

New system allowing the commercial exploitation of the image of professional coaches and athletes to be remunerated with royalties

Decree n° 2018-691 of 1 August 2018 concerning the commercial exploitation of the image, name and voices of professional coaches and athletes, published on 3 August 2018 in the *Journal Officiel de la République Française*, (the implementing decree of Article L. 222-2-10-1 of the French Sports Code ¹) was long awaited by the sports community; since the removal of the system of remuneration of collective image rights (“Dispositif du droit à l’image collectif”) in 2010, all revenues of professional coaches and athletes were treated as salary and thus subject to social contributions.

The new system introduced by the Decree provides the possibility for a club to enter into a contract with a professional coach or athlete it employs regarding the commercial exploitation of his/her image, name and/or voice, which is distinct from the contract of employment.

This contract, remunerating the commercial exploitation of the image of the coach or athlete, gives rise to the payment of royalties which are subject to reduced contributions (being taxed as income of on personal assets) while the contract of employment remunerates the sporting performance of the coach or athlete.

The aforementioned decree adds a new section 7 to the Sports Code entitled “Commercial exploitation of the images, names and voices of professional coaches and athletes” (new Article D. 222-50 of the Sport’s Code). The individual exploitation of the image, name or voice of the coach or sport professional is defined as the use or reproduction, associated with the image of the association or sporting company on the same support, in a similar or identical manner, of the image, name or voice of the professional coach or athlete.

This Decree defines the authorized modes of individual exploitation of the images of professional coaches and athletes and sets out the different revenue categories which will be the basis for calculation of the royalties due: they include sponsored products, advertising and sales of merchandise. The broadcasting rights of sporting events, the sales of access passes to sporting events (box office) and public subsidies are specifically excluded.

However, in accordance with Article L. 222-2-10-1 of the Sports Code, this new system may only be used in the sports industries in question provided that “a national convention or collective agreement, concluded in each discipline, establishes the maximum amount of the royalties that may be paid to the professional coach or athlete as well as the minimum remuneration due under the terms of the contract of employment on the basis of which the contract referred to in the first paragraph may be entered into by the professional coach or athlete”.

Article L. 222-2-10-1 of the Sports Code further provides that the minimum and maximum amounts of the aforementioned remuneration, as defined by the convention or the collective agreement, must be mentioned in the image contract, failing which the contract will be invalid.

Therefore, reference should be made to the collective agreements concluded in each given discipline, pursuant to the national convention for sports, in order to ensure that these amounts have been established. It is the responsibility of the social partners to determine the minimum and maximum amounts of the royalties.

We doubt that this mechanism will meet the objective laid down, namely making professional sporting clubs more competitive and helping clubs to better position themselves in the context of fierce international competition, especially that, as it stands, the implementation of this fragile mechanism (risk of requalification of the royalties as salary by the French social security authority URSSAF) is very complex and the system will only concern a limited numbers of coaches and athletes in practice.

That is why, in order to further secure this new mechanism, we recommend the prompt adoption of an administrative circular for professional coaches and athletes that would be similar to the one adopted on 20 April 2012² for performing artists and models.

However, this mechanism will hopefully compensate for the increase in the caps on supplementary pension contributions which will take effect on 1 January 2019, stemming from the AGIRC-ARRCO merger.

1. Article L.222-2-10-1 of the Sports Code, issued from Article 17 of Law n°2017-261 of 1 March 2017
2. Circular N°DSS/5B/2012/161 of 20 April 2012

LEGAL FRAMEWORK

Article L. 222-2-10-1 of the Sports Code as introduced by Article 17 of Law n°2017-261 of 1 March 2017:

“An association of a sporting company as referred to in Articles L. 122-1 and L. 122-2 may enter into a contract with a professional coach or athlete that it employs, pertaining to the commercial exploitation of his/her image, name or voice.

The professional coaches and athlete cannot be regarded, in the execution of the contract referred to in the first paragraph of this article, as linked to the association or the sporting company by a subordinate relationship characteristic of a contract of employment pursuant to Articles L. 1221-1 and L. 1221-3 of the Labor Code, and the royalties paid to them as part of this contract is neither a salary nor a remuneration paid in exchange for or in connection with employment within the meaning of Article L. 242-1 of the Social Security Code, provided that:

1° The physical presence of the professional coaches or athletes is not required to commercially exploit their image, name or voice.

2° The royalties of the professional coaches or athletes are not dependent on the salary received as part of the contract of employment but is actually dependent on the revenues generated by such commercial exploitation of their image, name or voice;

The contract mentioned in the first paragraph must specify (failing which it shall be null and void):

- a. The scope of the commercial exploitation of the name, image or voice of the professional coach or athlete, including the duration, the purpose, the context, the supports and the geographical zone of such commercial exploitation;
- b. The detailed rules of calculation of the royalties, in particular based on the revenues generated by this commercial exploitation;
- c. The maximum amount of the royalties that is likely to be paid to the professional coach or athlete as well as the minimum remuneration due under the terms of the contract of employment on the basis of which the contract referred to in the first paragraph may be concluded by the professional coach or athlete, as defined by the convention or the collective agreement referred to in the last paragraph.

The association or the sporting company shall promptly provide the contract concluded pursuant to the present article to the organization specified in Article L. 132-2 of this code herein.

A decree shall determine the categories of revenues generated by the commercial exploitation of the image, name or voice of the professional coach or athlete that are likely to give rise to the payment of the royalties.

A national convention or collective agreement, concluded in each discipline, establishes the maximum amount of the royalties that may be paid to the professional coach or athlete as well as the

minimum remuneration due under the terms of the contract of employment, on the basis of which the contract referred to in the first paragraph may be concluded by the professional coach or athlete”.

Article D. 222-50 of the Sports Code as introduced by Article 1 of Decree n°2018-261 of 1 August 2018:

“A professional coach or athlete may be paid royalties pursuant to Article L. 222-2-10-1, in exchange for the individual exploitation, by the association or the sporting company referred to in Articles L. 1222-1 or L. 122-2, of his/her image, name or voice.

The expression “individual exploitation of the image, name or voice of the professional coach or athlete” means the use or the reproduction, associated with the image of the association or sporting company on the same support, in a similar or identical manner, of the image, name or voice of at least one professional coach or athlete.

The categories of revenues generated by the association or the sporting company that may give rise to the payment of the royalties referred to in the first paragraph include the following:

1° The revenues generated by sponsorship contracts through which the association or the sporting company may exploit the image, name or voice of at least one professional coach or athlete, in particular on advertising and communication supports and on any type of equipment or clothing of professional coaches and athletes of the association or sporting company.

2° The revenues from contracts for the sale of merchandise through which the association or the sporting company can individually exploit the image, name and voice of the professional coach or athlete.

These categories of revenue do not include revenues generated from the sale of broadcasting rights over sporting events as defined by Articles L. 333-1 et seq., by the sale of access passes to sporting competitions, as well as public subsidies as defined by Article L. 113-2”.

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