
CHAMBERS GLOBAL PRACTICE GUIDES

Sports Law 2023

Definitive global law guides offering
comparative analysis from top-ranked lawyers

Sweden: Law & Practice

Karl Ole Möller
Nordia Law

Sweden: Trends & Developments

Karl Ole Möller
Nordia Law



SWEDEN

Law and Practice

Contributed by:

Karl Ole Möller

Nordia Law



Contents

1. Regulatory p.4

- 1.1 Anti-doping p.4
- 1.2 Integrity p.4
- 1.3 Betting p.5
- 1.4 Disciplinary Proceedings p.5

2. Commercial Rights p.5

- 2.1 Available Sports-Related Rights p.5
- 2.2 Sponsorship p.5
- 2.3 Broadcasting p.6

3. Sports Events p.6

- 3.1 Relationships p.6
- 3.2 Liability p.7

4. Corporate p.8

- 4.1 Legal Sporting Structures p.8
- 4.2 Corporate Governance p.9
- 4.3 Funding of Sport p.9
- 4.4 Recent Deals/Trends p.10

5. Intellectual Property, Data and Data Protection p.10

- 5.1 Trade Marks p.10
- 5.2 Copyright/Database Rights p.10
- 5.3 Image Rights and Other IP p.11
- 5.4 Licensing p.11
- 5.5 Sports Data p.11
- 5.6 Data Protection p.11

6. Dispute Resolution p.11

- 6.1 National Court System p.11
- 6.2 ADR, Including Arbitration p.12
- 6.3 Challenging Sports Governing Bodies p.12

7. Employment p.12

- 7.1 Sports-Related Contracts of Employment p.12
- 7.2 Employer/Employee Rights p.12
- 7.3 Free Movement of Athletes p.12

8. Esports p.13

- 8.1 Overview p.13

9. Women's Sport p.13

- 9.1 Overview p.13

10. Non-fungible Tokens (NFTs) p.14

- 10.1 Overview p.14

11. Regional Issues p.14

- 11.1 Overview p.14

Contributed by: Karl Ole Möller, Nordia Law

Nordia Law is a Nordic commercial business law firm with offices in Stockholm, Gothenburg, Copenhagen, Oslo and Helsinki, regarded as one of the leading law firms on the Swedish

market with regard to complex litigation and arbitration matters. Nordia Law offers quality legal services within all areas of commercial law to clients in the Nordic region and abroad.

Author



Karl Ole Möller is a partner and head of the sport sector at Nordia Law. His practice encompasses several main transactional and regulatory areas within the Swedish sport sector, including sponsorship agreements, mergers and acquisitions in sport, governance, rules and regulations, transfers, player contracts and image rights. He has acted for numerous Swedish high-profile professional athletes within different sports, such as ice hockey, football, track and field, tennis and golf. He regularly advises top global sports management companies, sport governing bodies, national teams, sports clubs and intermediaries. He is selected by UEFA as pro bono counsel in UEFA disciplinary proceedings.

Nordia Law

PO Box 856
SE-101 37 Stockholm
Sweden

Tel: +46 8 563 08 100
Fax: +46 8 563 08 101
Email: info@nordialaw.com
Web: www.nordialaw.com

N O R D I A

SWEDEN • NORWAY • DENMARK • FINLAND • LAW

1. Regulatory

1.1 Anti-doping

Doping is a criminal offence under the Swedish Doping Act. However, the Act only criminalises certain specific doping substances such as anabolic steroids, testosterone and growth hormones. Those substances may not be imported, transferred, manufactured, offered for sale, etc. Anyone wilfully breaking the Act may be sentenced to a maximum of six years' imprisonment.

Sweden adopted the World Anti-Doping Agency (WADA) Code in 2004. The Swedish national governing bodies (NGB) regulatory framework (based on the WADA Code) generally apply to all athletes who engage in competitive sports in Sweden.

Doping within sports has previously been monitored within the Swedish Sports Confederation's internal organisation (the Doping Commission). A separate National Anti-Doping Agency (NADO) has been established as per 1 January 2021. This new entity (Anti-Doping Sweden) has taken over all the responsibilities previously handled by the Doping Commission.

Anti-Doping Sweden will investigate all positive doping results and decide whether the matter should be reported for disciplinary action to the Doping Panel (the first instance penal body for cases involving anti-doping rule violations within sports). The Doping Panel's decision may be appealed to the Supreme Sports Tribunal by the convicted person or by Anti-Doping Sweden. The Supreme Sports Tribunal is normally the last instance. Also, depending on the circumstances of the case, it may sometimes be appealed to the Court of Arbitration for Sport (CAS). However, CAS may dismiss the case.

