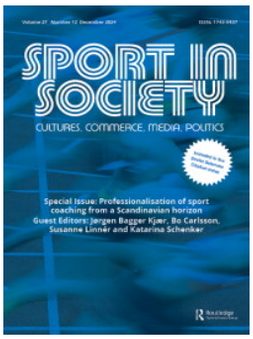
Money laundering and compliance in professional football: the case of Belgium in light of the new EU AML single rulebook



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Money laundering and compliance in professional football: the case of Belgium in light of the new EU AML single rulebook

William Bull[a] and Niels Appermont[b]

[a]Maastricht European Private Law Institute, Maastricht University, Maastricht, Netherlands; [b]Tax & Business Unit, Centre for Government and Law, Universiteit Hasselt, Hasselt, Belgium

ABSTRACT

In recent decades, football has evolved from a purely sporting activity into a global economic phenomenon. Along with this metamorphosis, questions of corporate governance and compliance have come to the fore when it comes to the governance of (professional) football clubs. A good example is the consequences of, and efforts to prevent, criminal activities in the form of money laundering. In recent years, the risks of money laundering activities through the professional football sector have often been highlighted by, for example, European Union institutions. In Belgium, an alleged money laundering scandal in professional football led to legislative measures. This contribution considers the application of Belgium's preventive anti-money laundering framework to professional football in comparison to the novel EU AML Single Rulebook legal framework as applicable to professional football. It concludes that this legal framework is not a miracle solution to the problems facing the sector, and furthermore, the application of this framework raises several questions.

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Introduction

The sport of football has undergone considerable developments in recent decades, not least among which is the evolution of the professional football sector from a purely sporting activity into a global economic phenomenon. Indeed, sport in general has become a significant contributor to the European Union economy, and the European football market in particular has seen substantial growth on a consistent basis, with revenues even increasing by 7% to €29.5 billion in 2021-22, notwithstanding the COVID-19 crisis (Deloitte 2023). Specifically as regards the revenues of European clubs, these increased from €11.7 billion in 2009 to €21 billion in 2018 (European Leagues and KPMG 2020). Being the biggest and most popular sport on Earth (Globalwebindex 2019), played by more than 265 million people worldwide (of whom 38 million are registered as professional players) (European Commission 2019, 2022b, 247), football has been a key driver in the commercial growth of sport, given not only its financial impact but also its economic resilience. However, the

CONTACT William Bull william.bull@maastrichtuniversity.nl

expansion of football as an industry has also coincided with an increase in the football sector's vulnerability to white-collar crime, including tax evasion, match-fixing and money laundering. Indeed, according to a recent research report on corruption in sport in Europe produced for the European Commission, around €90 billion is laundered through sport every year (Ecorys 2018). And, in conjunction with this, the level of attention to matters of governance in football has also intensified, which in turn has prompted different regulatory interventions intended to address financial malpractice in the industry.

This contribution will shed light on the phenomenon of money laundering in professional football and the problems that this crime engenders, as well as on regulatory responses to money laundering activities in the realm of football. The contribution will begin by highlighting the risks of money laundering through the professional football sector and in relation to the different actors involved (section 'Money laundering in professional football'). We will then move to outline certain regulatory efforts that have been undertaken to counteract money laundering in the football industry, both in the form of self-regulation initiatives and legislative interventions (section 'Regulatory responses to money laundering in professional football'). In the final section, we will examine one such intervention in particular that has been adopted in Belgium, where the legislator has been among the first to extend the application of preventative anti-money laundering (AML) legislation to the professional football sector (section 'Application of anti-money laundering legislation to professional football in Belgium'). In so doing, this contribution will present and draw upon the results of contemporary research into AML frameworks as applied to football. Said research was carried out as part of an independent research project funded by the Union of European Football Associations (UEFA) in the context of UEFA's Research Grant Programme, the results of which were first published in 2023 (Appermont and Bull 2023). The primary objectives of this project were to examine the legal implications and possible effects of this initiative on the part of the Belgian legislator. For this purpose, a combined doctrinal and qualitative-empirical research method was employed, comprising a series of semi-structured interviews with compliance officers of selected Belgian Pro League football clubs and the Royal Belgian Football Association (RBFA), as well as representatives of the Belgian Federal Ministry of Economic Affairs, the Belgian Financial Intelligence Unit and the Federal Parliament. It will be seen that the application of preventative AML regulation to professional football gives rise not only to difficult questions of interpretation, but crucially also to issues of compliance, which may significantly limit the extent to which such AML measures provide a solution to the problems facing the football sector, and which could therefore also hold important implications for ongoing EU initiatives to tackle money laundering in the footballing sphere. In this way, the present contribution will thereby also seek to identify possible lessons from the Belgian experience for the currently proposed EU Single Rulebook on AML.

