those promulgated by the FATF and fuelled by international financial scandals like the *Panama Papers*.[50]

Especially during the last few years, the system has been regularly adapted by the European legislator. For example, the fifth AMLD was promulgated within one year after the deadline of 26 June 2017 for the European Member States to transpose the fourth AMLD into their national laws.[51] The Commission proposal that led to the adoption of the fifth AMLD was even launched well before this deadline, on 5 July 2016.[52] Similarly, the package of legislative proposals of the European Commission was presented approximately one year and a half after the deadline for transposition of the fifth AMLD of 10 January 2020.[53] Interestingly, although traditionally the anti-money laundering legal framework mainly involved credit insitutions and financial institutions, but also auditors, external accountants and tax advisors, real estate agents and casinos, the fifth AMLD has further expanded its scope to professionals acting outside of what would classically be construed as the 'financial sector', such as the art sector.

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[48] EUROPEAN COMMISSION, "Proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing", COM(2021) 420 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0420 (accessed 31 March 2022).

[49] EUROPEAN COMMISSION, "Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849", COM(2021) 423 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0423 (accessed 31 March 2022).

[50] EUROPEAN COMMISSION, "Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC", COM(2016) 450 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0450&qid=1638020737588 (accessed 31 March 2022): "*At the same time and in addition to terrorist financing issues, significant gaps in the transparency of financial transactions around the world have been revealed which indicate that offshore jurisdictions are often used as locations of intermediary entities that distance the real owner from the assets owned, often to avoid or evade tax. This proposal seeks to prevent the large-scale concealment of funds which can hinder the effective fight against financial crime, and to ensure enhanced corporate transparency so that true beneficial owners of companies or other legal arrangements cannot hide behind undisclosed identities.*"

[51] See art. 67 of the fourth AMLD.

[52] EUROPEAN COMMISSION, "Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC", COM(2016) 450 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0450&qid=1638020737588 (accessed 31 March 2022).

[53] See art. 4 of the fifth AMLD.

Even though the current European preventive anti-money laundering legal framework is shaped largely by European legal instruments, this does not mean that the European Member States do not enjoy some leeway in their transposition of the successive Directives. This is due to the fact that the framework as we know it today, and which is shaped by the fourth and fifth AMLD, is a form of 'minimum harmonisation'. This is evidenced by article 4 of the (amended) fourth AMLD, which expressly states that Member States *shall* expand the scope of the Directive, in accordance with the risk-based approach, to additional professions or categories of undertakings, which engage in activities that are particularly likely to be used for the purposes of money laundering or terrorist financing. Thus, Belgium's move to expand the scope of obliged entities to actors in the professional football sector is in accordance with the European legal framework.

Will this change if and when the Commission's new package, including an anti-money laundering Regulation and a sixth AMLD, is turned into law? After all, the choice of the Commission to propose a new *Regulation* rather than just a sixth *Directive* is motivated by the fact that a Regulation is directly applicable to all Member States and does not require transposition into national legislation.[54] The Commission argued that

"*whereas the requirements of Directive (EU) 2015/849 are far-reaching, their lack of direct applicability and granularity led to a fragmentation in their application along national lines and divergent interpretations.* […] *To address the above issues and avoid regulatory divergences, all rules that apply to the private sector have been transferred to this proposal for an AML/CFT Regulation, whereas the organisation of the institutional AML/CFT system at national level is left to a Directive, in recognition of the need for flexibility for Member States in this area*".[55]

However, this should not be taken to mean that Member States will be unable to expand the scope of the preventive anti-money laundering framework or retain expansions of scope already in place. In its proposal for a sixth AMLD, the Commission states the following:

[54] See Art. 288 TFEU; ECJ 14 July 2011, *Bureau national interprofessionel du Cognac*, C-4/10 and C-27/10, consideration 66; K. LENAERTS, P. VAN NUFFEL, *Europees Recht*, 6e Editie, Antwerp-Cambridge, Intersentia, 2017, 588-600.

[55] EUROPEAN COMMISSION, "Proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing", COM(2021) 420 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0420 (accessed 31 March 2022).

"*Most applicable definitions for this draft Directive are contained in the draft Regulation accompanying it (where the definitions are relevant for both instruments); however, certain terms are defined in this draft Directive, where not relevant for the accompanying Regulation.*

This draft Directive enables Member States to extend the requirements of the accompanying draft Regulation to other sectors not covered in the scope of that Regulation; however, they must notify and explain their intention to the Commission, which will have six months to adopt an Opinion on the plans (after consulting AMLA), and may choose to propose legislation at EU level instead. Transitional provisions are laid down for additional sectors already covered by national AML/CFT legislation but not EU legislation. A consolidated list of the sectors to which Member States have extended the list of obliged entities will be published by the Commission in the Official Journal of the European Union on an annual basis."[56]

The foregoing implies that the Belgian expansion of scope may well be maintained, and may, subject to review by the European Commission, be introduced in other Member States. Interestingly, this will allow the European Commission to take a stance on the expansion of scope by a Member State and may well lead the Commission to expand the scope of the Regulation itself, thereby imposing unified regulations for the entire European Union.

B. Longstanding recognition of the money laundering risks in professional football within the EU

Even though none of the above-mentioned European legal instruments have specifically included professional football under their scope, EU institutions have long been aware of the vulnerability of professional football to money laundering.

One of the earliest policy documents in which the risks of money laundering were recognized was the ***Independent European Sport Review 2006,*** which came about during the UK Presidency of the EU of 2005. In this report, special attention was dedicated to criminal activity around football and to money laundering in particular.[57] The report noted that the increased economic importance of football could lead to situations where the sport would be used as a vehicle for criminal activity. Several money flows which bore risks of money laundering were

[56] EUROPEAN COMMISSION, "Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849", COM(2021) 423 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0423 (accessed 31 March 2022). See also Article 3 of the Directive Proposal.

[57] J. L. ARNAUT, *Independent European Sport Review 2006*, http://eose.org/wp-content/uploads/2014/03/independant_european_sports_review1.pdf, p. 90 ff. (accessed 31 March 2022).

identified, such as player transfers, payments to agents, investments in clubs and a variety of other deals. The report also noted that there was "*no existing anti-money laundering framework within football and whilst it is clear that football bodies cannot take the legal responsibility for adjudicating on all money laundering activities, it is considered that the European and national football authorities can play a role – together with the EU and the EU member states – in combating this risk.*" The report further noted that measures regarding club licensing and transparency regarding the beneficial owners of clubs would constitute important measures. Interestingly, the report urged UEFA to consider the establishment of a central 'clearing house' mechanism to increase transparency of financial flows surrounding European transfers[58] and to take responsibility for money laundering matters in the European area.

In 2007, attention was dedicated to the matter in a **Resolution of the European Parliament on the future of professional football in Europe**.[59] In this Resolution, the European Parliament anticipated the European Commission's *White Paper on Sport*, which would be presented later that year. Interestingly, the European Parliament took note of the fact that professional football does not function like a typical sector of the economy and that football clubs do not operate under the same market conditions as other economic sectors, due to the interdependence between sports opponents and the multitude of stakeholders involved.[60] The European Parliament deemed that many criminal activities are a result of the spiral of spending, salary inflation and the subsequent financial crises faced by many clubs.[61] Further, the European Parliament: "*[s]upports the efforts of European and national football governing bodies to introduce greater transparency in the ownership structures of clubs and asks the Council to develop and adopt measures for the fight against the criminal activities that haunt professional football, including money laundering* […] *Emphasises the need to ensure full compliance with transparency and money laundering legislation by entities involved in the football sector.*"[62]

The European Commission for its part dedicated special attention to money laundering in its ***White Paper on Sport***, which was also published in 2007.[63] The Commission acknowledged it

[58] *Ibid*, 88.
[59] EUROPEAN PARLIAMENT, "European Parliament resolution of 29 March 2007 on the future of professional football in Europe", 2006/2130(INI). This Resolution was based upon a report drafted by Belgian MEP IVO BELET, the so-called Belet Report, see: *Report of 13 February 2007 on the future of professional football in Europe*, 2006/213(INI).
[60] *Ibid*, Consideration L.
[61] *Ibid*, Consideration S.
[62] *Ibid*, Considerations 27 and 28.
[63] EUROPEAN COMMISSION, "White Paper on Sport", COM(2007) 391 Final.

could play a role in helping to develop mechanisms of good governance in the sports sector[64] and stated that it would continue to monitor the implementation of EU anti-money laundering legislation in Member States with regard to the sports sector.[65] It further noted that due to the cross-border aspects of sports, the EU anti-money laundering mechanisms should also apply in the sports sector. Interestingly, the *White Paper* also made an express link with players' agents: "*There are reports of bad practices in the activities of some agents which have resulted in instances of corruption, money laundering and exploitation of underage players*".[66]

On 8 May 2008, the European Parliament adopted another Resolution, in response to the Commission's *White Paper* of 2007.[67] In this **Resolution on the White Paper on Sport**, the Parliament took the view that, owing to large-scale capital movements in the context of transfers, financial transactions should take place in all transparency. It believed that, depending on the sport, this system should be run by the relevant governing body. In our view, this echoes the earlier recommendation in the *Independent European Sport Review* to establish a UEFA-clearing mechanism.[68] With regard to third countries, the Parliament called on the Commission and the Member States to extend the scope of the dialogue and cooperation with third countries to issues such as transfers of international players and money laundering.[69] Importantly, the European Parliament "*[c]ondemns bad practices in the activities of some representatives of professional sports players which have resulted in instances of corruption, money laundering and the exploitation of underage players and sportsmen and sportswomen, and takes the view that such practices harm sport in general.*"[70]

Further attention was dedicated to the role of player agents in the European Parliament **Resolution of 17 June 2010 on players' agents in sports.**[71] In this Resolution, the Parliament took note of the study on sports agents in the European Union commissioned by the European Commission[72] and, in particular, took note of the finding of the study that sports agents are central in the financial streams which are often not transparent, and which make them prone to

[64] *Ibid*, p. 12.
[65] *Ibid*, p. 16.
[66] *Ibid*, p. 15.
[67] EUROPEAN PARLIAMENT, "European Parliament resolution of 8 May 2008 on the White Paper on Sport", 2007/2261(INI).
[68] *Ibid*, Consideration 10.
[69] *Ibid*, Consideration 62.
[70] *Ibid*, Consideration 100.
[71] EUROPEAN PARLIAMENT, "European Parliament resolution of 17 June 2010 on players' agents in sports", 2011/C 236 E/14.
[72] KEA – CDES – EOSE, *Study on Sports Agents in the European Union*, November 2009, https://ec.europa.eu/assets/eac/sport/library/studies/study-sports-agents-in-eu.pdf (accessed 31 March 2022).

illegal activities.[73] The European Parliament further asked "*the Council to step up its coordinating efforts in the fight against criminal activities linked to agents' activities, including money laundering, match fixing and human trafficking*".[74]

In 2015, the European Parliament took note of recent revelations of high-level corruption cases within FIFA in a **Resolution of 11 June 2015**.[75] In particular, the Parliament took note of the fact that several FIFA officials were arrested in May 2015 by Swiss authorities, inter alia on the basis of charges of money laundering. It also stressed that "*corruption and money laundering are intrinsically linked and a large number of Member States have been affected by match-fixing and other financial crimes often related to criminal organisations operating on an international scale.*"[76] The European Parliament also welcomed the agreement on the fourth AMLD and supported the proactive use of all the means provided for within that new legislation to tackle this issue. It also called upon the Commission to consistently monitor EU anti-money laundering legislation to ensure that it is sufficient to fight against corruption in sports and ensure scrutiny of EU-registered sports governing bodies and their officials.[77]

On 2 February 2017, the European Parliament adopted a **Resolution on an integrated approach to Sport Policy**.[78] In this resolution, the European Parliament linked the phenomenon of money laundering to the increasing amount of money circulating within the sport sector and to bad practices connected with player agents and players' transfers.[79] Interestingly, the Parliament also called upon Member States to consider introducing dedicated prosecution services tasked specifically with investigating sports fraud cases.[80]

Importantly, on 21 February 2018, the European Commission and UEFA adopted a (renewed) **Cooperation Arrangement.**[81] In this document, it was agreed between both parties that they share the ambition to prevent the football sector from being used for money laundering

[73] EUROPEAN PARLIAMENT, "European Parliament resolution of 17 June 2010 on players' agents in sports", 2011/C 236 E/14, Consideration 4.
[74] *Ibid*, Consideration 12.
[75] EUROPEAN PARLIAMENT, "European Parliament resolution of 11 June 2015 on recent revelations of high-level corruption cases in FIFA", 2015/27305(RSP).
[76] *Ibid*, Consideration 9.
[77] *Ibid*, Consideration 28.
[78] EUROPEAN PARLIAMENT, "European Parliament resolution of 2 February 2017 on an integrated approach to Sport Policy: good governance, accessibility and integrity", 2016/2143(INI).
[79] *Ibid*, Considerations S and Z.
[80] *Ibid*, Consideration 14.
[81] Arrangement for Cooperation between the European Commission and the Union of European Football Associations (UEFA). This Arrangement can be accessed through the following link: https://editorial.uefa.com/resources/0242-0f842d5d2fe8-0bc0116a4b42-1000/arrangement_for_cooperation_uefa_ec_-_2018.pdf

purposes. UEFA took note of the Commission's efforts to identify and assess risks relating to money laundering in the European Union and will engage in this process to help the Commission assess money laundering risks in the football sector.[82]

One year later, on 24 July 2019, the Commission published its assessment on the matter. In its **bi-annual supranational risk assessment**, the Commission stated that money laundering risks have long been recognized at the EU level and that professional football's complex organization and lack of transparency have created a fertile ground for the use of illegal resources.[83] The Commission reaffirmed its conclusion that the sector is vulnerable to money laundering. Importantly, the Commission recommended that "*Member States should consider which actors should be covered by the obligation to report suspicious transpactions and what requirements should apply to the control and registration of the origin of the account holders and the beneficiaries of money*".[84] In the Staff Working Document that accompanied the Commission's report, the matter was reviewed in more depth. In this Staff Working Document, it was expressly noted that image rights contracts, advertising contracts and sponsorship contracts often involve opaque financial flows, due to the fact that the money stipulated in these contracts is often transferred via accounts belonging to offshore entities in third countries.[85] Even though the Staff Working Document did not explicitly refer to them, the examples provided by the Commission are reminiscent of the inquiries that were launched by Spanish authorities against Lionel Messi and Cristiano Ronaldo for the use of offshore (shell) companies in tax havens to conceal income from image rights. The case of Lionel Messi was brought to light through the publication of the so-called Panama Papers, yet he was not the only professional football player who made use of these mechanisms according to the leaked documents.[86] The Working Document further pointed to a lack of transparency as regards player transfers and as regards the true ownership of football clubs. The risk level of money laundering in the professional

[82] *Ibid*, p. 4.
[83] EUROPEAN COMMISSION, "Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities", COM(2019) 370 Final, p. 5.
[84] *Ibid*, p. 19.
[85] EUROPEAN COMMISSION, "Commission Staff Working Document on the Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities", SWD(2019) 650 Final, p. 233 (underline added by the authors).
[86] As reported by a blog affiliated with Duke University, see: J. YI, "Soccer and Shell Companies: on Messi, Ronaldo and Tax Evasion,", *Soccer Politics*, 29 April 2019, https://sites.duke.edu/wcwp/2019/04/29/soccer-and-shell-companies-on-messi-ronaldo-and-tax-evasion/.

football sector was therefore deemed to be 'significant'.[87] Finally, while the report also noted that certain actions have already been undertaken to impove the situation, such as FIFA's Transfer Matching System, it concluded that this is not yet enough and that self-regulation should not replace the work of the authorities.[88]

On 8 November 2021, a report was adopted by the European Parliament, which was drafted by former football player Tomasz Frankowski. This report, entitled **Report on EU Sports Policy: Assessment and Possible Ways Forward**[89], took special note of the efforts of FIFA to reform the global transfer system and welcomed measures to improve transparency and accountability. It especially welcomed the establishment of a clearing house, licensing requirements for agents and caps on agents' commissions as steps in the right direction. Furthermore, the report insisted that the fight against corruption in sport, which is often linked to money laundering, requires transnational cooperation among all stakeholders and authorities.[90] Ultimately, a **Resolution on EU Sports Policy: Assessment and Possible Ways Forward** was adopted by the European Parliament on 23 November 2021.[91]

Out of the foregoing, it follows that the institutions of the European Union have long been aware of the susceptibility of professional football to money laundering. Especially issues surrounding transparency of club ownership, player transfers and the central role of player agents[92] are often regarded as risks. Despite the continuous attention to money laundering, the EU has not included any specific measures targeting professional football in its existing anti-money laundering legislation. Until now, the EU has (seemingly) left the matter largely up to the sector itself to take measures in the form of self-regulation, and to the EU Member States, by leaving them to consider which actors should be covered by reporting obligations within the AML framework. It is exactly upon the latter invitation that Belgium has indeed acted.

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[87] EUROPEAN COMMISSION, "Commission Staff Working Document on the Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities", SWD(2019) 650 Final, p. 235-236.
[88] *Ibid*, p. 238.
[89] *Report of 8 November 2021 on EU Sports Policy: Assessement and Possible Ways Forward*, 2021/2058(INI), https://www.europarl.europa.eu/doceo/document/A-9-2021-0318_EN.html#title4 (accessed 31 March 2022).
[90] *Ibid*, Considerations 32-34.
[91] EUROPEAN PARLIAMENT, "European Parliament resolution on EU Sports Policy: Assessment and possible ways forward", 2021/2058(INI).
[92] This is reaffirmed in several studies on player agents, such as: KEA – CDES, *The Economic and Legal Aspects of Transfers of Players*, January 2013, https://ec.europa.eu/assets/eac/sport/library/documents/cons-study-transfers-final-rpt.pdf, p. 213-217 (accessed 31 March 2022); R. PARRISH, A. CATTANEO, J. LINDHOLM, J. MITTAG, C. PEREZ-GONZALEZ, V. SMOKVINA, *Promoting and Supporting Good Governance in the European Football Agents Industry*, October 2019, https://www.edgehill.ac.uk/law/files/2019/10/Final-Report.pdf , p. 14-15, 24, 57 and 96 (accessed 31 March 2022).

III. General overview of the AML framework as applied in Belgium

In the following section, the current anti-money laundering legal framework will be presented by way of the Belgian implementation of the fourth and fifth European AML Directives in the form of the PAML of 18 September 2017, as amended by the law of 20 July 2020. The purpose of this section is not to present the existing legal framework in great detail, but to provide an overview which allows the reader who is not familiar with the European anti-money laundering framework to understand the basic tenets of the system through its implementation in Belgium. This overview will also allow us to clarify and assess the role of the entities belonging to the football sector which are now included in this system in the following section.

The purpose of the current section is therefore to provide the reader with the information and context necessary to understand the exact scope and content of the obligations now resting upon the professional football sector in Belgium.

A. Material scope of the PAML

The material scope of the Belgian PAML is defined by Article 2, which provides a definition of the concept of 'money laundering' for the purposes of the PAML.[93] Put briefly, the definition of 'money laundering' in the PAML corresponds to the three major components characterizing money laundering according to the FATF: placement, layering and integration.[94] At the 'placement stage', the launderer attempts to introduce illegal profits into the financial system. At the 'layering stage', the launderer engages in a series of conversions or movements of the funds to distance them from their source. Finally, at the 'integration stage', the funds re-enter the legitimate economy. This might be done through investments in financial instruments, real estate, business ventures or luxury assets.

Each of three components mentioned in the PAML is separately regarded as 'money laundering', although they may be all be present together in one money laundering operation:

(i) The first component involves the conversion or transfer of money or other goods, while knowing that these have been obtained through or by participating in criminal activity, with the purpose of hiding their illegal origins. It also includes efforts to conceal the involvement of a

[93] The PAML also applies to the financing of terrorism and includes limits on cash payments. However, as these matters are beyond the scope of this research report, they will not be discussed further.
[94] FATF, "What is Money Laundering?", https://www.fatf-gafi.org/faq/moneylaundering/ (accessed 31 March 2022).

person or persons in such activities, in order to escape the legal consequences attached to such actions.

(ii) The second component relates to the 'concealment or disguising of the true nature, origin, finding place, transfer, movement of rights to or ownership of funds and goods, while knowing they have been obtained through criminal activity.

(iii) The third component is the acquisition, possession or use of funds or goods, while knowing, at the moment of their reception, that they have been acquired through criminal activity or complicity in criminal activity.

Addionally, the scope of the PAML includes complicity in, or encouragement of, the facilitation and provision of counsel to the benefit of one of the aforementioned acts.

However, the PAML also defines the concept of 'criminal activity' by providing an exhaustive list of crimes which can give rise to money laundering. In other words, money laundering can only take place in the wake of certain criminal activities. For example, Article 4, 23° mentions serious tax fraud which may or may not be organized[95], social fraud, corruption, forgery of money or goods, theft, extortion, organized crime and informatics criminality.

The reason for restricting the scope of the concept of money laundering for the purposes of the PAML is to limit the compliance costs which are borne by the private entities who are involved in the preventive legal framework as gatekeepers.[96] The Belgian legislator initially sought to strike a balance between allowing the financial system to continue to operate normally and obtaining and enforcing the cooperation of obliged entities in the prevention of money laundering. However, this limitation of scope is only present in the PAML, and not in Article 505 CC which penalizes money laundering in general.[97] However, the number of criminal offences included under the term 'criminal activity' has also steadily grown since the initial conception of anti-money laundering legislation.

[95] As opposed to 'ordinary tax fraud', which does not come under the scope of the PAML. This distinction is not always clear in practice, though; see: F. DESMYTTERE, J. GOETGHEBUER, "De herziene preventieve antiwitwaswetgeving als instrument in de strijd tegen (ernstige) fiscale fraude. Partners in crime?", *Algemeen Fiscaal Tijdschrift* 2021/2, p. 10-11.

[96] This can for example be deduced from the Explanatory Memorandum of the bill to introduce the Law of 11 January 1993, which preceded the current PAML of 2017. See: Explanatory Memorandum, Bill of 22 July 1992 concerning the prevention of the use of the financial system for purposes of money laundering, Senate BZ 1991-92, *Parl.St.* 468-1, p. 7 – 8, available at: https://www.senate.be/lexdocs/S0533/S05331371.pdf (accessed 31 March 2022).

[97] See also: A. TIBERGHIEN, *Handboek voor Fiscaal Recht 2020-2021*, Mechelen, Wolters Kluwer, 2021, p. 2714.

B. Personal scope of the PAML

The Law of 11 January 1993, which preceded the PAML, originally only applied almost exclusively to banks and other financial institutions. However, similarly to the expansion of the material scope of the AML legislation, the personal scope of anti-money laundering legislation has been expanded significantly over the last few years. The latest expansion of scope took place as a result of the transposition of the fifth AMLD through the Law of 20 July 2020. As was stated above, the fight against money laundering should be regarded as a continuous, ongoing process in which many private actors are expected to play a role as 'gatekeeper', in the sense that the law imposes upon these actors several stringent legal responsibilities.

Article 5 of the PAML contains an exhaustive list of these so-called 'obliged entities', i.e. the private 'gatekeepers'. Among these entities are the National Bank of Belgium, financial, credit and insurance institutions, wealth management entities, registered accountants, notaries, bailiffs, attorneys and real estate agents. As the law stands upon the moment of writing, the law distinguishes circa 32 types of obliged entities. This is more than double the number of obliged entities included in the Law of 11 January 1993. This indeed indicates that the personal scope of the PAML has been significantly expanded over the years, further increasing the compliance costs which are borne by private entities across the economic spectrum.

These gatekeepers play an essential role in the European regulatory framework concerning money laundering, as the information and notificiations which they relay to the relevant public authorities allow those authorities to detect money laundering schemes and their underlying criminal activities and, where appropriate, to initiate legal proceedings against the perpetrators.

As was mentioned above, the personal scope of the PAML was broadened due to the transposition of the fifth AMLD. As of 15 August 2020, it now includes providers engaged in exchange services between virtual currencies and fiat currencies, custodian wallet providers, and persons trading or acting as intermediaries in the trade of works of art (including when this is carried out by art galleries and auction houses where the value of the transaction or the series of linked transactions amounts to at least 10,000 EUR, as well as persons storing, trading or acting as intermediaries in the trade of works of art when this is carried out by free ports and where the value of the transaction or the series of linked transactions amounts to at least 10,000 EUR).

As was stated above, the Belgian legislator took the opportunity when transposing the fifth AMLD to include 'professional football clubs, the RBFA and players' agents in the football

sector' in the list of obliged entities. The football clubs and the RBFA are deemed to be obliged entities as of 10 July 2021. The law will only enter into force with respect to the player agents after a cooperation agreement has been concluded between the Belgian federal government and the regional governments. At the time of writing, no such agreement has been concluded.

C. Legal consequences for obliged entities

The law imposes upon obliged entities a large number of strenuous obligations and responsibilities. At the heart of all of these obligations and responsibilities is the so-called 'risk based approach'. The requirement to adopt such an approach is contained within Article 7 of the PAML. The risk-based approach is one of the key elements in the 2012 FATF Recommendations.[98] In short, the risk-based approach implies that one should identify, understand and assess the risks of money laundering with which one is confronted and take adequate measures in the face of those risks. Higher risks call for corresponding measures, whereas lower risks may permit simplified measures. The PAML therefore allows obliged entities to carry out their obligations under the PAML in a 'differentiated manner'. In the same vein, Article 8 of the PAML states that the obliged entities 'shall develop and apply effective policies, procedures and internal control mechanisms commensurate with their nature and size' to comply with the obligations imposed by the PAML.

At the level of the obliged entities[99], the risk-based approach requires these entities to carry out a risk assessment on two relevant levels.

First, according to Articles 16 to 18 PAML, an obliged entity should carry out an overall assessment of the money laundering risks to which it is exposed. This 'business-wide risk assessment' needs to take into account the nature of their activities, the characteristics of their clients and the channels they use to enter into legal relationships with their clients. This should allow the obliged entities to identify in advance situations which may entail a high risk of money laundering, but also situations where the risk is low. In sum, the obliged entities need to map their own money laundering risks and develop strategies to detect and counter these risks.

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[98] FINANCIAL ACTION TASK FORCE, "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (updated October 2021)", Paris, 2021, FATF/OECD, p. 10-11. Available at: https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf (accessed 31 March 2022).

[99] The risk-based approach is not only applied at the level of the obliged entities, but pervades all other relevant levels as well. Supervisory bodies have to carry out a risk assessment for the sector which they supervise. The Belgian State is obliged to carry out a national risk assessment (Articles 68-72 PAML) and the European Commission shall carry out a supranational risk assessment (Article 6 of the fourth AMLD).

Second, according to Article 19 PAML, a risk assessment needs to be carried out by obliged entities at the level of its individual client relationships. The risks associated with each of their customers should be assessed on a case-by-case basis. On the basis of such an individual assessment, the appropriate level of diligence that the obliged entity should maintain in its dealings with that specific customer is determined. The individual risk assessments will of course be influenced by the business-wide risk assessment of the obliged entity as a whole. This allows the obliged entity to allocate its resources in the most efficient manner.[100]

1. Requirements on the organizational level

A first set of obligations placed upon obliged entities can be situated on the organizational level of the entity itself. Apart from carrying out a business-wide risk assessment, the obliged entities have to develop and apply fitting codes of conduct, policies, procedures and internal control measures which are proportionate to their nature and size. These have to include risk management models, policies regarding client acceptation, and the level of diligence that has to be applied *vis-à-vis* specific clients and in respect of notifications of potential money laundering risks. Obliged entities also have to make sure, among other things, that they raise awareness among their staff by providing training aimed at enabling their staff to identify transactions which pose a risk of money laundering and how to appropriately respond to such transactions. Where applicable, their agents and distributors should be instructed as well. Obliged entities also have to nominate a 'Compliance Officer' among their senior staff.

2. Requirements on the level of individual client relationships

A second set of obligations relates to the level of individual client relationships that an obliged entity maintains with its clients or customers. Three main obligations can be distinguished: the necessity to carry out an individual risk assessment and to apply an appropriate level of diligence *vis-à-vis* the clients and their transactions, the analysis of atypical transactions and the notification of suspicions.

2.1. Individual risk assessment and an appropriate level of diligence

Article 19 PAML requires obliged entities to at least observe a 'general diligence requirement' *vis-à-vis* their clients. This general diligence obligation encompasses three separate obligations: the identification and identity verification of certain persons, the obligation to evaluate the characteristics of its clients and the nature of the business relationship or occasional transaction,

[100] A. TIBERGHIEN, *Handboek voor Fiscaal Recht 2020-2021*, Mechelen, Wolters Kluwer, 2021, p. 2724.

and the obligation to be continuously watchful of business relationships and occasional transactions.

The individual risk assessment therefore cannot be a static exercise performed at a single point in time, but is rather a continuous process. Usually, the business-wide risk assessment will allow an obliged entity to assign a provisional risk profile to a client, on the basis of which the appropriate level of diligence will be maintained in all dealings with that particular client. In the light of the dealings with that particular client, the risk profile of that client can be reconsidered, and the appropriate level of diligence can then be adapted. Risk levels can differ between high, normal and low.[101]

Requirements regarding the identification and verification of the identity of clients

The requirements of identification and verification of the identity mainly concern the clients of the obliged entities, but also, where applicable, their beneficial owners. This is also known as the 'Know Your Customer', or 'KYC', requirement. The PAML requires that obliged entities take these steps before[102] they (i) enter into a business relationship with a client, (ii) enter into an occasional transaction, which can be a single transaction or a number of related transactions, outside of a business relationship with a client for an amount of 10,000 EUR or a higher amount[103], or (iii) when reasonable doubt exists as to whether previous information with regard to the identity of a client is correct or (iv) generally when there exists a suspicion of money laundering. The amount of information to be obtained in the course of this process can be dependent on the provisional risk profile accorded to a specific client. When an obliged entity is unable to identify or verify the identification of a client in due time, it should cease all business relationships with that client, or refuse to enter into a new business relationship with that client.

Interestingly, obliged entities should also inquire into the identity of the 'ultimate beneficial owners' of their clients.[104] Obliged entities should therefore take appropriate measures to obtain insight into the ownership- and control structures of their clients which are corporate entities, foundations, trusts and similar legal constructs. In case of entities established in the European

[101] Explanatory Memorandum, Bill of 6 July 2017 concerning the prevention of money laundering, the financing of terrorism and to limit cash payments, Chamber of Representatives 2016-2017, *Parl.St.* nr. 54-2566/001, p. 132, available at: https://www.dekamer.be/FLWB/PDF/54/2566/54K2566001.pdf (accessed 31 March 2022).
This source will be further be cited as: 'Explanatory Memorandum PAML'.
[102] See Article 30 PAML.
[103] In rare cases, also transactions for an amount lower than 10,000 EUR may qualify as an 'occasional transaction', in case of certain cash payments or payments in anonymous electronic funds. See: Article 21, §1, b) PAML.
[104] See Article 23 PAML.

Union, this information should be accessible to obliged entities by consulting the register of Ultimate Beneficial Owners, which each Member State has created pursuant to the implementation of the fourth AMLD.[105] However, this information might not be as easy to obtain in the case of entities established in third countries.

In exceptional cases, obliged entities are allowed to verify the identity of their clients in the course of their business relationships if certain requirements are met.[106] For example, the obliged entities need to provide an exhaustive list of special circumstances in which this is allowed in their internal policy documents. Furthermore, the (provisional) risk profile awarded to that particular client should be low and the verification of the identify should happen as quickly as possible after the first contact with that client.

Requirements regarding the assessment of the purpose and nature of business relationships

Obliged entities should not only obtain information with regard to the identity of their clients, but should also assess the purpose and the nature of their business relationships or occasional transactions with clients in order to gain insight into the motives of that particular client.[107] This information is necessary for the obliged entity to assign a more definitive risk profile to an individual client. Additional information to be gathered can for example relate to the client's professional activities, the status of the client's assets, and his sources of income in light of the intended transactions that the client wishes to make.[108] This information can be added to the client's file and complements the information already gathered in the identification and verification phase.

Requirement to exercise continuous caution

Thirdly, obliged entities are required to exercise continuous caution in their dealings with each individual client, in light of the risk profile accorded to that client. Article 35 PAML distinguishes between two sets of obligations in light of this third requirement. On the one hand, the obliged entity has to carefully and continuously examine transactions that take place during the business relationship. Occasional transactions also have to be examined. The obliged entity must then assess whether these transactions are consistent with the characteristics of the client, his risk profile and the purpose and nature of the business relationship. Further, the obliged entity needs to identify atypical transactions, which must be subjected to an in-depth analysis.

[105] See Article 30 of the fourth AMLD.
[106] See Article 31 PAML.
[107] Explanatory Memorandum PAML, p. 130-131.
[108] Explanatory Memorandum PAML, p. 132.

On the other hand, the obliged entity is required to keep its records updated in order to ensure that its information on its clients is not out of date.

The foregoing implies that the obliged entity is afforded considerable leeway in according a certain risk profile to a particular client. However, there are cases where the law itself requires obliged entities to exercise a high level of caution. These so-called cases of 'enhanced diligence' are enshrined within Articles 37-41 PAML. For example, the law requires obliged entities to demonstrate enhanced diligence in cases where they are allowed to postpone the identification and verification of a client to later point in time when the entity and the client have already engaged in a business relationship, up to the moment where the identification and verification have taken place and allow for a reduced risk profile. The same is the case for transactions involving tax havens or when the client is a 'politically exposed person' ('PEP'). Pursuant to the transposition of the fifth AMLD, obliged entities will also need to demonstrate enhanced diligence when dealing with a client whose beneficial owners are located in high-risk third countries.[109] Such cases of enhanced diligence require the obliged entities to obtain additional information regarding the client and his beneficial owners, about the source of the funds and source of the client's assets, about the proposed transactions, etc.

2.2. The analysis of atypical transactions

According to Articles 35, §1, 1° and 45 PAML, obliged entities are required to detect and thoroughly analyze, under supervision of their compliance officer, all atypical transactions to inquire whether they raise a suspicion of money laundering. Atypical transactions are defined by Article 45, §1 PAML as transactions that are not consistent with the characteristics of the client, his risk profile and the purpose and nature of the business relationship. They especially have to assess those transactions which meet one of the following conditions: (i) they are complex, (ii) they are unusually large, (iii) they display an unsual pattern, or (iv) they do not have a clear economic or legitimate goal. These transactions have to be assessed while exercising an enhanced level of diligence. Atypical transactions might concern a single transaction or a series of linked transactions. The obliged entities are required to draw up a written report detailing the assessments they have carried out.