1.2 Integrity

Sweden adopted a new Gambling Act in 2019, introducing specific criminal provisions related to match-fixing. Match-fixing and other manipulation of sports activities previously had no specific and separate penal provision in the Criminal Code. Under the provisions of the Gambling Act, anyone who takes inappropriate actions to manipulate the outcome of a game that is subject to licence requirements under the Act may be imprisoned for a maximum of six years for cheating (ie, gambling fraud).

The Gambling Act is supervised by the Swedish Gambling Authority. The authority has created a special council concerning match-fixing and may halt and/or prohibit specific types of betting.

Match-fixing continues to be a major concern in Sweden (as internationally) and may in the long run damage the credibility of the sports movement and cause losses to other stakeholders, such as the gambling industry. Efforts to prevent match-fixing are complicated when operations are run in different countries. Match-fixing also often involves organised crime and the associated risk of threats and pressure against individual athletes and other officials. The betting companies must monitor the gambling market in a satisfactory manner and report deviant gambling patterns and suspicions of match-fixing to the Swedish Gambling Authority.

In 2015, the Swedish Sports Confederation adopted a general code to fight the manipulation of sporting competitions, covering all sports in Sweden. The code was revised in 2019 and applies to all members of the federation (ie, the special NGBs for each sport, clubs and individual athletes who participate in sport activities for a club). Under the code, sanctions may be

imposed on individuals (temporary ban for up to ten years), fines for NGBs and clubs as well as cancellation of results achieved in competitions, etc.

1.3 Betting

The new Gambling Act has created better opportunities for foreign operators to receive a gambling licence in Sweden. The Act applies to gambling of money, which is allowed in Sweden. The Swedish Gambling Authority has overall responsibility for licensing and supervision of the Act. Any gambling directed at the Swedish market without a licence from the authority is prohibited.

1.4 Disciplinary Proceedings

A regulatory or disciplinary offence by an athlete (doping matters included) will normally be determined by the relevant NGB's internal rules (by a disciplinary committee or similar body).

2. Commercial Rights

2.1 Available Sports-Related Rights

The main source of revenues for the event organiser, besides sponsorship (see **2.2 Sponsorship**) and broadcasting rights (see **2.3 Broadcasting**), derives from merchandising, catering, hospitality and ticketing rights at the event.

Swedish law does not require that any mandatory statutory provisions must be incorporated into commercial agreements regarding sport-related rights, or apply under such contracts. Neither does Swedish law generally impose any restrictions on ticket resale, even if it has been much debated. Ticket resale by "scalpers" above face value is still legal, regardless of limitations imposed by the event organiser. Official ticket sellers have tried to prevent grey marketing by

including a prohibition against reselling the tickets in its sale agreements or on the tickets themselves, thereby making reselling the ticket a contractual breach. Also, ticket quotas per customer and designating tickets for specified customers who can identify themselves have been used to prevent grey market sales.

2.2 Sponsorship

Sport in Sweden has a long tradition as an independent voluntary movement (generally known as the Scandinavian or, more broadly, the Nordic model) and has always been a popular platform for sponsorship from various business actors. The business community sees an obvious marketing advantage in being able to associate itself with well-known sports events, NGBs, leagues, local clubs or individual athletes.

The commercialisation of the sports sector has been massive and fast-growing during recent decades. The sports rights-holders (such as NGBs, leagues, event organisers, clubs, individual athletes) have become significantly more professional and business-oriented and sponsorship is usually at the core of revenues.

The key deal terms of a standard contract between sponsors and sport rights-holders are usually the duration of the contract, the territory in which the sponsor can use the sponsorship rights, the nature and scope of the sponsor's rights (exclusive or non-exclusive rights to naming and title rights, advertising rights and official supplier rights, etc), the use of the parties' respective intellectual property rights, the financial arrangements, warranties from the parties (for instance, that the sport rights-holder owns and control all rights related to the sports event) and relevant termination rights.

In individual sponsorship agreements, sponsors tend to protect themselves against serious sporting offences on the part of an athlete, such as doping and match-fixing. Sometimes, the sponsors go further and require the use of a morality clause, which may give the sponsor additional protection against other moral issues on the part of an athlete (such as drug abuse, gambling and other behaviour that does not reflect the sponsor's brand values). In some cases, the morality clause can be reversed, enabling the athlete to terminate the agreement if the sponsor or the brand suffers reputational damage.

2.3 Broadcasting

Broadcasting agreements are the most valuable source of revenue for the sport right-holders. Streaming services on the internet and other new media significantly increases these revenues. The broadcaster usually has the exclusive powers to license public screenings of a sport event. Swedish law does not recognise independent proprietary rights to an event per se (see 3.1 Relationships). However, event organisers will be able to restrict illegal broadcasting through control of access to the event and the terms of entry. The Swedish Copyright Act provides that radio or TV broadcasts may not be transmitted to the public without the consent of the broadcaster.

