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# SPAIN

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## I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

In December 2022, Spain entered a new regulatory era within sports law as the Spanish Parliament approved Act 39/2022, thus replacing the previous Act 10/1990 after more than three decades of being in force. This law adapts the current legal framework to the new sports reality in Spain. It is the main rule on sport in the country and is complemented by other regulations that address the institutions involved in sports, as well as the organisation, governance and development of sports in Spain.

However, owing to the particular construction of the state, it is not only the regulations enacted by the Spanish Parliament (such as Act 39/2022) that need to be taken into account: while Spain is a single sovereign state, it is composed of 17 regions or autonomous communities that are vested with a fair amount of autonomy and with competencies to rule on very diverse issues, among them, sports. Therefore, some particularities may be found in specific territories because of the powers granted to regions to rule on sports matters.

### i Organisational form

From an organisational standpoint, Act 39/2022 and the relevant provisions developing it primarily govern the following categories of sports entities.

#### *Clubs*

Clubs are sports associations composed of natural or legal persons that are devoted to the promotion of one or several sports modalities, their practice by relevant associates and participation in sports activities and competitions.

The former Act 10/1990 established for clubs participating in professional competitions the obligation to become a sports limited liability company (SAD) with some limited exceptions. However, the new Act 39/2022 has eliminated this obligation, even if nowadays most clubs competing in professional football and basketball adopt the form of a SAD. SADs have a special regime established in Act 39/2022 and Royal Decree 1251/1999 on sports limited liability companies and the Companies Act (the Royal Legislative Decree 1/2010).

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### ***Federations***

Federations are private entities with legal personality that, among other things, are responsible for organising sports events and competitions, promoting sport and exercising the disciplinary powers within their material scope. Federations develop their own private competencies but also carry out, by delegation, public functions of administrative nature. Depending on their territorial scope, these federations can be national or regional. Regional federations are part of the overall national federation but have their own specific rules and regulations.

### ***Leagues***

Leagues are sports associations exclusively and compulsorily composed of sports clubs that take part in official competitions of a professional nature and national scope. They have legal personality and independent autonomy for their internal organisation, even when they are part of their corresponding federation.

### ***Governing bodies***

The National Sports Council (CSD), which sits at the top of the sports organisational pyramid, is the government authority overseeing and ruling general sports activities in Spain.

In addition to the ordinary organisational structure outlined above, Spain has a National Olympic Committee and a Spanish Paralympic Committee.

## **ii Corporate governance**

Good governance issues are gathered under both the legal regulations and the internal rules of sports entities.

Concerns about good governance in sport come under the Spanish Criminal Code, which foresees a specific offence of corruption for managers, employees and collaborators of sports entities as well as referees and athletes for conduct aimed at predetermining or altering, in a deliberate and fraudulent manner, the result of a sports competition of special sporting or economic relevance. Act 19/2013 on transparency, access to public information and good governance also applies to the sport market. Based on this Act, some sports entities are obliged to make public information about their functions, regulations and organisational structure, including an updated organisation chart of the bodies they are composed of and the profile of persons belonging to them.

Another relevant piece of legislation regarding corporate transparency is the bundle of rules contained in Royal Decree 1251/1999 on Sports Limited Liability Companies concerning restrictions on the ownership of shares in these companies and their duties of information. For example, the acquisition of over 25 per cent of the share capital of a company must be authorised by the National Sports Council; professional clubs and SADs cannot participate in the share capital of another SAD taking part in the same competition; and those parties that own 5 per cent or more of the share capital of an SAD cannot hold, directly or indirectly, a participation of 5 per cent or more in the share capital of another SAD, and the financial information of these SADs is to be communicated to the National Sports Council.

A number of internal regulations of sports entities deal with good governance issues. Those of the Spanish football league, LaLiga, may be the most complete and exhaustive, with a focus especially on the aim of the economic control and balance of clubs and SADs.

Act 30/2022 also establishes that Spanish sports federations and professional leagues must adopt a code of good governance in order to improve their actions and criteria in the composition, democratic principles and functioning of their management bodies, with particular emphasis on creating channels for complaint and a disciplinary regime.