Money laundering in professional football

The concept of money laundering and risks of money laundering through the professional football sector

The concept of money laundering is not a straightforward one to define (van Duyne 2018). In essential terms, money laundering may be described as the concealment and possibly

the 'sanitizing' of illegal profits in order to disguise their illegal origin (Nelen 2021). While the phenomenon of money laundering per se is a well-known one – and particularly in the financial sector, where ill-gotten gains may be channeled through banks and other financial institutions so as to conceal their criminal origin – the increased attention to the phenomenon in the professional football sector is more recent. According to a report of the Financial Action Task Force of 2009, the professional football sector also exhibits a number of susceptibilities to money laundering activities designed to disguise the illicit origin of criminal proceeds (Financial Action Task Force 2009). Some of these are structural in nature, such as the relatively low barriers to entry into the football market, the high level of interdependence among actors in this market (Steenwijk 2021), and the diverse legal structures (corporations, non-profit entities, foundations, etc.) on which they operate. Other vulnerabilities rather pertain to the football sector's particular financial characteristics, not only in terms of the large amounts of money involved in football dealings, but also the degree of volatility in the market and the fact that many sources of revenue are dependent on sporting outcomes (Nelen 2022). In addition, there are also cultural and societal factors at play, with football's special role in society making it less likely for illegal activities to be reported and, at the same time, more attractive to criminals seeking to enhance their status (Nelen 2021; Cindori and Manola 2020).

More specifically, there are various forms of business dealings in the football industry that can be appropriated so as to process and eventually sanitize illegal profits. Some of these are more peripheral to the sport itself, such as advertising and sponsorship contracts, which are particularly vulnerable to money laundering activities if attendant payments are made to accounts in high risk, non-EU countries (European Commission 2019). Others, however, lie at the core of the football market. For example, transfer dealings can provide persons engaged in criminal behaviour with a fruitful mechanism through which to launder money, by inflating the (notoriously hard to estimate) value of players who are the subject of a transfer deal between a buying and selling club, and thereby enabling the concealment of a secret payment unrelated to the transfer itself (Cindori and Manola 2020; Appermont and Bull 2023). Equally, capital investments in football clubs with financial difficulties or complex structures of ownership may comprise illicit funds, as may declared income from sales of match tickets or stadium site development (Financial Action Task Force 2009).

That there exist these risks of money laundering in professional football has long been recognized in the EU. Indeed, special attention has been dedicated to the matter in a range of policy documents dating back at least to the *Independent European Sport Review 2006*, developed under the UK Presidency of the EU of 2005, which noted that the football sector's economic expansion had the potential to heighten the risk of the sport being used as a vehicle for criminal activity in general and money laundering in particular (Arnaut 2006). This report identified a range of revenue streams in the industry that could be susceptible to money laundering, including inter alia player transfer deals, payments to player agents and investments in clubs.

This report was also soon followed by declarations and documents issued by the EU institutions themselves, and most notably the European Parliament, which adopted a series of resolutions on the matter, starting with a Resolution on the future of professional football in Europe (European Parliament 2007). In that resolution, the European Parliament observed that professional football constituted an atypical economic sector, and one in which football clubs operated under peculiar economic conditions, given the multiplicity

of stakeholders in the market and the interdependence between competing clubs (European Parliament 2007, Consideration L). In particular, the European Parliament saw the exponential increases in club spending and player salaries – and resulting financial difficulties experienced by many clubs – as underlying causes of criminal activity in football (European Parliament 2007, Consideration S). Similarly, in a more recent Resolution on an integrated approach to Sport Policy, the European Parliament drew a connection between the increasing money flows within the sport sector and malpractice on the part of player agents and in the context of player transfers (European Parliament 2017, Considerations S and Z).

For its part, the European Commission has also devoted attention to money laundering in sport over the same period, beginning with its White Paper on Sport, in which it too explicitly linked the phenomenon of money laundering in sport to bad practices employed by certain intermediaries (European Commission 2007). More broadly, the European Commission published an assessment of risks relating to money laundering in the EU in 2019, in which it reaffirmed its view that the professional football sector is vulnerable to money laundering, due to its 'complex organization and lack of transparency', which had 'created fertile ground for the use of illegal resources' (European Commission 2019, 5). It also stressed as much in a subsequent report of 2022, in which it stated: 'Like many other businesses, sport has been used by criminals to launder money and derive illegal income. Football, being by far the most popular sport in the world, is an obvious candidate' (European Commission 2022a, 12).

It is therefore apparent that the risks around money laundering in professional football are well-documented, and certainly within the EU. Especially issues surrounding transparency of club ownership, player transfers and the role played by agents are considered to present notable risks.

Examples and consequences of money laundering activities in football

Admittedly, given the opaqueness that is inherent in the crime of money laundering, reliable data on the actual extent of money laundering are hard to come by. In fact, the lack of comprehensive empirical evidence on the scale of the phenomenon is a general problem that is identified by various AML specialists, also in the financial sector (Vogel 2020; van Duyne 2018; Vettori 2013). Still, in recent years a number of examples have come to the fore in different European countries that serve to illustrate the problem, and particularly the risks of money laundering incurred by professional football clubs and player agents, if not both.

The literature often refers to the example of Carson Yeung, a Hong Kong businessman who acquired the English football club Birmingham City FC in 2008, but was later convicted for, inter alia, money laundering (Nelen 2022; Steenwijk 2021). Another prime example of the susceptibilities of football clubs in financial trouble came to light in Portugal in 2016, as a result of the so-called 'Operation Matrioskas'; an operation conducted by the Portuguese police in collaboration with Europol (Europol 2016; Nelen 2022). This investigation uncovered a money laundering enterprise set up by a criminal group consisting primarily of Russian nationals, which had infiltrated various EU football clubs that found themselves in financial difficulty, via benefactors who provided short-term donations, loans and investments. Once these beneficiaries had established relationships of trust and confidence with

said clubs, they proceeded to acquire them outright through front men for obscure organizations made up of holding and shell companies incorporated in offshore tax havens. In this way, the ultimate beneficial owners of the clubs purchased and the source of the funds used to complete the purchases were hidden. Furthermore, after having brought these clubs under its control, the mafia-linked criminal organization then put in place a number of mechanisms for the purpose of laundering illicit gains, such as the over- or undervaluation of player transfer fees and broadcasting deals, as well as betting activities. The criminal investigators found that large amounts of money were being transferred from Russia to Portugal, while the beneficial owners remained shrouded behind offshore-registered structures.