Broadcasting rights in most high-profile sports are sold collectively by the governing bodies or the league, such as the Swedish Hockey League, on behalf of its member clubs. In 2020, UEFA announced the results from its bidding process for the UEFA Champions League and UEFA Europa League in the years 2021–24, where the Swedish company Telia bought the broadcasting rights to the Champions League in Sweden for SEK3 billion. From 2021, the UEFA

Champions League is broadcast on one of TV4 Group's channels (owned by Telia).

3. Sports Events

3.1 Relationships

As mentioned in 2.3 Broadcasting, Swedish law does not recognise independent proprietary rights in a sports event per se. The idea or concept for a sport event is not protectable under Swedish intellectual property laws. However, the sport event organiser generally protects the event and the commercial rights related to the event through a combination of real property law, contractual provisions, intellectual property law and tort law.

Generally, the event organiser holds control of access to the venue of the event. This means that the event organiser may restrict third-party access and ensure, through various agreements, that entrants are not entitled to benefit commercially from their attendance.

The event organiser may also protect the various commercial rights in the event through agreements related to the entry to the event (ticketing), sponsorship, broadcasting, merchandising, catering, hospitality, etc.

Entry to the event is based on the ticketing agreement between the organiser and the spectator (governed by the Contracts Act and the general principles of contract law). The ticket terms and conditions must be brought to the attention of the spectator at the time of purchase of the ticket. Access to the event may be granted on specific terms, usually described on the ticket itself, or by notices placed at the venue. If the ticket is purchased on the internet, the specific ticket conditions shall be listed on the seller's

website. The event organiser may impose specific terms for entry, such as refusing access to the event for security reasons, restrictions on resale of the ticket and recording footage of the event, restricting access to the event to certain specified areas of the venue and specifying the ticket-holder is over a certain age.

3.2 Liability

An event organiser's (non-contractual) civil liability is partly governed by the Swedish Tort Liability Act and partly on Swedish case law. Event organisers have a pronounced duty of care for the spectators' and the athletes' safety. If a spectator is injured because of the dangerous nature of the premises, a breach of duty will arise for the event organiser (for instance a sports club that owns its own arena or a club which leases such premises). Non-contractual liability normally covers personal injury and loss of or damage to property. Compensation for pure financial loss is excluded, except in the case of criminal behaviour.

Liability requires an event organiser's negligence and must be evaluated in each specific case by reviewing whether the organiser has fulfilled its obligations deriving from applicable legislation and the safety instructions of the sport governing bodies. Damages may be reduced if the plaintiff has contributed, by fault or negligence, to the injury sustained. Damages are awarded only for injury sustained. Swedish law does not recognise the use of punitive or exemplary damages.

An athlete's civil liability (non-contractual liability) is governed by the same sources of law as the organisers' non-contractual liability. Athletes may be held liable for damage or injury caused to other athletes, officials or spectators when the athlete acts intentionally or negligently. The

liability is evaluated on a case-by-case basis in the light of the athlete's obligations resulting from legislation and the governing body's sport-specific rules.

The athletes' criminal liability is based on the concept of non-acceptable risk-taking. Athletes have normally accepted the risks inherent in the specific sport. However, violence between athletes may constitute a criminal offence, even in sports involving more aggressive physical contact (such as boxing or ice hockey). However, if the athlete adheres to the relevant sporting rules, their actions will most likely not incur any civil or criminal liability. Sports-related violence is subject to public prosecution. Authorities will generally have to investigate criminal matters *ex officio*.

A spectator's civil liability (non-contractual) is governed by the same sources of law as the organisers and athletes' non-contractual liability. A spectator may be held liable in respect of damage to property or personal injury caused to the event organiser, other spectators or athletes. Liability for damages arises only when the spectator acts intentionally or negligently. Spectators may also incur criminal liability for offences under the Criminal Code.

Specific legislation relating to the access to sports events was introduced in 2015 following some tragic incidents at Swedish football grounds (such as the death of a football fan after pre-match violence in 2014). An individual may be prohibited from entering a venue where a sport event is going to be held. The public prosecutor may issue a banning order against, for instance, a violent supporter, for up to three years. Anyone breaking the banning order will be sentenced to a fine or maximum of two years' imprisonment. In 2017, new anti-hooligan legis-

lation was introduced for a ban against covering one's face at sporting events. A spectator at the arena who intentionally covers their face in a way that prevents identification may be sentenced to a fine or a maximum of six months' imprisonment.

4. Corporate

4.1 Legal Sporting Structures

The Swedish Sports Confederation is the unifying organisation of the sports movement in Sweden and has the task of supporting, representing, developing and leading the movement, both nationally and internationally.

The Sports Confederation consists of 71 special sports federations and 21 district sports federations, which organises more than 250 different sports and almost 20,000 local sports clubs. Almost a third of Sweden's inhabitants are members of a sports club (as athletes, officials, coaches or supporters).

