



SPORTS LAW: HOT TOPICS AND NEWS

In Italian sports law, it is now the season of evolution. Enacted on 17 June of this year, the new Code of Sports Justice of the *Federazione Italiana Giuoco Calcio* (FIGC) aspires to administer timely and consistent justice within the federation.

And on the field, we have seen a fantastic result from the Italian national women's football team at the world championship in France! This latest stellar performance means we should no longer wait to reform the traditional distinction between professional and amateur athletes, to guarantee to athletes of both genders a level of protection that is commensurate to the level of their performance and hard work.

Furthermore, Law 86/2019 has been effective since June and it is intended to restructure and reform the legislative framework governing sports. Law 86/2019 grants several powers to the government and is a good opportunity to govern sports contracts beyond the coverage under the historically applicable legislation, namely Law 91/1981.

FIGC'S NEW CODE OF SPORTS JUSTICE: THE CHAMBER OF ARBITRATION

The new Code of Sports Justice (the "**Code**") of the Italian federation governing the game of football, the *Federazione Italiana Giuoco Calcio* ("**FIGC**"), entered into force on 17 June 2019, introduced by Gabriele Gravina, President of the FIGC as follows: "*The structure of the text, especially in the section governing legal proceedings, is what makes this code modern and up to date. We wanted justice to be fair, speedy and efficient: Justice with a capital J. The end result lends greater credibility to the game of football in Italy.*"

The Code is divided in two sections: the first includes substantial provisions on liability, fines and violations, while the second governs procedure in legal proceedings involving the sport of football. This latter section introduces a very interesting option, the so-called "**Chamber of Arbitration**", where arbitrators

Articles

- FIGC's new code of sports justice: the Chamber of Arbitration;
- Sports as employment: potential reforms;
- Tax incentives for professional athletes who transfer to Italy;
- Sports crimes and systems and controls pursuant to Law 231/2001;
- Managing rights to one's image and "ambush marketing".

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will have the authority to settle disputes also beyond the traditional employment relationship, including disputes:

- relating to financial matters between sports associations, clubs and companies;
- between professional sports associations and their professional members that arise from the sports activity or membership and relate solely to economic matters that are not subject to collective bargaining agreements (see below for more information on these) and which can be decided by arbitration under the law;
- claims for compensation by professional members towards sports associations other than their own where the association's liability is recognised by the internal disciplinary commission.



Parties intending to devolve a dispute to the Chamber of Arbitration should ensure that a **specific arbitration clause** is included in the agreement between them, expressly providing for arbitration to settle disputes involving economic rights.

The new Chamber of Arbitration is additional to the existing **Arbitration Colleges**, provided for by the collective bargaining agreements that govern the legal and economic employment terms between professional football players and the sports associations in Italian premier league Serie A, and professional leagues Serie B, and Lega Pro. The Arbitration Colleges for the Serie A and the Serie B, for example, are responsible for settling all controversies, including those aiming to ascertain damages to be compensated as a result of contractual breaches, exclusively in relation to relationships governed by collective bargaining agreements or individual contracts for sports performance. From a subjective point of view, the controversies must involve participants in the Serie A or Serie B championships and their football players members.

The newly introduced Chamber of Arbitration enriches the alternative dispute resolution alternatives available to address controversies in the professional football sector.

The second section of the Code, relating to sports legal proceedings begins by enunciating a strong principle: "*sports legal proceedings implements the principles of the right to defence, parity of the parties, adversarial proceedings and all other principles of fair and equitable legal proceedings.*" Moreover, the Code sets out mandatory, peremptory terms, thus ensuring speedy proceedings. Under the Code, sports associations and all their professional members must have a certified electronic mail, which also will ensure greater certainty in the proceedings.

The Code is half the battle: the new provisions give more credibility and efficiency to the justice system for sports, in line with the hopes of the President of the FIGC.

SPORTS AS EMPLOYMENT: POTENTIAL REFORM

Historically employment relationships in the sports sector have been governed by Law no. 91 of 23 March 1981. The enactment in August 2019 of Law 86/2019, which delegates to the Italian government the authority to make the

specified changes in the legislative framework is a great opportunity to push beyond the existing traditional framework.

Currently, according to the general criteria set out in Article 2 of Law 91/1981, professional athletes, coaches, technical and sports managers and athletic trainers can be classified **as professionals** when they "*perform sports activities for remuneration, on a continuous basis, in specialties and sports governed by the Italian National Olympic Committee (CONI) and in specialties for which the respective national sports federation has decided to award the status of 'professional'.*"



Therefore, the requisites to be met to be deemed a "professional" are:

- receiving remuneration for the sports performance;
- continuity in performance of sports activities;
- sport specialty is governed by the CONI; and
- the national federation of the sport specialty performed recognises professional status.