A few years later, another investigation carried out by the Spanish criminal justice authorities also exposed a European-wide money laundering scheme, but this time involving football intermediaries (Europol 2020). The discovery stemmed from an inquiry the *Guardia Civil* had been conducting into the affairs of two football agents connected with one of Europe's most prominent player representation agencies, as part of which it effected several raids of properties throughout Spain that were linked to these agents. In the process, the authorities found that a number of high-profile agents had been engaged in arranging fictive player transfers which were only made on paper via a Cypriot football club for the purpose of laundering money and evading taxes on profits accrued in the course of the agents' business. The proceeds that were disguised by these entirely fabricated transfers were subsequently converted into assets (like yachts and real estate) for the benefit of the agents, the ownership of which was again also concealed through a convoluted network of legal structures such as shell companies. Furthermore, the investigation determined that these agents actually formed part of a broader criminal organization that controlled football clubs in various European countries, from Belgium to Serbia.

Around the same time, another operation took place in Belgium itself, known as 'Operation Zero'. In this particular instance – which is especially noteworthy for the purposes of the present contribution – the Belgian Federal Prosecutor's Office carried out searches on the premises of numerous football clubs competing in the Belgian first division, in the context of a large-scale investigation into an alleged scandal involving match-fixing, financial fraud, tax evasion and money laundering (Houben 2022; Appermont and Bull 2023). It also arrested and questioned various actors in the sector, including club officials, (ex-)coaches, player agents and even official referees. These searches and interrogations led to the indictment of no fewer than 56 individuals and implicated 12 professional Belgian clubs in all. The kinds of money laundering methods that were uncovered (based particularly on declarations made by one of the player agents involved, Mr. D. Veljkovic, who had taken advantage of a new repentance system in Belgian criminal law) included the drafting of fake contracts for scouting services that were not actually delivered, whereby the amounts paid by clubs on the basis of these contracts were transferred to corporate entities abroad and subsequently rerouted back to Belgium and collected in cash, so as to pay secret commissions to club executives, coaches and other actors. Another such method consisted of presenting luxury timepieces to club officials as gifts with a view to arranging preferred player transfers.

It is apparent, then, that the professional football sector offers a range of means for criminals to cover up and recycle ill-gotten gains. In fact, the realm of professional football

has been characterized as a 'crime facilitative system' in the criminological literature, precisely for reasons such as these (Nelen 2021) – and this clearly has serious implications for the industry. Indeed, on top of the damaging consequences for the sector itself, these crimes are also severely detrimental to the sport's public image, breeding mistrust even of those actors who are not engaged in criminal activity in any shape or form. And this reputational damage can also have practical repercussions; for instance, it can make it harder for professional clubs to obtain banking services due to money laundering concerns, as has already been reported in both Belgium and the Netherlands (Swennen 2021; Steenwijk 2021).

Regulatory responses to money laundering in professional football

Self-regulation initiatives

The increasing prevalence of the phenomenon of money laundering in football has given rise to efforts to tackle and prevent the problem, both in the form of self-regulation initiatives and legislative interventions. Starting with the former, it is not surprising that football governing bodies themselves have introduced measures designed to make the sport less attractive or conducive to money laundering activities, bearing in mind that the autonomy of these sporting associations rests on the promotion of standards of good governance by the sector itself. Indeed, since the turn of the Millennium, a number of self-regulatory mechanisms have been developed both by the international governing body of football, the *Fédération internationale de football association* (FIFA), and certain national football associations, which are intended to enhance transparency and accountability in the football industry. While these do not constitute anti-money laundering measures per se, they do address aspects of the football sector that are particularly susceptible to money laundering activities, including player transfers, the involvement of intermediaries, and club ownership.

When it comes to the initiatives undertaken by FIFA, these have centered on the status and transfers of players, as well as on the role of football agents. As far as regards the former, for instance, FIFA introduced a Transfer Matching System (TMS) in 2010, which is defined as 'a web-based data information system with the primary objective of simplifying the process of international player transfers as well as improving transparency and the flow of information' (FIFA 2022, article 13). This system requires clubs engaged in international player transfers to provide certain information pertaining to the transfer, including details regarding the types of payment made and the intermediaries involved, in order to obtain an obligatory International Transfer Certificate. In so doing, TMS seeks to enable football authorities and transacting clubs to identify and track the different payments attached to international player transfers, which are 'matched' under the system.