Sport in Sweden is historically organised as an independent voluntary movement (known as the Scandinavian or Nordic model). A long experience of collaboration with central government and local authorities has led to the sports movement being entrusted with the task of organising sport in Sweden on its own, but with the help of financial support from the state and local authorities. For historical reasons, all sports are organised through voluntary non-profit associations. The right to participate in clubs and societies is guaranteed by the Swedish Constitution.

Membership in the Sports Confederation is only admitted to non-profit associations. All local sport clubs are organised as non-profit associations with the purpose of organising sports

activities, having both professional teams and sport-for-all within the same organisation.

The Sports Confederation supports its members and represents the entire sports movement in contacts with the government, such as during the COVID-19 pandemic, where it negotiated several financial compensation packages to its members due to the losses suffered by the pandemic. *SISU Idrottsutbildarna* is the Sports Confederation's educational organisation. The Sports Confederation and *SISU Idrottsutbildarna* have different roles but complement and support each other in the daily work with the development of sports in Sweden.

The clubs are organised according to two principles: one geographical and one linked to the specific sport. The geographical organisation takes the form of district sports federations while particular sports are organised in special sports district federations and special sports federations.

The Sports Confederation has its own judicial system, with the Supreme Sports Tribunal as its highest instance. The tribunal deals with appeals against legal decisions handed down by the sports federations.

A sport club must hold a specific participating (sporting) licence with its special sport federation. However, the clubs may transfer its rights under the licence to a limited liability company, under the conditions that the club is the majority owner of the shares/voting rights in the limited liability company. The limited liability company is prohibited from transferring the sporting rights to a third party. Many sports clubs with professional teams – for instance, within football and ice hockey – have used this opportunity to attract financial investors from private business. So far,

only one of these limited liability companies (AIK Fotboll) has listed its shares on the public market.

All matters related to the Olympics are handled by the Swedish Olympic Committee. The committee consists of 41 member federations, the national sports federations for the Olympic sports and 16 recognised federations (ie, recognised by the International Olympic Committee, but not currently on the Olympic programme).

4.2 Corporate Governance

Swedish law does not provide for specific corporate governance codes within sports. However, sport governance is a growing concern among stakeholders, not least due to the significant commercialisation of sports during recent decades.

Professional teams organised within a limited liability company need to comply with the provisions of the Swedish Companies Act. Listed limited liability companies are subject to specific rules regarding corporate governance, such as the Swedish Corporate Governance Code; the Code may also be applied voluntarily by non-listed companies.

However, most clubs are organised as non-profit associations. Under Swedish law, the board is responsible for the organisation and management of the organisation's business. The board has the overall responsibility to assess the financial situation of the organisation and ensure that the accounting, management of assets and the financial situation of the organisation are monitored in a safe manner. The board represents the organisation officially and has the power to sign on behalf of the organisation.

A board member (or an officer) of a non-profit association or a limited liability company may be held responsible for damages caused to the organisation (or its members or shareholders) in the performance of their duties.

Board members are primarily responsible for any acts and omissions within the scope of the board's area of responsibility. However, board members may also be liable for acts taken by an officer of the organisation within the day-to-day management, if the board has neglected its duty to supervise. Board members are required to keep themselves updated regarding the organisation's current financial situation and make decisions based upon sufficient information. A board member (or an officer) may also be liable for damage that they intentionally or negligently cause a third party by violating the statutes of the association or the provisions in the Companies Act. Further, a board member may be subject to a wide range of further provisions in specific legislation – for instance, related to book-keeping, annual accounts, tax payments or environmental matters.

Board members and officers of an organisation may also incur criminal liability under certain provisions of the Companies Act and other offences under the Swedish Criminal Code, such as credit fraud, breach of trust and bribery. Insurance policies against liability exposure for board members and officers may be obtained and are quite common.

4.3 Funding of Sport

The Swedish sports movement is generally funded by central government resources, support from the municipal communities and revenues from sponsorship agreements. Other traditional revenue streams derive from the transfer of players (mainly for the elite clubs), broadcasting

rights, arenas (such as ticketing, hospitality and merchandising), online sales and lotteries. New possibilities of monetising fan engagement in the digital era are growing rapidly, such as exploiting image rights, the use of NFTs and the metaverse, etc.

The COVID-19 pandemic caused great difficulties for the sports movement and the government provided sport with several crisis packages, which were distributed to its stakeholders by the Swedish Sport Confederation.

The phasing out of measures in response to COVID-19 began on 9 February 2022. As of that date, measures such as the participant limit for public gatherings and events were removed.

4.4 Recent Deals/Trends

The investor interest in the Swedish sports sector is mainly focused on individual top athletes. Investments from private equity firms, venture capital funds and other investment institutions in professional elite teams are still rare, due to the restricted control of the club by its members. However, the growing number of sports tech start-ups is attracting investors from these groups. There are currently about 170 sports tech start-ups in Sweden.