[109] The most important list of qualifying third countries is compiled and maintained by the European Commission, see: Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies. The last amendment to this list was made on 7 December 2020, see: Commission Delegated Regulation (EU) 2021/37 of 7 December 2020 on amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council.

2.3. Notification of money laundering suspicions to the Financial Intelligence Unit

Obliged entities are required by Article 47 PAML to notify the Belgian Financial Intelligence Unit, the 'Cellule de Traitement des Informations Financières – Cel voor Financiële Informatieverwerking' ('CTIF-CFI'), when they know, suspect or have reasonable grounds to suspect that they have encountered (an attempt to engage in) money laundering. However, we should stress that it is not up to the obliged entities to identify or discern any underlying criminal activity.[110] Since the mere presence of a suspicion or even reasonable grounds for a suspicion suffice for a notification, the obliged entity does not have to prove that money laundering is actually taking place.[111] When an obliged entity notifies the CTIF-CFI of its suspicions, the obliged entity will be immunized from prosecution in the future on the basis of its potential participation in any money laundering activities which may come to light during a subsequent investigation. We should also note that the obligation to notify is not subject to a 'risk-based approach', but rather to a rule-based approach. Each time an obliged entity has reasonable grounds to notify the CTIF-CFI, it must do so. The obliged entity cannot, for example, take into account the intensity of its suspicion in order to make a judgment call. Thus, the slightest suspicion about the illegal origin or destination of the funds should suffice for making a notification.[112]

According to Article 51 PAML, the obliged entity should notify the CTIF-CFI immediately before the relevant transaction is executed. The notification should include the timeframe after which the transaction should be effectuated. The PAML only allows an obliged entity to notify the CTIF-CFI in cases where it is impossible to notify in advance (e.g. an account holder transfers funds between accounts via homebanking, without intermediation by a staff member of the bank) or in cases where any delay in the transaction could interfere with the possibility to prosecute the perpretator.

According to Articles 80 and 81 PAML, in cases where an advance notification is made, the CTIF-CFI can oppose the intended transaction for a period of least five working days. An extension of this period can be obtained if the CTIF-CFI notifies the public prosecutor, who then decides about a possible extension.

[110] This is specifically stated in Article 47, §1 PAML.
[111] A. TIBERGHIEN, *Handboek voor Fiscaal Recht 2020-2021*, Mechelen, Wolters Kluwer, 2021, p. 2735.
[112] C. GRIJSEELS, "Het preventief antiwitwasdispositief in een nieuw kleedje. Impact op de werking van de Cel voor Financiële Informatieverwerking", *Rechtskundig Weekblad* 2018, nr. 21, p. 812.

Nevertheless, an obliged entity should not take the decision to file a report with the CTIF-CFI lightly. In a judgment of 2 May 2017, the Brussels Court of Appeal ordered a financial institution to pay damages to a client whose accounts had been blocked in response to a notification by that financial institution to the CTIF-CFI, which led to the involvement of the Public Prosecutor's Office. Due to a lack of diligence on the part of the obliged entity, the Court of Appeal considered the notification to have been made in bad faith.[113] This judgment can be regarded as an illustration of the difficult position in which an obliged entity may find itself, and underscores the requirement of a demonstrable due diligence that the obliged entity should take into account when considering whether to file a notification.

3. The role of the supervisory authorities

The PAML appoints several supervisory authorities, which are charged with the task of monitoring the compliance of specifically appointed groups of obliged entities with the requirement of the anti-money laundering legislative framework. For several types of obliged entities, including the obliged entities from the professional football sector, the relevant supervisory authority is the Federal Ministry of Economic Affairs ('FPS Economy'), according to Article 85, §1 PAML. These supervisory authorities can issue regulations that are applicable to the obliged entities, which complement the requirements included in the PAML and its implementing decisions. In order to have legal effect, these regulations have to be approved by the government via Royal Decree. On a technical level, such regulations can concern the clarification of certain concepts that may or may not be defined by the law, such as the concepts of 'client' or 'business relationship', depending on the sector concerned.

The supervisory authorities exercise their supervision on the basis of their own general risk assessment, which includes the assignment of a risk profile to the obliged entities falling under the scope of their supervision. According to Article 87, §2 PAML, supervisory authorities should take into account the degree of risk assessment discretion conferred on the subject entities by the PAML, in the exercise of their own supervisory powers. Again, this allows for a differentiated approach *vis-à-vis* the obliged entities.

While exercising its supervisory role, the FPS Economy is, according to Article 107 PAML, afforded powers of investigation and detection. This allows federal agents to e.g. audit and investigate obliged entities. Further, Article 108 PAML grants the Federal Minister of

[113] Brussels Court of Appeal 2 May 2017, *Droit Bancaire et Financier* 2018/1, p. 3.

Economic Affairs the power to sanction non-compliance of any obliged entity, for example through naming and shaming or revoking licences.

Unfortunately, at the moment of writing, only one implementing measure has been adopted as yet with respect to the professional football sector in the form of the Royal Decree of 23 December 2021 concerning the registration of professional football clubs with the FPS Economy.[114] Further implementing measures, such as e.g. regulations clarifying the exact scope of the obligations of obliged entities in the football sector or providing further interpretations of key concepts of the PAML are still lacking at the time of writing.

4. The CTIF-CFI as Financial Intelligence Unit

Financial Intelligence Units ('FIUs') play a pivotal role in the preventive anti-money laundering framework. The CTIF-CFI is tasked with receiving and analyzing notifications of suspicions that relate to potential money laundering risks by obliged entities. As an FIU, the CTIF-CFI serves as a corridor between the private sector gatekeepers, in the form of the obliged entities, on the one hand, and the public legal entities tasked with investigating and combating (financial) crime, such as the Public Prosecutor's Office and the tax authorities, on the other.

To this effect, the CTIF-CFI functions as an independent filter, thereby making sure that the authorities are not flooded with suspicions and notifications.[115]

The CTIF-CFI does not only receive information from obliged entities, but may also be provided with information via supervisory authorities, trustees in bankruptcy, public servants, federal and regional tax administrations, the Federal Ministry of Public Health and social services.

Because of the transnational character of many money laundering schemes, the CTIF-CFI should also cooperate and exchange information with FIUs in other EU Member States. The fifth AMLD has reinforced the obligation of FIUs to exchange information and cooperate even further, for example by ensuring that uncertainties regarding the presence of an underlying criminal activity or the legal qualification of that criminal activity cannot stand in the way of

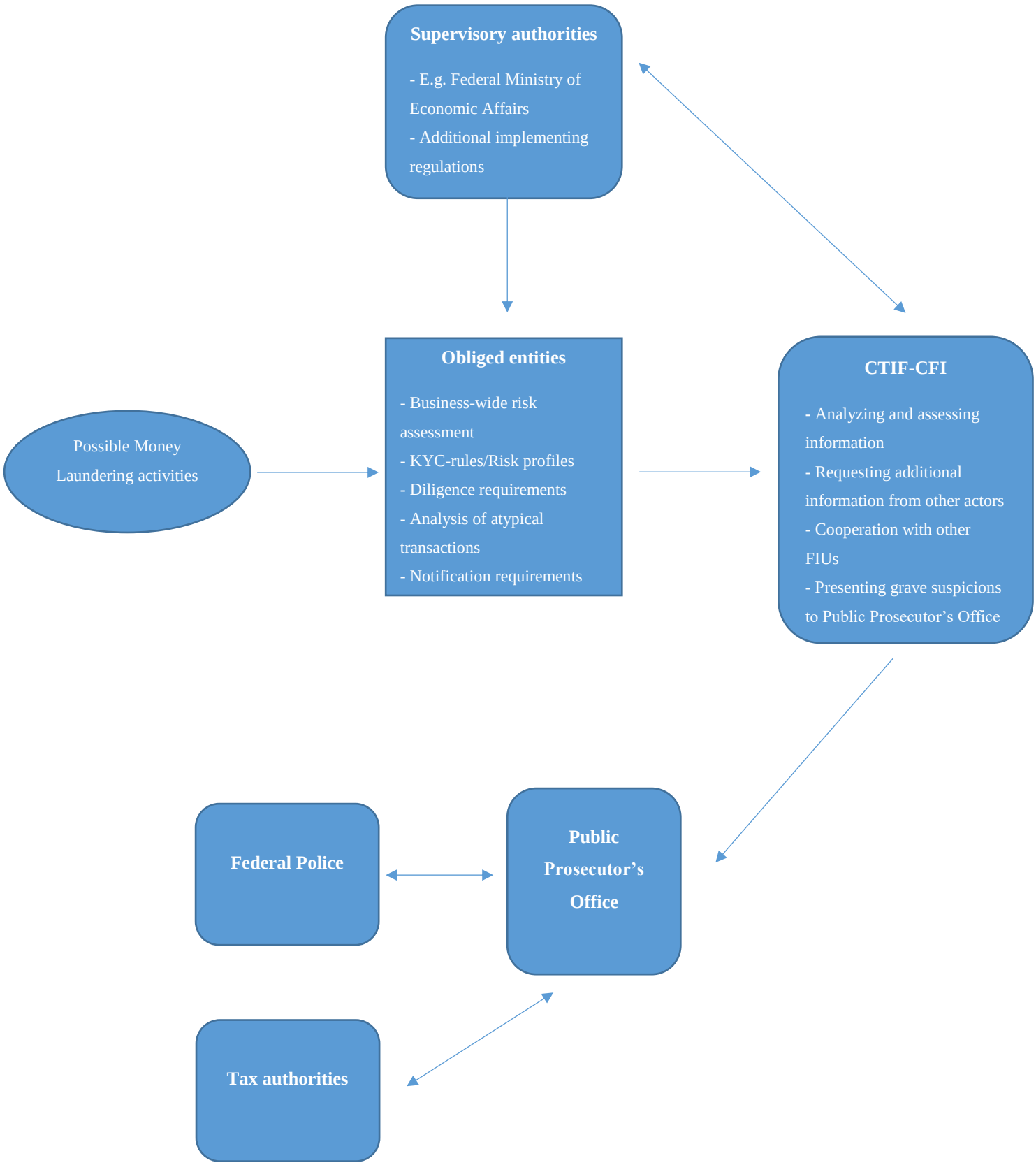
[114] Royal Decree of 23 December 2021 concerning the registration of the professional top football clubs by the FPS Economy, *Official Gazette* 11 February 2022.
[115] C. GRIJSEELS, "Het preventief antiwitwasdispositief in een nieuw kleedje. Impact op de werking van de Cel voor Financiële Informatieverwerking", *Rechtskundig Weekblad* 2018, nr. 21, p. 814-815.

an exchange of information.[116] As an FIU, the CTIF-CFI is also competent to request information from FIUs located in other EU Member States.

The CTIF-CFI therefore serves as a central nexus in the anti-money laundering regulatory framework, combining several flows of information in order to assess concrete money laundering risks, which can then be relayed to the relevant public authorities.

[116] See Article 53 of the fourth AMLD, as amended by the fifth AMLD.

Schematic overview of the preventive AML framework in Belgium



IV. The application of the PAML to the Belgian professional football sector

A. Motives and institutional context

As was mentioned above, the decision to subject the Belgian professional football sector to the Belgian preventive anti-money laundering framework was largely inspired by Operation Clean Hands, i.e. a major investigation by the federal police authorities regarding widespread match-fixing, corruption, tax fraud and money laundering in Belgian professional football. The public attention garnered by this investigation, combined with the ongoing process of transposing the fifth AMLD into Belgian law, provided the necessary momentum to take action and for the observations made by the FATF, the European Commission and the European Parliament.[117] At the same time, policymakers seemed to have the financial health and the image of the sector as their main focus when introducing the amendments which led to the adoption of the amended anti-money laundering law, rather than out of concern that criminals are using the Belgian football sector to launder significant amounts of money.[118]

For example, it has become increasingly difficult for legal entities in several sectors to obtain basic banking services, due to the application of AML legislation. In the literature, it has been observed that this is also the case for entities involved in the Belgian football sector.[119] These problems have even led to adoption of specific legislation in Belgium to ensure that legal persons are able to obtain basic banking services.[120] This issue for professional football is not restricted to Belgium alone. For example, similar cases have been reported in the Netherlands[121], where Rabobank took the decision not to take on any more clients from the paid football sector due to, *inter alia*, money laundering concerns.[122] Another policy concern was that, if no action was undertaken, sponsors would be less willing to commit to football clubs to the detriment of the sector.[123] Therefore, from the perspective of the policymakers, we can conclude that combating money laundering was not the sole, or perhaps even the most important, objective of the Belgian legislator. Whereas Operation Clean Hands served as a

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[117] Interview S. Matheï, p. 1; Bill containing miscellaneous provisions regarding the prevention of money laundering and the financing of terrorism and to limit the use of cash money, Amendments, Chamber of Representatives 2019-2020, *Parl.St.* nr. 55-1324/003, p. 5; Bill containing miscellaneous provisions regarding the prevention of money laundering and the financing of terrorism and to limit the use of cash money, Amendments, Chamber of Representatives 2019-2020, *Parl.St.* nr. 55-1324/007, p. 7-8.
[118] Interview S. Matheï, p. 2.
[119] H. SWENNEN, "Een basisbankdienst voor ondernemingen", *Revue de Droit Commercial Belge* 2021/2, 117.
[120] Law of 8 November 2020 concerning the introduction of a basic banking service for enterprises in Book VII of the Code of Economic Law.
[121] P.J.W. STEENWIJK, "Kwade zaken in het voetbal", *Ondernemingsrecht 2021/61*,
[122] "Rabobank weert voetbalclubs", *De Telegraaf*, 20 August 2019, https://www.telegraaf.nl/financieel/367353532/rabobank-weert-voetbalclubs (accessed 31 March 2022).
[123] Interview S. Matheï, p. 2.

trigger and provided the necessary momentum for including the professional football sector in the preventive anti-money laundering legal framework, this decision was also inspired by the intention to safeguard the sector and to push certain undesired actors out. The opinion that the inclusion of professional football in the preventive anti-money laundering framework should be beneficial for the image of the sector was shared by several, though not all, stakeholders.[124]

Notwithstanding the momentum provided by Operation Clean Hands, the inclusion of the professional football sector in the preventive anti-money laundering framework did not go smoothly. The initial proposal was in the form of an amendment proposed by several Belgian MP's in response to a bill proposed by the executive branch of government aimed at transposing the fifth AMLD into Belgian law.[125] From the subsequent interventions by the former Belgian Minister of Finance, it becomes clear that the executive branch of the Belgian government at the time was not in favour of this proposal.[126] Several objections were raised, such as the fact that the Federal Public Service Economy (FPS Economy) had not been consulted and that it was unclear why only football was being targeted. Furthermore, according to the minister, it was not clear how certain conceps from the PAML should be interpreted in the case of professional football. In response to these critiques, the amendments were withdrawn. In a later phase, the amendments were reintroduced, albeit in a revised form.[127] In the subsequent discussions, the sponsors of the proposed amendments explained that the definition of the concept of 'professional football club' had been revised and that informal discussions with the FPS Economy and the Minister of Economic Affairs had taken place.[128] However, the Minister of Finance remained sceptical and the CTIF-CFI provided a rather critical expert opinion in the Parliamentary subcommittee dealing with the relevant bill. Additionally, the interest group of Belgian professional football clubs (the Pro League, organised as a non-profit association)

[124] Interview P. De Beus, p. 3; Interview SPF Economy – CTIF-CFI, p. 3, 6. Compare with Interview S. Francis, p. 6.
[125] Bill containing miscellaneous provisions regarding the prevention of money laundering and the financing of terrorism and to limit the use of cash money, Amendments, Chamber of Representatives 2019-2020, *Parl.St.* nr. 55-1324/003.
[126] Bill containing miscellaneous provisions regarding the prevention of money laundering and the financing of terrorism and to limit the use of cash money, Report of the first Reading, Chamber of Representatives 2019-2020, *Parl.St.* nr. 55-1324/004, p. 13.
[127] Bill containing miscellaneous provisions regarding the prevention of money laundering and the financing of terrorism and to limit the use of cash money, Amendments, Chamber of Representatives 2019-2020, *Parl.St.* nr. 55-1324/007.
[128] Bill containing miscellaneous provisions regarding the prevention of money laundering and the financing of terrorism and to limit the use of cash money, Report of the second Reading, Chamber of Representatives 2019-2020, *Parl.St.* nr. 55-1324/008, p. 8.

warned of a competitive disadvantage for Belgian professional football clubs.[129] From its side, the representative from the CTIF-CFI maintained that the definition of professional football clubs should still be elaborated, that the sector was unprepared to deal with the obligations imposed by the PAML and that the EU was preparing an AML package, which might include professional football. However, as we have discussed above, the proposed new EU regulations do not include professional football for the time being. Notwithstanding the scepsis surrounding the proposed amendments, they were approved and turned into law.

It is interesting to note that, during the summer of 2020, the Belgian government had a minority in Parliament, after one majority party had left the majority in 2018. In May 2019, elections were organized in Belgium. However, a new majority government was only constituted in October 2020. At the time these amendments were being voted on, the 'resigning government' at the time did not have a majority in Parliament. Such a situation allows for more individual intiatives from Members of Parliament, because the ruling coalition at the time did not have a majority in the federal Parliament. This might help explain why the amendments were ultimately accepted, notwithstanding the sceptical stance of the competent Minister. Interestingly, three of the four co-sponsors of the amendment regarding the football sector belong to an opposition political party, while only one belonged to a majority party.

In summary, Operation Clean Hands, in combination with longstanding (supranational) attention regarding money laundering practices in football, provided the necessary momentum for interested policymakers in Belgium to obtain the necessary political support for the inclusion of the professional football sector in the preventive anti-money laundering framework. Nevertheless, Parliamentary discussions showed that the competent Minister, competent governmental agencies and stakeholders from professional football were sceptical and even critical of this move. Several questions and objections were put forward. In the end, the necessary political support to include the professional football sector in the PAML was obtained by the drafters of the relevant amendments to the Law of 20 July 2020 during a political transition period in which the governming coalition did not have a majority in Parliament.

[129] Bill containing miscellaneous provisions regarding the prevention of money laundering and the financing of terrorism and to limit the use of cash money, Report of the second Reading, Chamber of Representatives 2019-2020, *Parl.St.* nr. 55-1324/008, p. 7.

B. Actors in professional football subjected to the PAML

At the moment of writing, two actors in Belgian professional football are, as obliged entities, subjected to the requirements of the PAML. These are the 'professional top football clubs' and the Royal Belgian Football Association. The law also includes 'sports agents in the football sector'. However, the PAML has not yet entered into force *vis-à-vis* the latter category, as the Belgian federal government first needs to conclude a cooperation agreement with the Belgian Regions, due to the constitutional division of powers within the Belgian State.[130] It also seems that player agents active in the Belgian football sector have not yet been contacted or informed about the legal consequences of the application of the PAML.[131] Therefore, at the time of writing, there is no indication that the PAML will enter into force anytime soon regarding player agents.

The PAML provides the following definitions[132]:

- Professional top football club: "*any company established in Belgium which owns or manages a professional football club of which at least one team plays in the championship(s) of the highest level of competition in Belgium. The King provides for their registration by the FPS Economy according to the detailed rules, criteria and conditions that He determines.*" (translation by the authors)

- Player agent in the football sector: "*any natural or legal person established in Belgium which, in the football sector, acts as a private employment agency for potentially paid sportsmen and women or on behalf of employers with a view to concluding an employment contract for paid sportsmen and women, and whose activity is governed by the Flemish Decree of 10 December 2010 on private employment agencies, the ordinance of the Brussels-Capital Region of 14 July 2011 on the mixed management of the labour market in the Brussels-Capital Region or the ordinance of the Walloon Region of 3 April 2009 on the registration and accreditation of employment agencies. The King provides for their registration by the FPS Economy according to the detailed rules, criteria and conditions that He shall determine*." (translation by the authors)

[130] See art. 173 *in fine* of the Law of 20 July 2020.
[131] Interview S. Francis, p. 1.
[132] Article 4, 43° and 44°.

The Royal Decree concerning the registration of professional football clubs with the FPS Economy was adopted on 23 December 2021 and published in the Belgian Official Gazette on 11 February 2022. At the time of writing, it is the only implementing measure to have been officially adopted in the wake of the entry into force of the PAML regarding the professional football sector in Belgium. The Royal Decree specifies that the RBFA will provide, on an annual basis, a list to the FPS Ecconomy indicating the undertakings which bear the costs or book the proceeds relating to one or more of the football activities of the top football clubs of which at least one team plays in one of the first two national divisions. The relevant costs and proceeds are mentioned in the Royal Decree and include wage costs of players and (administrative, technical and medical) staff, costs and revenues relating to the purchase and sale of players, income from ticket sales, sponsoring and commercial rights, media rights, mechandising and hospitality, the operational management of the club, financial costs and revenues and costs and revenues relating to the use and the management of the stadium and training facilities.

Every undertaking which is not notified by the FPS Economy before 15 August of a relevant year and which exercises one of the activities mentioned in the Royal Decree should notify the FPS Economy and register itself.

Interestingly, the Pro League is not included in the PAML as an obliged entity. This seems a curious decision because the Pro League, which is organised in the form of a non-profit association like the RBFA, serves as the association and interest group of all professional football clubs in Belgium.[133] Interestingly, the Pro League also engages in sponsor deals[134] and is the designated organ which concludes contracts regarding the media rights of the Belgian football leagues. Moreover, from the interviews, it became clear that the Pro League serves as a central counterparty for the authorities in discussions regarding the development of implementing measures, while also informing the professional football clubs.[135] From the preparatory works, it can be deduced that the drafters of the relevant amendments feared that

[133] The decision not to include the Pro League is also questioned by HOUBEN, see: R. HOUBEN, "Het Belgische profvoetbal aan anti-witwasnormering onderworpen – een kritische analyse in context", *Rechtskundig Weekblad* 2022, nr. 21, 812.
[134] See: https://www.proleague.be/nl/pl/partners.
[135] Interview W. Georges, p. 1; Interview K. Verstringe, p. 1, 2, 3, 6; Interview P. De Beus, p. 2, 3-4.

the clubs would dissolve the Pro League and constitute another non-profit association with a different name to escape the application of the PAML.[136]

Finally, also the RBFA is included in the PAML as an obliged entity. According to the preparatory works of the Law of 20 July 2020, the RBFA is only mentioned because of the clearing system for player agent fees that it set up in 2020 in the wake of Operation Clean Hands.[137] In practice it seems that the RBFA plays a supervisory role, keeping an eye on other actors in professional football which are themselves subject to the PAML.[138] Nevertheless, the exact scope of this role is currently not defined, due to a lack of implementing regulations. However, other stakeholders indicate that the RBFA can play an important role in centralizing certain checks and information flows to achieve more administrative efficiency within the context of the application of the PAML.[139] Apparently, the fear that the RBFA would be dissolved and reconstituted under another name was not present with regard to the RBFA, perhaps because, as the official Belgian FA and a member of UEFA and FIFA, the RBFA plays an institutionalized role within global football.

In summary, currently only the RBFA and professional football clubs in Belgium are designated as obliged entities under the PAML. The law has not yet entered into force for player agents. The Pro League is not subjected to the PAML at all, yet the apparent reasons for not doing so seem questionable in light of the important role the Pro League appears to play in practice.

C. Application of the PAML to actors in professional football

The application of the PAML turns on a correct understanding and application of certain key legal concepts. After all, like the European Directives on which it is based, the PAML was originally developed to be applied in the financial sector. This begs the question as to how key generic legal concepts such as 'client' or 'business relationship' should be interpreted. After all, at least at first glance, the obligations concerning identification, the application of an appropriate level of diligence, the detection and thorough analysis of atypical transactions and, finally, the notification obligations apply *vis-à-vis* 'clients' with whom an obliged entity enters

[136] Bill containing miscellaneous provisions regarding the prevention of money laundering and the financing of terrorism and to limit the use of cash money, Amendments, Chamber of Representatives 2019-2020, *Parl.St.* nr. 55-1324/007, p. 10.
[137] *Ibid*.
[138] Interview P. De Beus, p. 1.
[139] Interview W. Georges, p. 1, 4. Another interviewed stakeholder suggested a similar role for the Pro League, see Interview K. Verstringe, p. 6.

into a 'business relationship' or *vis-à-vis* 'clients' with whom obliged entities enter into an 'occasional transaction', consisting of one or more operations which appear to be linked, of a value of 10,000 or more.

As was noted above, Article 86, §1 PAML mentions that the supervisory authorities may issue regulations clarifying legal concepts which may or may not be defined by law, such as 'client' or 'business relationship'. As we have noted, such regulations are still lacking with regard to professional football. Therefore, in what follows, we will construct an interpretation of these concepts on the basis of the applicable legal provisions. However, in our view, Article 86 PAML does not provide a license to the supervisory authorities to define these concepts in any way they deem fit. As a government agency which is part of the executive branch, the FPS Economy is bound to observe certain (constitutional) limits on its power such as the application of the constitutional principle of equality and non-discrimination, when exercising a bound and even a discretionary power awarded by the legislator.[140]

On the one hand, the question arises as to how far the FPS Economy is able to 'stretch' the meaning of these concepts without violating higher norms, including the PAML itself. On the other hand, the related question arises of whether extensive interpretations made by FPS Economy do not constitute a form of prohibited unequal treatment of the sector involved, especially when other sectors supervised by the FPS Economy are bound to less far-reaching interpretations and therefore more limited obligations under the PAML. Such regulations can be challenged and possibly declared null and void by Belgium's highest administrative court, the Council of State.

1. The concept of 'client' is not defined in the PAML

Even though the legal concept of a 'client' serves as a cornerstone of the PAML[141], the law does not define this concept. Nor can indications with regard to its exact scope or meaning be found in the parliamentary preparatory works. The most reasonable course of action, especially in the absence of any implementing regulations, would therefore seem to accord this concept its ordinary meaning.[142] According to VAN DALE, a authoritative standard Belgian dictionary,

[140] S. DE SOMER, I. OPDEBEECK, *Algemeen bestuursrecht. Tweede editie.*, Antwerp, Intersentia, 2019, 408-409; J. THEUNIS, "Het gelijkheidsbeginsel" in I. OPDEBEECK, M. VAN DAMME (eds.), *Beginselen van behoorlijk bestuur*, Bruges, die Keure, 2006, 204-207.
[141] A quick search shows that the word 'cliënt' is used 143 times in the PAML.
[142] F. DERUYCK, F. VAN VOLSEM, P. WAETERINCKX, *Strafrecht in de onderneming, 3e editie*, Antwerp, Intersentia, 2016, 357; R. HOUBEN, "Het Belgische profvoetbal aan anti-witwasnormering onderworpen – een kritische analyse in context", *Rechtskundig Weekblad* 2022, nr. 21, 818.

a client can be defined as ‘someone who is helped’. In the English language, MERRIAM WEBSTER defines ‘client’ as ‘a person who engages the professional advice of services of another’. We can therefore opt for the following working definition of the concept of client in the PAML: a legal actor who engages the services of an obliged entity. We can note that, in line with the standard definitions, the concept of client, at least at first glance, presupposes that the obliged entity is selling something or rendering a service to its client. This concept therefore frames the obliged entity as a provider of goods or services who is engaged by a client. In short, a client buys a good or a service from a seller or service provider.

For example, if a person decides to open a bank account with a certain bank, that person becomes a client of that bank. The bank is not a client of the account holder on the basis of the contractual relationship between the bank and the account holder. Similarly, a person who buys a piece of art with an art dealer subjected to the PAML becomes a client of that art dealer, whereas the art dealer does not become a client of the buyer of the piece of art on account of that contract of sale.

In the following section, we will consider that the legal definition of the concept of ‘business relationship’ seems to provide an indication supporting our interpretation.

In summary, the client concept is not defined by the PAML. In the absence of implementing regulations the most reasonable course of action is to accord this concept its ordinary meaning. We consider a ‘client’ to be a person or legal entity which buys a good or a service from a service provider. The PAML allows supervisory authorities to refine or clarify this definition. At the moment of writing, this has not yet happened. The exact scope of this power of interpretation is unclear.

2. The concept of ‘business relationship’ is defined in the PAML

The application of the obligations placed upon obliged entities by the PAML also turns in part on the concept of ‘business relationship’. Apart from the cases where obligated entites enter into qualifying ‘occasional transactions’ with clients, they only have to observe the requirements of the PAML when entering into a ‘business relationship’ with a client.

Article 4. 33° of the PAML defines the concept of ‘business relationship’ as follows:

“*a professional or commercial relationship that is entered into with a client and that is expected to last for some time:*

a) if this business relationship results from the conclusion of an agreement under which the parties will carry out several successive operations for a fixed or indefinite period or which gives rise to a number of continuing obligations; or

b) if this business relationship arises from the fact that a client regularly calls on the same obliged entity, without concluding an agreement as referred to in point (a), to carry out several successive operations;" (translation by the authors).

From this definition, the following essential characteristics can be distilled.: (i) the legal relationship concerns a professional or commercial relationship between the obliged entity and its client, (ii) the relationship has a certain lasting nature and (iii) the relationship is based on either a contract or on the fact that the client regularly calls on the same obliged entity without formally entering into a contract.

Importantly, the final characteristic can also be interpreted to elucidate the meaning of the concept of 'client', as the law expressly supposes that it is the client who is calling on the services of the obliged entity. This contention is in line with our interpretation of the concept of 'client' outlined in the previous section.

In summary, the PAML defines the concept of 'business relationship', but affords the same power of interpretation to supervisory authorities. A business relationship concerns a professional or commercial relationship of a lasting nature between the obliged entity and its client, which is either based on a contract or on the fact that the client regularly calls on the same obliged entity without entering into a formal contract. We regard the latter condition contained in the law as an underpinning for our proposed definition of the client concept in the previous section.

3. Application in respect of professional football clubs

Since a Royal Decree containing more detailed regulations or interpretations issued by the FPS Economy is still lacking, we will formulate an interpretation of these key concepts ourselves, in respect of the possible 'clients' and 'business relationships' with which a Belgian professional football club comes into contact in the normal course of its business.

Club owners and investors cannot be regarded as clients of the club. A shareholder who participates, in his capacity as shareholder, in the equity of a Belgian football club, in the case where that football club is organized as a corporate entity, is an 'inside party' and not an outsider

with whom the club has entered into a business relationship. The same seems to be true for other investors who do not participate in the equity of the club, such as e.g. bondholders.

However, this does not mean that the AML framework is irrelevant in this regard. Natural or legal persons who, according to Article 4, 27° PAML, are regarded as the 'ultimate beneficial owners' of the legal entities behind football clubs need to be registered by those clubs in the UBO register. When a club enters into a business relationship as a client with another obliged entity (e.g. a bank), that obliged entity will be required to 'identify' the football club as a client and therefore consult the UBO register. Note that not each and every shareholder will need to be registered in the UBO, but only those (natural) persons which directly or indirectly exercise control over the club, even when such control is exercised via other legal entities. When such a natural person holds, directly or indirectly, 25% of the shares or the votes in a corporate legal entity, this is deemed to be a strong indication of control.

Fans are arguably one of the categories of stakeholders which can be qualified as 'clients'. Football clubs deliver sports-related services which fans can buy, e.g. in the form of tickets to attend a match. We can interpret this category in a broad manner to include, for example, buyers of merchandising in club shops, considering the definition of 'professional football club' above. However, not all fans are in a business relationship with the club. For example, a fan who buys individual tickets on a non-recurrent basis is not in a 'commercial relationship' with the club which is expected to last for some time and thus has a lasting nature. On the other hand, season ticket holders are in a lasting contractual relationship with the club. Furthermore, fans engaging in an 'occasional transaction' with the club of a value of 10,000 EUR or more for a single match (e.g. access to VIP rooms or a significant number of business seats for one game) are also included in the scope of the PAML.

However, ticketing was not a priority AML-risk identified by the legislator[143] and policymakers[144]. Moreover, according to the FPS Economy, clubs do not need to identify every fan who buys a ticket.[145] Clubs on the other hand wonder how the concept of 'business relationship' should be interpreted concerning fans and ticket holders.[146] According to our analysis, fans are clients and, depending on the circumstances, they can enter into a 'business

[143] Bill containing miscellaneous provisions regarding the prevention of money laundering and the financing of terrorism and to limit the use of cash money, Amendments, Chamber of Representatives 2019-2020, *Parl.St.* nr. 55-1324/007, p. 10.
[144] Interview S. Matheï, p. 2.
[145] Interview SPF Economy – CTIF-CFI, p. 3-4.
[146] Interview K. Verstringe, p. 3.

relationship' with a football club. Fans who buy 'Fan Tokens' can also be considered to act as customers of the club, if the tokens are issued by the club and if the club provides them to its fans. If this transaction is effectuated by another company with which the club has entered into a contract, then that company should be regarded as a supplier of the club.

To the extent that AML obligations exist in clubs' relationship to fans, there seems to be a strong argument to award these actors a low risk profile. Caution needs to be exercised in cases where the law requires a higher risk level, for example in the case of a fan who is a PEP.

A normative argument can be made to exclude (certain) fans from AML obligations, as their relationships with clubs do not seem to be the main target. However, in this regard, a strong friction exists with the setup of the AML framework itself, as fans are indeed a prime example of 'clients' of a professional football club and thus fit within the categories that the PAML, and indeed any legal framework based on the 4th and 5 AMLD, targets. We will come back to this point in a further section.

Sponsors can be regarded as clients of the clubs as well. After all, sponsors can be deemed to 'call on' football clubs in order to gain exposure. The football club is therefore not a client of the sponsor. Moreover, a business relationship can be deemed to exist on the basis of the sponsorship contract. Even in the case of sponsors that may sponsor a single game, their sponsorship is likely to be recurrent or reach the threshold of 10,000 EUR. This qualification is in line with the aim of the legislator.[147] Moreover, it seems to be understood by actors in the field that sponsors should indeed be subject to AML checks by football clubs.[148] The risk profile assigned to sponsors may differ depending on the commercial activities developed by the sponsor. This risk profile may for example depend on the commercial activities of the sponsor. For example, if the sponsor engages in gambling or betting activities, it may make sense to assign that sponsor a high risk profile.