More recently, FIFA has also reformed the global player transfer market further by establishing a 'clearing house' for the purpose of processing international player transfers, which acts as an intermediary in payments relating to training rewards (solidarity mechanism and training compensation). The FIFA Clearing House (FCH) therefore ensures that payments by clubs are correctly distributed to training clubs that have contributed to training young players who later go on to establish a career as a professional football player. This clearing house, the regulations governing which were approved by the FIFA Council in October 2022 and entered into force the following month (FIFA Clearing House 2022, article 26), has the capacity to collect and process payments on behalf of clubs, with the aim being to

ensure that all international player transfers are wholly traceable and that all parties involved are fully compliant with national and international requirements pertaining to anti-money laundering, counter-terrorism financing and payments sanctions. The fact that the FCH has been set up as a payment institution in France entails that all relevant transactions that pass through the FCH will first have to be cleared in order to be effectuated, and the sanctions for clubs that do not comply can extend as far as 'a ban on registering any new players, either nationally or internationally' (FIFA Clearing House 2022, articles 17.6 and 17. 8). Apparently, FIFA initially planned to set up the FCH in the Netherlands, but was compelled to alter its plans after Dutch banks were unwilling to support the project out of… money laundering concerns (NOS 2023). Contrary to initial plans, the FCH currently only processes training rewards payments, whereas FIFA's original plans would – at least at some point in the future – also include agents' commissions and potentially transfer fees (Council of Europe 2021). Even though the FCH has been in operation since its establishment in November 2022, questions have arisen regarding its capacity to effectively handle the multitude of transactions the clearing house needs to effectuate, leading to long delays in payments in administrative complexity (Gómez de la Vega 2024). This observation begs the question whether the FCH would be able to effectively process the huge number of international player transfers – over 23.000 for professional men's and women's football alone in 2023 (FIFA Global Transfer Report 2024) – while being able to carry out a significant due diligence regarding the money laundering risks, should the scope of the FCH ever be expanded to include agents' fees and player transfer fees. Would it not be better to establish a more decentralized system that allows for additional 'boots on the ground' knowledge in order to assess the 'cleanliness' of the processed transactions, rather than processing global transactions within one single entity established in France?

FIFA has also made various attempts over the years to regulate the activities of football intermediaries. Whereas it first introduced a licensing system for players' agents in the 1990s under the erstwhile FIFA Player Agents Regulations, which required both clubs and players to employ the services of licensed agents only, FIFA replaced this mandatory licence in 2015 with a registration system under the FIFA Regulations on Working with Intermediaries, thereby relaxing the requirements with which it expected football agents to comply (Ioannidis 2019). This reform towards a more deregulated system was triggered in large part by the questionable degree of effectiveness of the original, stricter version of the regulations, given that (according to FIFA's own estimates) around 70% of all international transfers continued to be conducted with the involvement of unlicensed intermediaries even after their introduction (Bull and Faure 2022). More recently, however, FIFA has returned to a more stringent licensing system with the enactment of the current FIFA Football Agent Regulations (FFAR) in 2023. Under the FFAR, which the national member associations are also required to implement and enforce (FIFA 2023, article 3.1), individuals who wish to act as football agents must (again) obtain a licence in order to do so (FIFA 2023, article 8), which is subject to several eligibility requirements related to ethics and professional conduct, as well as the condition that the applicant must be free from criminal convictions for, inter alia, money laundering, tax evasion and fraud (FIFA 2023, article 5). In addition, applicants must successfully complete a habilitation exam administered by FIFA, which is designed to assess their knowledge of current football regulations (FIFA 2023, article 6.4). Furthermore, the new incarnation of the regulations lays down a maximum service fee payable for the provision of football agent services, thereby limiting the

amounts that agents are entitled to be paid for individual transactions (FIFA 2023, article 15). It should be noted, however, that the FFAR have been the object of numerous legal challenges in different European countries such as Germany and Spain since their adoption, which led to their temporary suspension by FIFA at the end of 2023, pending particularly a preliminary ruling of the Court of Justice of the European Union (CJEU) on the compatibility of the new regulations with EU competition law (Case C-209/2323 2023; Reuters 2023).

Alongside such initiatives, responses at the level of national football associations have focused on the ownership and control of football clubs themselves. In England, for example, the Football Association (FA) has developed a so-called 'Owners' and Directors' Test' (ODT), the first embodiment of which (called the 'Fit and Proper Persons' Test') was introduced in 2004, and which is now enshrined in Section F of the Premier League Handbook. This test has the effect of disqualifying persons from occupying the position of director of a football club participating in the Premier League under certain defined circumstances, such as where the person acts as a manager or administrator of – or otherwise holds a significant interest in – another club, or if they have been convicted for acts of dishonesty or violence, or affected as a director of a club in the past by insolvency proceedings resulting in a points deduction (FA Premier League 2023, article F1). The ODT is therefore intended to provide certain (albeit limited) safeguards with respect to the suitability of persons seeking to acquire of control of football clubs. Interestingly, the English Football Governance Bill, which aims to establish an Independent Football Regulator, includes a strengthened Owners' and Directors' Test (Football Governance Bill, UK House of Commons 2024). This bill is still pending at the time of writing. In a comparable development, the Royal Dutch Football Association (KNVB) has elaborated a 'know-your-owner test', which is prescribed in its Licensing Regulations. Under these regulations, the KNVB's prior approval is required for intended changes of control of licensed football clubs, which covers situations where a natural or legal person acquires or retains 25% or more of the shares or voting rights in a professional football entity (KNVB 2023, article 4.9). The attendant KNVB guidelines specify that said approval is predicated on the application of the 'know-your-owner' standard, which obliges football clubs to inquire into the identity and interests of prospective shareholders and to assess the origin of funds used to obtain a controlling stake, with a view to excluding funds derived from illicit sources (KNVB 2024). Hence, transactions of this kind can only be effectuated in the Netherlands once the KNVB has been furnished with necessary information concerning potentially controlling parties and, in turn, approved the proposed change of control (be it conditionally or otherwise). And, as will be seen in what follows, in applying this principle the KNVB has actually taken inspiration from existing legislation on anti-money laundering – although, it should also be noted that certain authors question whether the KNVB's Licensing Commission has the requisite expertise and resources to obtain all of the information that is necessary (Steenwijk and Nelen 2018). In fact, some authors question whether football organizations even have real incentives to move towards structural changes, other than to the extent necessary to avoid public regulation (Houben and Nuyts 2021).