5. Intellectual Property, Data and Data Protection

5.1 Trade Marks

Many stakeholders within the Swedish sport sector (including individual top athletes) seeks trade mark protection. Sweden has domestic protection through the Trademarks Act and has also implemented the EU Trademark Directives and adopted the Madrid Protocol. EU trade marks are recognised in Sweden, as well as

international trade mark registrations administered by the World Intellectual Property Organization (WIPO), designating Sweden.

Trade marks are registered by the Swedish Patent and Registration Office and the protection applies for ten years. Renewal can be made for an unlimited number of consecutive ten-year periods. The owner of the mark can bring an action against anyone making unauthorised use of the mark.

Trade marks may consist of words, signatures, symbols, patterns, etc, provided that the signs are distinctive.

A trade mark may be assigned or licensed.

5.2 Copyright/Database Rights

No particular form of copyright covers sports events specifically and an athlete's performance during the event would not be protectable in itself, but the provisions of the Copyright Act may be applied. Any recording (sound, visual and audio-visual recordings), broadcast and footage of the performance may be protectable under the Copyright Act. The Copyright Act protects the expression of an original work (for example, broadcasts and sound recordings) for a period of 50 to 70 years. The protection will arise automatically on the expression of the work.

The Copyright Act also provides protection to the compilation and use of sports databases for commercial reasons. To receive protection, certain conditions must be fulfilled (such as a substantial investment in the obtaining, verifying or presentation of the contents of the database).

5.3 Image Rights and Other IP

Image rights are protected under Swedish law under the Act (1978:800) on Names and Images in Advertising (the Names Act).

According to the Names Act, an individual's name or picture cannot be used in marketing purposes without the explicit permission of the individual. Violations of the Names Act may lead to fines. The person whose image rights have been exploited is entitled to a reasonable compensation for the infringement. The infringer shall also pay compensation for other damages suffered by the individual.

The public prosecutor may also initiate a criminal action for violation of the Act if the injured party has submitted a complaint over the infringement or if a prosecution is necessary in the public interest.

As mentioned in 5.1 Trade Marks, many Swedish professional athletes choose to protect their names as trade marks in accordance with the Trade Marks Act. The Names Act may be applied on most types of trade mark uses as well – ie, both acts may be applicable in infringement cases.

5.4 Licensing

NGBs, clubs and athletes may exploit their intellectual property rights through licence agreements. Swedish law does not contain any provisions restricting the assignment of IP rights to third parties.

5.5 Sports Data

The use of data in sport is quickly growing, both in order to improve the athletes' performance and for commercial reasons – for instance, to engage with local supporters and consumers. Clubs may also use mobile app data and

machine learning to personalise marketing campaigns and analyse game data. The use of new technology in the digital era can engage new fans and drive revenue from ticket sales and sponsorships.

5.6 Data Protection

The General Data Protection Regulation (GDPR) came into effect in 2018 and applies to all Swedish NGBs and clubs that monitor their athletes. In 2022, specific legislation was introduced for the handling of personal data in connection with the sports movement's anti-doping work. The new act (2022:926) covers Anti-Doping Sweden's and the NGB's processing of personal data in connection with all their anti-doping activities. The Swedish Authority for Privacy Protection (IMY) is the supervising authority. So far, NGBs and other sport stakeholders have generally been compliant with the regulations and no hefty sanctions have been imposed.

6. Dispute Resolution

6.1 National Court System

Public courts are normally not involved or likely to intervene in sports disputes. A regulatory or disciplinary offence by a participant will normally be solved within the respective NGB's internal dispute resolution mechanisms (disciplinary committee or arbitration). The individual athlete must abide contractually to the rules of their club, the relevant NGB, the Sport Confederation and the rules from international governing bodies. Most NGBs have their own disciplinary committee or arbitration board. Under certain circumstances, the Supreme Sports Tribunal deals with appeals against sport-related decisions and disciplinary sanctions handed down by the relevant NGB.

Public courts have jurisdiction over all disputes outside the sport governing bodies' internal dispute resolution systems (such as civil and criminal liability cases).

6.2 ADR, Including Arbitration

As mentioned in 6.1 National Court System, a regulatory or disciplinary offence by an athlete or other similar sports disputes (such as breach of contract claims) will usually be determined by a disciplinary committee or arbitral panel pursuant to the relevant NGB's rules.

6.3 Challenging Sports Governing Bodies

An arbitration award from a NGB is enforceable as a court judgment (the "Enforcement Code"). The award must be in writing and signed by the majority of the arbitrators.

There are no established principles in Sweden regarding when the public courts can examine and decide on lawsuits in relation to decisions of NGBs – for example, decisions on membership issues or disciplinary sanctions. Generally, the public courts are very restrictive when it comes to challenging decisions from NGBs and there are very few court cases on this issue. However, a public court may set aside a decision from a NGB if the decision is based on obvious unreasonable circumstances, such as discrimination because of gender, race or religion.