Players, coaches, managers and other staff can arguably not be regarded as clients of a football club. Normally, the legal relationship between the football club and its staff will be governed by an employment contract. And even in the case where a football club relies on the services of an independent contractor, it would rather be the club that acts as the client of the

[147] Bill containing miscellaneous provisions regarding the prevention of money laundering and the financing of terrorism and to limit the use of cash money, Amendments, Chamber of Representatives 2019-2020, *Parl.St.* nr. 55-1324/007, p. 10. The preparatory works however only mention 'large sponsorship contracts'; Interview S. Matheï, p. 2.
[148] Interview K. Verstringe, p. 2-3; Interview W. Georges, p. 3; Interview SPF Economy – CTIF-CFI, p. 4.

contractor than the other way around. In other sectors that are covered by AML legislation, workers are commonly not subjected to AML obligations.

Suppliers and independent contractors do not seem fit the requirements to be qualified as clients either, based on the same reasoning that we applied to (other) independent contractors with which a football club contracts. Rather, the club should be regarded as a client of the contractor. This category may include caterers, lenders, energy companies, persons or companies which rent out spaces to the club, etc. Nevertheless, some clubs do seem to consider at least some of their suppliers as a category to which AML obligations should be applied.[149] However, the situation changes when suppliers also act as sponsors, as explained above.

Football clubs may indeed be qualified as the 'client' of a Belgian football club, especially in the case of a player transfer. However, this does not mean that both clubs become each other's clients. In accordance with the guidelines formulated above, the club acquiring a player from another club acts as the client of the transferring club. Under this interpretation, football clubs should only apply its AML obligations in case it acts as the transferring club. In situations where a transfer is agreed between two Belgian football clubs, only the transferring club should apply its AML obligations. When a Belgian club transfers a player to a club located in another jurisdiction, it should equally apply its AML obligations. However, when a Belgian club acquires a player from a club located in another jurisdiction, the Belgian club merely acts as a client and no legal basis for the application of its AML obligations seems to exist. A similar logic can be applied when one player is loaned by one club to another. However, the question remains whether such a 'unilateral' or 'one-way' approach is consistent with the aims of the Belgian legislator.

Three further remarks need to be made in this regard. First, in more complex transfer agreements, things might not be as straightforward. Clubs can for example agree to swap players in case of a transfer. In such a case, both clubs might be considered to be each other's client, even though such as a situation might admittedly not 'sit very well' with the setup of the PAML. Second, in the case of player transfers, Belgian clubs appear to experience a strong competitive disadvantage in comparison with clubs established in other jurisdictions.[150] Due to the fact that the (inter)national market works on the basis of transfer windows, it could be harder for Belgian clubs to conclude a transfer at the end of the mercato period, because of the

[149] Interview K. Verstringe, p. 2.
[150] Interview K. Verstringe, p. 3-4; Interview W. Georges, p. 5; Interview P. De Beus, p. 5.

additional administrative burden the PAML imposes. After all, the AML framework generally requires that the identification and verification of the identity of a client take place *before* the transaction.[151] 'Last minute transfers' might therefore become rarer. Thirdly, one interviewee questioned whether the PAML could serve as an effective tool to combat money laundering in the case of player transfers, as a player's value is hard to determine on an objective basis. The risk of overvaluation of the transfer fee to hide a secret deal remains and it still hard to detect.[152]

Clubs paying or receiving training compensation payments or solidarity contribution payments in case of transfer can, in our view, not be regarded as clients of other clubs. Training compensation is payable to a player's training club(s) when a player is registered for the first time as a professional and each time a professional player is transferred until the end of the calendar year of the player's 23rd birthday.[153] Solidarity payments are owed when a professional player is transferred before the expiry of his contract to any club which has contributed to his education and training. The solidarity mechanism requires that 5% of the transfer fee is distributed among the clubs which trained the player between his 12th and 23rd birthday.[154] These payments do not constitute a business relationship where the club(s) receiving the payment can be deemed to be the 'client' of the paying club. Clubs receiving such payments have not provided a service to the paying club and these payments are payable on the basis of FIFA regulations and not on the basis of an existing contractual relationship or similar interaction between the clubs. A business relationship where one club is the client of the other club only exists between the clubs directly involved in the transfer arrangement.

Player agents will usually not act as a client of a club. Rather, in many cases, football agents will be hired by players seeking to contract with a new club. In such a case, the agent will not act as the client of the football club(s) involved. In other instances, a club might hire a player agent to bring a player into contact with that club. In such a case, the club has hired the agent and acts as the client of the agent. This reading seems to be confirmed by Article 4 of the FIFA Regulations on the application of the statutes: '*players and clubs are entited to engage the services of intermediaries when concluding an employment contract and/or a transfer*

[151] See Article 30 PAML.
[152] Interview P. De Beus, p. 6.
[153] See Article 20 of the FIFA Regulations on the Status and Transfer of Players, and specifically Annex 4 of these regulations.
[154] See Article 21 of the FIFA Regulations on the Status and Transfer of Players, and specifically Annex 5 of these regulations.

agreement'.[155] Therefore, player agents will normally not act as a client of a football club. When the PAML enters into force *vis-à-vis* player agents, it will be the agent who has to comply with his or her obligations under the PAML. From the interviews, it appeared as though many agents active on the Belgian football market are not yet sufficiently informed or ready or even sufficiently professionalized to take up such a role.[156] This reading however seems to contradict the expectations of policymakers.[157]

The Pro League, in its capacity as managing body for media and broadcasting rights, can arguably be qualified as a client of the Belgian football clubs. Even though the Pro League itself is not an obliged entity, it serves as the managing body for the media and broadcasting rights of the Belgian football leagues. At first glance, such management can be considered as a service to the clubs, but the reverse also holds true. The clubs obtain payments for their broadcasting rights by delivering professional football. Therefore, under the PAML, a strong case can be made for the application of AML obligations in respect of the Pro League. Moreover, it is also the Pro League that organizes the Belgian national leagues and the Cup tournament, in which Belgian football teams participate.

UEFA can also be regarded as a client of Belgian clubs in its capacity as organizer of the UEFA Champions League, the UEFA Europa League, the UEFA Conference League and the UEFA Super Cup. Belgian clubs that participate in any of these leagues are supplying professional football to these leagues and obtain payments in consideration for their participation. From the perspective of the AML legal framework, football clubs are providing a service to UEFA, which can justify qualifying UEFA as a client in a business relationship with professional football clubs. The same can arguably be said for **FIFA**, if and when a Belgian football club would participate in a tournament or competition organised directly by FIFA, such as the FIFA Club World Cup.

As a final remark, it should be pointed out that the administrative workload of compliance with AML obligations can be high, especially for clubs which are smaller and generally have fewer staff.[158] Whereas policymakers seem to hold the opinion that football clubs should be regarded as professionally organized and thus capable of dealing with this workload[159], one of

[155] FIFA Regulations governing the application of the statutes, accessible via: https://digitalhub.fifa.com/m/784c701b2b848d2b/original/ggyamhxxv8jrdfbekrrm-pdf.pdf (accessed 31 March 2022).
[156] Interview S. Francis, p. 1-2.
[157] Interview S. Matheï, p. 3.
[158] Interview S. Francis, p. 2.
[159] Interview S. Matheï, p. 3.

the interviewed club representatives indicated that the workload, especially during the starting phase, was quite high.[160] Here, special attention should be devoted to the status of existing contracts, which were concluded before the entry into force of the PAML, but which are still ongoing at the moment of the entry into force. Several issues can be encountered in this respect. First, because implementing regulations are still lacking, it might be a very hard exercise to determine which of these ongoing relationships should be regarded as business relationships with clients. Second, even if a certain relationship is identified as a client relationship, the club should make sure that its AML obligations are complied with. However, such contractual counterparties may question why a club is suddenly asking for all kinds of additional information or respond that the person who was responsible for the given contract has left the organization. Finally, if the club is unable to identify or verify the identification of a client in due time, it should, according to the law, cease all business relationships with that client, or refuse to enter into a new business relationship with that client. It can be recommended that clubs are allowed sufficient time to review such existing relationships after the adoption of relevant implementing regulations.

In summary, in the absence of implementing legislation and according to the definitions we formulated above, we can conclude that the following actors may, depending on the concrete circumstances, be considered as clients in a business relationship or which engage in an occasional transaction with professional football clubs: fans (in limited cases), sponsors, football clubs (when transferring a player to a Belgian professional football club), the Pro League and UEFA.

The following actors can, according to our analysis, not be regarded as clients of a football club with whom they enter into a business relationship or occasional transaction: players, coaches and staff, clubs training or receiving training compensation or solidarity contributions and suppliers.

However, these relationships always need to examined *in concreto*. For example, player transfers can exhibit a large degree of complexity in e.g. clubs engaging in mutual transfers, loans and/or several interrelated transfers. Interestingly, the outcome of our analysis does not always seem to match with the intentions of the Belgian legislator, which for example did not seemed to primarily target fans, the Pro League or UEFA, but rather sought to target other football clubs (also in the case of an outgoing transfer for the Belgian club) and player agents.

[160] Interview K. Verstringe, p. 1-2.

Below, we will revisit this issue within the context of the possibility of a so-called 'multilateral' or 'two-way' interpretation of the client concept.

Finally, it was remarked that legal relationships which were in existence prior to the entry into force of the PAML may raise specific issues, which can be further exacerbated by the lack of implementing regulations.

4. Application in respect of the RBFA

As is the case for professional football clubs, no implementing measures with regard to the RBFA have been adopted by the Belgian government. Accordingly, as we have done with football clubs, we will endeavour to offer an interpretation of the text of the law regarding the RBFA ourselves.

However, before we do so, it is necessary to first understand an important point of tension regarding the role of the RBFA within the international organization of the football system and its position as an obliged entity under the PAML. This is because the law itself treats the RBFA on exactly the same footing as professional football clubs and agents, by simply declaring it to be an obliged entity within the anti-money laundering framework. However, *within* the international football system, the RBFA fulfils a specific role, which involves a supervisory role with regard to Belgian football. The PAML does not recognize this role. It remains an open question whether future implementing regulations will take this role into account.

For example, on the basis of Article 14 of the FIFA Statutes, the RBFA is obliged to comply with the FIFA Statutes, FIFA regulations, directives and decisions of FIFA bodies.[161] Similarly, UEFA Member Associations are bound to comply with the UEFA Statutes and regulations, according to Article 7*bis* of the UEFA Statutes.[162] Both the FIFA and the UEFA Statutes require that Member Associations manage their affairs independently. Importantly, both FIFA and UEFA require Member Associations to ensure that their own members, leagues, clubs, players and officials comply with FIFA and UEFA regulations. As the official Belgian FA, the RBFA is expected to exercise a *supervisory role* within the broader organization of international football. The question therefore arises as to how this role relates to the RBFA's role under the PAML. We will discuss this more in depth below.

[161] FIFA Statutes, https://digitalhub.fifa.com/m/784c701b2b848d2b/original/ggyamhxxv8jrdfbekrrm-pdf.pdf (accessed 31 March 2022).
[162] UEFA Statutes, https://documents.uefa.com/v/u/_CJ2HRiZAu~Wo6ytlRy1~g (accessed 31 March 2022).

From the interviews, we can deduce that the special role of the RBFA is, at least to some extent, taken into account by the supervisory authorities.[163]

4.1. Which persons and entities can be regarded as clients of the RBFA?

Sponsors can be regarded as clients of the RBFA for the purposes of the PAML for the same reasons as we discussed in relation to clubs in the previous section. We can indeed assume that a business relationship exists between the RBFA and its sponsors and that sponsors can be regarded as 'clients' for the purposes of the PAML.

Fans who buy tickets for games of the Belgian national football team and merchandising can be regarded as clients as well, for the same reasons as we outlined in the previous section regarding football clubs. However, this does not necessarily mean that every transaction gives rise to a 'business relationship' under the PAML. In reality, it seems that 'lasting commercial relationships' or 'occasional transactions' exceeding a value of 10,000 EUR will be rather rare. And even in those cases, fans again do not seem to be the primary target of the anti-money laundering system.

Players, coaches and (other) staff of the RBFA cannot be regarded as clients entering into a business relationship with the RBFA for the same reasons we have outlined above for football clubs.

Suppliers and independent contractors engaged by the RBFA should, in our view, not be regarded as clients either. Again, the reasoning we applied to football clubs can be applied here as well. However, as is the case for football clubs, the situation changes when a supplier takes on the role of a sponsor.

The Pro League is not a client of the RBFA. The interest group of the professional football clubs is regarded as a 'chapter' (French: '*composant*") of the RBFA, according to its regulations.[164] The Pro League is therefore part of the RBFA. According to the RBFA regulations, the Pro League is even competent to appoint members of the board of the RBFA, which represent the chapter of professional football within the RBFA.[165] Because the Pro League forms part of the RBFA, it cannot be regarded as its client. Neither can there exist a business relationship between the RBFA and the Pro League.

[163] Interview P. De Beus, p. 1; Interview SPF Economy – CTIF-CFI, p. 1.
[164] See Article B1.6, 17 of the RBFA Regulations.
[165] See Article B2.15 and B2.16 of the RBFA Regulations.

The holder of the broadcasting rights for matches of the Belgian national team can also be regarded as a client of the RBFA. To this effect, the RBFA has concluded an exclusivity agreement with DPG Media.[166] Arguably, this gives rise to the existence of a business relationship between both organizations in which DPG Media could be regarded as the client of the RBFA. In case the contract is (also) regarded as a sponsorship deal, this would provide a further indication that the RBFA would need to apply its AML obligations in respect of DPG Media.

Football clubs can arguably not be regarded as clients of the RBFA. This conclusion is supported by several arguments. First, football clubs are members of the football association.[167] Without membership, a club is unable to participate in the official football competitions. On the basis of such membership, clubs and their members are obliged to act in accordance with the applicable legislation, but also with the Statutes, the regulations and decisions of the RBFA, UEFA and FIFA.[168] The RBFA has a supervisory role which it can exercise on the basis of the club's membership of the RBFA. Such a relationship is far removed from what we identified as a client or a business relationship above. Clubs do not call on the RBFA to obtain services from this organization, nor do these 'parties' carry out operations under any kind of agreement. This supervisory role can be also be illustrated by referring to the licensing process. Under the applicable FIFA and UEFA regulations[169], any professional football club wishing to participate in the Pro League is required to obtain a license from the RBFA.[170] The licensing process requires the RBFA to assume a supervisory role and to take an informed and impartial decision according to a specified decision-making process. UEFA even requires its Member Associations to take on a disciplinary role and apply disciplinary sanctions.[171] Outside of the licensing context, the RBFA also has a general disciplinary authority *vis-à-vis* football clubs.[172]

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[166] See: https://www.voetbalnieuws.be/news/482425/opvallend-kbvb-tekent-exclusief-contract-met-hln-en-vtm (accessed 31 March 2022).
[167] See Article B3.1 – B.3.20 of the RBFA Regulations, accessible via: https://belgianfootball.s3.eu-central-1.amazonaws.com/s3fs-public/rbfa/docs/pdf/reglement/bondsreglement_reglement_federal/KBVB_bondsreglement_Boek_B_Titel_3_Clubs.pdf (accessed 31 March 2022).
[168] See Article B3.10 of the RBFA Regulations.
[169] Such as the UEFA Club Licensing and Financial Fair Play Regulations, accessible via: https://documents.uefa.com/v/u/MFxeqLNKelkYyh5JSafuhg (accessed 31 March 2022).
[170] The applicable regulations are laid out in Book P of the RBFA Regulations, accessible via: https://belgianfootball.s3.eu-central-1.amazonaws.com/s3fs-public/rbfa/docs/pdf/reglement/bondsreglement_reglement_federal/KBVB_bondsreglement_Boek_P_proleague.pdf (accessed 31 March 2022).
[171] See Article 8 of the UEFA Club Licensing and Financial Fair Play Regulations.
[172] See Title 11 of the RBFA Regulations and e.g. Article B11.151 about the fines the RBFA can impose on clubs as a sanction.

The relationship between the RBFA and clubs is therefore characterized by a supervisory and even disciplinary role in respect of the RBFA. This seems to be far removed from what the anti-money laundering legal framework regards as a business relationship with a client.

Nevertheless, even though the RBFA is, according to our analysis, not required to carry out its AML obligations with respect to clubs, the RBFA is willing to flag suspicious money flows stemming from football clubs, for example in the context of the licensing process.[173] The FPS Economy has also indicated the licensing process to be of interest in money laundering prevention.[174]

Agents cannot be regarded as clients of the RBFA. A similar reason can be applied to agents as we applied to football clubs. According to the FIFA Regulations on Working with Intermediaries, the RBFA is, *inter alia*, obliged to develop a system which allows for the registration of player agents.[175] The RBFA even risks being sanctioned if it does not comply with these Regulations.[176] Furthermore, Article 4 of the FIFA Regulations governing the application of the statutes that we already cited does not mention the RBFA as a party which can hire the services of registered player agents. Article 4.3 of the FIFA Regulations on Working with Intermediaries even states that: "*Associations must also be satisfied that in carrying out his activities, the intermediary contracted by a club and/or a player has no contractual relationship with leagues, associations, confederations or FIFA that could lead to a potential conflict of interest. Intermediaries are precluded from implying, directly or indirectly, that such a contractual relationship with leagues, associations, confederations or FIFA exists in connection with their activities.*"

Article 9 of the Regulations on Working with Intermediaries even confirms the existence of a disciplinary competence regarding player agents. The RBFA has asserted this disciplinary competence in, for example, Title 8 of its Regulations, which specifically deal with intermediaries.[177] The combination of an obligation to avoid conflicts of interest with a disciplinary competence on the basis of a compulsory registration of intermediaries with the

[173] Interview P. De Beus, p. 2.
[174] Interview SPF Economy – CTIF-CFI, p. 1.
[175] FIFA Regulations on Working with Intermediaries, accessible via https://digitalhub.fifa.com/m/352df54820ee1a59/original/cr6dquxm2adupv8q3ply-pdf.pdf (accessed 31 March 2022). See especially Article 3.1 of these Regulations.
[176] See Article 10 of the Regulations.
[177] See Title 8 of the RBFA Regulations, accessible via: https://belgianfootball.s3.eu-central-1.amazonaws.com/s3fs-public/rbfa/docs/pdf/reglement/bondsreglement_reglement_federal/KBVB_bondsreglement_Boek_B_Titel_8_Tussenpersonen.pdf (accessed 31 March 2022). See specifically Article B8.50 and subsequent provisions.

RBFA curtails the possibility for the RBFA to conclude contracts or agreements with intermediaries and presupposes a position of authority and independence *vis-à-vis* agents. Moreover, the RBFA does not have a discretionary authority to refuse the registration of an agent. When an agent satisfies all formal requirements to be registrered, a refusal by the RBFA might lead to civil suits instigated by agents against the RBFA on the basis that they cannot exercise their economic activity due to the decision of the RBFA.

Our analysis corresponds with the position of the RBFA itself, which is of the opinion that agents do not qualify as 'clients' of the RBFA.[178]

In the preparatory discussions regarding the law of 20 July 2020, reference was (erroneously) made to a 'clearing house' set up by the RBFA.[179] The clearing mechanism as developed by the RBFA can be considered as a precursor to the clearing house which is currently under development by FIFA (see *supra*, page 9). This clearing mechanism is regulated by Title 8 of the RBFA Regulations. In brief, all payments made to agents by clubs or players need to be 'cleared' by the RBFA before they can be effectuated. The Clearing Department of the RBFA will review the invoices provided by the agents and the contracts on which they are based in terms of their conformity with the applicable RBFA Regulations. Any payment to the agent may only take place after clearing is granted. Importantly, the payment is made directly by the club or the player, or – as is common – on behalf of the player by the club, to the agent. The payment does not pass via the RBFA. Therefore, the RBFA clearing mechanism cannot be regarded as a 'clearing house' in the classic sense.

From the interviews, it became clear that the authorities expected the clearing mechanism to act as a support mechanism to aid in the effort to identify potential cases of money laundering in the field.[180] The RBFA from its side agrees and is prepared to make notifications to the CTIF-CFI when it encounters payment requests between clubs and agents within the context of the clearing system.[181]

UEFA and FIFA cannot be regarded as clients of the RBFA. Even though, for example, the Belgian national football team participates in tournaments organized by UEFA and FIFA, such as the European Football Championship, the Nations League and the FIFA World Cup, we

[178] Interview P. De Beus, p. 2.
[179] Bill containing miscellaneous provisions regarding the prevention of money laundering and the financing of terrorism and to limit the use of cash money, Amendments, Chamber of Representatives 2019-2020, *Parl.St.* nr. 55-1324/007, p. 10.
[180] Interview P. De Beus, p. 1, 2; Interview SPF Economy – CTIF-CFI, p. 1.
[181] Interview P. De Beus, p. 2.

cannot transpose the analysis we made regarding the relationship between professional football clubs and UEFA. This is because, according to the UEFA and FIFA Statutes, the RBFA is a Member Association of UEFA and FIFA. Such membership implies a position of authority for FIFA and UEFA in respect of the RBFA and an obligation for the RBFA to comply with FIFA and UEFA regulations.[182] This precludes the FIFA and UEFA from acting as 'clients' of the RBFA.

As a final remark¸we can again point to the specific problem of legal relationships which were in existence at the moment of the entry into force of the PAML regarding the RBFA. The same remarks can be made as we did with regard to football clubs.

In summary, in the absence of implementing legislation and according to the definitions we formulated above, we can conclude that the following actors may, depending on the concrete circumstances, be considered as clients in a business relationship or which engage in an occasional transaction with the RFBA: fans (in limited cases) and sponsors.

The following actors can, according to our analysis, not be regarded as clients of the RBFA with whom they enter into a business relationship or occasional transaction: players, coaches and staff, suppliers and independent contractors, the Pro League, the holder of the broadcasting rights (unless it counts as a sponsor), football clubs, player agents and UEFA and FIFA.

However, these relationships always need to examined *in concreto*. Especially with regard to football clubs and player agents, the RBFA has a supervisory and disciplinary role, which precludes these actors from being regarded as its clients. We will come back to the specific tensions this relationship may imply below. Again, this analysis does not seem to align with the intentions of policymakers. Because the RBFA is a member association of UEFA and FIFA, these organizations cannot be regarded as its clients.

Again, we can point to the specific issues which can be encountered with regard to legal relationships which were in existence prior to the entry into force of the PAML.

4.2.The tense relationship between the RBFA's supervisory and disciplinary role in football and its position under the PAML

Specifically with regard to football clubs and player agents, the RBFA finds itself in a specific role, which may interfere with its position as an obliged entity under the PAML. In the previous

[182] To this effect, see Article 7*bis* of the UEFA Statutes and Article 14 of the FIFA Statutes.

section, we have argued that football clubs and player agents cannot be regarded as clients which enter into a business relationship with the RBFA or enter into an occasional transaction with the RBFA. Nevertheless, in both instances we found that the RBFA is willing to flag transactions which it deems to be suspicious. Consequently, the RBFA is reporting potential cases of money laundering to the authorities to which it is not a party and about actors (e.g. clubs and agents) which are not its clients. Within e.g. the clearing process, the RBFA's role is only to clear transactions between clubs, agents and players. Within the licensing process, the RBFA's role is to decide whether or not a club is granted a license. Both of these procedures are interesting from the perspective of money laundering prevention because they give the RBFA the opportunity to look into financial information provided by the clubs, such as their books and accounts, or into their contractual agreements with player agents.

On a more fundamental level, it is not entirely clear if the law actually imposes an obligation on the RBFA to notify the CTIF-CFI in such cases. If we follow the logic of the PAML, such an obligation normally only exists when an obliged entity encounters, suspects or has reasonable grounds to suspect that it is faced with money laundering in the course of a business relationship or an occasional transaction with a client. An agent or a club cannot be considered as a client being in a business relationship or an occasional transaction with the RBFA. However, the legal basis for the obligation to notify is not drafted in a clear manner. Article 47 PAML states in a very broad manner that obliged entities should notify the CTIF-CFI when they know, suspect or have reasonable grounds to suspect that '*funds, regardless of amount, are related to money laundering or the financing of terrorism*' or that *'transactions or attempted transactions are related to money laundering or the financing of terrorism. This obligation to report shall also apply when the customer decides not to carry out the proposed transaction*.'

The second sentence explicitly refers to the client concept. Also, in practice, this provision is usually interpreted to mean that the obligation to notify is restricted to client relationships. Supervisory authorities, such as for example the National Bank of Belgium[183], explicitly link the notification obligation to the client concept. Even the CTIF-CFI seems to tie the client concept to the notification obligation in its official guidance notice.[184] One author, who is also a member of the CTIF-CFI, also seems to restrict the notification obligation to client

[183] See: https://www.nbb.be/nl/financieel-toezicht/voorkoming-van-het-witwassen-van-geld-en-de-financiering-van-terrorisme/analys-4 (accessed 31 March 2022).

[184] Guidelines for the subject entities referred to in Article 5 of the Law of 18 September 2017 on the prevention of money laundering and the financing of terrorism and on restricting the use of cash with regard to the reporting of information to the financial information processing unit, 15 August 2020, p. 15 *ff*. Accessible via: https://www.ctif-cfi.be/images/documents/Dutch/richtsnoeren.pdf (accessed 31 March 2022).

relationships.[185] However, the PAML allows for the imposition of administrative and even criminal sanctions on obliged entities which fail to comply with their duties under the law.

In view of the vagueness of the text of the law itself, the RBFA seems to have taken the position that it will rather file a Suspicious Activity Report with the CTIF-CFI when encountering a transaction where it suspects or has reasonable grounds to suspect money laundering activities might be taking place in respect of both agents and clubs. Again, this also seems to be the expectation of the supervisory authority.[186]

The foregoing begs the question whether self-regulatory initiatives such as the clearing mechanism can easily co-exist with the RBFA's role as obliged entity assigned by the PAML. The PAML does not accord the RBFA a supervisory role, but rather treats it on the same footing as it does the professional football clubs. Yet, in practice, the RBFA does fulfil such a role, based on applicable FIFA and UEFA regulations. The RBFA's role within the clearing process is restricted to assessing, on the basis of the information provided by clubs, players and/or agents, whether its regulations are respected. A similar problem arises within the context of the licensing process. Thus, there is always a risk that the RBFA, on the basis of incomplete or even false information which it cannot verify, clears a transaction or grants a license to a club in a case where there is an AML-related risk. As an obliged entity under the PAML, the RBFA may find itself in a difficult position in this respect in concrete cases.

After all, in a concrete case, there might not be a reason for the RBFA to refuse to grant a club a license or to clear a transaction involving an agent on the basis of the applicable sports law framework, such as the FIFA, UEFA and RBFA regulations, but it might have reasonable grounds to suspect that there exists a risk of money laundering. In such cases, it should file a report with the CTIF-CFI, which can then oppose the intended transaction. At the same time, it will not always be feasible for the RBFA to refuse a license or a clearing on the basis of money laundering suspicions alone and without further action from the CTIF-CFI. Because of the (quasi-monopolistic) position of authority from which the RBFA decides, such a refusal can have a (strong) negative economic impact upon the football club or the agent involved. This renders the RBFA liable to civil suits instigated by clubs and/or agents or even players. Unless a transaction is actually blocked by the CTIF-CFI and the judicial authorities, the RBFA might

[185] C. GRIJSEELS, "Het preventief antiwitwasdispositief in een nieuw kleedje. Impact op de werking van de Cel voor Financiële Informatieverwerking", *Rechtskundig Weekblad* 2018, nr. 21, p. 810-811.
[186] Interview SPF Economy – CTIF-CFI, p. 1.

find itself in a position where it is forced to allow a suspicious transaction to go ahead, even though it has filed a report with the CTIF-CFI.

In summary, it is apparently expected that the RBFA flags transactions concerning clubs or concerning player agents, even when these actors cannot be considered as clients of the RBFA and even when the RBFA is not involved in said transactions, but has information about them on the basis of its supervisory role. This can for example be the case within the club licensing or the clearing process. The RBFA is apparently willing to take up this role, in accordance with the expectations of the authorities. Even though these actors are not clients of the RBFA, one can even question if the RBFA is not also obliged to report such transactions. Arguably, this is not the case. The answer is not entirely clear, because of the *prima facie* unclear text of the PAML. Further, the question arises whether self-regulatory processes such as the licensing or the clearing process can easily co-exist with a the status of obliged entity under the PAML, which does not recognize this role. On the one hand, the RBFA can only act upon the knowledge and information it has and therefore risks approving (potentially) problematic transactions in cases where certain information is unavailable or withheld. On the other hand, because of the strong negative economic impact a refusal might have on the clubs or the agents involved, the RBFA might find itself in a position where it is forced to allow a suspicious transaction to go ahead, even though it has filed a report with the CTIF-CFI.

5. Additional questions raised by the application of the PAML to professional football

5.1 Territorial scope of the PAML

Even though the PAML is based upon a European Directive, its territorial scope is limited to the territory of Belgium. The fact that the Belgian legislator unilaterally decided to expand the scope of the PAML to include the sector of professional football thus has its inherent limitations. The law has currently entered into force regarding the RBFA and professional football clubs which are based in Belgium and which participate in the Belgian professional football leagues. Because the PAML has not yet entered into force regarding player agents, and due to the fact that no implementing measures have yet been adopted, no registration procedure for agents is currently in place. Nevertheless, the definition of the concept of ‘player agent active in the sports sector’ is restricted to agents which are established in Belgium.

The territorial scope of the PAML raises several questions regarding the effectiveness of the application of the anti-money laundering legal framework to professional football. It is very interesting to note that every stakeholder agrees that it would be better if professional football were to be subjected to the AML framework on a European level. This was already remarked in the Parliamentary discussions leading to the adoption of the Law of 20 July 2020.[187] All interviewees agreed on this point.[188] Reasons which were cited were the effectiveness of the system as a whole, the desire to create a level playing field between clubs within the European Union and the elimination of competitive disadvantages and the desire to increase awareness.

One open question is whether the application of the law to agents will lead to relocations of agents to other jurisdictions, within the EU or outside of the EU, where the AML framework is not applicable to them. The interviewee from the player agents stakeholder group was of the opinion that the application of the PAML to player agents would not, in itself, provide an incentive for agents to start operating from another jurisdiction.[189] In the opinion of this interviewee, the willingness of agents to move their business abroad depends on the impact that the regulation would have on their business, rather than on the mere existence of legal obligations per se. The interviewee was of the opinion that many agents would consider the administrative burdens imposed by the PAML as 'just some more paperwork' to deal with, with many being unaware of the legal risks involved.[190] However, if compliance with the PAML and its standards were to be strictly enforced, much like tax obligations are strictly enforced in practice, agents would feel its effects and its impact would, in the interviewee's opinion, be realized in the field. On the basis of this information, our provisional answer to this question is nuanced. Currently, it is not expected that many agents will decide to relocate because of the entry into force of the PAML *vis-à-vis* football agents alone. This could however change if the obligations under the PAML were to be strictly enforced by the government. The decision of an agent to relocate could also be influenced by the added administrative workload the status of obliged entity implies.

In summary, the fact that Belgium has acted unilaterally by including the professional football sector in the PAML implies that its territorial scope of application is restricted to actors

[187] Bill containing miscellaneous provisions regarding the prevention of money laundering and the financing of terrorism and to limit the use of cash money, Report of the second Reading, Chamber of Representatives 2019-2020, *Parl.St.* nr. 55-1324/008, p. 11.
[188] Interview W. Georges, p. 6; Interview K. Verstringe, p. 5; Interview P. De Beus, p. 6; Interview S. Matheï, p. 3; Interview SPF Economy – CTIF-CFI, p. 5; Interview S. Francis, p. 6.
[189] Interview S. Francis, p. 5.
[190] Interview S. Francis, p. 4.

established in Belgium. While the RBFA and football clubs are not mobile, football agents are. They can therefore try to avoid being qualified as an obliged entity under the PAML by relocating to another jurisdiction. However, it remains to be seen whether the entry into force of the PAML *vis-à-vis* agents will have such an effect in practice.

5.2 A 'unilateral' or 'one-way' application of the client concept, or a 'multilateral' or 'two-way' application of the client concept?

In our analysis of the application of the client concept of the PAML, we set out from a 'unilateral' or 'one-way' application of the client concept. In short, we argued, in accordance with the text of the law itself, that a business relationship or an occasional transaction with a client can only exist if the obliged entity is in the position of a seller or service provider *vis-à-vis* that client, and not the other way around. In our previous analysis, we have established that this interpretation restricts the scope of application of the PAML in various respects.

To give a few examples, we did not regard a football agent hired by a football club to assist in transferring a professional football player as a 'client' of that club. Rather, it is the other way around. In the same vein, in the context of a player transfer, we only regarded the club with an incoming transfer as the client of the transferring club. We also regarded football clubs and the RBFA as the clients of independent contractors and suppliers, and not the other way around.

Our first example would be 'remedied' by the entry into force of the PAML *vis-à-vis* player agents, but this solution does not apply to any of the other examples, which might be perceived as 'gaps' within the system.

Above (see *supra*, p. 9), we mentioned that the FPS Economy is granted the authority to issue implementing regulations on the basis of Article 86 PAML, which allow it to 'eludicate' the meaning and scope of concepts such as 'client' or 'business relationship' within the context of the PAML. It seems therefore that the FPS Economy has the authority to issue regulations in which it can opt for a 'multilateral' or 'two-way' application of the client concept. Such an interpretation would imply that every transaction in which an obliged entity is involved either as client or as seller/supplier of a good or service would lead to the application of AML obligations under the PAML for the obliged entity.[191]

[191] In a similar vein, see: R. HOUBEN, "Het Belgische profvoetbal aan anti-witwasnormering onderworpen – een kritische analyse in context", *Rechtskundig Weekblad* 2022, nr. 21, 819.

Such an interpretation of the concepts of 'client' and 'business relationship' could lead to a significant expansion of the scope of application for obliged entities under the PAML. Such an approach can be applied to player agents contracting with a club, to transferring clubs situated in Belgium or abroad, to independent contractors and suppliers of clubs and the RBFA. It can potentially even be applied to legal relationships with obliged entities that we qualified as being of a fundamentally different nature than a standard client relationship, such as memberships or labour relationships.

Such an approach would not be without its problems.

First, if applied indiscriminately, such an approach would seem to be overreaching. It does not seem to have been the intention of the legislator to include every (contractual) relationship entered into by a gatekeeper under the PAML. Furthermore, the sector of professional football would be disadvantaged even further by increased administrative obligations, which would extend further than is the case for other sectors to which the PAML applies. Such implementing regulations could, in our view, be realistically challenged before the Belgian Council of State on the basis of the constitutional principle of equality.