To conclude, it would seem that while the various instances of self-regulation by the professional football sector may often be well-intentioned, the structural effectiveness of most types of self-regulatory mechanisms to combat money laundering risks may be called into question. Even under the assumption that football regulating bodies are sincere in their

endeavour, such initiatives often face fundamental challenges such as the lack of access to information, the lack of far-reaching investigative capacities (e.g. the KNBV know-your-owner test, the FCH), or the lack of sufficient means and capacity to carry out sufficient checks while guaranteeing the efficient processing of transactions (the FCH), or are widely challenged in court by football stakeholders to the detriment of their legitimacy and even their legal soundness (FFAR). The question then becomes whether public legislative interventions constitute a preferable alternative.

Legislative interventions

Legislative responses to crimes of money laundering in professional football in Europe have only begun to emerge within the past decade, and until the past year this has been only at national level in just two Member States.

To be sure, the EU has made numerous legislative interventions in the field of money laundering, dating as far back as 1991, with the enactment of the first of what would become a series of AML directives (Council Directive 91/308/EEC). The continuous modifications and amendments to the European legal framework in this field that have followed have gone hand in hand with the ever-changing character of money laundering activities. However, these EU Anti-Money Laundering Directives (AMLD) have been specifically targeted at preventing the use of credit and financial institutions for money laundering purposes, meaning their scope does not extend to actors in sectors such as that of professional football. Recalling the attention that has been dedicated to professional sport and particularly football by the European Commission and the European Parliament that was highlighted previously, this might seem an incongruity. Yet, while it may have been contemplated, ultimately neither the sports sector in general nor the football sector in particular were included within the scope of the AMLD and, as a result, actors in the football sector have not been subject to the preventative and reporting obligations that have applied to financial actors in EU Member States by virtue of the AMLD. Instead, the Commission effectively relayed its concern to the Member States, encouraging them in its bi-annual follow-up to the fourth AMLD (Directive (EU) 2015/849) of 2019 and 2022 to 'consider which actors should be covered by the obligation to report suspicious transactions and what requirements should apply to the control and registration of account holders and the beneficiaries of the money' (European Commission 2019, 19, European Commission 2022a, 24). Indeed, being a form of 'minimum harmonization' measure, the AMLD do not preclude Member States from enlarging the scope of application of the rules and principles laid down in the directives when implementing them into their national law; on the contrary, the (amended) fourth AMLD explicitly requires Member States to 'ensure that the scope of this Directive is extended in whole or in part to professions and to categories of undertakings… which engage in activities which are particularly likely to be used for the purposes of money laundering or terrorist financing' (article 4).

The two Member States that have availed themselves of this possibility in respect of actors in the sports industry, to one extent or another, are Belgium and Bulgaria. For its part, Bulgaria actually extended the scope of its 'Anti-Money Laundering Act' so as to cover professional sports clubs in general (among others), but in 2021 it narrowed this scope to professional football clubs in particular (apparently based on the consideration

that other sports clubs present a lower level of risk) (Georgi Popov & Co 2021). For present purposes (and continuing in the subsequent section), however, the focus will rather be on Belgium, which, in transposing the fifth AMLD (Directive (EU) 2018/843) in July 2020, expressly subjected the professional football sector to its 'Preventive Anti-Money Laundering Law' (PAML, Law of 18 September 2017, as amended by the Law of 20 July 2020). The impetus for this legislative intervention was fuelled by the above-mentioned money laundering scandal that came to light a couple of years prior. In fact, the Belgian professional football sector was already subject to the general provision in the Belgian Criminal Code dealing with money laundering (article 505), but with the transposition of the fifth AMLD came the innovation that the sector was included in the accompanying PAML framework, which aims at exposing money laundering activities by assigning private actors the task of preventing and detecting (potential) criminal activity (Seer 2015, 61). Accordingly, and more precisely, not only professional football clubs but also players' agents and even the RBFA itself would now fall within the scope of the PAML, meaning in particular that they would now be considered 'obliged entities' under the PAML, and would therefore be subject to the due diligence and reporting duties provided therein (articles 31.3 – 31.5 and 32).

This move on the part of the Belgian legislator therefore represented a significant step towards the public regulation of the professional football industry as a possible vehicle for money laundering – and, as such, the Belgian case constitutes an important example of a legislative response to money laundering-related crime and malpractice in football, which will be examined in greater detail in the next section. This is all the more the case because, since this expansion of the Belgian PAML, the EU has now taken a similar step in its latest planned overhaul of the European AML package. While the original proposal for a new EU 'Single Rulebook' AML regulation of 2021 (COM(2021) 420 final), which (together with a sixth AMLD) would replace the existing AMLD, did not include the professional football sector, a provisional political agreement on this proposed regulation that was reached between the European Parliament and the Council at the beginning of 2024 has extended its intended scope to large professional football clubs (Schickler 2024). Interestingly, the inclusion of professional football under the new Single Rulebook was proposed and advocated by the European Parliament (European Parliament 2024). The new Single Rulebook consists primarily of Regulation (EU) 2024/1624 of 31 May 2024, which will be directly applicable to Member States of the European Union. This Regulation will replace the existing framework, consisting of European Directives, which need to be transposed into national law by the Member States.