7. Employment

7.1 Sports-Related Contracts of Employment

The relationship between clubs and professional athletes is governed by Swedish employment law. Professional athletes in commercialised team sports (eg, football and ice hockey) are

regarded as employees. In most cases, standard form employment contracts set out by the relevant NGB are used. In many cases, these standard employment contracts form an integral part of the collective bargaining agreement in place for the specific sport.

Temporary (fixed-term) employments are generally allowed, up to a maximum of two years. Longer fixed-term employments have been agreed in some collective bargaining agreements (such as within football).

The individuals and clubs must adhere to the transfer restrictions set out by the governing bodies and the corresponding rules from international governing bodies, such as FIFA's Regulations on the Status and Transfer of Players and FIFA's Transfer Matching System.

7.2 Employer/Employee Rights

All Swedish employers must take reasonable care of their employees' health and safety. The employers are also required by law to protect their employees from abuse, discrimination, sexual harassment, etc. The Swedish Sports Confederation and *SISU Idrottsutbildarna* are working proactively with members to implement several regulations, guidelines and education related to, for example, doping, sports integrity, diversity, sexual harassment and violence in the workplace, safeguarding and protection of minors.

7.3 Free Movement of Athletes

Sweden is subject to the EU rules regarding the free movement of labour, cross-border competition and discrimination. Following the Bosman case of 1995, the NGBs and the clubs adjusted their internal regulations to comply with EU law. It is prohibited to restrict the number of foreign athletes from EU member states, but the num-

ber of non-EU athletes may be limited to some extent. The Swedish Football Association has adopted rules where at least half of the players noted in the club's player list must be "home-grown players" – ie, they have been registered for a Swedish football club for at least three years from the ages of 12 to 21 years.

Athletes who are EU citizens have the right to live and work in Sweden without a residence permit or a work permit. Professional athletes who are non-EU nationals need to apply for a work permit to compete for a Swedish club. Foreign athletes can temporarily compete in Sweden for a maximum of 90 days without obtaining a work permit. Non-EU citizens from certain countries (such as Russia, Afghanistan, Iraq, Egypt, Indonesia and most African countries) may need a visa to travel to Sweden.

8. Esports

8.1 Overview

Despite its comparatively small population, Sweden is one of the world's leading countries within esports, and esports continue to grow rapidly. Some of the world's best-selling games are produced in the Nordic countries and the Nordic region has a huge gaming community. Sweden has approximately 435 professional esports players and is among the highest-earning countries in the world in terms of esports prize-winnings. The country develops some of the globe's top esports talent and has a leading esports programme, ensuring that junior players get a level of support that is on par with that of the professionals, including education, youth camps, training sessions, a strict code of conduct for players, parents, and organisers which holds those involved to the highest of standards.

A study conducted in 2018 found that Sweden is the second biggest market in Europe for esports consumption, based on merchandise purchases and brand interactions reported by sponsors. Sweden is also home to Dreamhack's esports tournaments, the biggest esports events in the world. The Swedish eSports Association is the umbrella organisation for Swedish competitive electronic gaming. The association currently has three national esports teams; women's, men's and junior national teams, representing Sweden at the European and World Championships in the disciplines Dota2, Counter-Strike: Global Offensive (CS:GO) and Rocket League. Sweden's national teams have for many years been successful and won the overall victory as "Best eSports Nation" at the 2021 World Championships in Israel. It is an ongoing debate whether esports should be recognised as an official sport in Sweden. The Sports Confederation has not yet accepted the eSports Association as a member, but this may change in 2023.

9. Women's Sport

9.1 Overview

Women's sports are well established in Sweden in most disciplines. Indeed, in some sports – such as alpine skiing and biathlon – Swedish women have, due to their greater international success, received far more media attention than the men.

The government is investing in sport and expects the sports movement, at all levels, to redouble its efforts to achieve gender equality in sports, and to give all those with an active interest the same opportunities to participate, regardless of their gender. The largest women's sports in Sweden are still athletics, football and gymnastics, but

other sports (such as ice hockey, basketball and handball) continue to develop.

There has been a sharp increase in audience figures during women's sports events in recent years and events from women's top sports leagues are regularly broadcast on TV and other mainstream media, which obviously attracts new sponsors, etc. In 2021, the Swedish Football Association introduced equal compensation for the national teams.

10. Non-fungible Tokens (NFTs)

10.1 Overview

NFTs (non-fungible tokens) are digital assets that may lead to new revenue streams for Swedish leagues, event organisers, clubs and individual top athletes, etc. NFTs, like cryptocurrencies, are technologies that at the time of writing remain in the grey area in terms of legal recognition in Sweden. NFTs have received huge interest globally, but the industry itself is in a very early stage, and the legal recognition of NFT transactions is still untested in Sweden. Nevertheless, NFTs may have great potential to offer new sources of revenue for the sports industry as they offer new types of engagement with the fans. Potential risks with NFTs are mainly copyright infringements and violation of GDPR/data protection regulations.