### **iii Corporate liability**

The general principle of *neminem laedere* is applicable regarding the liability of managers and officers of sports organisations.

In addition, some sports regulations also specifically refer to this liability. For instance, the general regime of liability of SAD directors is stipulated in the Companies Act and is quite strict.

Managers and officers are not only subject to civil liability, but also to disciplinary measures arising out of the legal provisions mainly set out in Act 39/2022 and Royal Decree 1591/1992 approving the Sports Discipline Regulations, as well as those that specifically arise out of the internal regulations of sports entities.

## **II THE DISPUTE RESOLUTION SYSTEM**

The Spanish sports dispute resolution system is interconnected, involving not only the ordinary courts but also the dispute resolution bodies of federations and leagues, and arbitration.

### **i Access to courts**

Athletes, clubs and other sports stakeholders may have access to the courts when the circumstances allow, whether at first instance (e.g., access to the labour courts in employment matters, or to the relevant ordinary courts in purely civil or commercial disputes) or with the intent to challenge certain decisions previously taken by sports or administrative bodies on organisational, disciplinary or other matters. Apart from the ordinary courts, the Sports Administrative Court deals with various sports-related issues, even if it has limited *ratione materiae* scope.

One of the main novelties of Act 39/2022 is that most of the competences attributed to the Administrative Court of Sport (TAD) on disciplinary matters have been suppressed, thus granting direct jurisdiction over these matters to the civil courts. Furthermore, the Act orders federations and leagues to set up alternative dispute resolution (ADR) methods to deal with these matters on a voluntary and free basis for athletes. And for disciplinary matters, federations and leagues must also implement a specific enforcement procedure. However, until the government enacts the corresponding regulations for these ADR systems, the former disciplinary regime will remain in force.

### **ii Sports arbitration**

The rules regarding arbitration in Spain are outlined in Act 60/2003 on arbitration, which permits all controversies on subjects that are within the free disposition of the parties to be resolved by arbitrators. A wide range of sports conflicts may be thus brought to the knowledge and decision of arbitrators.

The submission of a dispute to arbitration will require that the parties have agreed on a valid arbitration clause in writing, with no specific formalities beyond their clear will to bring disputes that may arise between them to arbitration.

Apart from the rules foreseen in Act 60/2003 dealing with general issues (regarding the arbitration clause, the arbitrators, their competence, the basic procedural issues and the award, its execution and annulment), the specific provisions of an arbitration court administering the procedure will also be observed (ad hoc arbitration in sports is not common in Spain). The Spanish Court of Arbitration for Sport, created under the auspices of the Spanish National Olympic Committee, and the Arbitration Tribunal for Football, created under LaLiga, are two of the arbitral courts to which sports disputes may be brought, provided that the nature of the relevant dispute may be allocated within their relevant material scope.

### **iii Enforceability**

The enforcement of arbitral awards is conducted through ordinary courts in accordance with the provisions specifically foreseen in Act 60/2003 and in Procedural Act 1/2000. The enforcement of arbitral awards can only be challenged based on very restricted grounds foreseen in the above-mentioned Acts (basically, the fulfilment of the award's decision and the cessation of the statute of limitations of the execution).

The internal regulations of sports federation bodies foresee disciplinary measures that foster the compliance of parties with any decisions.

## **III ORGANISATION OF SPORTS EVENTS**

The key element in events organisation is the compulsory adherence of all members and participants to the rules of their corresponding sports bodies. The federations and leagues normally undertake the organisation of sports competitions.

### **i Relationship between organiser and spectator**

Sports organisers are free to establish the terms and conditions that spectators must fulfil when attending a sports event. However, in any case, sports organisers must abide by the mandatory provisions of Act 19/2007 against violence, racism, xenophobia and intolerance in sport events, and Royal Decree 203/2010 approving the regulations on the same subject.

### **ii Relationship between organiser and athletes or clubs**

The organiser ensures the terms of the participation of athletes in competitions by means of sports licences. Upon the signature of the relevant labour agreement, athletes request through their club that the relevant federation issues sports licences that will allow them to participate in the corresponding official competition. When a federation grants a licence, all the relevant sports regulations at the national and international level become binding on the athlete, and the athlete thus becomes subject to the organic and disciplinary authority of the organiser.