The aim of the new regulation is to achieve uniformity of application throughout the EU. This regulation is accompanied by a sixth AMLD (Directive (EU) 2024/1640) on certain mechanisms to be put into place by the Member States, such as regulations on their Financial Intelligence Units (FIUs). Furthermore, the EU established a new EU Anti-Money Laundering Authority (AMLA) via Regulation (EU) 2024/1620. The AMLA is a decentralized EU agency that will coordinate national authorities to ensure a correct and consistent application of the EU rules.

In the following chapter, we will provide an overview of the workings of the European preventative AML-system by explaining and assessing its Belgian implementation and how this currently applies to Belgian football. Thereafter, we will compare the Belgian system

to the novel European mechanism as it will enter into force *vis-à-vis* professional football in 2029.

Application of anti-money laundering legislation to professional football in Belgium

General framework of the Belgian PAML and its application to professional football

Basic tenets of the Belgian PAML

The Belgian law subjecting actors in the professional football sector to the PAML entered into force in July 2021, although the amendment has yet to enter into force with respect to player agents, since this is dependent on a prior cooperation agreement being concluded between the Belgian federal government and the Belgian regions, due to the constitutional division of powers within the Belgian State (Law of 20 July 2020, article 173 *in fine*). This entails that Belgian football clubs participating in the Belgian Pro League (i.e. the top tier of professional football in Belgium) as well as the RBFA – though not yet player agents – are now subject to all obligations imposed by the PAML on 'obliged entities', which are founded on a so-called 'risk-based approach' (PAML, article 7). Pursuant to this approach, obliged entities are essentially required to identify and evaluate risks of money laundering in their business relationships and commercial transactions, and to take suitable measures in confronting those risks. This demands not only an overall, 'business-wide' risk assessment – whereby obliged entities need to sketch the money laundering risks they are likely to face in light of the nature of their activities and the characteristics of their clients and develop policies and strategies to detect and counter such risks (PAML, articles 16 – 18) – but also the need for obliged entities to carry out case-by-case risk assessments at the level of their individual client relationships, on the basis of which the appropriate degree of diligence that the obliged entities should employ in all of their dealings with a certain customer is determined (PAML, article 19). In particular, obliged entities must identify (and verify the identity of) certain clients (sometimes referred to as the 'Know Your Customer' requirement), assess the characteristics of clients and be vigilant of 'business relationships' and 'occasional transactions' into which they enter, taking into account their nature. In this sense, individual risk assessments and the assignment of risk profiles to clients amount to continuous obligations, which depart from the business-wide risk assessment, but which can be continually re-evaluated and adjusted in the light of actual dealings with a particular client.

In principle, the PAML requires obliged entities to take these steps *prior to* entering into a business relationship with a client or entering into an occasional transaction, which may be a single transaction or a plurality of related transactions, outside the context of a business relationship with a client, for an amount of €10.000 or more (PAML, article 30). It can also be necessary for obliged entities to do so where there exists reasonable doubt surrounding the accuracy of previous information concerning the identity of a client, or more generally a suspicion of money laundering. It is also for this reason that obliged entities are under a duty to gather additional information regarding, for instance, the client's professional activities, the status of their assets, or the sources of their income, so as to assess that particular client's motives in light of the transactions that they intend to make. In the event that an

obliged entity is not able to identify or verify the identification of a client in due time, it is to cease their business relationship with that client (or decline to enter into a new business relationship or occasional transaction with that client). In addition, obliged entities are required to distinguish 'atypical transactions' that do not tally with a certain client's risk profile or the purpose and nature of the business relationship, and to analyze these in depth under the supervision of their appointed compliance officer (PAML, articles 35.1.1 and 45).

Furthermore, on top of these due diligence obligations, the PAML also imposes on obliged entities the duty to report suspicious transactions before executing them (or, again, at least in principle). More precisely, obliged entities are placed under an obligation to notify the FIU, which in Belgium corresponds to the *Cellule de Traitement des Informations Financières – Cel voor Financiële Informatieverwerking* (CTIF-CFI), if they know, suspect or have reasonable grounds to suspect that they are confronted with (an attempt to engage in) money laundering activities, immediately before the relevant transaction is executed (PAML, article 47). Indeed, the presence of a suspicion (or even grounds for a suspicion) concerning the legitimacy of the origin or destination of funds constitutes a sufficient basis to trigger a notification, technically known as a 'Suspicious Activity Report' (SAR), to the Belgian FIU, meaning that the obliged entity filing the report does not need to prove that money laundering is actually taking place (Grijseels 2018). Equally, it is not incumbent on obliged entities to uncover any underlying criminal activity (PAML, article 47.1). Once the obliged entity notifies the CTIF-CFI of its suspicions, the latter will assess the notification, and may also refer it to other public authorities charged with the task of investigating and combating (financial) crime; while, for its part, the obliged entity becomes immunized from possible future prosecution connected with its potential involvement in any money laundering activities that may be discerned in the course of such investigations. As for the transaction itself, the notification should include the intended timeframe for its execution, and the CTIF-CFI is entitled to deny its effectuation for a period of at least five working days from the date of notification (PAML, articles 80 and 81). It may eventually also seek to obtain an extension of this period from the public prosecutor.