Second, even if such a 'two-way' interpretation were to be followed in a specific or targeted manner, i.e. if it only applied in *certain specific relationships* entered into by obliged entities, several questions would remain. Such an interpretation would still lead to a higher administrative workload for obliged entities in the football sector and would constitute a difference in treatment *vis-à-vis* obliged entities in other sectors. Which justification exists for such a course of action in respect of the professional football sector alone? Further, unless the choice of relationships subjected to such an interpretation was strongly motivated by objective reasons, it could seem arbitrary to apply this interpretation to certain relationships and not others. Finally, the question remains whether the FPS Economy, as a part of the executive branch of government, has the power to issue interpretations which, arguably, would fundamentally deviate from the words of the law. In other words, does such an approach amount to an *interpretation* of the law or does it constitute an attempt to *change* the law? In our view, the answer is uncertain.

In summary, the 'unilateral' or 'one-way' interpretation we gave to the client concept above leads to an apparent mismatch with the intention of the legislator and the expectations of the authorities because it may restrict the scope of application of the PAML, partially thwarting the intention of the legislator and the authorities. This problem can be tackled by using a

'multilateral' or 'two-way' interpretation of the client concept. In short, any transaction which involves an obliged entity, regardless of whether the counterparty acts as the client or whether the obliged entity acts as the client, can then be subject to anti-money laundering checks by the obliged entity. However, even when applied in a targeted manner to *specified* relationships, in an effort to avoid overreach and an administrative overload, problems may remain. Such problems include a difference in treatment which might or might not be justified, an additional administrative workload, an overstretching of the client concept and arbitrariness in its application.

5.3 An exemption for certain categories of clients?

In the previous section, we discussed the possibility of implementing regulations expanding the scope of the obligations for gatekeepers in the professional football sector in order to match the intentions of the policymakers. Here, we ask the inverse question. In the above sections, we determined that the application of the client concept of the PAML can also lead to the application of AML obligations in relationships with clients, which do not seem to be the main target of the legislator and policymakers. For example, the legislator did not seem to consider fans, such as season ticket holders, buyers of business seats, etc. as a primary money laundering risk in professional football. The same question arises in respect of, for example, UEFA, which could arguably be considered as a 'client' of professional football clubs.

It would seem, therefore, that these categories could be excluded from the client concept for the purposes of the application of the PAML to the professional football sector. Such a course of action would raise similar questions regarding the powers of the FPS Economy to interpret legal concepts defined or employed by the PAML, as well as questions regarding the principle of equality. However, there is another course of action available as well. Article 18 of the PAML allows supervisory authorities to decide on the basis of their powers under Article 85 of the PAML that certain documented risk assessments are not required if and when the specific risks inherent in the activities concerned are clear and transparent. Such an approach could complement the decision of clubs to subject, for example, their fans and perhaps even UEFA to a low risk profile.

In summary, certain categories of clients, especially in the case of clubs, were not the 'primary targets' of the legislator when subjecting the professional football sector to the preventive anti-money laundering framework. It can be questioned whether the supervisory authority can

exclude these categories from the client concept without violating the law. It would seem that a better course of action would be to designate a low risk profile to these clients and exempt clubs from certain documented risk assessments with regard to these categories of clients.

5.4 Interference with transfers and transfer windows

According to FIFA's Regulations on the Status and Transfer of Players, players can only be registered with a club during one of the annual registration periods ('transfer windows' or 'mercatos') fixed by the relevant association.[192] For the Belgian leagues, this transfer window is fixed in Belgium by Title 4 of the RBFA regulations. Transfers are therefore unlike most other business relationships, insofar as transfers have to be concluded before a well-defined deadline. While transfer deadlines may differ globally, they are somewhat similar in most of Europe.

As we already mentioned (*supra*, p. 48), the obligations imposed by the preventive money laundering framework may interfere with these transfer windows, due to the fact that Article 30 of the PAML generally requires that obliged entities have to comply with their identification and verification obligations before entering into a business relationship. This obligation certainly presents clubs with difficulties, especially in case of transfers that are realized close to the end of the transfer window. Moreover, one transfer sometimes necessitates another. If a certain player transfers to another club, it might lead to a situation where the transferring club is required to seek a replacement player for that position, close to the deadline.

As discussed above (*supra*, p. 30), in certain well-defined exceptional circumstances, the PAML allows an obliged entity to comply with these obligations in the course of the business relationship, but this is arguably not always a possibility in concrete transfer cases. The football club must then provide an exhaustive list of special circumstances in which this is allowed in their internal policy documents. It would therefore be advisable for clubs to make sure that their internal policy documents reflect this possibility and describe the situations in which they can make use of the postponed identification and verification processes.

Furthermore, the (provisional) risk profile awarded to that particular client should be low and the verification of the identity should happen as quickly as possible after the first contact with that client. The actual possibility of using this exception therefore depends on the risk profile

[192] See Article 20 of the FIFA Regulations on the Status and Transfer of Players.

which needs to be assigned to the other club that is participating in the transfer operation. Such a risk profile can be hard to determine, especially for clubs which are based in countries outside of the European Union. A Belgian football club can however try to make use of the 'geographical risk indicators' included in Annex 2 of the PAML. According to this Annex, a low risk factor can be determined on the basis of the client being established in (i) an EU Member State, (ii) third countries with effective AML systems in place, (iii) third countries which, according to reliable sources, have a low level of corruption and other criminal activity and (iv) third countries which, according to credible sources such as mutual evaluations, detailed assessment reports, or published follow-up reports, have regulations on combating WG/FT that are in line with the revised FATF recommendations and effectively implement those regulations.

In cases where no use can be made of this exception, Belgian football clubs may encounter difficulties in obtaining the necessary information from other clubs involved in the transfer operation. From the interviews, it became clear that the interviewed Belgian clubs have already encountered foreign counterparties who did not understand why they were asked for the information that the Belgian clubs need to comply with their obligations under the PAML.[193] After all, Belgian professional football clubs are currently the only ones which are under the obligation to collect all of this information. Belgian clubs are therefore dependent on other clubs, which may be established abroad and even outside the European Union, to provide information in time and in principle before the conclusion of the transfer. Such information can also be hard to verify and assess.[194] If the other club is not able or does not want to provide the required information in time, the Belgian club will, in principle, be precluded from concluding the transfer. This problem can be exacerbated even further in the case of multiple simultaneous transfers on behalf of one Belgian club which are interrelated.

Finally, the requirement that all identification and verification obligations need to be complied with prior to the transfer raises the question about *when* the business relationship with a client of a club is deemed to start. As one of the interviewees mentioned, it may happen that some action is already taken before a transfer contract is concluded. In concrete cases, it may be hard to even pinpoint the point in time from which these obligations need to be complied with.[195]

[193] Interview K. Verstringe, p. 2; Interview W. Georges, p. 2.
[194] Interview P. De Beus, p. 5-6.
[195] Interview P. De Beus, p. 4.

In summary, the existence of strict transfer windows does not sit well with the default obligation to identify and verify the identity of clients before entering into a business relationship. It would seem advisable for clubs seeking to reduce the risk of a missed transfer because of this obligation to make use of the exception regime provided for by the PAML. However, in practice this exception will not always be available to clubs, due to the rather strict conditions to which it is made subject. Belgian football clubs may also be dependent on clubs in other jurisdictions to obtain the information necessary to comply with this obligation. Because such clubs will generally not be subject to an anti-money laundering legal framework as obliged entities, they might not be willing to accommodate such requests from Belgian clubs. This problem may be exacerbated in case of multiple inderdependent transfers. Moreover, in practice it does not seem easy to pinpoint the exact time when the relevant obligation should be complied with. It is advisable to develop guidance in this respect.

5.5 Barriers to exchange of information between FIUs

The Belgian Financial Intelligence Unit, the CTIF-CFI, cooperates with FIUs based in other jurisdictions. The preamble of the 4th AMLD makes clear why this is so: '*Taking into account the transnational nature of money laundering and terrorist financing, coordination and cooperation between FIUs are extremely important. In order to improve such coordination and cooperation, and, in particular, to ensure that suspicious transaction reports reach the FIU of the Member State where the report would be of most use, detailed rules are laid down in this Directive.*'.[196]

On the basis of Article 123 PAML, the CTIF-CFI can exchange all kinds of information which can be useful for the processing or the analysis of information concerning money laundering. This exchange of information between FIUs is regulated. According to Article 127 PAML, when the CFI wishes to obtain information from another jurisdiction, it should direct any request to that effect to the FIU of that jurisdiction. If the CTIF-CFI receives a request for information from a foreign authority that is not an FIU relating to information included in a report on a suspicion in its possession, it shall send any action it decides to take on this request

[196] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, Consideration 54.

to the FIU of the country concerned. The CTIF-CFI will therefore not direct any requests towards obliged entities in other countries.

This exchange of information is deemed to be a central point in the transnational anti-money laundering framework. This is evidenced by the fact that the European Commission has proposed a Sixth AMLD[197], apart from its proposed Regulation on anti-money laundering. The proposed Sixth AMLD complements the proposed Regulation and concerns important revisions in order to further facilitate the exchange of information between national FIUs.

However, within the context of the application of the preventive anti-money laundering framework to football, the question arises to which extent the CTIF-CFI will be able to make use of this system of exchange of information. After all, in other jurisdictions, the football sector is not subject to the preventive anti-money laundering framework. It can then be expected that less information will be obtained in other jurisdictions, diminishing the possibilities for the Belgian FIU to obtain relevant information from other jurisdictions. This is problematic considering the transnational character of the modern football industry and seems to constitute a handicap for the effectiveness of the Belgian system. This does not mean that there will be no information available whatsoever, though. After all, banks and other financial institutions with which football clubs in other countries deal are obliged entities, and may provide information to their respective FIUs.

In summary, the swift functioning of the international anti-money laundering legal framework depends to a large extent on the exchange of information between national FIUs. The reason for this is that money laundering operations are often characterized by a transnational nature. This exchange of information is regulated by the European AMLDs. Since Belgium is the only country which has subjected the professional football sector to its anti-money laundering legal framework, relevant information from abroad might not be easily obtainable via FIUs located in other jurisdictions. This could potentially hinder the Belgian FIU's work.

[197] EUROPEAN COMMISSION, "Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849", COM(2021) 423 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0423 (accessed 31 March 2022).

6. Observation: in practice a 'learning period' is observed

An interesting observation we made during the interviews was that the sector of professional football and the FPS Economy as supervisory authority have first gone through a 'learning period' during which no sanctioning has taken place and which was based on rather informal contacts and working methods.[198] During this period, the FPS Economy organized information sessions and entered into dialogue with the RBFA, the clubs and the Pro League.[199] It seems that many of the information flows, questions and asnwers etc. in practice took place via the intermediation of the Pro League, which itself is not an obliged entity.[200] During this phase, the clubs, the RBFA and the Pro League have been granted the opportunity to develop practices and guidelines in order to allow the RBFA and the clubs to learn to comply with their obligations under the PAML.

This seems to be the standard working method for the FPS Economy when a new sector comes under the scope of the PAML and under their supervision.[201] The FPS Economy indicated that it has experience guiding non-financial sectors into this story. From the interviews with the FPS Economy and the representatives of the clubs, an apparent difference in perspective can be deduced. From the perspective of the FPS Economy, the professional football sector seems to be 'one of the sectors' which is now under the scope of the PAML, whereas the representatives from professional football are of the opinion that their sector is different from other sectors which were traditionally subject to the anti-money laundering framework.[202] One of the interviewees from the sector stated that a football club is '*a private commercial entity with different activities than all other obliged entities*'.[203]

Also, it seems that several clubs have already been audited by the FPS Economy during this 'learning phase'. At the time of the interview, four clubs had already been subject to an audit.[204] One club representative even stated that he would personally like to have federal agents from the FPS Economy come to audit the club during this phase, in order to 'test the waters' and make sure that they are on a correct path towards full compliance with the PAML.[205]

[198] Interview SPF Economy – CTIF-CFI, p. 1-2; Interview K. Verstringe, p. 2; Interview W. Georges, p. 4, 5.
[199] Interview P. De Beus, p. 2; Interview SPF Economy – CTIF-CFI, p. 1-2.
[200] Interview K. Verstringe, p. 3.
[201] Interview SPF Economy – CTIF-CFI, p. 1.
[202] See also: Interview SPF Economy – CTIF-CFI, p. 3 for a similar point of view on behalf of the representative of the CTIF-CFI.
[203] Interview P. De Beus, p. 5.
[204] Interview SPF Economy – CTIF-CFI, p. 4.
[205] Interview W. Georges, p. 4.

The fact that such a learning period – during which all relevant actors and especially the supervisory authority and the obliged entities are engaging in dialogue and are 'learning on the job' in order to develop working methods, guidelines and interpretations – is taking place can only be assessed as positive. The professional football sector is indeed a new sector that, arguably, has its own specific characteristics, which are relevant in view of the application of the preventive anti-money laundering legislation. The development of such a framework in combination with 'trial audits' constitutes an important 'learning experience' for obliged entities from the football sector. However, the experience would probably have been better still if such a 'learning phase' could have taken place *before* the entry into force of the PAML *vis-à-vis* the actors in the football sector and, for reasons of equal treatment, it would be advisable to allow every club the opportunity to undergo such a 'test audit'. Clubs, on the other hand, can exchange their knowhow and experience from such audits via the Pro League.

In summary, in practice a 'learning period' has taken place during which the FPS Economy, the clubs (via the Pro League) and the RBFA have relied on dialogue and informal contacts and working methods to establish 'roadmaps' for the exact application of the anti-money laundering obligations in practice, and during which no sanctioning has taken place. Several clubs have also been audited during this learning phase. The representative from one interviewed club even expressed a desire to be audited during this phase as a learning experience. While such an approach can be applauded, in our view it would have been better if this process had taken place before the entry into force of the law *vis-à-vis* clubs and the RBFA. This could have led to, for example, a swifter adoption of implementing regulations and more legal certainty for the parties involved.

V. Current state of knowledge and literature review on anti-money laundering regulation and its effectiveness

As will be seen, the state of the art when it comes to literature on anti-money laundering regulation and its effects has developed considerably since the turn of the Millennium, to the extent that one can now find a number of individual studies on the subject. Most of these are focused on the financial and banking sector, and many are conducted with the aim of assessing the effectiveness of regulations on anti-money laundering, particularly from an economic perspective (including both law and economics theory and empirical legal research).[206] In addition, more recently, AML law has begun to be discussed in the literature as a distinct – if still an interdependent and incomplete – subset of law in its own right. In other words, the most recent development in the scholarly treatment of AML regulation has seen the subject approached in a more holistic manner, considering its multi-level features (with applicable laws and legal frameworks at international, supranational, national, and even regional levels), its hybrid nature (combining both public and private governance) and the interplay between its diverse legal elements (including criminal justice, financial markets law and data protection, to name but a few).[207] Indeed, until recently, one would be hard-pressed to find any works of more encyclopedic nature on the subject of AML law, save perhaps earlier handbooks that examine AML regulation itself as a part of an even more global discussion of money laundering policy and the economics of money laundering, along with its significance as a social phenomenon.[208] This indicates a progression towards laying the foundations of a comprehensive analytical framework for the description and evaluation of legislative initiatives concerning AML. When it comes to the professional football sector, however, this barely features in the above body of literature (with very few exceptions[209]), meaning that for the most part these studies do not take

[206] Take, for example, A. CHONG, F. LOPEZ-DE-SILANES, "Money Laundering and its Regulation", *Economics & Politics* 2015, vol. 27(1), 78-121; J.FERWERDA, "The Economics of Crime and Money Laundering: Does Anti-Money Laundering Policy Reduce Crime?", *Review of Law & Economics* 2009, vol. 5(2), 903-923; D. MASCIANDARO, "Money Laundering: the Economics of Regulation", *European Journal of Law & Economics* 1999, vol. 7(3), 225-240.

[207] In particular, this evolution has been advanced, if not even triggered, by the potentially seminal book on national and international anti-money laundering law edited by Vogel & Maillart, which was published in 2020 (and providentially so given the timing of the present study); B. VOGEL, J. MAILLART (eds.), *National and International Anti-Money Laundering Law: Developing the Architecture of Criminal Justice, Regulation and Data Protection*, Intersentia 2021.

[208] As regards opera pitched at this broader level still, see notably P. van DUYNE *et al.*, *The Critical Handbook of Money Laundering: Policy, Analysis and Myths*, Palgrave Macmillan 2018; B. UNGER, D. VAN DER LINDE (eds.), *Research Handbook on Money Laundering*, Edward Elgar 2013, and; D. MASCIANDARO *et al.*, *Black Finance: The Economics of Money Laundering*, Edward Elgar 2007.

[209] One exception from the field of Criminology is: H. NELEN, "Detection and Prevention of Money Laundering in Professional Football" in H. NELEN, D. SPIEGEL (eds.), *Contemporary Organized Crime. Developments, Challenges and Responses*, Cham, Springer, 2021.

the specifics of the professional football business and its particular multitude of stakeholders (such as, for example, the role of the national associations and federations) into account. Similarly, studies into relevant areas of sport and law, such as notably the regulation of player agents in football, do not deal with the money laundering aspect in any great depth.[210] Therefore, a conspicuous knowledge gap can be identified at the intersection between AML law and sports law.

Accordingly, this section will centre on the current state of knowledge with respect to AML regulation and its effectiveness, especially (though not only) in the financial sector, with a view to extrapolating theoretical and methodological insights of relevance to the application of – and hence in the context of – AML legislation in the football sector, thereby building on the minimal writings on the latter that have been published to date. In particular, the deductions that will be drawn from the existing studies on the subject will be connected with the present study and the application of the Belgian PAML to the football sector. This review of the literature will therefore first examine the academic debate around the effectiveness of AML law in general, and particularly economic analyses of AML laws in the financial sector, before considering the implications of AML scholarship for the footballing sphere, with a view to drawing relevant conclusions for the present study.

A. Effectiveness of AML regulation in general

The discussion of the effectiveness of AML law in general terms comprises several facets, the most notable of which will be addressed in this section, in order to identify the main insights regarding the overall effectiveness of AML. The first of these (and the obvious ones with which to begin) are methodological reflections concerning how AML's effectiveness is to, or can, be assessed. These require consideration of the very nature and purpose of AML legislation, as well as an analysis of both the benefits and the costs of AML measures, particularly in economic terms. Then, on top of these methodological foundations, there is the important matter of the degree of compliance with AML obligations, as well as the related question of their enforcement. In addition, and connected with all of these aspects, attention is also paid to the more empirical issue of the available data on AML.

[210] E.g. KEA – CDES – EOSE, *Study on Sports Agents in the European Union*, November 2009, https://ec.europa.eu/assets/eac/sport/library/studies/study-sports-agents-in-eu.pdf (accessed 31 March 2022); R. PARRISH, A. CATTANEO, J. LINDHOLM, J. MITTAG, C. PEREZ-GONZALEZ, V. SMOKVINA, *Promoting and Supporting Good Governance in the European Football Agents Industry*, October 2019, https://www.edgehill.ac.uk/law/files/2019/10/Final-Report.pdf (accessed 31 March 2022); W. BULL, M. FAURE, "Agents in the sporting field: a law and economics perspective", *International Sports Law Journal* 2021, 1-16.

1. Methodology

1.1 The nature and purpose of AML regulation

The first methodological issue to be identified, which is clearly a fundamental starting point for any discussion about the effectiveness of AML law, is the question of how to define AML and what the main aim of AML regulation actually is, not to mention what it should be. For it is of course a well-established proposition (in fact an axiomatic truth) that one can only assess the effectiveness of a given measure in light of the objective(s) that that measure is intended to achieve. Yet, in the case of AML, even the very goal of legislation in this area may be – and has been – a matter of considerable doubt. One of the central goals that AML legislation in the financial sector is aimed at is the protection of the 'soundness, integrity, and stability of credit institutions and financial institutions' (to employ the wording that is used in the preamble to the fourth EU Anti-Money Laundering Directive)[211], insofar as the channeling of illicit proceeds through banks and other legitimate businesses carries with it the danger of compromising the financial system as a whole and, in turn, the reputation of and confidence in that system. Indeed, this aim features prominently in the motivations behind the EU legislation that has been adopted to tackle money-laundering activity, and no doubt reflects a very real concern about the risk of commingling of illegal with legal economies. However, this is clearly not the only essential aim that AML legislation is concerned with. Rather, as is also apparent from the explicit justifications given by the EU legislator for regulatory intervention in this area, AML is also ultimately intended to target the underlying criminal activities that generate, or make use of, the proceeds that are laundered through legitimate enterprises. In other words, money laundering prohibitions and AML obligations are also seen as a means to the end of detecting, preventing and prosecuting so-called 'predicate offences', including notably organized crime and tax offences, not to mention the financing of terrorism.[212] On this view, AML law seeks to identify and sanction the profits of crime as a mechanism among others to tackle the 'core' crime itself.

At first sight this may not seem problematic, insofar as these legislative goals would appear to go hand in hand – and at least to some extent that may well be the case. However, depending

[211] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, Recital 2.

[212] See the preamble to the fourth AMLD, particularly Recitals 1 & 11, as well as the preamble to Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.

on the emphasis that is placed on one or other of these goals, they do not necessarily point AML regulatory initiatives in the same direction. As VOGEL puts it: "Where policymakers or the competent authorities give preference to one of those two visions of AML, this can be to the detriment of the other."[213] For if the primary focus of AML policy is on targeting predicate offenders, this may come at the expense of uncovering and countering criminal elements and activities within the legal economy, thereby detracting from the goal of protecting the financial system from the contamination of illicit funds. Conversely, if AML law is principally geared towards entities and actors within the financial sector rather than towards criminal clients of theirs, it may be of less utility as a tool for combating profit-generating offences.[214] Indeed, there is disagreement as to what the focal point of AML legislation should be, as is also reflected in the literature itself. For one, VOGEL himself takes the view that AML law should be principally directed at professional laundering service providers facilitating the recycling of criminal profits – and thereby facilitating profit-oriented crime – including at a relative distance from the profit-generating predicate offences.[215] By contrast, though, in the preceding handbook on money laundering by VAN DUYNE *et al.*, for instance, the authors caution against making professionals in the financial sector the central target of AML policy, to the extent that this may risk losing sight of the aim of addressing the conduct of for-profit criminals in the 'outside world' – which itself can reduce the threat of laundering taking place within the financial sector.[216] And so the balance that is struck between these two diverging objectives and their competing demands clearly has differing possible implications for the specific design, application and interaction of concrete AML components, both on the private and the public side (and including as between EU Member States[217]). Moreover, it is necessary to form a clear understanding of what the essential purpose and priorities that lie behind AML measures are in order to be able to evaluate their effectiveness.

[213] B. VOGEL, "Reinventing EU Anti-Money Laundering, Towards a Holistic Legal Framework" in B. VOGEL, J. MAILLART (eds.), *National and International Anti-Money Laundering Law: Developing the Architecture of Criminal Justice, Regulation and Data Protection*, Intersentia 2021, at p. 886.
[214] *Ibid*, p. 886-887.
[215] *Ibid*, p. 919.
[216] P. van DUYNE *et al.*, *The Critical Handbook of Money Laundering: Policy, Analysis and Myths*, Palgrave Macmillan 2018, p. 271. See also H. GEIGER, O. WUENSCH, "The Fight Against Money Laundering: An Economic Analysis of a Cost-Benefit Paradoxon", *Journal of Money Laundering Control* 2007, vol. 10(1), 91-105.
[217] For while a number of EU AML directives have been adopted to date, there are still significant differences in how these have been implemented in national legal systems; see J. MAILLART, "Anti-Money Laundering Architectures: Between Structural Homogeneity and Functional Diversity" in B. VOGEL, J. MAILLART (eds.), *National and International Anti-Money Laundering Law: Developing the Architecture of Criminal Justice, Regulation and Data Protection*, Intersentia 2021, p. 879.

Furthermore, the uncertainty surrounding the aims of AML legislation also translates into problems in understanding the very concept of AML and its technical legal definition. As was already alluded to, in basic terms AML is concerned with the funneling of criminal profits and assets into the legal economy, for the purpose of falsely legitimizing (or 'white washing') those ill-gotten gains. Certainly that is the essence of the definition embodied in EU legislation in the field, which is itself based on the broadly recognized description of money laundering in international law.[218] Taking the most recent EU directive to be adopted in the area (Directive 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, which is sometimes referred to as the 'AML Criminal Directive'), for example, this specifies three main forms of money laundering offences in its Article 3(1), as follows:

> '(a) the conversion or transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action;
> (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity;
> (c) the acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from criminal activity.'

It is apparent from this, therefore, that the generally accepted description of the offence of money laundering in the law is closely linked with the predicate offences from which that money originates – hence the reference in each of the above formulations to property 'derived from criminal activity'. In other words, "[t]he offence is primarily characterised by the criminal origin of assets and not by objective features that would specify the conduct of the offender."[219] It is true that the reference in the first two formulations to 'concealment or disguise' of the origin of assets indicates that this element of obscuration is a distinctive feature of the misconduct that is inherent in money laundering, but it is still required that the offender does so with the illicit nature of the property in mind. The point therefore remains that the

[218] Admittedly, the definition provided in international conventions on the subject differs in its wording, and the same is true of descriptions of the notion of money laundering in national law; see P. VAN DUYNE *et al.*, *The Critical Handbook of Money Laundering: Policy, Analysis and Myths*, Palgrave Macmillan 2018, p. 91-92. Still, for present purposes we will take the definition laid down in EU law, while accepting that there is no universally accepted definition of the concept.

[219] B. VOGEL, "Reinventing EU Anti-Money Laundering, Towards a Holistic Legal Framework" in B. VOGEL, J. MAILLART (eds.), *National and International Anti-Money Laundering Law: Developing the Architecture of Criminal Justice, Regulation and Data Protection*, Intersentia 2021, at p. 913.

identification of the offence is largely dependent on the confirmation of the assets' criminal source and, accordingly, on the demonstration of a predicate offence (at least to a reasonable degree of certainty[220]) from which the assets are derived. Whereas, if the origin of the property is not established, it becomes difficult to distinguish acts of money laundering from lawful handling of property.[221]

So the extent to which AML law constitutes a mechanism to tackle wrongdoing connected to the assimilation of criminal proceeds within, and therefore integral threats to, legitimate sectors of the economy, as opposed to simply another weapon in the arsenal of the criminal justice system to discover or deter predicate offences, also is not clear in the way in which it is defined. And this lack of clarity in the substance of the offence of money laundering can also impinge upon the effectiveness of AML legislation, since law enforcement authorities may then have difficulty comprehending what makes money laundering a punishable form of wrongdoing in its own right, which goes beyond the assistance of – and is therefore prosecuted as a separate offence on the basis of considerations that are distinct from – the wrongdoing connected with predicate offences.[222] As a consequence, those in the financial sector who engage in efforts to process criminal assets through legal means may be overlooked by the authorities if the concatenation of transactions involved is a long and convoluted one and the professional launderer is not directly implicated in the commission of the predicate offence. That is, the incertitude pertaining to the distinctive nature of the offence of money laundering in AML law can "effectively discourage criminal justice authorities from investigating suspects who are not directly related to predicate offenders and where, as a result, the tainted origin of assets is not easy to establish."[223] Yet, the prohibition of money laundering must rationally amount to more than a mere extension of the criminalization of predicate offences for violations to be punishable as a distinct form of crime.[224] And even if AML is to be assessed on the basis that it is

[220] According to art. 3(b) of Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, conviction for money laundering offences 'is possible where it is established that the property was derived from a criminal activity, without it being necessary to establish all the factual elements or all circumstances relating to that criminal activity, including the identity of the perpetrator'.

[221] B. VOGEL, "Reinventing EU Anti-Money Laundering, Towards a Holistic Legal Framework" in B. VOGEL, J. MAILLART (eds.), *National and International Anti-Money Laundering Law: Developing the Architecture of Criminal Justice, Regulation and Data Protection*, Intersentia 2021, p. 913-914.

[222] *Ibid*, p. 916-917.

[223] *Ibid*, at p. 918.

[224] In fact, this leads some to question in many respects the added value of introducing additional legal mechanisms criminalizing AML on top of pre-existing criminal law offences at all; see, for example, P. VAN DUYNE *et al.*, *The Critical Handbook of Money Laundering: Policy, Analysis and Myths*, Palgrave Macmillan 2018, p. 308. On this see also A. CHONG, F. LOPEZ-DE-SILANES, "Money Laundering and its Regulation", *Economics & Politics* 2015,

fundamentally an additional tool for the authorities to pursue and prosecute predicate offenders, there would remain the problem that any evaluation of its effectiveness would then be necessarily subsumed within, and to a great extent dependent upon, the wider question of the degree of effectiveness of the criminal justice system as a whole.[225]

1.2 Cost-benefit analysis of AML regulation

As VAN DUYNE *et al.* observe, "the largest amount of literature falling within the field of money laundering has been contributed from the discipline of economics."[226] Indeed, the phenomenon of money laundering and its regulation in the financial sector has predominantly been analyzed from an economic perspective, with numerous papers having been dedicated to this form of analysis.[227] More specifically, "[a] large proportion of the literature within this discipline deals with methods of measuring and modelling money-laundering, including ways of measuring AML effectiveness."[228] And, of these, many contemplate models of the kind wherein the effects of anti-money laundering regulation are assessed according to the extent to which such regulation may mitigate economic damage caused by money laundering, counterweighted against the economic costs it may produce on the functioning of the system and the actors it regulates. This focus on cost-benefit analyses reflects a widely-held concern that AML measures themselves may cause 'collateral damage' to market performance and efficiency, particularly in terms of financial burdens and operational constraints on participants in the market created by the imposition of preventative AML and reporting obligations.[229] In other words, regardless of whether AML legislation is aimed at protecting economic institutions or

vol. 27(1), 78-121, 79. While acknowledging this more existential line of attack on AML law, however, we will focus more on specific issues that have been raised in respect of AML legislation that has been introduced.

[225] See B. VOGEL, "Reinventing EU Anti-Money Laundering, Towards a Holistic Legal Framework" in B. VOGEL, J. MAILLART (eds.), *National and International Anti-Money Laundering Law: Developing the Architecture of Criminal Justice, Regulation and Data Protection*, Intersentia 2021, p. 894.

[226] P. VAN DUYNE *et al.*, *The Critical Handbook of Money Laundering: Policy, Analysis and Myths*, Palgrave Macmillan 2018, at p. 186.

[227] See, as some examples, R. BARONE, D. MASCIANDARO, "Worldwide Anti-Money Laundering Regulation: Estimating the Costs and Benefits", *Global Business and Economics Review* 2008, vol. 10(3), 243-264; H. GEIGER, O. WUENSCH, "The Fight Against Money Laundering: An Economic Analysis of a Cost-Benefit Paradoxon", *Journal of Money Laundering Control* 2007, vol. 10(1), 91-105; D. MASCIANDARO, "Money Laundering: the Economics of Regulation", *European Journal of Law & Economics* 1999, vol. 7(3), 225-240;

[228] P. VAN DUYNE *et al.*, *The Critical Handbook of Money Laundering: Policy, Analysis and Myths*, Palgrave Macmillan 2018, at p. 186.

[229] In fact, this concern is visible in the fourth AMLD itself, the 2nd recital of which adds that '[a]t the same time, the objectives of protecting society from crime and protecting the stability and integrity of the Union's financial system should be balanced against the need to create a regulatory environment that allows companies to grow their businesses without incurring disproportionate compliance costs.' Indeed, Masciandaro describes this as "the efficiency-effectiveness trade-off" that is faced by the legislator; D. MASCIANDARO, "Money Laundering: the Economics of Regulation", *European Journal of Law & Economics* 1999, vol. 7(3), 225-240, at 239. See also R. BARONE, D. MASCIANDARO, "Worldwide Anti-Money Laundering Regulation: Estimating the Costs and Benefits", *Global Business and Economics Review* 2008, vol. 10(3), 243-264, 259.

at combating criminal activity (or a combination of the two), it is generally accepted that "money laundering prevention measures leads [*sic*] to undesired side effects both for the economy and for the society as a whole."[230] For this reason, it is commonly considered that AML measures should be judged not only on their effectiveness in achieving their intended outcome(s) and the eventual benefits thereof, but also taking into account the direct costs AML compliance engenders for legitimate market actors and transactions, along with its more indirect costs to legal economies and societal systems.