### **iii Liability of the organiser**

Article 5 of Act 19/2007 establishes the economic and administrative liability of organisers of sports events for all damage that may take place owing to their lack of diligence, or prevention of damage or public disorder. This liability is independent of and without prejudice to any other criminal or disciplinary liability.

#### **iv Liability of the athletes**

Owing to the specific characteristics of sport, as a general rule athletes are not liable for damage (e.g., injuries) that they may cause during the performance of a sports activity. In particular, it is understood that athletes assume the risk that is inherent in the sports activity. However, the theory of the assumption of risk only applies to damage caused within the ordinary limits of a sport activity (i.e., behaviours in line with the relevant standards of conduct). Therefore, when an athlete's behaviour goes beyond those limits, they can be liable for the damage caused. In addition, under some circumstances, an athlete can also be found guilty of a criminal offence when they had the clear intention to hurt or damage a third party (intent to injure).

#### **v Liability of the spectators**

Spectators that breach the regulations under Act 19/2007 can be administratively sanctioned by the competent disciplinary body (not only with economic fines but also, among other things, with a prohibition of access to sports venues). Spectators can also incur civil liability for any damage that, through their fault or negligence, is caused to third parties. Furthermore, spectators can be found guilty of criminal offences they may commit during a sports event, not only in sports venues, but also in their surrounding areas.

#### **vi Riot prevention**

Pursuant to Article 27 of Organic Act 4/2015 for the protection of public safety, and Article 35 of Royal Decree 203/2010, the public security forces are responsible for security and public order during sports events. Neither clubs nor organisers must pay a financial contribution towards this public service. However, Act 19/2007 and Royal Decree 203/2010 establish certain measures that clubs and organisers must implement in sports venues aimed at preventing not only riots but also any kind of violence, racism, xenophobia and intolerance. In this regard, organisers are responsible for implementing the necessary measures to prevent riots and guaranteeing that the spectators meet the conditions of entrance to a sports venue. For this purpose, clubs are obliged to arrange the necessary private security in sports venues and to implement all the means necessary to accomplish the security measures imposed by law. In particular, clubs and organisers must implement, among other things, a computerised system of access control, turnstiles, security equipment and video surveillance. In addition, all sports venues must have a control room where a security coordinator will manage the measures in place during a sports event, and will coordinate all the security bodies involved (private security, police, firefighters, emergency services, sanitary services, etc.).

### **IV COMMERCIALISATION OF SPORTS EVENTS**

#### **i Types of and ownership in rights**

The main sports-related rights exploited in Spain are athletes' image rights, the broadcasting rights of sports competitions and the intellectual property (IP) rights held by clubs and organisers.

The right to self-image, guaranteed by Article 18 of the Spanish Constitution and developed by Organic Act 1/1982 on the protection of honour, intimacy and self-image, enables athletes (those who practise individual sports and those who render their sporting services in collective sports) to exploit their image and to assign it to third parties.



Each sports competition exploits its own broadcasting rights. The ownership of the sports broadcasting rights will ultimately depend on the competition at stake. However, as a general rule, these broadcasting rights belong to the clubs participating in the sports competition or to the organiser of the competition, or to both. In this respect, Royal Decree-Law 5/2015 on urgent measures in connection with the commercialisation of rights to operate the audiovisual content of football competitions, orders the joint selling of the commercial rights of the national professional football leagues (first and second division), the Spanish Cup, the Spanish Super Cup and other (both male and female) competitions organised by the Spanish Royal Football Federation (RFEF), establishing rules for the distribution of revenues among clubs and SADs (depending on some legal criteria).

It is worth highlighting that the new Act 39/2022 has expressly prohibited the establishment of a commercial relationship between a federation and any athlete likely to participate in its competitions.

Clubs and organisers can also hold IP rights that are exploited through the merchandising activity of their brands and symbols, either personally or through a licence to third parties, based on private law rules.

## **ii Rights protection**

The protection and enforcement of sports-related rights depend on the type of right involved in each specific case.