11. Regional Issues

11.1 Overview

So far, Brexit has not had any significant impact on sport in Sweden. However, this may be due to the previous COVID-19 pandemic and the associated restrictions imposed on travel, competing abroad and the events postponed due to the pandemic. The new EU-UK Trade and Cooperation Agreement entered into force on 1 January 2021. The Agreement means that, among other things, free movement of athletes between Sweden and the UK ended.

UK nationals will be exempt from a visa requirement for short-term visits that do not exceed 90 days within any 180-day period. UK athletes who want to come to Sweden for long-term stays or residency have to apply for a residence permit in Sweden in the same way and on the same terms as other athletes who are not EU citizens. As a general rule, such a permit must have been applied for and granted before entry into Sweden. The possibilities of receiving a permit to come to Sweden to work as a professional athlete are generally good.

Trends and Developments

Contributed by:

Karl Ole Möller

Nordia Law

Nordia Law is a Nordic commercial business law firm with offices in Stockholm, Gothenburg, Copenhagen, Oslo and Helsinki, regarded as one of the leading law firms on the Swedish

market with regard to complex litigation and arbitration matters. Nordia Law offers quality legal services within all areas of commercial law to clients in the Nordic region and abroad.

Author



Karl Ole Möller is a partner and head of the sport sector at Nordia Law. His practice encompasses several main transactional and regulatory areas within the Swedish sport

sector, including sponsorship agreements, mergers and acquisitions in sport, governance, rules and regulations, transfers, player contracts and image rights. He has acted for numerous Swedish high-profile professional athletes within different sports, such as ice hockey, football, track and field, tennis and golf. He regularly advises top global sports management companies, sport governing bodies, national teams, sports clubs and intermediaries. He is selected by UEFA as pro bono counsel in UEFA disciplinary proceedings.

Nordia Law

PO Box 856
SE- 101 37 Stockholm
Sweden

Tel: +46 8 563 08 100
Fax: +46 8 563 08 101
Email: info@nordialaw.com
Web: www.nordialaw.com

N O R D I A

SWEDEN • NORWAY • DENMARK • FINLAND • LAW

FIFA's New Football Agent Regulations and the Impact on the Swedish Agency Industry

The most notable regulatory change in Sweden during 2023 will most likely be the implementation of the FIFA Football Agent Regulations (FFAR) in the Swedish football agency industry.

The Swedish Football Association (SvFF) is required to update its current regulations and implement the FFAR no later than 30 September 2023. Among other things, the FFAR means that from 1 October 2023 it will be mandatory to have a FIFA licence to practice as a football agent. As of this date, clubs, players and coaches in Sweden may only hire a FIFA licensed agent in upcoming transfers.

The FFAR only applies to representation agreements in connection with international transfers, not to domestic transfers between Swedish clubs. At the time of writing, SvFF has not yet presented its new set of regulations. However, it can be assumed that the SvFF will introduce a uniform system, which applies to representation agreements in connection with international transfers as well as domestic transfers between Swedish clubs.

The requirement for the Swedish agents to obtain a FIFA licence came into force in the beginning of January 2023 and the agents are now required to urgently submit their licence applications to FIFA (complying with various eligibility requirements) and successfully pass an exam conducted by FIFA. In addition to this, the applicant must pay an annual licence fee and undertake continuing professional development (CPD) sessions on an annual basis. In addition, the applicant must pay an annual licence fee and undertake continuing professional development (CPD) sessions on an annual basis. Some agents formerly licensed by FIFA as an agent pursuant to FIFA's previous

regulations are exempt from the requirement to pass the exam. The SvFF plans (through FIFA) to hold two football agents exams in 2023.

There are currently about 140 football agents registered at the SvFF. The domestic football market is relatively small in Sweden and the agents receive the biggest proportion of their fees in connection with international transfers (ie, to or from a Swedish club). Like many other countries, Sweden has exported many successful players to the major leagues in Europe (and elsewhere, such as the MLS in the US).

The essential part of the FFAR, in particular Articles 11-21, covering major regulations relating to representation, minors, commission and commission cap, the rights and obligations of agents, players and clubs, disclosure and publication, disputes and disciplinary must be implemented by the SvFF in its own regulations (entering into force from 30 September 2023). Representation agreements that are currently in force and expire after 30 September 2023 are still valid until they expire, even if the agreements do not comply with FIFA's new regulations. However, all new representation agreements (or renewals) signed after 30 September 2023 must comply with the FFAR.

Representation contracts concluded prior to 16 December 2022 will remain valid until they expire; however, any new representation contracts or renewals of existing representation agreements concluded after 16 December 2022 must comply with the new regulations from 1 October 2023.