It makes sense, therefore, to adopt an approach of this kind as the basis for the analysis of the new Belgian anti-money laundering framework in the present study. It should be noted, however, that this approach is not without its complications. For one thing, of course, what the benefits and costs of AML regulations are may be different for – or may be viewed differently from the perspective of – different actors. That is not a mere reference to the divergent interests of criminal operators as opposed to legitimate actors, but rather to the fact that the distribution of costs and benefits may not be felt in the same way by financial institutions and their clients as it is by legislators and society at large.[231] This is because, while AML laws (again, regardless of their specific objectives) are geared towards what are primarily public benefits, "much of the cost of regulation is a private cost that has to be internalised by the regulated institutions and passed through to their customers."[232] Indeed this is why more recent assessment methodologies have attempted to carry out comparative cost-benefit analyses of AML measures for different social actors – although this more elaborate approach is still in its infancy.[233] Furthermore, even when it comes to more basic models for the economic evaluation of AML regulatory interventions, the costs and benefits of AML measures can be difficult (if not even impossible) to quantify.[234] Moreover, the degree of accuracy of cost-benefit analyses depends on the existence of sufficient (and sufficiently reliable) economic and empirical data; yet, as is discussed further below, such data remains scarce in the field of AML, even in sectors like the

[230] H. GEIGER, O. WUENSCH, "The Fight Against Money Laundering: An Economic Analysis of a Cost-Benefit Paradoxon", *Journal of Money Laundering Control* 2007, vol. 10(1), 91-105, at 92.
[231] See further R. BARONE, D. MASCIANDARO, "Worldwide Anti-Money Laundering Regulation: Estimating the Costs and Benefits", *Global Business and Economics Review* 2008, vol. 10(3), 243-264, 259 ff.
[232] P. VAN DUYNE *et al.*, *The Critical Handbook of Money Laundering: Policy, Analysis and Myths*, Palgrave Macmillan 2018, at p. 194.
[233] See B. VETTORI, "Evaluating anti-money laundering policies: where are we?" in B. UNGER, D. VAN DER LINDE (eds.), *Research Handbook on Money Laundering*, Edward Elgar 2013, p. 477 ff.
[234] In fact, according to VAN DUYNE *et al.* cost-benefit evaluations of AML regulations are "almost always followed by the codicil that attempts at efficiency-measurement are well-nigh impossible"; P. VAN DUYNE *et al.*, *The Critical Handbook of Money Laundering: Policy, Analysis and Myths*, Palgrave Macmillan 2018, at p. 194. See also H. GEIGER, O. WUENSCH, "The Fight Against Money Laundering: An Economic Analysis of a Cost-Benefit Paradoxon", *Journal of Money Laundering Control* 2007, vol. 10(1), 91-105

financial sector where such regulation is more long-standing. Of course, it is possible to seek to surmise and estimate costs and benefits of AML regulation while accepting limitations on the accuracy of such estimations, but even these more circumscribed attempts to do so suffer from a paucity of authoritative data, so much so that some have even opined that "[m]ost literature on money laundering effects is pure speculation."[235] In addition, cost-benefit projections rest on expectations concerning the compliance with, and enforcement of, AML regulations, but, as will be further elaborated in the next subsection, there is also a significant question mark surrounding the 'real-world' influence and application of AML laws.[236]

2. Compliance with and enforcement of AML obligations

On top of these methodological foundations, then, there is the important matter of the degree of compliance with AML obligations, as well as the related question of their enforcement. Indeed, apart from the actual substance of AML regulation itself, prior research into the effects of regulation has demonstrated that that the degree of compliance and quality of enforcement is a significant variable – and, as such, one that explanatory models typically seek to take into account.[237] And when it comes to AML regulation, it has been said that attempts to avoid complying with AML obligations "are arguably the greatest challenge to the effectiveness of AML."[238] This is partly because criminal actors will often find it more expedient to seek to induce or force financial service providers to violate AML obligations than to take steps to disguise the illicit source of their assets, and also because current AML legislative frameworks are short on mechanisms to detect and sanction intentional misconduct within regulated financial institutions, as opposed to money laundering threats posed by their clients.[239] In addition, according to VAN KONINGSVELD, internal supervisors within the financial system as well as law enforcement authorities lack skills and capacity with respect to the money laundering process.[240] For this reason, he maintains that "[a]n increase in both theoretical and

[235] B. UNGER *et al.*, "The amounts and the effects of money laundering", Report for the Dutch Ministry of Finance 2006, p.102.
[236] On this see P. VAN DUYNE *et al.*, *The Critical Handbook of Money Laundering: Policy, Analysis and Myths*, Palgrave Macmillan 2018, p. 185, and J. FERWERDA, "The Economics of Crime and Money Laundering: Does Anti-Money Laundering Policy Reduce Crime?", *Review of Law & Economics* 2009, vol. 5(2), 903-923, 907.
[237] See further A. CHONG, F. LOPEZ-DE-SILANES, "Money Laundering and its Regulation", *Economics & Politics* 2015, vol. 27(1), 78-121, 105.
[238] B. VOGEL, "Reinventing EU Anti-Money Laundering, Towards a Holistic Legal Framework" in B. VOGEL, J. MAILLART (eds.), *National and International Anti-Money Laundering Law: Developing the Architecture of Criminal Justice, Regulation and Data Protection*, Intersentia 2021, at p. 972.
[239] *Ibid*.
[240] J. VAN KONINGSVELD, "Money laundering – 'You don't see it, until you understand it': rethinking the stages of the money laundering process to make enforcement more effective" in B. UNGER, D. VAN DER LINDE (eds.), *Research Handbook on Money Laundering*, Edward Elgar 2013, p. 435.

practical knowledge is essential to successfully combat money laundering"[241], particularly as a means of enhancing its enforcement. Hence, just as in other types of regulation – if not even more so – the quality of enforcement is a crucial element for the effectiveness of AML legislation from a theoretical perspective[242]; yet, for many the enforcement of AML obligations still leaves a lot to be desired, as will become apparent from the debate outlined below. This is therefore an important issue that should be borne in mind in the discussion surrounding AML and its effectiveness. Before delving into that debate, however, there is still another issue of significance that should be highlighted, regarding the available data on AML.

3. Data on AML

As was already indicated, authoritative data on AML and its regulation is limited, still to this day, and even in the financial sector, notwithstanding the fact that AML regulation in this sector has existed already for many years. While this might seem odd, this is a general and evidently significant problem in AML scholarship that is attested to by various authors in the field. Indeed, there appears to be a broad consensus around the view that "AML suffers from a lack of reliable data to assess its performance and unintended side-effects."[243] And, at least in part, this is due to significant gaps in data on money laundering activity itself.[244] In other words, as VETTORI observes, "there is still a lack of convincing empirical evidence on the extent of the phenomenon, as well as the effectiveness of the measures to combat it" – and these problems are closely connected, insofar as the effectiveness of AML measures is assessed on the basis of the extent to which they reduce money laundering activities.[245] To be sure, this particular issue does not point towards AML regulation being either effective or ineffective; but it does stand for the proposition that the effectiveness of AML law is at best difficult to determine in practical terms. Whether the main goal of AML legislation is to curtail predicate offences or (even more so) to protect the integrity of financial systems, what the actual costs and benefits of such

[241] *Ibid*, at p. 436.
[242] A. CHONG, F. LOPEZ-DE-SILANES, "Money Laundering and its Regulation", *Economics & Politics* 2015, vol. 27(1), 78-121, 105.
[243] B. VOGEL, "Reinventing EU Anti-Money Laundering, Towards a Holistic Legal Framework" in B. VOGEL, J. MAILLART (eds.), *National and International Anti-Money Laundering Law: Developing the Architecture of Criminal Justice, Regulation and Data Protection*, Intersentia 2021, at p. 893. See also P. VAN DUYNE *et al.*, *The Critical Handbook of Money Laundering: Policy, Analysis and Myths*, Palgrave Macmillan 2018, p. 272 ff.
[244] In turn, one likely reason for this is precisely the fact that, as was already alluded to, sophisticated money laundering operations can be difficult to detect.
[245] B. VETTORI, "Evaluating anti-money laundering policies: where are we?" in B. UNGER, D. VAN DER LINDE (eds.), *Research Handbook on Money Laundering*, Edward Elgar 2013, at p. 474. In this chapter, Vettori goes on to discuss a number of reasons for these knowledge gaps, ranging from inabilities to quantify the volume of money laundering activities and certain (particularly intangible) costs and benefits of legislative interventions, to difficulties in determining the actual impact of AML initiatives on such activities.

legislation are, and how far AML measures are actually complied with and enforced, are questions that still cannot be answered with any degree of certainty, let alone precision. This has led to calls for legislators to collect more comprehensive data on the application of AML measures, as well as for academics to provide more verifiable evidence in support of their economic analyses and conclusions. While these calls have not fallen on deaf ears[246], there is still considerable work to be done towards laying more solid empirical foundations for the assessment of AML and its effectiveness.[247]

4. Overall effectiveness of AML regulation

It becomes readily apparent from a perusal of the literature on the subject that the degree of effectiveness of AML law is a matter of considerable doubt – if not one that is outright contested – and not merely because of a lack of evidence. As a basic starting point, it has been said that "even without extensive data, one may still conclude that it would in all likelihood expand the operational freedom and thus power of criminal actors if they were (again) allowed to freely…invest in lawful businesses."[248] While this proposition may be an uncontroversial one, however, the overall value of AML regulation is disputed, bearing in mind also the costs that such regulation can entail. That is not to say that the effectiveness of AML law is universally rejected of course; on the contrary, there are positive (or at least potentially positive) assessments to be found in the literature. But one also encounters many more negative assessments, ranging from the critical, which concentrate their attention on possible reforms to AML regulations in order to make them more effective, to the sceptical, which deem the current regulatory approach to AML to be fundamentally ineffective.

Studies modelling the effects of AML regulation that have arrived at conclusions supporting the effectiveness of AML have been predicated on the hypothesis that AML law acts as a deterrent for predicate offenders and serves to reduce criminal activity. In testing this hypothesis, FERWERDA's empirical estimation, for example, held that "improved anti-money

[246] For instance, the fourth AMLD, as amended by the fifth AMLD (Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU), now requires Member States to maintain 'comprehensive statistics on matters relevant to the effectiveness' of their systems to combat money laundering (art. 44).

[247] For an initial academic step that has been taken in this direction, see notably J.FERWERDA, "The Economics of Crime and Money Laundering: Does Anti-Money Laundering Policy Reduce Crime?", *Review of Law & Economics* 2009, vol. 5(2), 903-923.

[248] B. VOGEL, "Reinventing EU Anti-Money Laundering, Towards a Holistic Legal Framework" in B. VOGEL, J. MAILLART (eds.), *National and International Anti-Money Laundering Law: Developing the Architecture of Criminal Justice, Regulation and Data Protection*, Intersentia 2021, at p. 896.

laundering policies…are associated with lower crime levels", and that it is possible to achieve such reductions in rates of crime particularly by "increasing the probability of being caught for money laundering and the predicate crime, increasing the punishment for money laundering and by increasing the transaction costs of money laundering."[249] Similarly, a more recent empirical study of money laundering and its regulation in a large number of countries by CHONG and LOPEZ-DE-SILANES found that "tougher money laundering regulation…are [*sic*] linked to lower levels of money laundering across countries."[250] In their view, this is particularly the case with those AML legal frameworks that criminalize the feeding of illicit funds into the financial system and promote disclosure on the part of financial institutions, which they see as especially important aspects of AML. On this basis, these authors concluded that "[i]n contrast to those that are skeptical of the usefulness of anti-money laundering regulation, our data show a positive impact of several of its features and their enforcement."[251] Meanwhile, others have called for the continuing development of AML systems to ensure that they "remain robust", especially in terms of addressing threats posed by other forms of money laundering in sectors beyond the financial industry.[252] This therefore indicates that in some academic quarters AML is considered to be both an effective and advisable tool in addressing the risks posed by money laundering.

Clearly, however, there are many scholars in the field who do not share this favourable perspective on the effectiveness of AML.[253] Of these opposing viewpoints, most adopt the position that the design of AML in its current form lacks effectiveness, and therefore advocate for remedial reforms to AML systems in order to increase their effectiveness. In an early economic analysis of AML regulation in Italy, MASCIANDARO, for instance, argued that the effectiveness of the regulation was limited, not only because the application of the law produced a low number of notifications of suspicious cases, but also because it gave rise to significant regulation-related costs, including in terms of burdens imposed on financial intermediaries, which impaired the efficient functioning of the financial system.[254] In other words, his model

[249] J.FERWERDA, "The Economics of Crime and Money Laundering: Does Anti-Money Laundering Policy Reduce Crime?", *Review of Law & Economics* 2009, vol. 5(2), 903-923, at 923.
[250] A. CHONG, F. LOPEZ-DE-SILANES, "Money Laundering and its Regulation", *Economics & Politics* 2015, vol. 27(1), 78-121, at 78.
[251] *Ibid*, at 121.
[252] See particularly J. SIMSER, "Money Laundering: emerging threats and trends", *Journal of Money Laundering Control* 2013, vol. 16(1), 41-54.
[253] Cf. J. VAN KONINGSVELD, "Money laundering – 'You don't see it, until you understand it': rethinking the stages of the money laundering process to make enforcement more effective" in B. UNGER, D. VAN DER LINDE (eds.), *Research Handbook on Money Laundering*, Edward Elgar 2013, p. 435.
[254] D. MASCIANDARO, "Money Laundering: the Economics of Regulation", *European Journal of Law & Economics* 1999, vol. 7(3), 225-240.

demonstrated "an unsatisfactory solution to the efficiency-effectiveness trade-off"[255] in the state of Italian AML regulation at the time. At the same time, however, MASCIANDARO concluded that it was feasible to increase the effectiveness of AML regulation while simultaneously reducing its costs by improving standards of efficiency, and therefore that policymakers should "orient policy efforts in the direction of an effective-efficient regulation."[256] Much more recently, a comparable argument has been advanced by NAHEEM, who used models derived from agency theory to describe the effects of AML regulation on the financial sector.[257] He too maintains that AML regulation is not as cost-effective as it could be, particularly because "the administrative and resource implications of AML compliance have been consistently increasing, which is proving to be a burden on the banking sector and increasing the costs for business clients because of time delays and increased information gathering."[258] Accordingly, NAHEEM contends that AML regulation should be less complex and cumbersome, so as to ensure that financial institutions can continue to provide speedy and inexpensive services and thereby that banking operations remain fruitful and attractive for clients.

Others, though, have gone further in their criticism, and are doubtful of the possibility of improving AML systems in the way they are currently conceived. One of the most striking economic assessments in this respect is that of GEIGER and WUENSCH, whose analysis of the costs and benefits of AML measures in Switzerland, Germany and Singapore found that "[c]ompared with the monetary and non-monetary costs of money laundering prevention for the society and the economy, the benefits are small."[259] According to these authors, this is essentially because the implementation costs and collateral damage that can be caused to legitimate areas of the economy and society by AML regulations are high – and these are not offset by benefits in terms of reductions in predicate offences, which are minimal, since the current money laundering framework has largely failed to diminish predicate crime.[260] In turn, the reason for this, they argued, is that the appeal of money laundering depends on various

[255] *Ibid*, at 239.
[256] *Ibid*, at 238. See also previously D. MASCIANDARO, "Money Laundering Regulation: The Micro Economics", *Journal of Money Laundering Control* 1998, vol. 2(1), 49-58, 52.
[257] M. NAHEEM, "The agency dilemma in anti-money laundering regulation", *Journal of Money Laundering Control* 2020, vol. 23(1), 26-37.
[258] *Ibid*, at 26.
[259] H. GEIGER, O. WUENSCH, "The Fight Against Money Laundering: An Economic Analysis of a Cost-Benefit Paradoxon", *Journal of Money Laundering Control* 2007, vol. 10(1), 91-105, at 91.
[260] The authors note that this failure is a "common opinion", and indeed there are many who have expressed this opinion. For an overview of perspectives on this point see further P. van DUYNE *et al.*, *The Critical Handbook of Money Laundering: Policy, Analysis and Myths*, Palgrave Macmillan 2018, p. 260 ff.

factors, of which the cost of engaging in the activity (which is increased by AML) is only one. Furthermore, they did not even consider the protection of the financial system against use by criminal actors to be a practicable aim by which the benefits of AML should be measured.[261] So, for these reasons, they reached the conclusion that "[i]nstead of broadening and deepening the current AML framework, a thorough review of the current approach should take place."[262] And a similar concern has also been expressed more recently by VAN DUYNE *et al.*, who, on the back of their extensive survey of money laundering policy, "question the added value of many of the anti-money laundering legal tools."[263] Still, for the most part, the focus of the more critical voices in the literature on AML regulation has been on specific issues with its design and on how these should be addressed so as to improve the overall effectiveness of existing AML systems.

B. Effectiveness of AML regulation in other sectors

In recent times, AML law has expanded beyond the financial sector, with other markets now being subjected to AML frameworks. Of these, one notable example is the art market, following the adoption of the fifth AMLD, which added 'persons trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses' to the scope of the fourth AMLD.[264] And some countries have since gone further still, with the prime example for the present study being the decision by the Belgian legislator to extend the scope of application of its AML framework to the professional football sector, notwithstanding the fact that neither the sports sector in general nor the football sector in particular have as yet been included within the scope of the EU anti-money laundering directives. In turn, such developments have sparked further writings on the subject of AML specifically in these areas. Of course, being recent developments, these are smaller branches of literature than that on AML in the financial sector – and when it comes to the professional football sector, as was already indicated in the introduction, the number of publications on the matter is very limited. Nevertheless, in this section the most noteworthy academic assessments that have been carried

[261] H. GEIGER, O. WUENSCH, "The Fight Against Money Laundering: An Economic Analysis of a Cost-Benefit Paradoxon", *Journal of Money Laundering Control* 2007, vol. 10(1), 91-105, 102.
[262] H. GEIGER, O. WUENSCH, "The Fight Against Money Laundering: An Economic Analysis of a Cost-Benefit Paradoxon", *Journal of Money Laundering Control* 2007, vol. 10(1), 91-105, at 91.
[263] P. van DUYNE *et al.*, *The Critical Handbook of Money Laundering: Policy, Analysis and Myths*, Palgrave Macmillan 2018, at p. 308.
[264] Art. 1(1)(c)(i) of the fifth AMLD. See also Art. 1(1)(c)(j), which included 'persons storing, trading or acting as intermediaries in the trade of works of art when this is carried out by free ports' as well. In both cases, the EU AML legal framework applies 'where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more'.

out in these more recent fields of application of AML law will be outlined, starting with AML in the art sector, before finally moving to writings on AML in the professional football sector. And, as we will see, the literature that has been produced so far in these other sectors reflects much of the criticism that has been levelled by scholars at AML in the financial sector.

1. Effectiveness of AML regulation in the art sector

The expansion of AML law into the art sector is a development that has taken place not only in the EU with the adoption of the fifth AMLD in 2018, but also in the US following the introduction of the Illicit Art and Antiquities Trafficking Prevention Bill of the same year. These legislative initiatives were prompted by concerns that, in response to more stringent AML regulation of the financial sector, criminals are increasingly turning to the art market for the purposes of funneling illicit proceeds, to the extent that money laundering has become commonplace in the art industry.[265] The art market is considered to be inherently vulnerable to money laundering, given the high and highly variable prices involved in the purchase of artistic assets, coupled with a lack of transparency and of pre-existing regulation within the industry.[266] As a result, both the US and the EU legislators have deemed it necessary to extend preventive AML measures and reporting obligations to art dealers and auction houses, albeit once again while endeavouring to balance the desire to deter money laundering activities against the need to limit the burdens on these businesses in the art market.

Now, just as in the financial sector, there are those who see this as a positive move. In an initial note on the US initiative, for example, SHEA has argued that "focusing on targeted enforcement and deterrence through existing anti-money laundering laws offers the best approach to both preventing wrongdoing in the industry and ensuring the future stability of the market."[267] In her view, this is because prior attempts at self-regulation of the industry have not sufficiently incentivized operators in the art market to address risks in, and increase the transparency of, their activities. By contrast, she believes legislative intervention imposing obligations of reporting and disclosure on such operators could be a more effective means of instigating them to discover and deter criminals using the art market to launder illegal profits – although again this belief is posited on the pre-condition that the AML laws are "properly and rigorously

[265] See A. SHEA, "Shooting Fish in a Bliss Bucket: Targeting Money Launderers in the Art Market", *Columbia Journal of Law & the Arts* 2018, vol. 42(2), 665-687, 667, and also S. HUFNAGEL, C. KING, "Anti-money laundering regulation and the art market", *Legal Studies* 2020, vol. 40(1), 131-150, 132.
[266] *Ibid*.
[267] A. SHEA, "Shooting Fish in a Bliss Bucket: Targeting Money Launderers in the Art Market", *Columbia Journal of Law & the Arts* 2018, vol. 42(2), 665-687, 667-668.

enforced."[268] As has also been seen in the academic debate on AML in the financial industry, however, others have offered a considerably less favourable outlook on the value of extending AML regulation to the art market, pointing in particular to the adverse side-effects of such regulation on the commercial activities of operators on the market, as well as issues with enforcement. According to HUFNAGEL and KING, for instance, while an expansion of the AML regime to the art sector will serve to increase transparency within the sector, it will also disproportionately increase costs for dealers and auction houses (and especially small businesses), as well as inhibiting their freedom of operation and impacting their business.[269] In other words, "[a]ll downsides of the AML regime that manifest in other sectors are now feared to apply to the art market".[270] Furthermore, in line with many commentators on AML in the financial sector, these authors also doubt whether AML actually works, bearing in mind the absence of supporting evidence on the matter.[271] In this respect, they note in part the unclarity surrounding the very objectives of AML regulation, and also a lack of attention paid to the aspect of enforcement of AML obligations and how to incentivize compliance.[272] Thus, on the basis of these considerations, HUFNAGEL and KING reach the conclusion that "the extension of the AML regime [to the art market] is not justified."[273] Once again, though, some of the critical viewpoints that have been expressed on this extension have rather focused their critique more on possible reforms. For example, RAUSCH *et al.* have also pointed to similar issues AML law in the art market, noting that it is still far from clear under what circumstances obliged entities need to report suspicious transactions, and that there is a chronic lack of attention towards combating money laundering in this domain on the part of the authorities.[274] Still, they consider that the expansion of AML regulation into the art sector is needed in order to ensure greater transparency in the market, albeit with a concomitant need to clarify ambiguities in the regulation itself, as well as to increase the attention of investigative authorities in its application.[275]

2. Effectiveness of AML regulation in the football sector

[268] *Ibid*, at 687.
[269] S. HUFNAGEL, C. KING, "Anti-money laundering regulation and the art market", *Legal Studies* 2020, vol. 40(1), 131-150, 145.
[270] *Ibid*, at 150.
[271] *Ibid*, 148.
[272] *Ibid*, 146-147.
[273] *Ibid*, at 145.
[274] See C. RAUSCH *et al.*, "'Dirty money, pretty art': Witwassen en ondermijning in tijden van financialisering van kunst", *Justitiële verkenningen* 2020, vol. 46(4), 28-40, 36-37.
[275] *Ibid*.

As has already been explained in this report, the further extension of the AML legal framework to the professional football sector within the EU has been mooted for some time already. Meanwhile, at the international level, the 2009 FATF report, to which reference has already been made, and which discussed a number of cases in which the football sector has been used as a vehicle for the laundering of criminal proceeds, suggested among other things the adoption of self-regulatory measures to make the transfer system less attractive to money launderers.[276] Such ideas have been contemplated on the back of perceived vulnerabilities in the financing and structure of football, particularly with respect to the transfer market and club or player ownership, as well as – again – the concern that more stringent AML measures in the financial sector will push money launderers towards other sectors like the football sector.[277] As yet, though, the step of expanding EU AML law so as to cover professional football has not been taken – but this notwithstanding it has within the national context of Belgium, at the time of transposition of the fifth AMLD. This is an even more recent development in AML law and, as such, it should come as little surprise that even less research has been done on AML in this sector to date. The issue of money laundering has been touched upon in connection with other aspects of football regulation, such as the regulation of player agents, and the particular susceptibility of the football sector to money laundering and the need for greater intervention has also been recognized by commentators in the literature.[278] However, studies assessing the application of AML law to the football sector are still few and far between.

Still, there are two noteworthy contributions in this respect that have been published in the past year (at the time of writing). One initial appraisal of AML-related initiatives in the professional football sector has been provided very recently by NELEN, who actually looked at non-legislative measures taken to address risks of financial malpractice and corporate instability, such as the so-called 'Fit and Proper Persons Test' for football club owners and directors introduced by the Football Association in England, or the Financial Fair Play regulations of UEFA.[279] While such measures are not comparable to the extension of the Preventative Anti-

[276] FINANCIAL ACTION TASK FORCE, "Money Laundering through the Football Sector", Paris, 2009, FATF/OECD, 37.
[277] S. CINDORI, A. MANOLA, "Particularities of anti-money laundering methods in football", *Journal of Money Laundering Control* 2020, vol. 23(4), 885-897, 896.
[278] See for example I. BLACKSHAW, "Money Laundering and Tax Evasion in football", *International Sports Law Journal* 2009, vol. 3(4), 143; E.g. KEA – CDES – EOSE, *Study on Sports Agents in the European Union*, November 2009, https://ec.europa.eu/assets/eac/sport/library/studies/study-sports-agents-in-eu.pdf (accessed 31 March 2022); F. DE SANCTIS, *Football, Gambling, and Money Laundering*, Cham, Springer, 2014; and again more recently S. CINDORI, A. MANOLA, "Particularities of anti-money laundering methods in football", *Journal of Money Laundering Control* 2020, vol. 23(4), 885-897.
[279] H. NELEN, "Detection and Prevention of Money Laundering in Professional Football" in H. NELEN, D. SPIEGEL (eds.), *Contemporary Organized Crime. Developments, Challenges and Responses*, Cham, Springer, 2021.

Money Laundering Law in Belgium, they do nevertheless constitute a form of external supervision of aspects of football financing. Yet, even if he agrees that efforts to enhance external supervision of the football sector are welcome (and would be particularly compelling in respect of players' agents, given the key role they play in player transfers), NELEN does not consider this to be a cure-all solution to the problem of money laundering in professional football.[280] On the contrary, in his view, "[a]lthough the response of strengthening external supervision of the football sector would be the most noticeable for outsiders…[t]he forces necessary to curb the money laundering problem in professional football are most likely to have to come from within the closed bastion of the football world rather than from outside."[281] In particular, he argues that the exposure of covert dealings between parties involved in football financing needs to be promoted by convincing such parties of the importance of full disclosure of commercial activities in the sector, as well as through whistleblowing schemes and other internal measures – and not only by relying on external measures.[282] In other words, NELEN advocates "a more comprehensive approach", combining different strategies including but not limited to external supervision, on the basis that "an awareness strategy would yield as many, if not more, results."[283]

Then, even more recently – and of more direct applicability to the present study – HOUBEN has published a prospective piece specifically on the expansion of the Belgian PAML.[284] Overall, his first impression is that this expansion is an understandable policy choice, particularly insofar as it seeks to bring greater transparency to the professional football sector in Belgium, from which the sector will benefit in his opinion. However, he also emphasizes the need for a proportionate approach to the application of the standards in the PAML to the sector – given the significant effects it can be expected to have on Belgian football clubs, the RBFA and player agents who are active on the Belgian market, especially in relation to player transfers – as well as the need to properly sanction non-compliance within the obliged entities. In addition, he highlights specific issues arising from the application of the legislation to the particular features of the football industry, such as notably the questions of what constitutes a "client" and a "business relationship" within the meaning of the legislation, which are important starting points for its application, as has also been discussed in the present study. Moreover, HOUBEN

[280] *Ibid*, p. 131.
[281] *Ibid*, at p. 132.
[282] *Ibid*.
[283] *Ibid*, at p. 133.
[284] R. HOUBEN, "Het Belgische profvoetbal aan anti-witwasnormering onderworpen – Een kritische analyse in context", *Rechtskundig Weekblad* 2022, vol. 21, 811-822.

criticizes the fact that these legislative amendments have been introduced at the Belgian national level, which he believes constitutes a competitive disadvantage for Belgian professional football clubs.[285] In this sense, he argues that true effectiveness of this kind of legislation in Europe can only be achieved through EU harmonization, on the grounds that money laundering in professional football is intrinsically a cross-border issue concerning European (not to mention even international) markets, and regulation only in certain Member States will lead to a situation where clubs in the internal market operate on unequal regulatory playing fields.[286]

C. Insights on the research topic for the present study

This literature review has laid out a theoretical and methodological framework for the analysis of AML regulation, particularly from an economic perspective. This framework is centred around a cost-benefit analysis of AML legislation, which allows for not only the conceivable economic benefits of AML law to be considered, but also for the actual and potential costs and deficiencies of AML obligations to be taken into account. As with any assessment of legislative effectiveness, such an analysis must be carried out in light of the main goal(s) of the legislation in question, which may be to insulate markets from criminal activity, or to prevent and prosecute predicate offences, or a combination of the two. In addition, the variables of compliance and enforcement must be factored into this analysis, as these can have a significant impact on the effectiveness of the legislation. It is also important to bear in mind the lack of available data on the effectiveness of AML measures, although even in the absence of such data it is still possible to evaluate legislation in terms of its expected or likely outcomes, as the present study seeks to do.

The literature on AML and its effectiveness, particularly though not only in the financial sector, identifies and discusses a multitude of issues and bones of contention in the regulation of AML. One encounters substantial tensions between the aims that AML legislation is, or should be, intended to achieve, as well as around how AML measures should be designed and applied in order to give effect to these aims. From this literature review, it has become apparent that the effectiveness of AML is certainly disputed, and that many scholars have a critical, if not even

[285] See also R. HOUBEN, A. VAN DE VIJVER, N. APPERMONT, G. VERACHTERT, *Taxing Professional Football in the EU. A Comparative Analysis of a Sector with Tax Gaps*, Publication for the Economic and Monetary Affairs Subcommittee on Tax Matters (FISC), European Parliament, Luxembourg, 2021, p. 18-19.

[286] On the wider need for more 'meta-governance' by the EU in the field of sports and particularly football, see also A. GEERAERT *et al.*, "The governance network of European football: introducing new governance approaches to steer football at the EU level", *International Journal of Sport Policy and Politics* 2013, vol. 5(1), 113-132.

sceptical, view on the matter. This is partly because the benefits of AML regulation appear to be limited, or at least uncertain, but also because it is widely seen to imply considerable costs for the markets and actors that it regulates. While it seems to be generally accepted that AML measures have the effect of increasing transparency in these markets, it is far from clear that they serve to deter predicate crime, let alone that they protect the integrity of legal economies and lawful businesses from being infiltrated by criminal actors and contaminated by illicit proceeds. At the same time, entities in the market on which reporting and due diligence obligations are imposed face additional costs of compliance with such obligations, which can also lead to indirect costs for the market as a whole in terms of the degree of efficiency with which it functions and the economic freedom with which it operates.

As far as the effectiveness of AML in the football sector is concerned, the state of the art in the literature is still at a very early stage of development. Nevertheless, extrapolating insights from scholarship on AML in the financial sector, and also drawing on the qualitative empirical findings from the interviews conducted as part of the present study[287], it is possible to arrive at some preliminary conclusions and proffer some initial forecasts. Whereas AML regulation can be expected to enhance the transparency of the professional football market, this should be understood as a means to an end, rather than an aim in and of itself. It is important to be clear on (and in turn to communicate clearly) what the primary goal of extending AML obligations to actors in the football sector ultimately is in the jurisdiction concerned, and particularly whether the emphasis is on tackling criminal activity or safeguarding the financial health and image of the football economy, as this has inevitable implications for the optimal content and application of specific AML measures under the legal framework. Judging particularly from the interviews conducted in this study, it seems the Belgian legislator still has work to do in this respect. This need for clarity of purpose is all the more important given the costs that such measures will entail for obliged entities in the football sector, especially for football clubs and player agents, as well as for the transfer market as a whole. And, in this respect, one can even foresee added difficulties in view of the specificities of the professional football industry. For example, as has already been discussed in detail in this report, understanding who the 'customers' of football clubs are for the purpose of the 'Know Your Customer' requirements presents a particular challenge, as does the level of scrutiny that clubs should apply before deciding to file a Suspicious Activity Report, taking into account the limited resources that

[287] See in particular Interview S. Francis; Interview W. Georges; Interview K. Verstringe, as well as Interview P. De Beus.

many clubs (not to mention FIUs and law enforcement authorities) have. Also, additional regard needs to be had to specific structures of and relationships in the football sector, and especially the role of football federations and governing bodies as stakeholders beyond the actors on the transfer market. Furthermore, AML obligations carry with them distinct challenges for the smooth functioning of the transfer market itself, particularly where it is not possible to make use of an exception regime, as the bureaucracy involved in complying with these obligations may impede the efficiency of player transfers, which often rely on the ability of clubs and agents to finalize deals freely and quickly, especially during the short-lived transfer windows and in the rush before transfer deadlines. All of these added complications suggest that there may be a need to tailor the AML framework, which was classically devised for the financial sector, to the specifics of the football sector, at least in its practical application, if not also in its substantive requirements.

Along with these initial expectations, it can also be anticipated that the effectiveness of the application of the AML legal framework to the football sector will depend to a significant extent on the quality of enforcement of the obligations that it lays down. Given the risk of non-compliance on the part of deliberate wrongdoers within obliged entities, particularly as a consequence of interaction with criminal actors, there is a real prospect of law-abiding operators bearing the bulk of the burden of the legislation with scant reward for them or the football economy as a whole, unless the legislator and the authorities dedicate sufficient attention and resources to detecting and prosecuting infringements and circumventions of AML obligations. While AML law places the onus on obliged entities to comply with their preventive and reporting obligations and enforcement of these obligations may be difficult, there seems to be a general consensus in the literature – even among those who look upon AML regulation favourably – that proper enforcement is an essential ingredient in the effectiveness of AML. The potential for the AML framework to combat predicate crime and/or to make the football industry less vulnerable to money laundering would seem to rely greatly on the existence and implementation of a strong sanctioning regime. At the same time, the importance of gathering data on the application of AML should also be borne in mind. It was seen that there is a lack of reliable data even with respect to the application of AML measures in the financial sector, which have been in existence already for many years. Future research in the field should therefore seek to collect and analyze solid data on the application of AML law to the football sector over time, in order to be able to provide more definitive assessments regarding its effectiveness. This endeavour was beyond the scope of the present study, the intention of which was to gather some

preliminary qualitative data on the matter, but a future study seeking to assemble extensive quantitative data in this respect would undoubtedly advance the state of knowledge in the field.

VI. Conclusion: Provisional assessment of the application of the PAML to professional football, recommendations and impact of the research

Professional football has, for over a decade, been recognized as a sector vulnerable to money laundering. This has led to significant attention for money laundering practices in professional football by for example the Financial Action Task Force and the institutions of the European Union, most notably the European Commission and the European Parliament. During the past decade, several international investigations and scandals have surfaced in professional football which demonstrated the existence of money laundering practices and criminal activities taking place. However, notwithstanding the increasing attention for the existence, the detection and prevention of money laundering practices in professional football, the sector has not been included in the scope of the European preventive anti-money laundering legal framework.

However, due to a major scandal, involving serious allegations of match-fixing, tax fraud and money laundering in Belgian professional football, the Belgian legislator, in its implementation of the 5th European Anti-Money Laundering Directive, chose to include the Belgian professional football sector in the Preventive Anti-Money Laundering Law in the summer of 2020. This law has entered into force in July 2021 and is currently in force regarding the Royal Belgian Football Association and Belgian professional football clubs. The law has not yet entered into force regarding player agents. This is due to the fact that the Belgian legislator still needs to adopt an agreement with the Belgian Regions because of the constitutional division of powers in Belgium.

However, more than half a year after the entry into force of the PAML regarding the RBFA and Belgian football clubs, implementing regulations are still lacking. The relevant government authorities are still in the process of developing such regulations, in consultation with the sector. In practice, therefore, it is, at the time of writing, hard to determine the exact scope of application of the PAML and the exact obligations it imposes upon these actors. The fact that the Law of 20 July 2020, which included the Belgian professional football sector in the PAML, was adopted in the summer of 2020 and that almost a year after its entry into force in July 2021, implementing regulations are still lacking, can be taken to demonstrate that the exact way in which the AML framework can or should apply to professional football is far from self-evident.

In the absence of such implementing regulations, we have made our own assessment as to which actors can be considered as ‘clients’ who enter into a ‘business relationship’ or an ‘occasional transaction’ with Belgian football clubs or the RBFA.

This exercise, coupled with an analysis of the PAML's legal framework, the intentions of the legislator and the first experiences from stakeholders in the field, uncovered several challenges to the (intended) application of the preventive anti-money laundering legislation to professional football and its ability to achieve its goals.