Regarding athletes' image rights, their defence can be enforced before the ordinary courts through proceedings based on the principles of preference and preliminary hearings or, if applicable, through a relevant claim before the Constitutional Court. In particular, the right to self-image is covered by the civil protection procedure established in Act 1/1982, which provides legal safeguards against illegal exploitation of the self-image right. Spanish jurisprudence has made important contributions to the development of this right.

IP rights are protected through the specific mechanisms envisaged in Act 17/2001 on trademarks that include, among other things, cessation of actions, removal of effects and compensation for damage in the case of a breach of IP rights.

The tools and mechanisms foreseen in Act 34/1988 on general advertising and in Act 3/1991 on unfair competition should also be considered regarding the protection of this kind of right.

## **iii Contractual provisions for exploitation of rights**

In accordance with Spanish law, sponsorship, merchandising and image rights contracts are not expressly ruled by any specific regulation; thus, the parties can freely determine their content with the sole limitations arising out of law.

Nevertheless, a number of provisions typically arise in these contracts, such as the relevant licensing of trademarks and other distinctive signs, non-compete and exclusivity clauses, first refusal clauses and provisions regarding the assignment of IP rights. In this regard, Spanish regulations prohibit the sponsorship of sports events by alcoholic drinks and tobacco brands. The exact definition of the scope of the exploitation and assignment of these rights is also of utmost importance, as is the self-reservation of rights, as the case may be.

The sale of broadcasting rights may be carried out on an exclusive or non-exclusive exploitation basis in accordance with the legal provisions in force. In addition, pursuant to Act 13/2022 on audiovisual communication, the exclusive assignment of the television broadcasting rights of sports competitions cannot restrict citizens' rights to information. For

this purpose, the broadcasters that hold the exclusive rights to an event of 'general interest for society' must allow other broadcasters to broadcast 'brief information summaries' (of less than 90 seconds) to be used only in general information programmes in which the logo or trademark of the organiser and the brand of the main sponsor of the event must appear.

## **V PROFESSIONAL SPORTS AND LABOUR LAW**

Professional athletes have a 'special labour relationship' with their employers that is ruled in accordance with Royal Decree 1006/1985, given the special features of the kinds of services to be rendered and the qualities of the persons rendering these services.

### **i Mandatory provisions**

Royal Decree 1006/1985 applies on a compulsory basis to sports contracts, while the general regulations on employment in Spain (especially the Workers Statute) will only apply on a subsidiary basis.

The special relationship between athletes and their employers is of a temporary nature, and salaries are, as a general rule, fixed in the relevant collective bargaining or labour agreement, or in both, as well as in the contract.

The labour relationship may end because of any of the general causes of termination of labour contracts (e.g., expiry of term or by mutual agreement), even if there is a special regime of unilateral contract termination by the athlete in exchange for the payment of compensation to the club, which will be fixed for this purpose in the labour agreement or, in the absence of a provision of this kind in the contract, established by labour courts.

### **ii Free movement of athletes**

The free movement of athletes from EU Member States is guaranteed in the same general terms applicable in all EU countries. However, in some sports there are some direct or indirect restrictions on the number of non-EU athletes that can take part in competitions (among other things, football and basketball). The same happens with minors.

### **iii Application of employment rules of sports governing bodies**

Labour agreements may contain provisions that the parties freely agree on (including those already included in the regulations of the sports governing bodies), provided these do not contravene compulsory laws, in which case they would be deemed null and void.

## **VI SPORTS AND ANTITRUST LAW**

In Spain, competition law issues are increasingly prevalent in the field of sport. Instances of state aid to clubs, the a priori economic control rules imposed on clubs by some professional leagues and the conditions of access to professions (e.g., in the case of licences for football coaches) have led to legal discussions concerning their potential restriction of competition.

The intervention of antitrust law measures in sport is not new in Spain. However, while situations encountered in the past (such as in matters related to the freedom of movement of athletes or broadcasting rights distribution) have been resolved, new issues have developed (e.g., the Super League case). Although we cannot yet say that a genuinely separate and autonomous competition sports law exists in Spain, it is undeniable that in recent years

competition rules have come into play and the authorities are involved more and more in the day-to-day activity of sports, and that the authorities take antitrust principles into consideration in their resolution of conflicts. The professionalisation of sport in Spain has had a great deal to do with this.