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

It is important to keep in mind, however, that the multitude of administrative duties that the PAML assigns to obliged entities were originally designed to be applied to actors in the financial sector, in line with the European AML directives on which the PAML is based. For this reason, many of the legal concepts that the PAML employs are not always easy to apply to the professional football sector, and give rise to important issues of interpretation. Even seemingly intelligible terms such as the key generic legal concept of 'client', which is a central feature of the PAML, beg the question of how they should be interpreted when applying the PAML to actors in professional football. In general terms, the concept of client denotes a natural or legal person who engages a provider of a good or service; however, the diverse commercial relations that actors like professional football clubs enter into do necessarily conform to this notion. For instance, while a club that engages in an outbound transfer to another club may not give rise to particular difficulties, insofar as the acquiring club is 'receiving something' from the releasing club and may therefore be regarded as the releasing club's client, it is less apparent that this would be so in the case of an inbound transfer. In other words, it is far from clear that player transfers entail that both clubs become

each other's clients, notwithstanding the aims of the legislator behind the PAML. And this is even less clear when it comes to more complex transfer agreements, such as the situation where clubs engage in a player swap. In such a case, both clubs might be considered to be each other's client, even though this may not fit neatly with the reasoning underpinning the PAML. Similarly, whereas sponsors may be regarded as clients of football clubs, on the basis that sponsors engage football clubs in order to gain exposure (and not the other way around), the determination might be less straightforward when it comes to independent legal contractors with which a club contracts. In this case, at first sight the club should be seen as the client of the contractor; and yet some clubs in Belgium appear to be of the view that their AML obligations would cover at least some of their contractors (Appermont and Bull 2023). Questions of this nature also arise in connection with football clubs' relations with supporters or with the RBFA, and even more so in relation to the RBFA itself, given the added complication that the RBFA also performs a regulatory function.

Such questions were especially pressing at the time of the entry into force of the amended PAML, since the law did not actually define the concept of 'client', even though the term is used on 143 occasions in the legislative text. Instead, the Belgian legislator deferred the elaboration of this rather vague concept to the executive branch by means of an implementing decree. A Royal Decree approving a proposed framework by the Belgian Ministry of Economic Affairs addressing this matter (among others) was subsequently promulgated on 20 March 2023. The Belgian Ministry of Economic Affairs specifies a closed list of categories of clients in the professional football sector that are to be interpreted as falling within the concept laid down in the PAML.

The qualification as 'client' is restricted to the following entities and persons when they enter into a contract with a professional football club with a minimum value of EUR 10.000: spectators, sponsors, football clubs, player agents, lessees, sports federations and lenders. Other categories of persons can never be considered as clients, such as investors and shareholders, employees, volunteers, clubs receiving training rewards and suppliers which are not sponsors. Especially the exclusion of investors is an interesting point, as the examples cited above show that capital injections into clubs may pose an AML-risk as well and are in some instances specifically targeted by forms of auto-regulation such as the KNVB's 'know-your-owner test'.

Thus, much depends on how the supervisory authorities will interpret the relevant provisions in the PAML and apply them to professional football.

Another recommendation made on the basis of our research (Appermont and Bull 2023) related to the co-existence of the Belgian AML rules with self-regulatory mechanisms of the RBFA as the Belgian national football association, in order to avoid the RBFA having to, for example, refuse a license to a Belgian professional football club on the basis of suspicions and possibly triggering complex and lengthy litigation. We also identified the need for an increased regulatory level playing field in order to avoid competition distortions between European football clubs.

Compliance

Another further concern that has been raised in the literature on AML is the question of the degree of compliance with AML obligations, as well as the related issue of their

enforcement. Indeed, leaving aside the actual content of AML legislation, previous research into the effects of AML regulation in the financial sector has shown that the extent of compliance is a significant variable in the effectiveness of the application of AML law (Chong and Lopez-De-Silanes 2015). Some have even gone as far as to assert that issues of non--compliance with AML obligations 'are arguably the greatest challenge to the effectiveness of AML' (Vogel 2020, 972). In part, this is due to the fact that in many instances criminals will attempt to induce or even force obliged entities to infringe their AML duties, rather than seeking to mask the illegal origin of their assets. However, problems of compliance with AML regulations are of course also connected with, if not dependent upon, the question of their enforcement. And whilst, as we have seen, existing AML legislative frameworks provide several mechanisms to counter the threats posed by clients of obliged entities, they are comparatively short on mechanisms to discover and sanction misconduct within obliged entities themselves. In addition, it has been observed that supervisory authorities as well as law enforcement authorities lack capabilities and resources to effectively tackle money laundering processes (van Koningsveld 2013).