In Italy, only four national federations recognise professional status to certain segments within their sports: the FIGC for football, and the federations for cycling, golf, and basketball. The FIGC for example recognises professional status only to male members, who perform their work activity only in the context of the Serie A, Serie B, and Lega Pro championships.

Thus, currently Law 91/1981 does not govern **de facto professionals**, or those athletes who perform their sports for remuneration on a continuous basis, who are however classified as amateurs because their federation has not yet recognised a professional segment. Income earned by amateurs, whose performance is not classified as "work", is deemed to be "other income" and therefore no social security contributions are paid in connection to such work. This creates a manifest disparity of treatment between sports professionals and those holding the status as "amateurs", who are therefore offered different degrees of protection for the same performance – depending on the sport they practice.

Against this backdrop, **Law 86/2019** was enacted to "*delegate authority to the Government and to simplify other provisions governing sports and professions in sports.*" Among the many subject matters to be potentially reformed, Article 5 of the Law states that the government will have the authority to reform employment relationships in the field of sports.

Article 5 of the law seeks a definition of "*employee in the field of sports, including the role of referee, without any distinction as to gender, and regardless of whether the activity performed is professional or amateur, and to set out the related legislation as to insurance, social security and tax as well as the rules to manage the pension fund.*"

In this regard, we would do well to remember that the **EU Court of Justice** does not distinguish between professional and amateur sports performance; rather it bases the distinction on whether the activity has an economic nature, or not. Precedent decisions of the EU Court of Justice have clarified that, for the purpose of classifying an athlete, it is sufficient that the athlete receive periodic remuneration in exchange for an obligation to perform in a sport as an employee, which is the athlete's principal activity.

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The law appears to wish to recognise "*the peculiarity of the sports employment relationship as defined nationally and in the European Union*" thus attempting to address the manifest disparity of treatment set out in the Italian legislative framework. **Women's football** is one example: this year, the women's football world cup in France has recorded growing public interest and is becoming a highly significant social and economic event. Nevertheless, the classification of the athletes as amateurs prevents these female athletes from benefitting of the safeguards available under Law 91 of 1981, which governs both the relationship with the sports association but also social security, health insurance and pension arrangements.

Legal and economic considerations support the reform hoped for by Law 86/2019, to move away from the traditional set-up and to align applicable Italian law to the broader EU legislation, so that all athletes can be given the recognition and merit they deserve.

We are monitoring the progress of Law 86/2019, which delegates the government to take these important steps to remove the unequal treatment, in terms of both salary and social security benefits, of professional athletes and athletes who are formally amateurs but *de facto* professionals.



TAX INCENTIVES FOR SPORTS PROFESSIONAL WHO BECOME RESIDENT IN ITALY

1. The provisions of new Law 58 of 2019

New Law 58 of 2019, enacted in June 2019, provides for an advantageous tax regime for sports professionals, within the meaning of Law 91/1981, who become Italian residents for tax purposes starting from 2020. As stated above, the definition of sports professionals in Article 2 of Law 91/1981 includes: athletes, coaches, technical and sport directors and trainers, who are on a continuous basis remunerated for their performance in sports governed by the Italian Olympic Committee, CONI, and exclusively for those sports whose national sports federation distinguish between amateur status and professional status.

The tax regime in question implies that the income generated by sports performance will be considered taxable income only by 50%, in the year in which tax residence is transferred and for the following four years. The regime can be extended for an additional five years, in case a taxpayer athletes has at least one child under the age of eighteen and purchases residential property in Italy.

Accession to the regime is optional and implies a contribution equal to 0.5% of taxable base income.

Eligibility for the regime is conditional on the following:

1. Tax residence abroad for the two tax periods preceding the transfer in Italy;
2. Requirement to remain in Italy for two years following the residence transfer;
3. Performance of the work activities prevalently in Italy.

2. Alternative favourable regime

In alternative to the tax regime under Law 58/2019, the persons transferring their tax residence in Italy may opt for the regime pursuant to Article 24-bis of the Income Tax Code (Presidential Decree 917 of 22 December 1986), which provides for the payment of a substitute flat tax of Euro 100,000 per year only on all income generated abroad for up to 15 years.

Eligibility for the regime is conditional on the following:

1. Transfer of tax residence in Italy;
2. Tax residence in a country other than Italy for at least nine of the ten tax periods preceding the exercise of the option.

In case of doubt as to whether the eligibility conditions are met, the tax payer is expressly allowed to submit a petition for a ruling to the Tax Authorities.