## **VII SPORTS AND TAXATION**

The main particularities of the tax regime for athletes and professional clubs in Spain can be briefly summarised as follows.

Athletes who are tax residents in Spain must pay personal income tax (PIT) on their worldwide incomes. The PIT rate is progressive and can reach up to 54 per cent depending on the athlete's territory of residence in Spain. The PIT rules do not foresee a special tax regime for athletes (which used to apply in the past).

Athletes who have transferred their image rights to a third party and have a working relationship with a club that has obtained their image rights as part of the relationship are also taxed PIT on the payments made by the club to third parties for the image rights.

Athletes who are not tax-resident in Spain and foreign clubs that obtain income related to their participation in events in Spain can be subject to non-resident income tax relevant to their participation in events held in Spain. Double tax treaties (if any) will have to be considered in this respect.

SADs are subject to corporate income tax at a general tax rate of 25 per cent.

## **VIII SPECIFIC SPORTS ISSUES**

### **i Doping**

Besides the administrative sanctions established by the Organic Law 11/2021, of 28 December, on the fight against doping in sport, under Spanish law those who, without therapeutic justification, prescribe, provide, dispense, supply or facilitate banned or prohibited pharmacological substances or other prohibited methods to athletes to enhance physical capabilities or modify the results of a given sports competition commit a criminal offence (Article 362-quinquies of the Criminal Code).

Therefore, the Criminal Code punishes doping in sport, but it does not criminally sanction the use of doping substances by athletes, only its provision or supply to the latter. The criminal sanctions established by the Criminal Code include the imprisonment of the offender for a period of between six months and two years, a fine equivalent to six to 18 months' salary, and a special disqualification for the exercise of profession or holding a public service position.

### **ii Betting**

Law 13/2011 on the regulation of gambling and rules regarding sports betting, which are permitted activities in Spain, provides a general legal framework for online national gambling activities. This Law has been developed by Royal Decree 176/2023 of 14 March, through which safer gaming environments are developed. Furthermore, the 'autonomous communities', in light of the provisions set out in Section I, are competent to regulate gambling within their respective regions, so their regulations must be considered as well.

Act 13/2011 regulates national gambling performed through electronic, interactive and technological means, which include the internet, television, mobile phones, landlines

and any other interactive communication systems. Betting operators must obtain the corresponding licence prior to carrying out any betting activities. In addition, Act 13/2011 prohibits the advertisement, sponsorship or endorsement of gambling activities, as well as the advertisement or promotion of gambling operators that do not hold the appropriate licences. The provisions of Act 13/2011 are also applicable to cross-border gaming activities. In this regard, remote betting operators must obtain an administrative authorisation or licence granted by the relevant Spanish authority prior to carrying out their business in Spain.

The Spanish Ministers Council also promulgated Royal Decree 958/2020, of 3 November, on commercial communications of gambling activities, which regulates the advertising of online gaming, betting and gambling in Spain. It establishes, among other things, that sports clubs must not sign sponsorship contracts that involve gambling advertising on their official sports equipment. Clubs must not carry out sponsorship activities that consist of using an operator's brand to identify a sports facility. Nor will it be possible to broadcast betting commercial communications outside the legally scheduled time frame (1am–5am).

In addition, Law 13/2011, which is still in force, has been slightly amended by Act 23/2022, of 2 November 2022, with the purpose of:

- a* improving the protection of vulnerable groups;
- b* preventing addictive behaviours related with betting; and
- c* increasing and improving the fight against match-fixing and match manipulation.

### **iii Manipulation**

As mentioned, the Criminal Code envisages corruption offences for collusion between individuals, including a specific modality in relation to professional sports competitions. In this regard, Article 286-bis of the Criminal Code sanctions match-fixing and, to that extent, club directors, managers, employees and those who collaborate with sports entities, whatever their legal form, as well as athletes and referees, in relation to conduct aimed at deliberately and fraudulently attempting to alter the results of a professional sports match, game or sporting competition. The sanction foreseen for this conduct includes imprisonment of between six months and four years, a special disqualification banning practising in the industry or commerce for a term of between one and six years, and a fine of up to three times the value of the gains obtained by the illicit activity.