A first important challenge is that the client concept, when interpreted in accordance with its common meaning, does not match well with the business structure of modern professional football and that its standard application risks focusing the application of anti-money laundering obligations to legal relationships with parties that, from an AML perspective, do always not seem to pose the gravest money laundering risks, such as fans. This interpretation can include sponsors, the Belgian Pro League, football clubs that obtain a player transfer from a Belgian club, holders of broadcasting and media rights and arguably even UEFA. However, other actors such as football clubs transferring a player to a Belgian club, player agents, staff and independent contractors are normally not covered by this interpretation. A similar analysis was made within the context of the RBFA's status as an obliged entity, where fans, sponsors and media rights holders could be qualified as clients of the RBFA, but generally not clubs, UEFA or FIFA, player agents, staff, the Pro League or independent contractors. However, every such legal relationship should be assessed *in concreto* in order to decide whether a legal relationship with one of these actors should give rise to AML obligations or not. This assessment cannot be made in the abstract.

We argued that the FPS Economy, as the supervisory authority, could also opt for a different interpretation of the client concept. Such a 'multilateral or two-way' interpretation would imply that every transaction in which an obliged entity is involved either as client or as seller/supplier of a good or service would lead to the application of AML obligations under the PAML for the obliged entity. Such a multilateral interpretation can also be used in a 'targeted manner' by only applying it to certain actors and not to others, in order to 'fine-tune' the scope of the PAML. Such an interpretation of the client concept would however not be without its problems, such as overreach, respect for the constitutional principle of equality, an increased administrative workload and the conformity of such an interpretation with the text of law itself.

A second important challenge is that the structure and application of the PAML does not take into account the specific manner in which international football is structured. On the basis of this structure, which is shaped and governed by *inter alia* the FIFA and UEFA Statutes and regulations, actors subjected to the PAML such as the RBFA and clubs play a specific role within this system. For example, in case of the RBFA, which acts as a member association of

FIFA and UEFA, this role includes a regulatory and disciplinary oversight of e.g. clubs and player agents. This role may cause frictions with the application of AML obligations by the RBFA. This is because, even though the RBFA is, according to our analysis, not obligated to treat clubs and player agents as its clients, the supervising authority still expects it to carry out AML obligations regarding these actors. However, can the RBFA, for instance, refuse to grant a license to a club on the basis that it suspects a money laundering risk might be present, and thereby risk legal proceedings being instigated by that club? Can the RBFA grant a license while having made a notification to the Belgian Financial Intelligence Unit? Does it then risk being regarded as condoning such activities by the authorities or public opinion? All in all, the position of an obliged entity under anti-money laundering legislation generates a friction with such self-regulatory mechanisms which are common in the international professional football governance structure.

A third important challenge consists of the limited territorial scope of the PAML. Because Belgium is the only country that has subjected the professional football sector to the PAML, there is always the (theoretical) possibility for actors to move to another jurisdiction where no similar obligations apply. In practice, this course of action can only be taken by player agents. Another limitation consists of the fact that the possibility for the Belgian and foreign FIUs to engage in exchange of information is more limited with regard to the football sector, because football clubs, national football associations and player agents are not obliged entities in other jurisdictions and are therefore not obliged to make notifications to their national FIUs, which may imply that relevant authorities in other jurisdictions do not possess as much information.

A fourth important challenge, which is related to the territorial application of the PAML, is that the observance of AML obligations by Belgian clubs may cause difficulties within the context of the international transfer system, because it increases the administrative burden on Belgian football clubs when engaging in a transfer. The requirement that Belgian clubs should, in principle, comply with certain obligations before entering into a business relationship or transaction with another club, may cause problems in the face of strict transfer deadlines. Such deadlines are not regular in other sectors which are subjected to AML legislation. Clubs established in other jurisdictions and which may not have much affinity with the Belgian anti-money laundering legal framework might not understand why Belgian clubs are asking for information, might not have such information to hand or may even be unwilling to cooperate with such requests. Belgian clubs risk being bypassed by such clubs in favour of clubs established in other jurisdictions to which no AML obligations apply. In practice, it also seems

hard to determine exactly *when* these obligations should be complied with, because it may be hard to pinpoint the exact start of the 'business relationship' in the case of a player transfer. Such a transfer is often preceded by informal contacts and negotiations between the different parties involved. For multiple reasons, then, Belgian football clubs seem to suffer a competitive disadvantage as a result of the application of the AML framework.

From the interviews, it also became clear that, in practice, a 'learning period' seems to have been observed during which the FPS Economy, the clubs and the RBFA have relied on dialogue and informal contacts and working methods to establish 'roadmaps' for the exact application of the anti-money laundering obligations in practice, and during which no sanctioning has taken place. In this process, the clubs have relied on their interest group, the Pro League. This again demonstrates that the development of implementing regulations for the professional football sector is not an easy task. While a positive aspect in itself, it is a pity that such a process had not already taken place before the entry into force of the PAML regarding professional football. If this had been the case, implementing regulations might have been available sooner after the entry into force of the law.

Recommendations

Several recommendations and takeaways can be formulated on the basis of our analysis of the Belgian anti-money laundering framework regarding professional football. These recommendations can be of interest not only to the Belgian legislator but also to any jurisdiction contemplating the extension of its anti-money laundering framework to professional football, as well as for interested stakeholders from the field of professional football.

Recommendation 1: Formulate the envisaged aims and assess whether these can be achieved through an AML approach

On the basis of the available literature and on the basis of the provisional Belgian experiences, it remains to be seen whether the application of anti-money laundering legislation to the professional football sector is able to achieve the Belgian legislator's apparent goal of rendering the sector less susceptible to infiltration by criminal actors or contamination by illicit proceeds. In economic terms, it is unsure whether the gains exceed the (significant) costs which accompany the application of the AML framework. It is not a given that the application of AML

legislation (in its current form) constitutes the most efficient way to achieve these goals. Any legislator needs to thoroughly consider whether the application of AML legislation will work to achieve the intended aims. This also entails that it is important to be clear first and foremost on what the primary goal of extending AML obligations to actors in the football sector ultimately is in the jurisdiction concerned, and particularly whether the emphasis is on tackling criminal activity or safeguarding the financial health and image of the football economy, as this has inevitable implications for the optimal content and application of specific AML measures – if not even the choice as to whether these aims are best served by the application of AML legislation in the first place.

Recommendation 2: Tailor the AML framework to the specifics of professional football in order to ensure its proper functioning, preferably in consultation with the sector

If one is indeed convinced of the need for the application of AML legislation to professional football, it is advisable to tailor the applicable AML framework to the specifics of the football sector and to take into account the various roles that actors have within the global governance model of professional football. Classic AML concepts, such as the concept of 'customer' or 'business relationship', will need to be clarified and (re)defined, preferably within the law itself, to ensure the proper functioning of the AML framework, while providing sufficient legal certainty. It is also advisable that the framework should take into account the specific regulatory and disciplinary roles of the national football associations, as well as FIFA and UEFA. Specific attention should also be dedicated to coexistence of AML obligations with self-regulatory mechanisms such as clearing mechanisms, licensing regulations, etc. It should be specified what can reasonably be expected from the national associations when they are engaged in such self-regulatory activities in light of their AML obligations. Another point of attention is the smooth functioning of the transfer market. Here, it seems most advisable to allow for more leeway for ex post compliance with AML requirements, in order to safeguard the smooth operation of the transfer market while achieving the aims of the AML framework.

In short, the legislator should take informed decisions regarding the application of the AML framework to professional football, and strike a balance between the aims pursued by the legislator, the effectiveness of the AML framework and the proper functioning of the professional football sector.

Recommendation 3: Aim for a level regulatory playing field

If one is indeed convinced of the need for the application of AML legislation to professional football, unlevel regulatory playing fields should be avoided. It would therefore be advisable to include the sector in the European AML framework to ensure a more level regulatory playing field within the European Union. Preferably, similar regulations could be introduced in third countries as well, for example in the UK. Because of the transnational character of global and European football, a more level regulatory playing field decreases the risk of competitive disadvantages. At the same time, a European approach could be expected to increase awareness and transparency in the market, as well as the exchange of information between national FIUs, while equally reducing the risk of player agents circumventing their AML obligations by employing exit strategies through moving to other jurisdictions. Due to the importance of the European football market, a European approach would probably also increase the willingness of clubs and actors established outside of the EU to provide the necessary information to European clubs when engaging in transactions.

Recommendation 4: Ensure the quality of enforcement

The application of AML legislation imposes a significant administrative burden on obliged entities, which are effectively forced into the role of gatekeepers. One should be mindful that many professional football clubs in European national competitions may not be readily equipped to deal with the administrative burden of AML legislation. It can be expected that this risk could be higher in competitions with a large number of small clubs. Moreover, even larger organizations such as clubs and associations require enough time and legal certainty on the interpretation and application of specific AML concepts and obligations to be able to comply with their AML obligations in respect of existing legal relationships. The same can be said for player agents who operate on an individual basis. And precisely because of these high administrative burdens, governments bear the responsibility to ensure the quality of enforcement on at least two levels. On the one hand, this relates to the enforcement of the obligations laid down by the preventive anti-money laundering system. Given the risk of non-compliance on the part of deliberate wrongdoers within obliged entities, particularly as a consequence of interaction with criminal actors, there is a real prospect of compliant operators bearing the bulk of the burden of the legislation with scant reward for them or the football economy as a whole, unless the legislator and the authorities dedicate sufficient attention and

resources to detecting and prosecuting infringements and circumventions of AML obligations. On the other hand, the government bears the responsibility that notifications will be effectively investigated by their FIUs and that criminal actors will be effectively prosecuted. In footballing terms: gatekeepers can make the assist, but it is up to government authorities to score the goal.

Recommendation 5: Investigate the possibility of an institutionalized 'pilot project'

When including the football sector in a national or supranational AML framework, it is advisable to investigate the possibility of organizing a 'pilot project', which may resemble the 'learning period' we observed in Belgium, but on an institutionalized basis. Such a 'pilot project' or 'learning period' could prove useful to fine-tune the AML system to professional football and could thereby help to achieve our second recommendation.

Recommendation 6: Increase attention regarding data collection and research on the effectiveness of AML

Finally, it was seen that there is a lack of reliable data even with respect to the application of AML measures in the financial sector, which have been in existence already for many years. Future research in this field should therefore seek to collect and analyze solid data on the application of AML law to the football sector over time, in order to be able to provide more definitive assessments regarding its effectiveness. This endeavour was beyond the scope of the present study, the intention of which was to gather some preliminary qualitative data on the matter, but a future study seeking to assemble extensive quantitative data in this respect would undoubtedly advance the state of knowledge in the field.

BIBLIOGRAPHY

Legislation and official policy documents

Arrangement for Cooperation between the European Commission and the Union of European Football Associations (UEFA).

Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies.

Council Directive 91/308/EEC of 10 June 1991 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering.

Council of Europe, FIFA Transfer System Reform. Analysis and Recommendations. Expert Report, Strasbourg, 31 March 2021, https://rm.coe.int/fifa-transfer-system-reform-analysis-and-recommendations-expert-report/1680a28ad7

Council of Europe, Football Governance: business and values, Report for the Committee on Culture, Science, Education and Media, 10 January 2022, https://pace.coe.int/pdf/16a601c83cb93799c64dda4f126ba2eeb11e74eaa8ae3bd9cd778c32ff9a052f/doc.%2015430.pdf

CTIF-CFI, Guidelines for the subject entities referred to in Article 5 of the Law of 18 September 2017 on the prevention of money laundering and the financing of terrorism and on restricting the use of cash with regard to the reporting of information to the financial information processing unit, 15 August 2020, https://www.ctif-cfi.be/images/documents/Dutch/richtsnoeren.pdf

Directive 2001/97/EC of the European Parliament and the Council of 4 December 2001 amending Council Directive 91/308/EEC on the Prevention of the Use of the Financial System for the Purpose of Money Laundering.

Directive 2005/60/EC of the European Parliament and the Council of 26 October 2005 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing.

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the

Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.

European Commission, Sport in the European Union, https://ec.europa.eu/assets/eac/sport/library/documents/eu-sport-factsheet_en.pdf

European Commission, Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities, COM(2019) 370 Final.

European Commission, Commission Staff Working Document on the Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities, SWD(2019) 650 Final.

European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC, COM(2016) 450 Final.

European Commission, Proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, COM(2021) 420 Final.

European Commission, Proposal for a Regulation of the European Parliament and the Council on information accompanying transfers of funds and certain types of crypto-assets (recast), COM(2021) 422 Final.

European Commission, Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the

financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849, COM(2021) 423 Final.

European Commission, White Paper on Sport, COM(2007) 391 Final.

European Parliament, European Parliament resolution of 29 March 2007 on the future of professional football in Europe, 2006/2130(INI).

European Parliament, European Parliament resolution of 8 May 2008 on the White Paper on Sport, 2007/2261(INI).

European Parliament, European Parliament resolution of 17 June 2010 on players' agents in sports, 2011/C 236 E/14.

European Parliament, European Parliament resolution of 2 February 2017 on an integrated approach to Sport Policy: good governance, accessibility and integrity, 2016/2143(INI).

Financial Action Task Force, Money Laundering through the Football Sector, Paris, 2009, FATF/OECD.

Financial Action Task Force, "Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Providers", Paris, 2021, FATF/OECD.

Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (updated October 2021), Paris, 2021, FATF/OECD.

Financial Action Task Force, What is Money Laundering?, https://www.fatf-gafi.org/faq/moneylaundering/

Law of 18 September 2017 relating to the prevention of money laundering and the financing of terrorism and to limit the use of cash money, Belgian Official Gazette 6 October 2017, as amended by the Law of 20 July 2020 containing miscellaneous provisions regarding the prevention of money laundering and the financing of terrorism and to limit the use of cash money, Belgian Official Gazette 5 August 2020.

Ministry of Justice of the Grand Duchy of Luxembourg, ML/TF Vertical Risk Assessment: Virtual Asset Service Providers, December 2020, https://mj.gouvernement.lu/dam-assets/dossiers/blanchiment/ML-TF-vertical-risk-assessment-on-VASPs.pdf

Journal Articles and Book Chapters

R Araujo, Assessing the efficiency of the anti-money laundering regulation: an incentive-based approach, Journal of Money Laundering Control 11(1), 67-75 (2008).

R Barone & D Masciandaro, Worldwide anti-money laundering regulation: estimating the costs and benefits, Global Business and Economics Review 10(3) (2008).

I Blackshaw, Money Laundering and Tax Evasion in football, International Sports Law Journal 3-4, 134 (2009).

W Bull & M Faure, Agents in the sporting field: a law and economics perspective, International Sports Law Journal, 1-16 (2021).

A Cattaneo, R Parrish, Sports Law in the European Union (Kluwer 2013).

A Chong & F Lopez-De-Silanes, Money Laundering and its Regulation, Economics and Politics 27(1), 78-123 (2015).

S Cindori & A Manola, Particularities of anti-money laundering methods in football, Journal of Money Laundering Control 23(4), 885-897 (2020).

F De Sanctis, Football, Gambling and Money Laundering: A Global Criminal Justice Perspective (Springer 2014).

F Desmeyttere, J Goetghebuer, De herziene preventieve antiwitwaswetgeving als instrument in de strijd tegen (ernstige) fiscale fraude. Partners in crime?, Algemeen Fiscaal Tijdschrift 2021/2, 5 – 54 (2021).

J Ferwerda, The Economics of Crime and Money Laundering: Does Anti-Money Laundering Policy Reduce Crime?, Review of Law and Economics 5(2), 903-929 (2009).

A Geeraert et al., The governance network of European football: introducing new governance approaches to steer football at the EU level, International Journal of Sport Policy and Politics 5(1), 113-132 (2013).

H Geiger & O Wuensch, The fight against money laundering: An economic analysis of a cost-benefit paradoxon, Journal of Money Laundering Control 10(1), 91-105 (2007)..

C Grijseels, Het preventief antiwitwasdispositief in een nieuw kleedje. Impact op de werking van de Cel voor Financiële Informatieverwerking, Rechtskundig Weekblad 21, 803-821 (2017).

F Deruyck, F Van Volsem, P Waeterinckx, Strafrecht in de onderneming (Intersentia, 3rd ed. 2016).

R. Houben, Het Belgische profvoetbal aan anti-witwasnormering onderworpen – Een kritische analyse in context, Rechtskundig Weekblad 21, 811-822 (2022).

S Hufnagel & C King, Anti-money laundering regulation and the art market, Legal Studies 40(1), 131-150 (2020).

K Lenaerts, P Van Nuffel, Europees Recht (Intersentia 6th ed. 2017).

D Masciandaro et al., Black Finance: The Economics of Money Laundering (Edward Elgar, 2007).

D Masciandaro, Money Laundering: the Economics of Regulation, European Journal of Law and Economics 7(3), 225-240 (1999).

D Masciandaro, Money Laundering Regulation: The Micro Economics, Journal of Money Laundering Control 2(1), 49-58 (1998).

S De Somer, I Opdebeeck, Algemeen Bestuursrecht (Intersentia 2019).

A Mehdi, Unfit, improper ownership in UK football clubs in Transparency International, Global Corruption Report: Sport (Routledge, 2016).

M Naheem, The agency dilemma in anti-money laundering regulation, Journal of Money Laundering Control 23(1), 26-37 (2020).

H Nelen, 'Detection and prevention of money laundering in professional football', in H Nelen & D Siegel (eds.), Contemporary Organized Crime: Developments, Challenges and Responses (Springer 2nd ed. 2021).

C Rausch et al., 'Dirty Money, Pretty Art': Witwassen en ondermijning in tijden van financialisering van kunst, Justitiële Verkenningen 46(4), 28-40 (2020).

R Seer, The European AEOI: Risks and Opportunities of Anti-Money Laundering Acts in G Marino (ed.), New Exchange of Information Versus Tax Solutions of Equivalent Effect. EATLP Annual Congress Istanbul 29-31 May 2014 (IBFD 2015).

A Shea, Shooting Fish in a Bliss Bucket: Targeting Money Launderers in the Art Market, Columbia Journal of Law & the Arts 42(2), 665-687 (2018).

J Simser, Money laundering: emerging threats and trends, Journal of Money Laundering Control 16(1), 41-54 (2013).

P J W Steenwijk, Kwade zaken in het voetbal, Ondernemingsrecht 8, 353-364 (2021).

H Swennen, Een basisbankdienst voor ondernemingen, Revue de Droit Commercial Belge 2021/2, 113-130 (2021).

J Theunis, Het gelijkheidsbeginsel in I Opdebeeck, M Van Damme (eds.), Beginselen van behoorlijk bestuur (die Keure 2006).

A Tiberghien, Handboek voor Fiscaal Recht 2020-2021 (Wolters Kluwer 2021).

B Unger & D van der Linde (eds.), Research handbook on money laundering (Edward Elgar 2013).

J van Koningsveld, 'Money laundering – 'You don't see it, until you understand it': rethinking the stages of the money laundering process to make enforcement more effective', in B Unger & D van der Linde (eds.), Research handbook on money laundering (Edward Elgar 2013).

B Vettori, 'Evaluating anti-money laundering policies: where are we?', in B Unger & D van der Linde (eds.), Research handbook on money laundering (Edward Elgar 2013).

B Vogel, 'Reinventing EU Anti-Money Laundering: Towards a Holistic Legal Framework', in B Vogel & JB Maillart (eds.), National and International Anti-Money Laundering Law: Developing the Architecture of Criminal Justice, Regulation and Data Protection (Intersentia 2020).

P van Duyne et al., The Critical Handbook of Money Laundering: Policy, Analysis and Myths (Palgrave Macmillan 2018).

Other policy documents

FIFA Statutes,

https://digitalhub.fifa.com/m/784c701b2b848d2b/original/ggyamhxxv8jrdfbekrrm-pdf.pdf

FIFA Regulations on the Status and Transfer of Players, https://digitalhub.fifa.com/m/e7a6c0381ba30235/original/g1ohngu7qdbxyo7kc38e-pdf.pdf

FIFA Regulations governing the application of the statutes, https://digitalhub.fifa.com/m/784c701b2b848d2b/original/ggyamhxxv8jrdfbekrrm-pdf.pdf

FIFA Regulations on Working with Intermediaries, https://digitalhub.fifa.com/m/352df54820ee1a59/original/cr6dquxm2adupv8q3ply-pdf.pdf

RBFA Regulations, https://www.rbfa.be/nl/competities/bondsreglement

UEFA Statutes, https://documents.uefa.com/v/u/_CJ2HRiZAu~Wo6ytlRy1~g

UEFA Club Licensing and Financial Fair Play Regulations, https://documents.uefa.com/v/u/MFxeqLNKelkYyh5JSafuhg

Research reports and studies

J. L. Arnaut, Independent European Sport Review 2006, http://eose.org/wp-content/uploads/2014/03/independant_european_sports_review1.pdf

Deloitte, Annual Review of Football Finance, June 2020, https://www2.deloitte.com/ch/en/pages/technology-media-and-telecommunications/articles/annual-review-of-football-finance.html

Deloitte, Annual Review of Football Finance, July 2021, https://www2.deloitte.com/uk/en/pages/sports-business-group/articles/annual-review-of-football-finance.html

Ecorys, A.E. Manoli, "Mapping of Corruption in Sport in the EU. A Report to the European Commission", 2018, https://op.europa.eu/en/publication-detail/-/publication/71c67c33-1dff-11e9-8d04-01aa75ed71a1/language-en

European Leagues, "The Financial Landscape of European Football", KPMG, 2020, https://europeanleagues.com/wp-content/uploads/REPORT-THE-FINANCIAL-LANDSCAPE-OF-EUROPEAN-FOOTBALL.pdf

European Platform for Sport Innovation, Position paper on the impact of the COVID-19 crisis on the sport sector, https://euoffice.eurolympic.org/files/position_paper_COVID-19%20final_revision.pdf

Globalwebindex, Sports Around the World *2018*, https://iccopr.com/wp-content/uploads/2019/03/Sports-Around-the-World-report.pdf

R. Houben, A. Van de Vijver, N. Appermont, G. Verachtert, Taxing Professional Football in the EU. A Comparative Analysis of a Sector with Tax Gaps, Publication for the Economic and Monetary Affairs Subcommittee on Tax Matters (FISC), European Parliament, Luxembourg, 2021.

KEA – CDES – EOSE, Study on Sports Agents in the European Union, November 2009, https://ec.europa.eu/assets/eac/sport/library/studies/study-sports-agents-in-eu.pdf

KEA – CDES, The Economic and Legal Aspects of Transfers of Players, January 2013, https://ec.europa.eu/assets/eac/sport/library/documents/cons-study-transfers-final-rpt.pdf

Nielsen Sports, World Football Report 2018.

Oxford Research, Examination of Threats to the Integrity of Sports, April 2010, https://www.kennisbanksportenbewegen.nl/?file=1359&m=1422882871&action=file.download

R Parrish, A Cattaneo, J Lindholm, J Mittag, C Perez-Gonzalez, V Smokvina, Promoting and Supporting Good Governance in the European Football Agents Industry, October 2019, https://www.edgehill.ac.uk/law/files/2019/10/Final-Report.pdf

Report of 8 November 2021 on EU Sports Policy: Assessement and Possible Ways Forward, 2021/2058(INI), https://www.europarl.europa.eu/doceo/document/A-9-2021-0318_EN.html#title4

B Unger et al., The amounts and the effects of money laundering, Report for the Ducth Ministry of Finance 2006.

ANNEX I – INTERVIEWS WITH STAKEHOLDERS FROM THE FIELD

Interview Mr. Steven Mathei – Member of the Belgian Federal Parliament

15/12/2021

Interview conducted in the course of the research project 'Towards an anti-money laundering framework for professional football: an inductive inquiry on the basis of the Belgian case'.

Q: What were the main drivers for you as a policy maker to subject the Belgian professional football sector to the preventive anti-money laundering legislation?

A: *To do that, there has to be momentum at a certain point, and this momentum was there in the summer of 2020, because then the anti-money laundering law had to be adapted to the fifth European directive. This was before Parliament at the time. At the time, we were looking at the regulation of Belgian football, not only in terms of money laundering but also in terms of social security, taxation and all related matters. At that time we tabled an amendment to make football subject to the anti-money laundering law. The other aspects concerning football were approved yesterday. So there has been a lot of progress.*

We then thought, if we want to do something about it, now is the time. This was not easy, because it was not provided for in the European Directive, and so we wanted to go beyond what Europe requires. Operation Zero had also just broken out, and we received the message that the federal public prosecutor's office had also started money laundering investigations. At the same time, we had also seen the reports in 2007 and 2009 from the European Parliament and from the FATF according to which football was a high-risk sector. The Pro League itself also said in September 2017 that it wanted to work on good governance and anti-money laundering.

All of these developments combined led a number of Members of Parliament, including myself, to table an amendment to make football subject to anti-money laundering legislation as well. This amendment was eventually approved. This was also done in close consultation with the FPS Economy, which was to function as the supervisory body. We also consulted with the then Minister of Economic Affairs. All of this happened in the summer of 2020.

Q: With the extension of the preventive anti-money laundering legislation, the sector will be faced with a series of additional obligations. Do you think these additional obligations will bring more transparency to the sector? Do you think there will be positive aspects to the additional compliance costs? And do you think the expected objectives can be achieved?

A: *First of all, the less regulation the better. If things run smoothly without regulation, that is fine. But here we had to conclude that at a certain point regulation became necessary. The expert group of the Pro League itself confirmed this. At a certain moment you have to take that step.*

In terms of administrative burdens, it depends on the context in which you look at it. Here we are talking about the clubs of the Pro League. These are all professionally managed organisations that are part of a legal structure. With that legal structure come rights and duties. The duty of good governance is one of them. Good governance also includes making sure that the financial transactions you make are clean and that you are careful with them. I think these are proportionate measures. I also think that the football sector as a whole can benefit from this. Because in this way they can show, when the anti-money laundering system is fully operational, that they are taking appropriate measures, checking things and so on. It is then their ticket to show that they are working more transparently than they are today. This is important for the sector in order to maintain its credibility. It is also a way of protecting the football clubs themselves. After all, this is a socially relevant issue. Because if everything continued as it was, I would venture to suggest that football would partly be ruined as a result.

Q: There are occasional reports in the media, both domestic and foreign, that football clubs, for example, are still finding it difficult to maintain financial accounts with banks and financial institutions. Could this be a concrete example of an advantage that the additional transparency would bring to the sector?

A: *Yes, because today we have to legally impose on banks the obligation to make sure that banks will open bank accounts for legal persons.* [The speaker is referring to new legislation on basic banking services]. *I would go even further. If this continues and no measures are taken, what sponsor would want to commit to a football club, where certain things may happen that should not see the light of day. After all, they are committing their name to a club. If we take it one step further, this might even cause supporters to leave the club. There's the formal and legal part, but there are also possible consequences in terms of sponsors and supporters. So it seems to me that this is to the advantage of the sector.*

Q: So the focus was very much on the financial health of the sector, the image of the sector, etc. But was the focus also on the criminal justice aspect of deterring crimes?

A: *That was also an important aspect, but at that point it did not come up as much. The question of whether it was really about money derived from criminal activities did not immediately feature strongly. I am also active with subversive crime at the municipal level. In the Netherlands, for example, a report has been published on subversive crime in sports clubs. Criminals try to socially launder their way in, cultivate goodwill within the community and so*

on through local sports clubs. The real link with the laundering of criminal money in the Belgian football sector was not raised very often during the debates.

Q: How do you assess the effect of the preventive anti-money laundering legislation on professional football so far?

A: *I think the law is a game-changer. The law is now in force, and compliance is monitored by the FPS Economy. The Royal Decree is not yet in place. I have already asked the competent minister a number of parliamentary questions about this. Moreover, because in the parliamentary explanatory memorandum to the amendment, we have included a passage in consultation with the Federal Public Service for the Economy which gave some guidance. This information should be included in the Royal Decree. For example, under the anti-money laundering legislation, clients must be screened and assigned a risk profile. We already included that transfers and big sponsor deals are a high risk, but ticket sales to supporters should not lead to every supporter being screened and the like. We included this in the parliamentary preparations with the intention that it would later be integrated into the Royal Decree. The same with the application of the law on players' agents, where there is still a cooperation agreement between the Regions. I have also asked the Minister responsible about this. It is important that this is done quickly.*

Q: Do you think anti-money laundering legislation could be improved to better suit the professional football sector? After all, money laundering legislation was originally developed for the financial sector. Or could this be resolved by the implementing measures being developed?

A: *I think it makes sense to keep the link with the Anti-Money Laundering Act here because other sectors are also included. I do not think it makes sense to separate this. It does make sense to further specify this specifically for the sector in the Royal Decree, preferably in consultation with the sector. The most important thing is to arrive at a workable whole. But a whole that matches the anti-money laundering legislation. If we succeed in this, we will already have taken important steps.*

Q: As far as players' agents are concerned, we are indeed still waiting for the inter-federal cooperation agreement. This is also a purely Belgian initiative. Do you think that it is not easy for agents to establish themselves abroad in order to avoid the application of the Belgian law?

A: *Two things. First, if it can be regulated at European level it is better. I think it is good that our country is taking the lead on this. It is often the case that one country has to take the lead. I would like to draw a comparison with the Digitax. France unilaterally introduced a Digitax because it felt that players in the digital economy who are not based in France should also pay*

taxes in France for the services they provide in France, because other French companies do pay these taxes. Ideally, something like this would be settled at the European level or even the OECD level. Does this make sense? It does, because if you wait for it to be regulated internationally, you may be waiting a very long time. The initiative can have an important signalling function. Now, some years later, there is a global agreement on a global minimum tax that can also partly involve these players. Same here, we have now grasped it and are going to work on it. However, that does not detract from the fact that we must continue to work to regulate it internationally.

As far as agents are concerned, it is always a case of two sides. Yes, an agent can establish himself outside of Belgium. There is freedom of establishment and free movement of services. But if a broker wants to do business in Belgium, the clubs will still have to comply with their obligations when they enter into a business relationship with the brokers.

So, it is best to regulate internationally, but it is not that our unilateral actions will have no effect on the Belgian sector.

Q: Do you not fear that Belgian clubs will be put at a competitive disadvantage, given the additional compliance costs? And that they might adopt a more cautious attitude towards international transfers? Do you see a certain risk here for our football sector?

A: *Well, we have to ask ourselves: what is the disadvantage? The disadvantage may be that there is more administrative workload for the football clubs. This does not seem to me to be such a big disadvantage for a football club that they can no longer function, given how professionally they are organised. A bigger disadvantage might be that they are no longer allowed to work with rogue agents who do not meet the conditions. But this is exactly what we want to achieve. All the more reason to regulate it internationally, so other clubs can no longer do this.*

Q: An often-heard criticism in the literature of anti-money laundering legislation is that it targets actors who do not engage in money laundering. If we build on these critical voices in the literature for a moment, do we not run the risk here of generating more bureaucracy, but perhaps little result? What do you think of these criticisms?

A: *I don't think so. It doesn't seem like an immediately important argument here.*

Q: Do you have anything else that you would like to share? Or that we should definitely include?

A: *We've talked about anti-money laundering legislation now, but the overall package of measures is broader. For example, we want to combat the exorbitant brokerage fees by*

regulating them. For example, we want more transparency regarding agents' fees. Sometimes they are paid by the club, or by the player, or by both. But the player does not always know how much an agent actually earns or how much the agent is paid by the club. We now want to take the initiative that when a club pays a real estate agent, this payment from the club is only tax deductible as a professional cost of up to 3%, in line with what FIFA wants. If the payment can be made via the player, this ceiling does not apply. Because the player then receives an invoice and knows himself how much the agent is paid. The club can then pay the player more and then pass this on to the agent, but then at least everyone is aware.

Q: Will there also be an increased focus on tax audits? When a club pays a broker on behalf of a player, this is actually a benefit in kind (VAA) for the player. In practice, this is rarely if ever declared.

A: *It is indeed stated in the Minister's policy memorandum that additional attention will be paid to this during tax audits.*

To conclude, if you look at all of the measures that we want to take or have already taken, such as anti-money laundering, measures in the framework of social security, tax measures and the like, you will see that it is already a sizeable package. Then you see that it is already a comprehensive package. Five years ago, we would not have thought that we could have taken such a package of measures.

Interview Mr. Wouter Georges – Compliance Officer KAA Gent

15/12/2021

Interview conducted in the course of the research project 'Towards an anti-money laundering framework for professional football: an inductive inquiry on the basis of the Belgian case'.

Q: At this point in time, the Belgian anti-money laundering legislation has entered into force for professional football clubs. However, do you feel that the relevant representatives of professional football clubs in Belgium are informed (or at least sufficiently informed) as to what the application of anti-money laundering obligations on their clubs would entail?

A: *The announcement about the entry into force of this new law was made roughly a year ago now, but then it took quite some time before we received some clear information about its content and relevance. Only in the last few months before the starting date of 1 July did we have some information sessions organised by the Belgian Pro League together with the government's economic service. So in a way we were informed at a rather late stage about all of the concrete measures to be taken by the professional clubs, also because this depended on ongoing negotiations between the Pro League and the federal agency charged with the task of ensuring that every club is in compliance with the law. So that was kind of a problem. We were aware that there would be a new law coming on 1 July, but the concrete measures were communicated to us rather late for us to be able to prepare for it properly. Also the final, most important information session organised by the Pro League only took place on June 14, just over two weeks before the entry into force of the law, so it was a bit of a rush, and at some point the clubs even had to improvise in order to comply, because a centralised policy had not been laid out. That is, each club had to deal with it internally with their own systems and procedures in order to be compliant. So that reflected a lack of overall coordination, and I think most of the Belgian clubs would assess the preparations in the same way.*

Q: Do you feel that the professional football sector was given enough time and information to adapt to the entry into force of anti-money laundering legislation?

A: *There was some general documentation and forms that had to be used to gather all of the relevant information, which was quite useful, but the way in which clubs gathered this information was completely different. So each club used its own procedures and practices, admittedly for the same purpose, but it meant we had to do a lot of double work. Take, for example, the issue of football intermediaries. They have to be registered with the Belgian football federation, but for any transaction with an intermediary, each club carried out a*

separate check of each intermediary, which could easily be done centrally by the Belgian football federation. So that takes a lot of time and effort, especially when you have to start from scratch. Another problem was the ongoing contracts, not only for intermediaries but also for transfers of players, where instalments had already been paid, and new instalments had to be paid after the starting date of 1 July. This meant that payment processes slowed down because we had to do all of the AML checks, on clubs and clients with whom we had had a working relationship for years – and some of them did not understand why they suddenly had to send in all these kinds of documents, which had to be checked in order for us to accept them as clients. Of course we referred them to the text of the new law, but you can imagine that some [foreign] clubs do not really concern themselves with Belgian law, especially when they do not understand the text of the law. So that was also a problem with the start of the application of the law within our club. And another thing of course is that professional football is a highly specific, particular business. The AML law was already applicable in the diamond sector and real estate sector, but they do not have to deal with transfer windows or transfer deadlines or last minute deals on the last evening of the 'mercato'. And these are all elements which I do not think were taken properly into consideration when the government extended the scope of this legislation to professional football.