Given the amount of the flat tax to be paid (Euro 100,000), the flat-tax regime may be convenient where the new resident taxpayer has significant investment abroad, while the new regime under Law 58/2019 would allow significant tax savings on income generated by sports activities performed in Italy.

SPORTS CRIMES AND SYSTEMS AND CONTROLS PURSUANT TO LAW 231/2001

In May 2019, Law 39/2019 concerning the ratification of the "Convention of the Council of Europe on the manipulation of sports competition, made at Magglingen on 18 September 2014" was enacted, and as a result the offence of "*Fraud in competitive sport and the illegal betting*" was placed on the list of relevant criminal offences pursuant to Law 231/2001 ("**Law 231**"). In parallel, the Code of Sports Justice of the Italian Football Federation, FIGC, entered into force on 17 June 2019 and also states that the effective adoption and implementation of systems and controls under Law 231 (the "**Model**") can exempt or exonerate also in connection with this offence.



Specifically, the recently introduced offence has extended corporate liability for the commission of the offences under Articles 1 and 4 of Law 401/1989 if they are committed by (i) senior executives or persons managed or supervised by them and (ii) in the interest of or on behalf of the company.

The crime of sports fraud listed in **Article 1 of Law 401/1989** targets:

- anyone who **promises or offers** "*money or other profit or benefit to any participant in a sporting competition organised by the recognised federations*" or who performs "*other fraudulent acts*" with the intent of "*achieving an outcome different from that resulting from the correct and fair evolution of the competition*", as well as
- **a participant in a sporting competition** "who accepts money or other profit or benefit or **accepts the promise**".

The text of **Art. 4 of Law 401/1989**, titled "Illegal betting", is particularly complex and sets forth a plurality of different offences, some of them major and some of them misdemeanours, connected to the operation, organisation, sale of activities, games and betting in breach of authorisations or administrative concessions.

The description of two offences listed in Art. 25-*quaterdecies* of Law 231 immediately makes it clear that it is a wide-ranging scheme of punishment both in terms of the type of behaviour considered criminal as well as in terms

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of the persons identified as possible offenders. This seems to be the result of a precise legislative decision to make sports companies more accountable towards the sporting community and to ensure that games are played in accordance with the rules and that the results of matches will be genuine.

Art. 25-*quaterdecies* of Law 231 states that a corporation that has not implemented a Model suitable to prevent the offences of fraud in sporting competition and illegal betting can be subject to:

- **fin**es: up to Euro 774,500 for major crimes and up to Euro 402,740 for misdemeanours;
- **industry bans**: solely in relation to the major crimes, those bans set out in Article 9(2) of Law 231¹ **for not less than a year.**

Another significant reform, however, is the introduction at **art. 7** of the Code of an explicit provision that from a substantial point of view assigns to the **Model an exemption or exoneration** where the court finds "*adoption, suitability, effectiveness and effective operation*".

As Art. 7 of the By-laws of FIGC clearly states, "the *models ... must provide: a) measures suitable for ensuring sporting activities in compliance with the law and sports legislation that identify in good time risk situations; b) the adoption of a code of conduct, specific procedures for the decision-making phase of both administrative and technical and sporting nature and appropriate control mechanisms; c) the adoption of an effective internal disciplinary system suitable for sanctioning non-compliance with the measures indicated in the Model; d) the appointment of a guarantee institution comprised of persons of the utmost independence and professionalism vested with autonomous powers of initiative and control, appointed to supervise the operation of and compliance with the models and to ensure their update: the systems and control model to which the Code makes reference is nothing other than the Model under Law 231.*

Further, the prerequisites for the application of the sanction benefits to the sports associations within FIGC are those set forth in Articles 6 and 7 of Law 231 and simplify the evidentiary mechanism outlined in Art. 13 of the previous version of the Code, broadening its scope of application by providing that "*For the purpose of excluding or mitigating the liability of the company referenced in art. 6, as set out and referenced in the Code, the court shall evaluate the adoption, suitability, effectiveness and the effective operation of the systems and controls model as per art. 7, par. 5 of the By-laws.*"

On a practical level, the enactment of Art. 25 *quaterdecies* of Law 231 requires each corporate entity to verify whether the new provision applies to the activities carried out by the entity. Sports association and companies will need to pay significant attention, because the recent provisions imply they need to adopt or update and implement a Model, that while carrying out the risk mapping takes into account all relevant crimes (especially fraud in sports) as well as all the sports crimes provided for under the Code.