Commission/remuneration

A major concern for the Swedish football agents will be the introduction of the commission cap on their fees. Under current conditions, the par-

ties are free to agree on the level of commission and how the commission is to be paid (and by whom). The current regulations from the SvFF recommend a fee level of 3% of a player's annual remuneration, but most agents charge fees of about 10% or more of the remuneration. The fee is usually calculated on the gross financial compensation set out in the employment contract with the club, including any sign-on fee and performance bonuses. The FFAR now introduces a fee cap of 5% if the player's annual remuneration is less than USD200,000. If the player's annual remuneration exceeds this amount, the excess above the amount shall be subject to a commission of 3%. In cases of dual representation (acting for both the player and the engaging club) the fee level is capped at 10% for contracts with less than USD200,000 in annual remuneration and 6% of the amount that exceeds USD200,000.

The new regulations from the SvFF must comply with the FFAR, meaning that most agents will have their fee levels reduced by at least 50% (in many cases). Several agents involved in domestic player transfers with a low player value are at risk of being severely affected by the FFAR. The capped fee levels may lead to such small sums for the agent that they do not justify the agent's time and effort. This, in turn, may lead to problems for lower domestic league players or young players to engage a competent and professional agent to negotiate on their behalf.

However, it still remains to be seen whether FIFA's introduction on the cap of the agent's fees will be in line with EU competition and anti-trust law. The mandatory caps will likely be legally challenged in many jurisdictions.

Another important change is that the commission must be paid by the player directly. Under current conditions, the club may pay the com-

mission to the agent on the player's behalf as a benefit in kind (which is common, at least in domestic transfers). However, the club will still be able to pay the commission on the player's behalf if the player's annual remuneration is less than USD200,000.

In cases where an agent represents both the player and the club (dual representation), the club is prohibited from paying more than 50% of the total fees due.

The FFAR also introduces significant constraints on how the commission will be paid to the agent. Commission must be paid after the closure of the relevant transfer window and in quarterly instalments for the duration of the employment contract (in Sweden, such payments have traditionally been paid annually in advance). Commission will only be paid on remuneration actually received by the player (on a pro-rata basis). Currently, the agent and the player/club themselves can agree on how and when payment is to be made.

Pursuant to the FFAR, all commission must be paid via the newly created FIFA Clearing House. It remains to be seen how the SvFF handles this requirement in its upcoming agent regulations.

Agencies

Another specific requirement under the FFAR is that the representation contract may only be signed by the individual (FIFA licensed) football agent, not their sports agency. Sports agencies will therefore have to carefully consider how they best protect their interest in the player and the representation contract (entered into by the individual football agent). The use of non-compete clauses and restrictive covenants in the agent's employment contract with the sports agency will likely increase.

Representation limits

Another main change to the current position is that the football agent may only perform services for one (single) party in the transfer. The only exception to this is a consented dual representation (ie, where the agent represents both the player and the engaging club). This means that the agent cannot work for the player and the releasing club, for both clubs, or for all parties in the same transfer. The agent is not allowed to try to circumvent these restrictions by acting through another agent (ie, an agent at the same agency or a third party agent). This may lead to difficulties for Swedish agents engaged in domestic transfers with a low player value, where they traditionally have represented several parties at the same time.

Player self-representation and representation agreement termination

The FFAR has also introduced new specific restrictions on the football agent, such as trying to limit the player's right to negotiate their own employment contract and to receive commission on such deals. Restrictions on the player's ability to conclude contracts without the involvement of the agent are banned. The representation agreement can be terminated at any time by either party if there is just cause to do so. However, a wrongful termination may lead to financial compensation to the other party for any resulting damage. According to the FFAR, there is just cause to terminate when a party can no longer reasonably be expected to continue the contractual relationship for the agreed term (including where the football agent's licence has been withdrawn or suspended).

Minors

As regards minors, the FFAR introduces stricter rules (agents may only approach or enter into a representation agreement with a minor in the six months before the minor reaches the age to be able to sign their first professional contract in accordance with the applicable legislation, together with a written consent from the minor's legal guardian). In Sweden, minors may sign their first professional contract at the age of 15. When representing a minor, the agent must complete additional FIFA CPD sessions and comply with the applicable legislation in the country concerned.

Disputes

FFAR has introduced the Agents Chamber of the Football Tribunal, which will resolve disputes between agents or between agents and players/coaches/clubs arising out of or in connection with representation agreements with an international dimension. Disputes related solely to the domestic Swedish football market will continue to be heard by the SvFF's Arbitration Tribunal.

Poaching

Finally, another problem that troubles many Swedish football agents is poaching from other agents. Unlike the Swedish ice hockey agent industry, where this problem has been strictly regulated, there are no clear regulations for when a football agent may approach a player (represented by another agent). It remains to be seen if the SvFF introduces provisions regarding this matter in its upcoming regulations. According to the FFAR, a football agent may approach and enter into a representation agreement with a player represented by another agent in the final two months of their exclusive representation agreement.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com