

PROFESSIONAL FOOTBALL AND ANTI-MONEY LAUNDERING

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Assessment of the Application of the
Belgian Anti-Money Laundering Legal
Framework to Professional Football

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PREFACE

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

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

The second part of the present study is dedicated to the wider context behind this initiative of the Belgian legislator, and particularly to the EU dimension of anti-money laundering legislation. This part looks not only at the EU’s critical role in the development of the anti-money laundering legal framework and the European legal instruments that have been adopted and proposed in this area, but also at the longstanding recognition of the money laundering risks in professional football within the EU. Indeed, while the EU itself has

not (yet) included professional football within the scope of any of its existing AML directives, EU institutions have long been aware of the vulnerability of professional football to money laundering.

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

After having described the essential content and requirements of the PAML, the fourth part of this study examines the application of the PAML to the Belgian professional football sector from a doctrinal perspective. As part of this appraisal, the study looks at the motives and institutional context behind the decision to subject the Belgian professional football sector to the Belgian preventive anti-money laundering framework, before considering the specific actors in professional football who are subjected to the framework, and providing an in-depth analysis of how exactly the PAML applies (or can be expected to apply) to these actors. This analysis necessitates a clarification of the meaning of certain key concepts in the PAML as applied to professional football, such as the (likely) interpretation of the terms ‘client’ and ‘business relationship’ within the law, with a view to discussing its practical application particularly in respect of Belgian professional football clubs and the RBFA (bearing in mind that at the time of writing the law has not yet entered into force in respect of player agents). In addition, this part of the study addresses a series of additional questions raised by the application of PAML to professional football. These include the territorial scope of the PAML (i.e. the fact that this is limited to Belgium, and what the implications of this could be in the broader European context); different possible approaches to the client concept; the possibility of an exemption for certain categories of clients; the concern that the obligations imposed by the preventive money laundering framework may interfere with the football transfer windows in Belgium; and potential barriers to the exchange of information between FIUs. Lastly, the operation of a ‘learning period’ in practice is highlighted.

Then, in the fifth part of the study, the current state of knowledge in the literature on anti-money laundering is reviewed, focusing on the question of the effectiveness of AML regulation. The field of law in question is characterized by a conspicuous knowledge gap, because while studies have been carried

out on AML and its effects, these have been focused mostly on the banking and financial system, rather than on the specifics of the professional football business and its particular multitude of stakeholders (such as e.g. the role of the federations). As part of this literature review, questions of methodology are explored, along with the significant variables of compliance and enforcement and the issue of available data on AML, as a precursor to exploring the overall effectiveness of AML, particularly in the financial sector. This review then moves to investigate the academic debate on the effectiveness of AML regulation in other sectors, including the art sector as well as ultimately the football sector, with a view to extrapolating theoretical and methodological insights of relevance for the research topic of the present study, and particularly the application of the Belgian PAML to the professional football sector.

Finally, on the basis of all of the above analyses, this exploratory study concludes with a provisional assessment of the application of the PAML to professional football and its effectiveness as a regulatory tool for tackling money laundering and enhancing financial transparency in the football sector. Here, the most important findings of the study are summarized. In turn, on the back of this assessment, a number of recommendations are formulated that can be of interest not only to the Belgian legislator but also to any jurisdiction contemplating the extension of its anti-money laundering framework to professional football, as well as for interested stakeholders from the field of professional football. These include not least national football associations and the Union of European Football Associations (UEFA), as well as domestic football clubs and player agents across the European Union, and possibly even the EU itself, as both the European Commission and the European Parliament acknowledge the need to combat money laundering in the professional football sector.

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

This study presents the results of a research project carried out for, and funded by, UEFA as part of UEFA's Research Grant Programme. We are extremely grateful to UEFA for selecting our project and for supporting our research throughout.

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The manuscript was completed in September 2022. Later developments in legislation have not been taken into account. All websites and hyperlinks were last visited at the time of completion of the manuscript.

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