In response to the growing number of internal audit systems and controls, all companies are called upon to implement legislation applicable to several sectors, such as data privacy, environment, health and safety at work, antitrust, and now – sports justice, and the consequent risk of overlapping



¹ Art. 9(2) of Law 231/2001 lists the following industry bans: "a) prohibition to exercise activities; b) suspension or revocation of authorisations or concessions that are functional to the commission of the crime; c) prohibition to enter into contracts with the public administration, other than to obtain the supply of a public service; d) excluded from eligibility of benefits, loans, grants, subsidies and revocation of any of the foregoing already granted, if any; and e) prohibition from advertising goods or services."

monitoring and fines makes it ever more useful that a company choose **an integrated approach**. In relation to the Model and to a programme for the prevention of sports crime, the creation of an integrated compliance system can be implemented as follows:

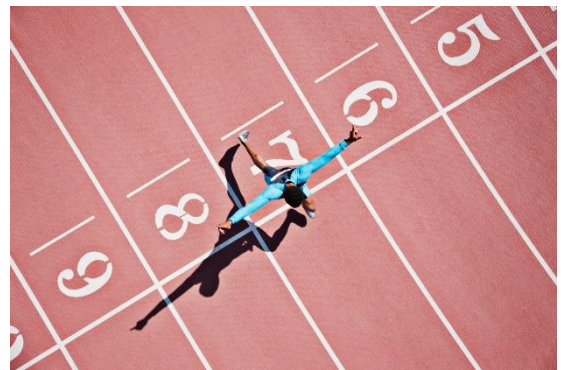
- during Risk Assessment and Gap Analysis, taking into account, not only the relevant offences under Law 231 but also those potentially relevant sports crimes that entail the risk of disciplinary sporting offences;
- Including in the Code of Ethics the principles to foster sports culture and to create procedures and systems suitable to minimize the risk of violations of the Code;
- When drafting the Model, taking into account specific protocols or procedures aiming to prevent "unfair" conduct;
- Providing for specific, appropriate flows of information to the Supervisory Board.

MANAGING RIGHTS TO ONE'S IMAGE AND 'AMBUSH MARKETING'

One of the issues that is always at the forefront of controversy in the media, and sometimes judicial, debate is the ownership, management, awarding and sharing of the economic rights to the image of athletes, their performance and sports events generally.

A main distinction is clear:

- **Audio-visual rights**, relating to specific competitions, owned by their respective organisers along with the sports associations involved: audio-visual rights are offered by way of competitive tenders, either on single platforms or on two or more competing platforms, making several bundles available. Audio-visual rights are governed by Legislative Decree 9/2008, correct application of which is supervised and regulated by the Italian Communication Authority, **AGCOM**. **In addition, the Italian Competition Authority, AGCM** regulates competition in the process to sale and manage audio-visual rights and the related market. More recently, audio-visual rights have been at issue in a heated legal dispute before the Court of Milan, arising out of the award for the rights in Italy of the "Champions League", which involved Sky as well as state television Rai (and marginally also Mediaset). Even more importantly, the legislation governing audio-visual rights in sports is under pressure to adapt to new, emerging technologies able to offer viewing alternatives in addition to the traditional "in clear" or "pay-per-view" modalities, such as viewing in streaming or upload on "video sharing" platforms. These new viewing options intertwine with the complex legislative and judicial evolution arising from the growth of internet and the liability of providers of unlawful content uploaded by users. At the same time, the Italian market has presented a few, initial offers of "authorised" streaming, thus contributing to further competition in this evolving sector.
- **Image rights**, or the exploitation of the economic rights to a sports star's image, by the sports star directly on one hand and by the sports club, on the other: in certain cases, for example in football (with the **1981 League/AIC Agreement for clubs** and the **2004 FIGC/AIC**











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Agreement or national teams), representatives for the various parties involved have reached agreements to set out base regulations. Although there is still a wide margin for regulation, especially in other sports, where there is no regulation at the federation level. The issue of image rights is often crucial when negotiating contracts with sports professionals, typically when balancing the rights of third parties, such as the sports club's technical sponsors and the individual athlete's sponsors.

A separate related phenomenon is **ambush marketing**, a notion classified in law as unfair competition, which consists in the unfair and unauthorised parasitic exploitation of certain significant sports (or other) events that attract massive media attention. Without any authorization to do so, the conceptual nexus is exploited in a wide variety of ways for commercial ends, whether it is the choice of spokespersons, the presentation of the advertising messages or the use of hashtags or other forms of "digital" communications for advertising purposes. Recently, ambush marketing has been found to exist by Italian courts in connection with globally-relevant events such as the Winter Olympic Games in Turin in 2006 and the World EXPO held in Milan in 2015, therefore we expect that careful consideration will be given to the issue leading up to the new international sports events to be held in Italy, first and foremost the 2026 Winter Olympic Games in Milano-Cortina.



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