As the Criminal Code refers only to the intention to alter results, it is currently not entirely clear if this can be applied to actions intended to alter the development of an event that can have no impact on the final results.

Finally, a criminal offence will be committed through the mere intent of match-fixing; therefore, it is not required that the effective benefit or advantage intended actually occurs.

On the other hand, Act 23/2022 has created the Global Investigation Service of the Betting Market (SIGMA), a network of interactive and accessible cooperation by telematic means, to which the CSD, sports federation, professional leagues and gambling operators can adhere. Therefore, the above-mentioned stakeholders must inform SIGMA about facts likely to constitute fraud.

### **iv Grey market sales**

Article 67.2 of Royal Decree 2816/1982 approving the general police regulations on public entertainment and leisure activities stipulates that the resale of tickets is prohibited. Notwithstanding this and bearing in mind that the regulations only prohibit the resale of

tickets on the street (and not, for example, through the internet), it is unclear whether the resale of tickets outside those channels established by the organiser of the sports event is prohibited by law.

However, regarding the sale of tickets to a sports event, most organisers impose a general prohibition on purchasers on reselling tickets.

## IX THE YEAR IN REVIEW

The following recent decisions of the Spanish courts and authorities on sports-related issues are worth mentioning.

On 19 January 2023, the National High Court dismissed the appeal filed by the World Anti-Doping Agency (WADA) against the ruling of the Central Administrative Court No. 7 of Madrid, and thus confirmed the resolution of TAD that had cleared former cyclist Ibai Salas of sanctions for alleged irregularities in his biological passport. The Ibai Salas case dates back several years, when in 2018 the Spanish Agency for the Protection of Health in Sport (AEPSAD, now CELAD) imposed a four-year sanction on the athlete. Later, TAD overturned this sanction on the grounds that the biological passport alone was not sufficient evidence to support an anti-doping violation. Subsequently, WADA appealed this decision to the Spanish ordinary courts and to the Court of Arbitration for Sport (CAS). The CAS confirmed the four-year sanction on the former cyclist, but the Spanish courts ruled differently, considering that the biological passport 'does not enjoy the presumption of veracity' for this purpose.

On 11 July 2023, the Provincial Court of Madrid ordered the RFEF to pay a compensation up to €12.3 million for 'attempting to exclude Mediapro from the bidding process for the commercialization of the audiovisual rights of the Copa del Rey' during the 2019/20, 2020/21 and 2021/22 seasons. The ruling states that the RFEF contravened Article 2 of the Spanish Competition Act (abuse of dominant position) and Article 102 of the Treaty of the European Union, and that the compensation to be paid is based on Mediapro's *lucrum cessans* for not having been awarded the management of the Spanish, European and international licence rights.

On 18 July 2023, the Spanish Supreme Court (Contentious-Administrative Chamber) ruled that radio broadcasters must pay LaLiga the amount of €100 per match and stadium, to be quantified and paid in advance by the radio broadcasters for the full season to reimburse the expenses that the football clubs bear to make radio booths and other facilities available in stadiums for the radio broadcast of the matches.

## X OUTLOOK AND CONCLUSIONS

The sports law system in Spain is well developed, but it is still growing and being perfected in line with the relatively rapid conversion of sports into a business.

Spain has moved from amateurism in sports to professionalism over the past 30 years and, as usually happens, the law follows the reality. This has meant that a significant number of changes have taken place in recent years to address problems that were unknown decades ago. The tendency in the Spanish system is to continue to evolve to an even greater extent with the aim of harmonising legislation, as far as possible, with the new trends in international sports law. Spain has come a long way (especially in matters related to doping, bankruptcy,

distribution of broadcasting rights, financial control, betting regulation and the coordinated fight against match-fixing), but new challenges are still pending and will require the Spanish legislators' and sports institutions' intervention in the near future.