Q: Apart from the existing regulations of the Flemish Region, the RBFA regulations regarding football clubs, etc, the sector will be confronted with an additional set of legal obligations under the anti-money laundering framework. Do you feel that the latter additional set of obligations will succeed in generating more transparency within the sector? Do you consider that it would add something of value to the benefit of the sector? Do you expect it to be effective in achieving its goals?

A: *In general I do not question the purpose of this legislation. I think the most important remark I would make in this regard is that they did not think it through enough before they implemented the law in the professional football sector. In particular, it is an extremely heavy burden for each club, which has to hire or appoint an employee to be in charge of the entire AML management within the club. And especially starting up it is a huge job to carry out all of the checks and so forth. Once again in this respect the Belgain football federation should have undertaken a more prominent role itself; for example they could have already done some work through the channel of their clearing house to relieve the clubs of workload, because they already track and register transactions involving intermediaries, who are in the 'high-risk' category under this legislation. So there is duplication of administrative obligations on football clubs and the Royal Belgian Football Association.*

But I think that after some time it will be of benefit. There will be more transparency, especially with regards to intermediaries – and also with regards to clubs, although in my opinion transfer transactions will slow down a bit, especially in the last few days of the mercato. It will be highly implausible to do a deal in those last few days when you still need to do some necessary checks. So this is an important point, which I have already communicated internally to our management and employees, i.e. the need to first do a client acceptance check in order to sign any contract or agreement, and if this is not done you cannot sign. So this is a major issue if you want to

speed things up; on the contrary it will slow it down. But in the long run, after all of the major administration has been done and everything has settled down, I think it will be a positive thing for the professional football sector. For example, I have already carried out around fifty checks of intermediaries and clubs myself, and (with one possible exception) they have all been accepted as a client, so now we are more or less "safe" for the next two years. Of course we still have to check any financial transaction or payment, but it does not take much time to check the invoice data and bank account numbers etc.

Then again, I would reiterate as a general remark that there is a need for centralisation and uniformisation, preferably also globally or at least within Europe. I believe that is really necessary, because if I think for example of the recent contact I had with a club across the border in France, they did not understand why they had to provide all of this information, when other clubs required them to provide other information. There is a lack of uniformity in this matter, so I think we have to create a level playing field, initially in Europe and eventually internationally, maybe taking it up to FIFA to have something on a global scale. That might be wishful thinking at this moment in time, but it would be good to have the same measures and the same application worldwide, otherwise we are creating disadvantages for our clubs at this point.

Q: What about the wider objective of identifying illegal flows of money and protecting the health of the economy of the football sector. Would you say this law would also eventually achieve this objective, or do you think that is more far-fetched in terms of what we can reasonably expect from the application of the law?

A: *Yes, in the long run I think there will only be benefits, and while at this point it is a bit of a hassle for the clubs' administrations to implement these procedures within the clubs, it is also true that this depends on the counterparty in question. For example, I have only spoken about intermediaries and clubs until now, but another major aspect of this law concerns the business and commercial partners of a club. Admittedly this aspect is still a bit underdeveloped within our club at present, as we have devoted all of our attention thus far to intermediaries and other clubs (especially when we carried out most of the checks on these counterparties in the months of July and August), but now we are turning our attention to the commercial side as well, and for our commercial partners we have now developed an online form so that they can easily provide all of the required information and documents through a standardised procedure. And this is not something we can introduce for all of the intermediaries and foreign clubs, because most commercial partners are Belgian firms or international firms with a Belgian branch, and for them it is relatively easy to fill in the required information, since they have to provide it to Belgian banks etc. as well. Having said that, we are just at the beginning of the process of gathering the acceptance procedures of all of our commercial partners, so this also has to speed up a bit further, but still I do not foresee any major problems with that aspect.*

As AML officer within the club, however, it is also important for me to inform all staff members and commercial employees about the importance and relevance of the law, and once again the

meeting in which I had to inform them that they could not sign any new contract before the procedure was fully completed was a difficult one.

So I do not see any big problems in the future for commercial partners, but it is also a lot of extra work to be done. Fortunately, though, we have very loyal commercial partners who are faithful to our club and do not take issue with financial obligations. So for us it was a big relief to see them coming back to us and retaining their support for our club.

Q: On this point about the development of internal procedures towards commercial partners but also agents and other clubs in case of a player transfer, is the interpretation of important legal concepts of the PAML, such as 'client', 'business relationship' or 'occasional transaction' sufficiently clear to you at this point in time? That is, is it more or less clear to you how you should interpret these concepts in the course of complying with the AML obligations, or is that still somewhat unclear?

A: *Yes, that is a very good question, because during the numerous information sessions we had, sometimes a different presentation or interpretation was given about the exact definition of these terms. So, as far as I can see, it is possible for club A to accept client X, while club B may refuse client X, each having different arguments for doing so, but at some point it is the federal agency with oversight powers that has to make the final decision as to which club has interpreted the client acceptance procedure correctly. Because there are a lot of unclear definitions in the law and every club may have its own interpretation of them. Of course, each club can explain why they accepted the client or not, but at some point someone will have to decide which of them had the right interpretation.*

So at this point, while it might sound somewhat cynical to say, I would like federal agents to visit us and check all of the administration that we have already done, so that we can know if we are following the procedures that they would like us to in the right way. Because as things stand we think that we are doing ok in following the measures and instructions that we have received, but at some point it could transpire that we are doing something wrong. But we will only know this after the FOD Economie visits our offices and looks into all of our files we have created per client and all of the information we have gathered and all of the evaluations and checks we have carried out to see if all of this has been done correctly and on the right basis. Maybe we accepted some client when there is actually some important piece of information missing for them, but we thought we were ok.

So I think this is an important point that will arise again, especially in the coming months, but for the next year it might be good to have some more precise feedback about the current application. Indeed when I talked to some colleagues after one of the information sessions the feedback given differed widely – and I think it is also important that as professional football clubs we share our experiences and our practices with each other.

In short, some of the definitions in the law are not very clear in my opinion and as such they may be subject to different interpretations, so this is certainly something that has to be taken into consideration in the future.

Q: Do you then feel there should be more in the way of written guidance, if not even regulations, fleshing out what these concepts mean?

A: *Well I do not wish to criticise the federal government and the lawmakers too much, but I do not think they were fully aware of the specific characteristics of the professional football sector. For example, questions were asked as to how to deal with a loan of a player between two clubs when there is no fee mentioned in the contract; does the AML procedure apply in that instance or not? And yet they could not give a clear answer on that. Notwithstanding there being no fee in the agreement, they spoke about the professional value of the player and how that could increase after the loan is done and how it was necessary to carry out an assessment of the value of the player. So it was very unclear what the exact application was in the case of specific agreements between clubs concerning loans and temporary transfers etc. So there is still work to be done at this point to clarify some specific cases, and I think this is an ongoing process that will be improved step-by-step, after more cases are highlighted and presented to the clubs. There will still be some exceptions that will be encountered during the application, so it is important that especially within the Pro League they gather all of these cases and share them with the clubs.*

Another point is of course the resources that the clubs have at their disposal. Are clubs really equipped to carry out all of the checks and controls? We are not a police force; we do not have access to registers or information held by state authorities. We received a suggestion to consult a "world check" website, but that is something that can easily be done by the Belgian football federation, to make an account with that website, and then all clubs could use it to carry out checks when they have doubts about certain clients. But as it stands now, every club has to obtain and pay for a separate licence for this website, whereas it could easily be done at the central level of the Belgian football federation.

But once again, the application has only just started and I think it can only improve by learning during the process.

Q: In your view, could the existing anti-money laundering legislation be improved to better match the 'architecture' of the professional football sector? Should certain modifications or adaptations be made to better account for the specificities of the football sector?

A: *Yes, of course. Because, for example, initially [the governing body] talked about any transaction above €10,000 falling within the scope of the AML legislation, but then later on that was not the message anymore; rather it became more broadly that a client with whom you have a permanent relationship over several years also falls within the scope of the law. Also the different type of clients (especially commercial clients, intermediaries and clubs), the frequency of transactions…we received different instructions during the information sessions. So there were several interpretations circulating in the beginning, so it needs a lot of work on that point as well.*

Q: Given that football clubs have been subjected to these obligations since 1 July, how would you assess the functioning of the anti-money laundering framework with respect to professional football in this past half-year? The implementing regulations and Royal Decrees are said to be 'under way', so is it fair to say that the system and its operation has so far depended on informal contacts and working methods?

A: *Yes, I think that is a rather correct analysis. Maybe the first six months of application of the law is not representative, in the sense that there is a transfer window coming up at the end of the year. I think we will be able to see the real effects of this AML law within a couple of months, after the end of the transfer window on 31 January. Because this question was also raised during an information session with the FOD Economie, where several clubs remarked that we would be disadvantaged in making transfers as compared to Dutch, French, German clubs etc. when we are interested in a highly valued player. And their reaction was "ok, then just send us a list of instances where you felt you were disadvantaged, quantifying the losses you suffered as a result of missed transfers due to the AML law, and we will take it into account later on." But as you can imagine the reaction of the professional football clubs was one of astonishment, because it will create a disadvantage for us with regard to closing transfer deals, especially in the last days of the mercato, as I have already said. But, again, the effects will only become clear within a couple of months, so I think a proper evaluation can only be done one year after the entry into force of the law.*

Q: Do you see any other possible competitive disadvantages, or perhaps even advantages, of the appliication of the AML legislation to Belgian clubs?

A: *At this point I do not really see any advantage: Well, maybe the fact that now we are taking the lead in some legislation that hopefully will be implemented across Europe eventually. To be honest I do not see how this [Belgian law] can sit alongside European law, because with the AML we are kind of doing the exact opposite to what is required by the General Data Protection Regulation. The GDPR is all about the protection of data, but within the application of the AML law it is all about gathering data. Of course we have to protect the information that we receive, but it is a bit contradictory that the GDPR says you have to protect all of the data that you receive, while the AML legislation says you have to collect any data that is necessary to accept a client and to prove a financial transaction. So I feel that at some point this will have to be implemented in every country in Europe. But in reply to the question I do not see any practical advantages within our club or our professional football business.*

Q: So would you agree that it is necessary to take the lead on this, rather than wait for action at the European level that might take some time to come (if it arrives at all)?

A: *Certainly if they eventually introduce such a law at European level then we will already be acquainted with the procedures and maybe then we will have an advantage over other [foreign] clubs, but as I said we will just have to wait over the coming months to see what the effects will really be, especially with regard to transfers on the international level between clubs of*

different European countries. Because I now have the feeling – and most of my colleagues of other clubs do as well – that there is not a level playing field in this regard, and especially given the impossibility of closing a deal on the final day of the transfer window if we need to do all of the AML checks, particularly when there are complicated files to verify. Maybe it is rather easy to obtain documentation and verify information from a sole intermediary who has a small business on his own, but when it comes to a club, say, from Ukraine, with links and bank accounts in Cyprus, then you will have a busy time ahead to verify all of the information that they deliver to you. So the difference between all of the clients we have dealings with is so large, and we have to proceed and check them out on a case-by-case basis. But, again, we will have to see what happens in the months ahead.

Interview Mr. Pieter De Beus – Compliance Officer RBFA

15/12/2021

Interview conducted in the course of the research project 'Towards an anti-money laundering framework for professional football: an inductive inquiry on the basis of the Belgian case'

Q: At this point in time, the Belgian anti-money laundering legislation has entered into force for the RBFA. However, do you feel that the relevant representatives of the RBFA are informed (or at least sufficiently informed) as to what the application of anti-money laundering obligations on the RBFA would entail?

A: *Yes, before the application, I had a clear communication line with our legal director, our financial director and our CEO on the potential scope of the law, as this was not yet clear at the time, nor is it today unfortunately. We also had some meetings with representatives of the Ministry of Finance to understand what our duties would be. These have been communicated to our management and our board, and upon the entry into force of the law, I have made sure that all stakeholders were informed. Marketing, finance, licencing and legal teams have also been trained on our responsibilities.*

As an organisation, the RBFA was informally informed by the authorities. We now expect all of these obligations to be written down in an official document. So, when the RBFA is eventually audited, we can show, on the basis of this document, that we are compliant with our AML obligations.

The obligations were not always clear. For example, we have only understood at the very end of the process that we should also look into our sponsors. Initially, we were told that we were only obliged to look into our clearing process and our licensing system.

Q: In particular, since the RBFA is concerned not only as a governing body in the football sector but also as one of the obligated entities under the expanded Belgian PAML, do you believe the RBFA is (sufficiently) informed first and foremost as to its own role and duties within the newly-established anti-money laundering framework?

A: *Based on the informal conversations, we do have a view, but we would like to see everything put in writing, because there are some ambiguities regarding our supervisory role in football and our own obligations under the AML framework. We have an informal agreement that there should be no conflicting provisions, but we are not sure yet.*

The regulatory authorities consider us as an 'eye in the field', and the RBFA will probably not be subject to the same obligations as for example clubs – even though the law itself does not foresee this role for the RBFA as such. Hence, we are curious as to what will be in the written regulations.

Q: What are the actions that you are currently undertaking to fulfil these obligations. You talked about communicating the obligations. But have you laid out some plan of action or a work plan to address these obligations?

A: *We have not yet developed a real action plan, for two reasons. Firstly, we are not yet sure as to which concrete obligations will ultimately be imposed on us. Secondly, the role that the government foresees for us is an add-on to what we have been doing in the past. The AML law will allow us to further develop some initiatives that we were already developing, but that we could not develop further until now because we could not do this as a private organisation. We could not take these steps on our own. For example, within the licensing process for clubs, we might come across things that we had doubts about or which raised question marks. We always had to regulate these matters internally within our football system. The decisions emanating from external arbitrage or state courts are known and were not always conducive for us to act upon. Now we have a secure way to act upon the information we come across. The same applies to our clearing process. Within clearing, there is a whole set of rules we apply on the interactions between clubs, players and agents. But when we saw something, there was no real mechanism to bring this to the attention of the authorities. For us, the AML legislation is an add-on to our existing processes.*

All of this has been put down in an AML policy which has been approved by our board.

Q: Further, as far as regards the RBFA being concerned as a governing body, do you believe the RBFA is (sufficiently) informed as to the duties the expanded Belgian PAML will entail for entities falling under the authority of the RBFA, i.e. particularly professional football clubs and player agents established in Belgium? Will the RBFA fulfill any form of governing role within the AML-framework?

A: *We were contacted by the clubs some time ago regarding draft regulations, in order to receive feedback. It is mostly the clubs and the Pro League that have been in contact with the government regarding the development of the regulations applicable to clubs. We will not have a controlling function regarding the clubs. For example, if a club is required to identify its sponsors, it is not up to us to do that or control whether a club is doing that. If the clubs report money flows to us that make no sense from a licensing perspective or a clearing perspective, we will raise a flag. But it is not up to us to check whether they are doing their job. That should be the task of the supervisory authority.*

In a sense, we are a second line of defence. It is not our job to go and audit them, but if we see in our interactions with them things which raise suspicions, then our people are trained to report these things to me as AML Officer.

Q: In addition, the newly-established anti-money laundering framework also has implications for the 'clearing system' that the RBFA introduced in July 2020. Are these implications clear to you, and how would you assess them? In particular, do you believe the expanded PAML will entail revisions to the clearing system, and if so what do you expect those to be?

A: *It will depend on whether the authorities will consider clubs as our clients. We have made clear that we do not consider player agents as our clients. The same reasoning applies to clubs. From an anti-money laundering perspective, we cannot decide on the basis of a risk assessment that someone is an affiliated agent, an affiliated club or an affiliated player. We do not consider them as clients or as business relationships. We do consider them as persons with whom we have regular contacts and in respect of whom we have a duty of vigilance, to see whether they respect the anti-money laundering legislation as such and whether they use us for any type of criminal activity that falls within the scope of the law. As of now, we are not planning to risk assess clubs or agents.*

Q: - Do you feel that the professional football sector was given enough time and information to adapt to the entry into force of anti-money laundering legislation?

A: *It depends what you consider to be enough time… It is something completely new for the vast majority of people in professional football. I think there was enough time if the time was used efficiently, to come up with guidance, regulations and royal decrees to explain what needs to be done. We are now in the middle of December, and there is no guidance or clarity apart from our inclusion in the law. Not that this is the Ministry's fault. This was I think a political decision and it was just left up to the Ministry to come up with new regulations for a new sector in AML. But generally, when you get a year and a half to prepare yourself, it should suffice.*

Q: Apart from the existing regulations of the Flemish Region and RBFA regulations regarding football clubs and player agents, the sector will be confronted with an additional set of legal obligations under the anti-money laundering framework. Do you feel that the latter additional set of obligations will succeed in generating more transparency within the sector? Do you consider that it would add something of value to the benefit of the sector? Do you expect it to be effective in achieving its goals?

A: *First of all, AML does not increase transparency. It concerns an internal policy and decisions that you make are not public. Notifications to the financial intelligence unit are not public. This in itself does not increase transparency.*

The other regulations do not always seem to fit with each other; there is a lack of consistency between them, I fear. Does it bring about additional compliance costs? Yes. Does it provide answers to the known criminal activities? Well, in the past this also happened via financial institutions and all of these clubs were already subject to review of their accounts by auditors who were also already obliged entities, just like the financial institutions. An illegal activity will not appear on the official books. Will the fear of sanctions under the AML legislation help? It might, but will this help to stop all criminal activity? If that were the case, then money laundering would not be happening in the world anymore, considering the regulatory frameworks already developed.

Does it help to provide better credibility to the sector. Yes.

Will it help football clubs to form financial relationships more easily? I don't think so. Banks will not begin to grant football clubs or agents financial accounts simply because they are obliged entities now. They will still assess the risk on their own terms while taking into account the sector and its perceived risks. Becoming an obliged entity does not mean in and of itself that you will start operating correctly.

Q: How would you assess the functioning of the anti-money laundering framework with respect to professional football so far?

A: *First of all, I can only speak for the RBFA. For us, it is based on what I believe should be done. I am keen to see official confirmation from the government that our plans and policy complies with their expectations, which I hope it does. For the clubs, the Pro League has hired a consultant who has drafted a risk assessment model. I cannot assess the quality of that risk assessment model. Is it upheld by each and every club in the same way? I don't know. I have seen some clubs doing it, but other clubs I have not seen doing it. And the consequences that you should attach to them are not clear. For instance, I have not heard about a club refusing to work with a certain intermediary based on a risk assessment of that person from a money laundering perspective: Whereas I as an AML Officer would conclude that I would not want that person to be accepted on my client list.*

In other sectors, such as is the case for financial institutions, they have a blacklist. Any person on that blacklist is not accepted by those institutions as a customer anymore. That does not mean that such a person is a criminal, but that that person does not meet the client risk acceptance criteria. In football, I think that the law is applied in such a way that people can keep on doing what they used to do, rather than as a shift in ethics or decision-making.

Q: Do you think this position will change when the Royal Decree and the implementing regulations are promulgated?

A: *I fear for it, because it is largely left up to the sector to decide for itself what is acceptable or not. I am not at liberty to share what I saw in the draft regulations, but what I have seen does not convince me that a major shift will take place.*

Q: In your opinion, is the interpretation of important legal concepts of the PAML, such as 'client', 'business relationship' or 'occasional transaction' sufficiently clear at this point in time? If not, what additional guidance would you recommend?

A: *At this point in time, these concepts are not clear. And the draft of the Royal Decree that I have seen does not provide the answers to be honest. The problem that I have with for example the concept of 'client' and 'client relationships' in interactions with football agents and football clubs is that, normally, you only have a client relationship once a contact has been signed. But in football and in practice, services may well have been delivered prior to signing the contract. For example, a player may have already transferred and a new employment contract may already have been signed, but the financial agreements with football agents are often documented in a contract afterwards. The law prescribes that you need to identify your counterparty before you enter into a business relationship. If the club interprets the signing of the intermediary agreement as the start of the relationship and there is no contradicting guidance on this topic, it will not change a lot…*

At a financial institution, a new credit is not given to a customer if that customer was not identified within the system.

Q: Might it be safe then to assume that additional guidance regarding the interpretation of these concepts should be developed by the regulatory authority.

A: *Yes. They should take into account the consequences of the way these concepts should be interpreted in practice. Because if you allow exceptions or use vague definitions or terms that are different in football than in other industries you might end up with applications of the law that do not match the aim of the law.*

Q: In your view, could the existing anti-money laundering legislation itself – as opposed to implementing mechanisms - be improved to better match the 'architecture' of the professional football sector?

A: *Good question, I do not really have the answer. One year and a half into the new law, I am still wondering whether this law can as such be applied to the industry. I do not think the regulations make sense when applied to this industry. Or in some cases it is even impossible to apply the law as it is literally. The football club is a private commercial entity with different activities than all other obliged entities. There is no real service or client relationship… And I do not always see the added value of the preventive measures that are applied to football. But for us as the RBFA, it gives us the opportunity to for example review our sponsors, do a documentary process and then perhaps decide that we do not want a certain sponsor. In the past, we could not do a lot, or we were dependent on publicly available information or a known complaint with regards to a subject/football agent. The disclosure we can now do to the FIU is*

a plus, but we do not really know what is done with these notifications. The repressive aspect of the anti-money laundering legislation has to be able to keep up.

Q: The law only applies, apart from the RBFA, to professional football clubs and agents established in Belgium. Do you feel that the application of anti-money laundering obligations could entail a competitive disadvantage for the Belgian football transfer market, particularly in terms of the possibility of greater bureaucracy impeding the smooth functioning of the market?

A: *Absolutely. There is already forum shopping happening within Europe by criminals, to seek out the easiest access points to enter the financial industry. So the real criminals will not be prevented from doing what they did in the past. They will just move their activities outside of Belgium. Belgian clubs need to do a lot, whereas other clubs in Europe abroad do not have these obligations. If you are a criminal and want to continue your activities, you just bypass Belgium. One of the most famous and named intermediaries is currently in the process of registering his new company in the UK. He will fall outside of the scope of the law as an obliged entity.*

Q: For example, when a Belgian club wants to do business with another club established outside the European Union or in other European countries, it will have to observe these obligations in its dealings with the foreign club. I can imagine it's not very easy to buy a player from clubs outside of the EU or even within the EU.

A: *It is very difficult given the specificities of football, there are deadlines and transfer windows. Often transactions happen towards the deadline. Let us take for example the positive case where a Belgian club succeeds in collecting the data. And then what? They have the data, but what will they do with it? Are they going to assess whether a club in Russia or Albania has gotten money from certain investors when they sell or buy a player from them? Are you going to look into these investors and inquire as to how they made their money?*

It even holds true for the biggest clubs. Is a Belgian club going to look into the shareholding structure of for example Manchester City or Paris Saint Germain? Would they enter into business relationships with other, smaller clubs who have a similar shareholder structure? Well recognized clubs are receiving money from everywhere… If I apply the law really strictly, can my risk assessment then be anything else than really high? Do I enter into a commercial relationship with them? And even if I do, I need to monitor. But what am I monitoring? The money flow. But if I'm selling a player to them, I want that money as a club. So am I convinced that this will stop dirty money flows? I do not think so. And if retrocessions are being paid, they will not even appear on the official books.

Moreover, a transfer fee can always be X while a player is actually worth Y. The value of a player is very hard to determine. I find it a good idea to apply the AML law, but I struggle to see how the AML law can help with the fight against money laundering in football.

Q: Would it be fair to say that this last observation can be extended to anti-money laundering legislation in other sectors?

A: *Yes. And also, the preventive part of the law is only one aspect, but the repressive aspect is also very important. The investigation into whether something is wrong, the incrimination of the right parties and the successful criminal prosecution of those parties in court is the most important thing.*

Q: In your opinion, would it be better to regulate this matter on the European level instead of through a 'unilateral' action by the Belgian legislator?

A: *If it has to be regulated, it does make sense to do it on the European level, thereby creating a level playing field and subjecting everyone to – supposedly – the same set of rules. The awareness will also be greater. It may be more difficult for the same practices in football to continue. But that does not mean that there are no 'weak points' in the European system, such as for example Malta or Cyprus.*

Q: On the point of the effectiveness of the AML-legislation in general, it sounds a little bit that some of the concerns that the legislation is seeking to address, which are valid concerns, are seemingly not always appropriately addressed. Suppose you were in the seat of the legislator, are there changes you would make to the system?

A: *I am not against the application of the law to football, and the reasons for doing so make sense. Whether the way it is done is the best solution, I do not know. But I have to admit that I do not have the ultimate answer myself. I came from the financial industry. I feel that the answer is not out there. You cannot prevent these things from happening, because you are always behind. I am starting to think that privatising government duties is not the way forward. If you ask me the question 'how could it be better?', I would think that more government control and more interaction between different parts of the government can bring to light more issues. Another thing I would suggest is sector-wide blacklisting, to be able to share concerns within one sector. Applied to football: if a Belgian football club has the idea that they should not work with a specific party due to its risk assessment and files a disclosure to the FIU, there is nothing stopping that party from knocking on the door of another club, which might not be that strong. By the time the FIU and the police open a case, the money might already have entered the industry via another route. This is not only an issue in football, but it is a very boxed industry. Why can there not be one central authority which maintains such a blacklist? Could the RBFA do this? Perhaps yes, if given the right powers and if the other actors would then respect our decision if we actually blacklist someone.*

Q: Is there anything else you would like to add?

A: *Yes, I might have come across as a bit negative, partly because of what has been appearing in the press in the last few weeks. But each instance of money laundering that is stopped through*

the application of the law is good news. However, if you balance the compliance cost with the number of cases actually stopped you have to question the efficiency of the law and whether it is applied in football and even more generally in the right way.

Interview

Mr. Christian Bourlet and Mr. Olivier Loiseau – SPF Economy

Mr. Hans Van Hemelrijck – CFI-CTIF

15/12/2021

Interview conducted in the course of the research project 'Towards an anti-money laundering framework for professional football: an inductive inquiry on the basis of the Belgian case'

Q: At this point in time, the Belgian anti-money laundering law has entered into force regarding the RFBA and the professional football clubs. Do you feel that the relevant representatives of the RBFA and the football clubs are sufficiently informed as what the application of the AML obligations would entail.

A SPF: *The first goal of the RBFA was to include the clearing house into the story. After the first discussions with the federation, it was established that also other services of the RBFA would be of interest for money laundering prevention. For example, the licensing procedure for clubs and the licensing regime for agents. But yes, for the most part, I think that all of the representatives know what they have to do.*

We had several meetings with the federation, with the AML representatives, with members of the licensing commission and with the CEO of the federation. So, we believe it is clear to them what to do and what the impact of the AML regulations on their work will be.

It is not the first new sector we have to control. For example, we started with the diamond and the real estate sectors, with company service providers, art dealers and so on. Our procedures are generally the same. We first make an analysis of the functioning of the sector and then we explain to the sector how they can comply with the AML regulations. So, it is not specific to football. We have experience with guiding non-financial sectors in this story.

A CFI: *From our side, we have had contact with the compliance officer of the RBFA, who has a background in different financial institutions, so he knows the compliance function and the anti-money laundering law very well. He proposed to give a presentation to the different members of the association, which we agreed to. Unfortunately this has not happened yet due to COVID, but this will be organised in the future. Through those contacts, we have the impression that at least the compliance officer is very well aware of the situation and knows the legislation very well.*

Q: The law subjecting the professional football sector entered into force in July 2021 after having been introduced in July 2020. Do you think that the sector has been granted sufficient time to adapt itself to the obligations that the anti-money laundering law imposes?

A SPF: *This is an ongoing process. We have done a lot of work with the Pro League and the RBFA to inform them and to identify where the problems are with the application of this legislation. They have been granted the time to make a report containing the necessary guidelines for clubs. It is good that at some point they began with the actual work. In this way, we could identify where the problems with the application are. We are not yet in the sanctioning phase of the control, so the clubs still have time to adapt themselves. We are not expecting that all clubs are already fully applying the framework as of today.*

Q: Is there a timing in sight by which you think that the system would be fully operational?

A SPF: *That is a good question, but it depends on what you mean by 'fully operational'.*

Q: For example, when the relevant Royal Decree and other implementing regulations are in place. We gathered from some previous interviews that clubs and the RBFA are currently applying the law as they think it should be applied, in the absence of more detailed regulations. I understood that we are in a transitional phase right now. And the question pertains to when we can move on to a more permanent and stable phase of application.

A SPF: *For us, it would be acceptable to have a fully compliant sector by the end of 2022. There are two periods which are crucial for AML and those are the two 'mercato' periods in January and in August. These are the periods where we can give advice to the clubs and can guide the clubs. We made the first audits of four clubs in October through December to assess the mercato of the summer of 2021. We saw that the clubs had taken action. Most of the them did well, but there were some problems. But we will tackle these and go further with them. But our hope is to have a good degree of compliance by the end of 2022. It is a learning process for both parties, as it is a new sector for us too. In the period of July 2020 to July 2021, we also had to analyse the sector and its risks and to prepare the first controls. So it is a learning curve for us as well.*

A CFI: *There were some contacts between the clubs, the RBFA and the CFI as well. But we are also waiting on the Royal Decree which will fully start the system. Then the clubs will be able to give us formal declarations and Suspicious Activity Reports (SARs), as is foreseen in the law. At the moment, we cannot really receive those reports yet, and therefore we cannot yet act upon them and use our competences as we should. But we have already had contacts with certain clubs who have already given us information. We are trying to test to system out now, but we are still waiting for the Royal Decree to officially start our work.*

Q: Apart from the existing regulations, which are already imposed on the sector, such as the Flemish regulations on player agents, RBFA regulations for clubs, FIFA regulations such as those applicable to player transfers, now an additional set of legal obligations is placed upon the sector. This implies a certain compliance cost which accompanies this additional set of legal obligations. What are your expectations regarding the results. Do you think these regulations will help to generate more transparency within the sector? Will they add something of value to the sector?

A SPF: *We believe that there will be more transparency within the sector, but certainly not full transparency. In this sense, we think the situation will certainly improve. Whether the situation will be much better, I do not know. The situation cannot be worse than it is now, in my opinion. The AML framework is a part of a whole. It cannot change everything by itself. There must be other modifications to compliance regimes as well. I think the prosecution by the authorities and other FIFA decisions could make things better, with the help of this new legislation.*

A CFI: *I think the clubs themselves can also benefit in the longer run from more transparency. We have seen the same thing with the classic financial institutions, the banks; after the financial crisis their image really needed a boost, and I think compliance with the anti-money laundering law, which is after all a basic set of rules, can only add to their credibility and their transparency, which will contribute to a much better image for the sector as a whole. A lot of the de-risking problems they have right now, and difficulties in obtaining bank accounts, can be overcome. I think banks are ready to provide financial credit possibilities to clubs that are transparent at least to some extent. So I think we should not always look at it from a negative point of view, but more as an opportunity for the clubs and for the RBFA to show that they are really involved in making the system more clear, more transparent and more credible.*

Q: Which actions is the FPS Economy currently developing to control or assist the sector to help fulfill its obligations under the amended anti-money laundering legislative framework? Are we only talking about the development, for example, of a Royal Decree, or are there also additional implementing regulations or other measures that will be foreseen? How far will the framework go regarding the professional football sector?

A SPF: *The Royal Decree is only a technical tool. I do not think that can help the sector. It can only say who is obliged; which persons are the obligated entities. But we have had several meetings, as was already mentioned, and we are drafting regulations for the sector. There will be two sets of regulations; one for the clubs and one for the RBFA. We have already sent a draft of these projected regulations to the Pro League, and we have a meeting planned to discuss these. The goal of these regulations is to give legal certainty to the clubs. The law is the law: The goal of the regulations is to give an interpretation of what we want from them. One challenge in this sector is that there is no definition of the precise activity of football clubs. We do not know precisely which contracts fall within the scope of the activities of football clubs. So that will be one goal of these regulations; to say this type of client does fall within the scope and that type does not. We will also give other instructions, like the precise moment at which*

the obligation must be fulfilled. For example, clubs do not need to identify every supporter who buys a ticket. That is a very simple example but it is just to illustrate the goal of these regulations. Without these regulations there cannot be legal certainty on this matter.

Q: The anti-money laundering law employs very specific terms which have a specific legal meaning; for example 'client', 'business relationship' or 'occasional transaction'. So do I understand it correctly that the interpretation of these terms as regards the application of the law to the football sector will be clarified in these regulations?

A CFI: *Yes, in fact I think the SPF has already done so. They have had extensive discussions on the legal terminology. But in general I think the anti-money laundering standards are applicable to each and every sector, and in the past we have often seen that when a certain economic sector is brought under the umbrella of the system there are some hiccups or some concerns. For instance, the diamond sector is an example that was already mentioned. In previous meetings, representatives of that sector also maintained that the rules are not applicable to their specific activity, but after some debate and discussion we see that it is absolutely possible to apply those rules, no matter what the specific sector is. When you look at what is going on in football, I do not think it is so specific that their activity could not take place within the legal framework of the anti-money laundering system. So I think it is rather the sector that has to adapt certain specific procedures because they are not in accordance with the anti-money laundering legislation, rather than that the legislation should be adapted and tailor-made to a certain specific sector where there are certain habits that are just not correct in terms of normal financial behaviour.*

Q: So do I understand correctly that in your opinion the terms in the law are suited to apply to any sector, but their exact interpretation can perhaps differ between sectors? So that, for example, one would regard sponsors or other clubs that deal with Belgian clubs in the course of a player transfer as clients or business relationships, but in the case of, say, ticketing services whereby tickets are sold to fans, that such fans would be excluded from the interpretation as a client. So, in other words, might differing or specific interpretations for the given sector be a helpful solution for the good application of the anti-money laundering law?

A CFI: *Absolutely. I think the law is general in nature, and certain notions need to be clarified. I think that is a process that should take place, and in this case it is one that has already been done by my colleagues at the SPF. So there has been a lot of discussion on these specific notions, in order to apply them to the specific sector that football is. But, on the other hand, the notions and the regulations are general and in my view they are logical enough to be properly interpreted by the clubs and the RBFA.*

Q: How would you assess the functioning of the anti-money laundering framework with respect to professional football so far? Bearing in mind that we are still in something of a transitional phase, do you have any initial thoughts to share on how it is currently going?