Hence, in spite of the fact that the quality and quantity of enforcement is an essential corollary to the need to ensure compliance with AML duties on the part of obliged entities – and, as such, a fundamental element in the effectiveness of AML legislation – for many the enforcement of AML obligations by governmental authorities still leaves a lot to be desired. Given the risk of non-compliance on the part of deliberate wrongdoers within obliged entities, particularly as a result of interaction with criminal operators, there is therefore a danger that compliant actors in the football sector might end up bearing the bulk of the burdensome administrative requirements imposed by AML legislation with little reward for them or the football industry as a whole, unless the public authorities devote sufficient attention and resources to detecting and prosecuting violations and avoidance of AML obligations. Certainly, this is a concern that has been expressed by actors in Belgian professional football that have been subjected to the requirements of the PAML as obliged entities (Appermont and Bull 2023). Equally, governments bear the responsibility of ensuring that their FIUs effectively investigate notifications that they receive from obliged entities, and that individuals who engage in money laundering activities are effectively prosecuted. The especial importance of enforcement and enhancing strategies of enforcement, not to mention wider awareness strategies, in the context of anti-money laundering has also previously been highlighted by others (Nelen 2021). One year after the entry into force of the PAML *vis-à-vis* Belgian professional football clubs, it was reported that visitations had shown that no single football club was fully compliant with its AML obligations (Bové 2022). However, according to the Belgian FIU, it has already received a respectable number of SARs from the Belgian RBFA (10 in 2021, 40 in 2022 and 26 in 2023) and Belgian professional football clubs (4 in 2021, 10 in 2022 and 12 in 2023) (CFI-CTIF 2023).

Brief comparison of the existing Belgian AML system with the European AML Single Rulebook concerning professional football

As indicated above, certain actors from the professional football sector have been included in the new EU AML Single Rulebook Regulation. This Regulation shall apply from 10 July 2027, with the exception of the football sector, to which it will apply from 10 July 2029 in

order to allow the sector sufficient time to adapt to the novel obligations. Article 3 of the AML Regulation includes football agents, and professional football clubs in respect of certain transactions. These are: (i) transactions with an investor, (ii) transactions with a sponsor, (iii) transactions with football agents or other intermediaries and (iv) transactions for the purpose of a player's transfer. Article 5 of the Regulation states that Member States may decide to exempt, in full or in part, professional football clubs that participate in the highest division of the national football league and that have a total annual turnover of less than EUR 5.000.000 for each of the previous two calendar years on the basis of a proven low risk posed by nature and scale of the operation of such professional football clubs. Likewise, Member States may exempt professional clubs participating in lower divisions on the basis of a proven low risk. For these purposes, Member States are obliged to carry out risk assessments and make sure that these exemptions are not abused when granted.

There are important differences between the approach of the AML Single Rulebook Regulation and the existing Belgian approach. For example, the future EU framework does not include national football associations as obliged entities and will, contrary to the PAML, apply to football agents from the outset. Secondly, the scope of transactions to which AML obligations will apply will be limited by the Regulation itself, rather than through administrative applications of the client concept. Importantly, this list includes transactions with investors, but does not include transactions with football governing bodies, lessees and spectators.

Equally important, the aim of achieving a level playing field can be thwarted through the exemption rules, which allow Member States to exclude certain clubs from the AML-framework. It remains to be seen whether Member States will be susceptible to lobbying by the sector to introduce exceptions and whether the two-year turnover criterion will be easy to apply, given the volatile financial nature of the footballing business.

Among others, the governing body of football in Europe, UEFA, has urged caution in the eventual implementation of these new rules, lest 'there could be unintended consequences from applying bank-style checks on customer identity to the diverse sports sector' (Schickler 2024). In fact, the concern surrounding the large room for interpretation in the rules as they are applied to the football sector is arguably even greater at EU-level, given the possibility of varying applications in different Member States. Certainly, in its original form, the European AML framework does not seem naturally suited to be applied to professional football, given the specific sporting and organizational features of the sector and the roles that actors in the sector play in the sport's governance model. It would therefore be advisable for the AML framework to be tailored to the specificities of football in order to ensure its proper functioning.

Conclusion

This contribution has presented the results of contemporary research into football and money laundering, as well as regulatory attempts to address this phenomenon in the professional football sector. As a result of the rapid (and still ongoing) economic expansion of the football industry, the sector has been faced with ever-increasing risks of money laundering activity, alongside other forms of financial crime. This has given rise to questions surrounding the need for good governance in the industry and, in turn, to regulatory

responses in the form of both self-regulation initiatives and legislative interventions. While the EU has long been aware of the problems caused by money laundering in sport and particularly in football, it has only recently taken steps to intervene directly by means of anti-money laundering legislation that will become applicable to the sector in 2029. Prior to this development, it has mainly been FIFA and national football associations that have sought to introduce mechanisms to counter the problem, along with the governmental authorities in two Member States. Of these, the case of Belgium is an especially interesting one, where the legislator intervened after an alleged money laundering and corruption scandal in Belgian professional football, by subjecting the sector to its existing preventive anti-money laundering framework. While this is no doubt a momentous response, it has been shown that the application of AML legislation to professional football gives rise to significant issues, both in terms of the interpretation of the law and as regards compliance with the obligations laid down therein on the part of obliged entities. These issues point to a lack of alignment between the requirements and setup of the AML framework that was originally developed for banks and financial institutions, on the one hand, and the specificities and institutional architecture of the football sector on the other, which makes the sector difficult to 'grasp' within a single set of regulations, as is evidenced by the differing scopes of existing self-regulatory mechanisms and the Belgian PAML and the EU Single Rulebook – as well as to potential constraints on the overall effectiveness and enforcement of the legislation. Taken together, these may considerably limit the extent to which such anti-money laundering measures provide a solution to the problems facing the football sector, and therefore suggest that the novel EU AML legal framework will not be a panacea to curb or prevent money laundering activities within professional football.

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ORCID

William Bull http://orcid.org/0000-0002-4797-0974
Niels Appermont http://orcid.org/0000-0002-1334-1205

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