A SPF: *First I should say that there is good cooperation with the football federation and with the Pro League. They are well-involved in communication with and preparation of the clubs with respect to AML. Secondly, as I mentioned before, we have carried out four audits so far, following the summer mercato, and I believe we have seen efforts on the part of the clubs. We see that they now have AML officers, most of whom attended the relevant meeting organised by the Pro League. We do see that there are still some problems on the ground, and we will correct those problems, but until now from my point of view we have seen goodwill from the four clubs we have already audited.*

It is difficult to say more at this stage, because we selected only a few clubs, and these are maybe not the more risky ones. But the first impression we have formed of the sector until now is not a bad impression. We will see how it goes in the future.

A CFI: *I am also hopeful. On the other hand, we have to be realistic as well. I was stunned by the recent documentary about Dejan Veljkovic and the allegations he has made. Of course these still remain to be proven, but these alleged practices where bags containing hundreds of thousands of euros were being exchanged "under the table" is something we typically see in drug-trafficking rings; but we do not associate that with an economic sector like professional sports.*

So I think we need the preventive part of the legislation, which we are now working on together with the SPF, but we also need the repressive part and the judicial inquiries of the kind that was undertaken in 'Operation Clean Hands' in order to eradicate those kinds of practices, which are really stunning actually. On the other hand, I think that clubs are willing to cooperate, but a fear we still have is that they might try to shift the blame onto their competitors, meaning we might get a lot of SARs regarding other clubs and not always on a very objective basis. So that is something that is inherent in the very competitive scene of football and football clubs, which is something that we need to take into account. On the other hand, that does not mean we cannot use that information. Often you get very interesting elements handed to you by competitors, but you always have to keep in mind what your source is and how to interpret those data.

Q: In your view, could the existing anti-money laundering legislation be improved to better match the 'architecture' of the professional football sector?

A SPF: *We too believe that the law is general and it is not a problem to apply it to a specific sector, as we are taking the necessary measures to clarify the law for each specific sector, with all of the regulations, guidance and so on. So I do not believe that the law has to be changed.*

Q: What about when it comes to actual practices in the application of the law? For instance, when it comes to the threshold for reporting to FIUs and the different possible approaches to this (qualititative, quantitative or a combination of the two), do there need to be some adaptations to account for the specificities of the football sector?

A CFI: *Yes, I would agree with that. The law is based on international standards, which are more or less the same; the FATF framework is actually the legal basis on an international level. But the problem is that on a national level there are different types of FIUs and different thresholds, so the translation of the international standards into national law or application may differ, which complicates matters. I think the European Commission is aware of that problem, and with the recent AML package it is working towards a standardisation of the reporting system in the different countries. And I think that is something that would also benefit the football sector, because the application of AML legislation should actually be done on a European level, in order to guarantee and maintain a level playing field between the different countries and the different football sectors in those countries. That is something we are working towards but I think we still have some work to do there, and I think the European Union is aware of the problem and is working towards a solution.*

Q: In your opinion, would it then be better to regulate this matter on the European level instead of through a 'pioneering' action by the Belgian legislator and, if so, how do you assess the chances of that happening in the near future?

A CFI: *I think we would benefit from a European approach and European regulation. In some countries the football lobby is very powerful, and I am not convinced that all of the European countries are really ready or willing to submit their football sectors to the AML standards. But I think it would surely be of benefit, and we are kind of pioneers here in Belgium. On the other hand, again, I do not think we should see this as something negative. I think we can use it as a competitive advantage in respect of other countries where the regulation is not adapted to the football sector.*

A SPF: *I would draw an analogy with the regulation of cash payments. Belgium was also a pioneer in the limitation of cash payments, and we saw problems with some dealers in Belgium, who were in competition with dealers in Germany or the Netherlands, where no such limitation was applicable. And what we see now is that there will be a European uniformization of the limitation, similar to the new AML package. So I believe it will come for football too, but I'm afraid it will take a little time.*

In fact, we should also add that Belgium is not actually a pioneer in AML for sports, as France already introduced such obligations for sports agents in 2010. So I am sure there are other Member States that will adopt similar measures.

Q: The law of 18 september 2017 applies, apart from the RBFA, to professional football clubs and agents established in Belgium. Do you feel that the application of anti-money laundering obligations could entail a competitive advantage or disadvantage for the Belgian football transfer market, particularly in terms of the possibility of greater bureaucracy impeding the smooth functioning of the market?

A SPF: *I believe it is up to the clubs. They can make an advantage of it. Some clubs will say it entails a disadvantage because, for example, if they cannot identify certain details with respect to another club then they will not be able to contract with that club, which is possible. But that will only arise in very limited instances. I believe for the image of professional football it could be a good thing, but the clubs have a role to play as well in making it a good thing.*

A CFI: *If there will be European harmonisation in this area in the future, then the fact that Belgium already has such a system and is therefore ready to work in that way might be an advantage. I am not a specialist on the international football scene, but I think that possibly, given the fact that the budgets of clubs in some other countries are much bigger and a large portion of those budgets may be used in an illegal way, by controlling the sector and making it more transparent, the Belgian clubs with a more limited budget might also profit on a sporting level. On the other hand, it could be that the budgets of some of those other clubs are so big that even when everything is transparent the difference will remain: I am not sure. But if you have to maintain a competitive level through fraudulent practices or working with illicit funds, I do not think that is sustainable in the long term. So I think the clubs will benefit from this approach in the longer run. Of course there will always be clubs that engage in fraudulent practices or work with illicit funds, but we have do our utmost to stop that and to work towards a more sane economic sector, because that is what it is; an economic sector.*

A SPF: *Indeed the football sector is not fundamentally different from other sectors. When we started with the application of AML legislation to other sectors, such as company service providers or art dealers, their initial reaction was to say "it will not be possible for us to function anymore", but it was possible, and it will also be possible for football.*

Interview Mr. Koen Verstringe – Compliance Officer Club Brugge

16/12/2021

Interview conducted in the course of the research project 'Towards an anti-money laundering framework for professional football: an inductive inquiry on the basis of the Belgian case'.

Q: At this point in time, the Belgian anti-money laundering legislation has entered into force for professional football clubs. However, do you feel that the relevant representatives of professional football clubs in Belgium are informed (or at least sufficiently informed) as to what the application of anti-money laundering obligations on their clubs would entail?

A: *Well, in terms of communication, the fact that professional football clubs are subject to the law is clear, and I do not see any major issues in that respect. Of course when it comes to the content of the communication, it is not always entirely clear what we need to do, but I think the reason for that has more to do with the fact that we are applying a law that was written for banking institutions rather than football clubs. So it is not so much about how it is communicated, but rather that there is still some unclarity as to how we can apply this law in practice. But I would not say that we are missing any communication. I think also from the side of the Pro League there have been a couple of meetings where they have informed us and even tried to elaborate a bit already on the law and how we could practically work it out. So I would not be too negative about that.*

Q: Is it right that these communication efforts are still ongoing and, for example, that you had one such information session most recently only a couple of days ago?

A: *Actually in that most recent session we received a draft of the new Royal Decree, and we were asked to give our feedback to the Pro League, who in turn were going to communicate our feedback to the FOD Economie. So that was more like a feedback session from us to them. But before there were information sessions that were organised, and I was involved in one such information session where even people from the FOD Economie (so the people who are going to control us) were there. So in terms of the manner of communication etc., I do not see any big issues.*

Q: Do you feel that the professional football sector was given enough time and information to take the necessary steps to adapt to the entry into force of anti-money laundering legislation?

A: *I must say, since I have only been working for Club Brugge for three months now, I am not 100% clear on when exactly this was communicated to us, and how long it then took us to take action. Of course, we were confronted with the fact that the previous compliance manager left*

the company, so from our point of view we were definitely not ready on 1 July. And we are still not 100% ready as of today, because it takes a lot of time to catch up. What I mean by that is that all of the parties with whom we have been contracting over the past years, with whom we still need to arrange payments (incoming or outgoing), are also subject to the law. So that means that we have to scan all of these parties, and that is a huge catch-up exercise that we need to do. I once counted that we need to scan about 280 parties, and most of them from scratch, starting with the KYC ('Know Your Client') form, obtaining the relevant information and then the carrying out the analysis, so that requires a huge effort. Because that means that we even need to scan clubs with whom we have agreed a transfer two or three years ago, bearing in mind that typically not all of the money is paid at the moment of the transfer, but rather we work with milestones. So if we still need to arrange one of those payments, we need to scan the club. So for these clubs it is a very strange question, seeing as we have effected a number of payments already without asking for any of this additional information, but now we have to do so.

Then there is also the issue that this is a Belgian law. So especially when we talk about non-Belgian clubs, they wonder what these Belgians are asking for. They are constantly telling us that they have never been asked to do this, which is probably true, so it is a difficult exercise, and we are catching up. For example, I am in contact with my counterparts at other clubs, and they have the same issue.

Officially there has not been an intermediate or grace period; on the other hand, the FOD Economie has always said that, while they are going to carry out checks already this year, they are not planning to issue any penalties; instead at this stage they will carry out checks more to help us out and to make things clear. And I understood from the most recent session that they are planning to continue to work like that for the time being. So they are going to carry out checks – indeed I have heard from different clubs that have been checked already – but they are not handing out any fines; rather, they are making suggestions for improvements. So they are effectively creating a kind of intermediate period themselves, which is helpful and also necessary.

Also, after the moment the law came into force, it took quite some time for the Pro League to confer with the FOD Economie and eventually to come up with some advice for us to implement. We engaged an external party to assist us and advise us as to what do, and looking at the outcome of that advice compared with what we are now doing based on the advice we later received from the Pro League, it is quite a big difference. So we need some time, but I think they are realising that. Normally they should say this is the law, this is how you should implement it in practice, and then give you some time to implement it, and then actually the real period should start after that, whereas now it is a little bit mixed. So I think that could have been done better in that sense – but on the other hand it was the same with the new GDPR legislation. I think it happens in many cases that they first push the law and then they kind of allow companies to learn for a period of a year or a year and a half, and only then do they really start to control it. Unless, of course, if they were to carry out a check tomorrow and we had not done anything – then it is common sense that they could take action against us.

Q: Are you also currently undertaking or developing other actions, or at least action plans, to fulfill your obligations under the law?

A: *Yes, what I have done is to list all of the requirements of the law and make a gap analysis and then said this is what we are going to do. The catch-up is one part, which is taking up most of the time, but indeed in parallel we are in the process of finalising and establishing policies and procedures. We are also organising training sessions, and I have already delivered some training for the executive team. In addition, we are implementing controls that will allow us to intervene in the right spots. When we make a payment to a company, for example, how are we sure that the counterparty has been checked? So we also need to embed controls (or "gatekeepers" if you will) in the payment process, as well as the sales process, when dealing with a new supplier or sponsor, to ensure that the necessary AML checks have been done and that we only proceed with certain transactions (be it signing a contract or executing a payment) if everything is ok – because this is of course what is expected from us under the law. So it is about documenting your policies, giving training, catching up on everything from the past, redesigning your processes and making sure that you keep control and feel comfortable that you capture everything that you need to capture.*

Q: In your opinion, is the interpretation of important legal concepts of the PAML, such as 'client', 'business relationship' or 'occasional transaction' sufficiently clear at this point in time? If not, what additional guidance would you recommend?

A: *I must say on the definitions themselves I think the Pro League has done a good job, by explaining what the typical counterparties are that a football club is working with, and they have indicated specific things that do or do not fall within the scope of the law. Actually if you look at the document that came out of that, strictly speaking I do not think it is fully compliant with the law – but the document has been agreed upon. For example, for me if you talk about a 'business relationship', what is a business relationship? A recurring customer, you could say. But a supporter who buys a ticket three times in a season and who when he attends a match buys some refreshments etc. could be seen as a business relationship in a very strict sense. Whereas the Pro League said if he is not spending more than €10,000 in a season then he falls outside the scope of the law – which does make a lot of sense, but if you interpret the law strictly it is debatable.*

Still, as I say, I think the Pro League did a good job in dealing with it in one go on the basis that it is more or less the same for all clubs, and it does make sense. The only thing where I think it does not make sense, or at least where it is very difficult to comply in practice, concerns those sponsors or business fans who do engage in transactions with the club amounting to over €10,000. These are typically, for example, the local butcher buying four or five business seats, and as of three such tickets they are already above €10,000 for the season. One of the struggles we see is that it is very difficult to tell parties like these that since they have bought three executive tickets they need to complete a KYC form because we need to carry out an anti-money laundering check on them. Knowing some of these small businesses as I do, I just do not see it

working. So in terms of who falls within the scope of the law, I think there is definitely still some room for improvement.

But, indeed, these definitions were very unclear, especially in the beginning. And what for me is still very unclear is the concept of an 'atypical transaction'. Because it is all about risk assessment: They say whenever you see something atypical, you need to document that as an atypical transaction. But if, say, three people were to carry out an assessment of a certain case, we could end up with three different opinions (of course hopefully not to the extent that one says "white" and another says "black", but still more or less different assessments). So it is not clear to us as of when we need to document something as an atypical transaction, or as of when we need to report something to the CFI; in fact for me it is very unclear.

At the same time, there are other things that are clear but that are difficult to implement in practice, and I think the prime example of that is the obligation to complete your entire AML check before you enter into a contract. That should be doable in most cases, except for player transfers. In recent years, as a rough estimate, around 70% of all transfers have taken place within three or four days before the transfer deadline. For example, in the summer we closed a transfer which was completed in 28 hours; luckily it was from a Belgian club, so it was quite easy and not very risky from an AML perspective. But for us it will become impossible to do a transfer from a Colombian club, for example, in the last days of the transfer period. So that is not a problem of unclarity: The law is clear, but it is practically not doable.

As I said, if you talk about unclarity of the law, for me the two main topics are when we need to document something as an atypical transaction, and especially also when we need to file a report. There is not a lot of guidance on this, and that makes it very subjective. If and when [the authorities] come to inspect us and we have not done our homework, clearly they will be able to give us a fine; but will they be able to give us a fine if they perceive a situation differently to ourselves? That is a big question we have. Of course if we carry out an analysis that raises ten red flags and we approve the transaction nonetheless, it is probably to be expected; but whenever we are in that grey area, I do not know. We have put these questions to the FOD Economie and they have responded simply by saying that it is a matter of risk assessment, which is obviously true, but it is risk assessment without any guidance, so people will no doubt carry out different assessments. Therefore more guidance on this, whether it be a risk model or something else, would be a huge improvement.

Q: Apart from the existing regulations of the Flemish Region, the RBFA regulations regarding football clubs, etc, the sector will be confronted with an additional set of legal obligations under the anti-money laundering framework. Do you feel that the latter additional set of obligations will succeed in generating more transparency within the sector? Do you consider that it would add something of value to the benefit of the sector? Do you expect it to be effective in achieving its goals?

A: *I think – and I can probably speak for everybody at Club Brugge here – that we agree that something needs to be done, and that transparency needs to be there. The fact that it is only*

Belgium is a big problem, but that is a side-effect we will no doubt come back to later in this interview, and in principle we support the initiative.

As it stands today, the law will function in a preventive manner, which is a good thing. Imagine this were a European law and that nobody wants to work with shady agents; that will lead to those agents being driven out of the market, end of story. So, yes, in that sense it is good.

As to the aim of identifying risky transactions and risky counterparties and reporting those, we do not know what will happen with those reports. We are told that [the authorities] will come back to us within five days and then potentially say no, and if they do not come back to us then we will be able to proceed, but a lot of the results of the law will depend on how fluently this works. The idea behind the overall setup is that the AML law brings up risky transactions and risky parties, which can then be investigated and eventually acted upon by the CFI – assuming they have sufficient staff and resources to do so – but we cannot be sure as to how well that will work. I read an article some time ago that said that the CFI is kind of an "empty body", in which case our reporting will not change a great deal.

Still it will open up our own eyes, functioning preventively, but also detectively. Going back to the example I mentioned in answer to the previous question, if we carry out an analysis of a transaction that raises ten red flags, and then we report it, and the CFI does not then tell us that we cannot proceed, I still cannot imagine many such instances where we would proceed anyway, even though we would be allowed to. Because our reason for reporting it in the first place would have been that we foresaw money laundering risks with it, so it is unlikely that we would then proceed with it. So in that sense the preventive aspect will have succeeded, as it will mean that we will not carry out certain transactions and more generally that we will not be involved in any shady transactions, directly or indirectly. But still for me the question surrounding the other aspect of when we report it to the CFI remains.

Q: What about the wider objective of identifying illegal flows of money and protecting the health of the economy of the football sector. Would you say this law would also eventually achieve this objective, or do you think that is more far-fetched in terms of what we can reasonably expect from the application of the law?

A: *Yes I think the AML law will work as a preventive measure for those transactions of a potentially illegitimate nature within the professional football sector.*

Q: The law only applies to the RBFA and to professional football clubs and agents established in Belgium. Do you feel that the application of anti-money laundering obligations could entail a competitive disadvantage, or perhaps even advantages, for the Belgian football transfer market, particularly in terms of the possibility of greater bureaucracy impeding the smooth functioning of the market?

A: *Perhaps there could be some advantages in the long run. For example, hopefully we could have a better image, which could in turn result in more fans and more partners who are*

interested in sponsoring or investing in us, etc. Those could be advantages, but the competitive disadvantage is huge, in terms of all of the bureaucracy and the fact that we [as Belgian clubs] are the only ones asking for that, which other clubs do not understand. With agents it is typically ok because they want the business, but that is not true of clubs. In fact, in the summer I heard of one club that literally told us that next time they will seek out other options for the player in France, for example, because they will not need to do all of this administration there.

And it is also disadvantageous especially because if we are going to stop a transfer on the ground that there are risk factors and red flags, which could be for a very good player who we then do not buy as a result, as per today a club just across the border in France will take him. We will certainly be faced with this situation, so it is not only the administration etc., which is bothersome, but the real economic disadvantage comes in whenever we cannot do something as a club, in terms of proceeding with certain deals, while other clubs will do it because they are not under these obligations.

Q: In your opinion, would it be better to regulate this matter on the European level instead of through a 'unilateral' action by the Belgian legislator?

A: *Following on from the point that I just made and for the reasons I just mentioned, the answer to this is yes, this needs to be regulated on a European level. By doing it unilaterally on a Belgian level, it is making our lives difficult and not those of the clubs in other countries, which is a big competitive disadvantage for us.*

Q: How would you assess the functioning of the anti-money laundering framework with respect to professional football so far? In your view, could the existing anti-money laundering legislation be improved to better 'match' or account for the specificities of the professional football sector?

A: *As we have already discussed, with regards to the transfer deadline it would be extremely helpful for us to have some kind of measure that could make it work in that respect. What could also be helpful in terms of practical application would be to make the checks more efficient, because as things stand at the moment all of the clubs in Belgium are doing double work. For example, in the summer one of our fellow Belgian clubs sold a player to a club in Italy, and we then signed a player from that Italian club on loan, and in the process both that other Belgian club and ourselves carried out an AML check. So in order to make this more efficient for everybody (including for the foreign club, as they have to fill in all of the documentation twice), the starting point could be a centralised one. Of course we each need to carry out our own risk assessment, but imagine that this is implemented on a European level, and that all of the documents are then made available by the clubs somewhere centrally and updated regularly – then it would be possible to obtain those documents from that central point in order to carry out one's risk assessment. I think that should be the ultimate goal for the law and its practical implementation, as it would make things a lot more efficient for all parties, and at the same time it would not change much for the objectives of the law; it would just make it a lot more*

practical. In fact, even on a Belgian level this could be implemented, and organised, say, by the Pro League, seeing as a significant portion of the player transfers in Belgium are between Belgian clubs.

Interview Mr. Stijn Francis – Stirr Associates

01/02/2022

Interview conducted in the course of the research project 'Towards an anti-money laundering framework for professional football: an inductive inquiry on the basis of the Belgian case'.

Q: At this point in time, the Belgian anti-money laundering legislation has not yet entered into force for players' agents. So, currently, these obligations are not yet applicable to player agents. However, do you feel that player agents in Belgium are informed (or at least sufficiently informed) as to what the application of anti-money laundering obligations to player agents would entail?

A: *The answer is no. We just read about it in the media. My colleague has a tax background and we both used to be lawyers so we already know a bit about anti-money laundering, but my feeling is that the vast majority of agents, say 80% as a rough estimate if not even more, has no idea what is happening. We did not receive any information from the [football] federation, save perhaps for one e-mail, although I am not even sure if we received that. I do not think that they are very professional in this respect. To give you an idea, when they launch a new regulation, they launch it on the 1st of July, but then they only send around the regulations on the 2nd or 3rd of July, so I think it will still be some time before they inform us properly as to what is going to happen and what the consequences are. So at the moment we have no idea what it will mean for us or even when it will enter into force. And actually I think we are one of the companies that is probably the most up-to-date as far as know-how and legislation are concerned, so I guess that what applies to us will also apply to most of our colleagues.*

Q: Do you think that the reason for the lack of information that you have received to date could simply be that the legislation is entering into force at a later stage for players' agents, or do you see this as being due to a problem with the communication?

A: *No, it is a problem, although I think that is probably on a Belgian level: If it had been the English FA I am sure we would have received 100 e-mails by now. I think the level of professionalism at the Belgian federation is just not what you would expect it to be. Certainly when you compare it to the English, the Dutch, or even the Danish federation, there is a big difference in terms of professionalism, and you cannot compare the way of communicating of the English FA with that of the Belgian federation. That is probably also because the Belgian federation likely does not have the manpower, so I do not expect that they will suddenly start to communicate in the right way.*

What is also a problem, which also probably stands in contrast to many other countries, is that the Belgian agents only have a small official federation of agents, consisting of 30 people or

so. In fact I am not even sure whether or not that federation still exists, and if it does I am not sure that those people are better informed than us. It could be that they are – sometimes we have the impression that state officials are communicating with everyone except ourselves – but it could be that that is applicable to all agents [in Belgium]. I do not know.

Q: In the absence of this information, from your perspective is there anything in the way of preparatory actions that you can take or are undertaking, or is it essentially the case that until you receive more information there is nothing you can do?

A: *What we normally do is, after reading something in the press, to carry out a legal search in the Belgian state gazette. And that is not only with the anti-money laundering legislation: We also have this now with the new social security regulations, which apparently should be applicable as of the 1st of January, but there has been no publication whatsoever. So I think the communication is rather a problem in football in general, and not only with these anti-money laundering regulations.*

So that is what we try to do: When we read something in the press, we try to find some more information ourselves – but it is very difficult to get the right information.

Q: More generally, do you feel that the professional football sector was given enough time and information to adapt to this legislation? Is it fair to say that from your perspective this is a more general problem for the football sector?

A: *Yes, it probably is a more general problem, because what people underestimate is the amount of work involved in gathering all of the information, getting the right information, and implementing it. It is true that the bigger clubs, such as Club Brugge, have a team of employees who can deal with a lot of information, but when you look at, for example, RFC Seraing, I think they have three full-time employees [dealing with such matters], so for them to gather all of the information and to get the right information and to implement it, it is a lot of work, unless they outsource it to lawyers. What I see is that many lawyers have been advising clubs [on such matters], but in general on a Belgian level I think clubs are not of such a size that they can deal with this easily, except for the bigger clubs. Most clubs will never be in a situation where they can be prepared because they are just too small.*

And of course there are a lot of regulations. You have the general legislation, and regional legislation, and then you have the Belgian federation, and UEFA and FIFA, and you have tax regulations and now you have anti-money laundering legislation. It is so complicated, particularly for a small club. Even for us as an agency, we have four or five people working here; I do not see how it is possible for agents to easily find out how it works, bearing in mind also that 90% of the agents are just individuals. Then they need to contact lawyers, but they do not have the budget for lawyers. So I think [the legislator] overestimates the professionalism and the scale of the business, and that is also a problem when it comes to adapting to and implementing the legislation, because you do not have the manpower to deal with it.

Q: Apart from the existing regulations of the Flemish Region regarding player agents, and the existing RBFA regulations, not to mention the upcoming revised FIFA regulations regarding player agents, the sector will be confronted with an additional set of legal obligations under the anti-money laundering framework. Do you feel that this additional set of obligations will succeed in generating more transparency within the sector?

A: *Yes, I guess it will become more transparent. But I do not believe it will solve the issues with agents and money laundering, because the agents, or the dodgy agents at least, live in Monaco and in Dubai. And then you can have the ultimate beneficiary who lives in Dubai, and things can still happen with the money over there, and they can still find constructs and structures, and deals and transfer dealings. So while I do think it is going to be more transparent, it will not solve the issues we have seen with all of the famous cases in Belgium – and not only in Belgium but everywhere I think, because it is something structural that all of these offshore companies still exist and they will continue to exist. Also because most of them live there, actually. So it is not something that is secret.*

Q: What about the wider goals of the legislation, such as that of securing the 'health' of the economy of the football sector: Do you consider that it would add something of value to the benefit of the sector, beyond transparency per se?

A: *No, not from my point of view. I think in any business, whether it is real estate, or football, or maybe also some financial industries, it attracts a lot of dirty money in my view, and I still believe [this legislation] will not help to solve this kind of attractiveness for those who want to do money laundering. I think it is still good business to invest in football, and if you have a club in South America and a club in Europe and you do transfers, buying players in South America, it is something you cannot prevent with this kind of legislation, also because it is too international for that to be possible in my opinion. Admittedly I am not a specialist in anti-money laundering, but my feeling is that it will not solve anything.*

Q: So is it fair to say that you are skeptical about AML legislation and its effectiveness in general, and not just specifically in the football sector?

A: *Well, no, I think it depends on the business. When I worked previously as a lawyer in a well-known law firm, I remember we were strictly informed about how to deal with this and when there would be suspicion about something, and the law firm I worked for was very conscious of these regulations because it could mess up their business – whereas I think that culture of awareness will never exist in football.*

One of my colleagues in Germany always says that the reason many agents become rich is just because they do not know what the legal risks are: They are simply not aware. You can send them a thousand documents and they will fill out whatever needs to be filled out, and then the next day they do something completely different to what is in those documents. So the culture

in football, certainly in the agency business, is one where they do not have any awareness, and the culture is not there to follow up the rules in a strict way, like we did in the law firm. So I think that is an additional problem in football, because nearly all agents will not have a clue what it is about. They will simply ask "where do I have to sign?" And that is the culture in football. Actually that is something that is changing at the level of clubs, because they are more professional, but at the level of agents, who are just individuals, they sign whatever needs to be signed – whether that is a warranty of good behaviour, or a representation that they do not engage in criminal activity, or whatever – in order to get a deal done.

So I think the obstacle to implementing this in the right way is the level of professionalism, the level of awareness, and the culture [in football]. On a club level, yes; on a federation level, one hundred percent; but then the clubs and the federation need to push really hard with the agents [for them] to understand what it is about – and that is not the case, also because they are not big enough to do so.

Q: So is it rather that you are skeptical specifically about the effectiveness of such legislation in the football sector, and that you would you then contrast that with the financial sector, at least to some extent?

A: *Definitely. Well, that is my experience. In the law firm I worked for [these anti-money laundering obligations] were a big thing, but I do not have the feeling it is a big thing [for player agents]. It is just yet another thing to comply with, and we do not know what it is about. Indeed if you ask me what it is really about, I have no idea; what I remember is what I did ten years ago [as a lawyer].*

I see all of these documents from the clubs that we need to comply with – and, ok, for us it is very easy because we are very transparent, as it is just our company and maybe a management company and that is it – but I can imagine that [is not the same for many other agents]. To give you an idea, in Belgium there is a Belgian law saying that when you are an agent and you get money [for agency services], you cannot transfer that money to an agent who is unregistered in Belgium: That is the law. But, believe me, I know 200 agents who are not registered in Belgium and yet they do receive such money. And it will be the same with this legislation as well. The agents will not comply with it, unless and until they feel that it is serious and that they have a problem. It is a different culture.

Q: Do you think the existing anti-money laundering legislation could be improved to better match the 'architecture' of the professional football sector, or do you rather take the view that it simply would not work in the football sector?

A: *I would not go as far as to say that it would not work, but it would need a lot of cases and a lot of proceedings against agents who are not complying in the right way before there will be a change of behaviour. That is unfortunately a bit the culture in football, that [those who are active in the sector] will only change when they are being caught, and as long as they are not being caught it is fine from their perspective. When it comes to agent regulations in Belgium,*

there are no controlling mechanisms whatsoever; you do whatever you want, and nobody is checking it. Only when agents see that it is being checked will they start to change. So I think that is going to be the issue: If they discover that it is serious, then they will change; but as long as they think it is just another kind of formality, then it will not change.

Q: So in terms of possible improvements, do you think that it would help to make the penalty for getting caught more severe?

A: *Definitely, that could help. Then I would expect that agents would become more alert [to these obligations]. But I have a similar feeling with the GDPR (General Data Protection Regulation), which required us to do a lot of things, such as placing some additional information on our website, but then there is nothing that happens with it, and at the present moment in time nobody is thinking about GDPR because it is not our problem. But when it becomes a problem for agents then they will change. That is a least the feeling I have, but I am just one agent, and I cannot speak on behalf of the other agents. Still, I think if you were to ask all of those other agents what anti-money laundering is, I think most of them, while they might have some rough idea, would not really know what it is about. It is just an annoying bit of administration; that is what I expect they would say.*

And actually that is what we see happening: Clubs are scared of this, and clubs will push it through. That is what we saw after the 'propere handen' case in Belgium, that all of these clubs were suddenly very strict in saying to agents "ok, you need to have a representation contract; it needs to be registered; we will help you with the registration." That is also what they are doing now with the 'ultimate beneficiary' documents, that they follow up on it because they are scared of it. And I think that is probably the way to do it, that the clubs are held responsible also for the agents they work with – although that is tricky, because it is something that they will never do. But the point is that now with all of the other regulations you see that the clubs push them through the agents, and that the agents then adapt themselves, not because the agents are scared but because of the clubs being scared of sanctions. So I think that is a way to work around the problem.

Q: The law will only apply to player agents in the football sector who are established in Belgium. Do you feel that the application of anti-money laundering obligations could entail a competitive disadvantage for player agents established in Belgium?

A: *No, I do not think so. I do not think any [agents] will move because of this. If agents do move, it is because they have problems with the tax authorities, or because the taxes are too high, but not because of regulations. Certainly I would not move because of this myself. That is my personal opinion. Mostly when agents move it is tax-driven. Perhaps it could be linked to money laundering, but at any rate that is something I would obviously not be in a position to prove.*

Q: And what about the Belgian football transfer market in general – do you feel that the application of anti-money laundering obligations could entail a competitive disadvantage for the Belgian football transfer market, particularly in terms of the possibility of greater bureaucracy impeding the smooth functioning of the market?

A: *I would not say that it would be a competitive disadvantage, but it may be something that some agents and clubs will take into account, that there is this extra layer of administration and compliance that should be done, and that maybe also some people cannot be involved in a certain deal. That also depends to an extent on whether or not the international clubs are actually engaged in money laundering, or are involved with people who are engaged in money laundering. So that is something that I cannot assess. I guess if they really have a problem in that respect then they will take into account the fact that in Belgium there exist these kinds of regulations, but it is difficult for me to say. From a Belgian perspective, I think clubs and agents will just say that [the Belgians] are bothering us with extra rules and administration, but I do not think that this will result in a transfer being done to, say, the Netherlands instead of Belgium. But I do not know. What we have seen in the past is that all of these dodgy people who are buying Belgian clubs will no longer consider buying Belgian clubs; that could happen. But when it comes to transfers, I am not sure; maybe.*

I should also add that the kinds of people we are talking about are not ones who we have been in touch with ourselves, to be honest. I have only been confronted with such a question once from an agent who was living in Qatar, who asked if we could send an invoice to a Belgian club and if he could then invoice us, because that Belgian club did not want to pay him directly because they were afraid of doing so as they were not sure what would happen with the money – although we then pointed out to him that for us it is the same problem. So I am not too familiar with these kinds of people who could have an impact [on the functioning of the transfer market], because we do not engage in money laundering and we are very transparent and we pay our taxes and we do not have any offshore companies where we transfer money to. So for us it is just extra administration, though I can imagine that for a minority of people it could change their business.

Q: Do you think that the application of anti-money laundering obligations could actually benefit the Belgian football market in some way?

A: *Maybe. I think that for people who want to buy clubs in Belgium and who are genuine, they might feel that this allows them to compete on a level playing field and on a more honest level, if they know that [unscrupulous actors] will be banned from the market. That could be, and maybe that can help. I am not sure.*

Q: Do you think that the application of anti-money laundering obligations could benefit the football sector as a whole in terms of image or reputation in Belgium?

A: *No. If anything maybe the fact that there is this initiative to extend the application of these obligations to football even increases the perception of football as a dodgy business. Because*

now they are saying that there are not enough rules, but from my perspective if everybody were complying with the existing rules and this compliance were being checked, it would already be a lot better. Strange as it may be, the more they talk about regulations for agents and clubs, the more dodgy I think our reputation becomes. Before the 'propere handen' case, agents had a bad reputation, and now, notwithstanding the fact that they have created an abundance of new rules, the perception of agents is that they are even dodgier than before.

Having said that, I also think now is bad timing to discuss this question of reputation, because there is too much in the press at the moment about these kinds of cases, so that is the problem at this moment in time.

Q: In your opinion, would it be better to regulate this matter on the European level instead of through a 'unilateral' action by the Belgian legislator?

A: *One hundred percent: All of these regulations governing agents should be made on the European level. I think it is completely ridiculous that within the European Union there are so many different regulations, and while it is very difficult for us to do business in Italy, for an Italian [counterpart] to do business in Belgium is completely impossible. So it does not make sense to do this on a Belgian level; it should be on a European level – and that goes for everything regarding agents, not only this matter.*

Q: An often-heard criticism in the literature on anti-money laundering legislation is that those actors it seeks to target are precisely those who would not comply with the obligations that it lays down, whereas those actors who would not engage in money laundering anyway are ultimately the ones who are burdened by those obligations. Would you agree with that view?

A: *That is one hundred percent my conclusion. I think this legislation is now targeting an industry where most people who have had an agency company for more than ten years – while they may be the right target – do not like to comply with things, and will do whatever they want to do in the belief that nothing will happen to them. So that is why I think that if they were being sanctioned they would change their behaviour, and that the problem is not the regulations but rather the culture, and as long as those governed by the regulations get away with [non-compliance] their behaviour will not change, regardless of how many regulations there are.*