



Questionnaire concerning Business, Sports & Fraud

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Sports and Fraud: identifying the relevant framework

1. Are there specific legal forms for sports club (e.g. specific type of company structure, association, etc.) in your jurisdiction?

Spain is quite a complex jurisdiction when it comes to its legislative process, or more accurately, processes. Thus, it is worth including some preliminary remarks on law production in Spain.

From the political organization point of view, Spain is divided into 17 Autonomous Communities plus 2 Autonomous Cities. Each of the said Autonomous Communities has its own legislative assembly or parliament that is competent to legislate over a certain range of matters which vary from case to case.

According to the Spanish Constitution¹, sports are one of the matters the regulatory competences over which may be transferred from the central state authorities to the regional ones. That being the case, most of the Autonomous Communities in Spain have been effectively transferred regulatory competences over sports on wider or narrower bases.

As a consequence of the legal scenario generated on the above grounds, there is not only one legal regime but several to be considered as regards sports in Spain. In practical terms, Spain has a state-level law on sports, which will hereinafter referred to as the “**Spanish Sports Act**”² and several regional laws³.

The different regional laws shall not contradict the essential terms of the Spanish Sports Act. Moreover, the scope and range of each of the said regional laws is different and the Spanish Sports Act always applies on a subsidiary basis.

Having the foregoing been stated, this report shall unless otherwise specified refer to the Spanish Sports Act and the legal terms set forth therein.

Diving into the subject matter of this first question, article 14 of the Spanish Sports Act establishes that sports clubs are, based on their circumstances, classified into (a) elementary sports clubs (b) basic sports clubs and (c) sports public limited companies⁴.

¹ Specifically, articles 148 and 149 set forth the legal regime applicable to the distribution and transfer of competences between the central and the regional authorities.

² *Ley 10/1990, de 15 de octubre, del Deporte* in the original Spanish.

³ In fact, each Autonomous Community has its own regulations on sports (Andalucía, Aragón, Asturias, Cantabria, Castilla Y León, Castilla-La Mancha, Catalunya, Madrid, Comunidad Valenciana, Extremadura, Galicia, Murcia, Illes Balears, Islas Canarias, La Rioja, Navarra)

⁴ (a) *clubes deportivos elementales*, (b) *clubes deportivos básicos*, (c) *sociedades anónimas deportivas*.

The particular features of each legal form are those briefly defined hereinafter.

(a) Elementary sports clubs

Elementary sports clubs is the most basic legal form under the Spanish Sports Act. Establishing an elementary sports club only takes a private document signed by the club's founding members, with no further legal requirements before applying for its registration with the Registry of Sports Associations (such a registration is mandatory regardless the legal form of the club).

Elementary sports club may have their own by-laws but this is not a legal obligation. In the absence of such by-laws, elementary sports clubs shall be directly ruled by the relevant applicable laws.

(b) Basic sports clubs

The establishment of a basic sports clubs already takes some further formalities than elementary sports clubs.

Very briefly, the establishment of elementary sports clubs needs to be formalized before a Notary public and it is mandatory that the founding members approve the club's by-laws with the minimum mandatory contents set forth in the Spanish Sports Act⁵.

(c) Sports public limited companies

Sports public limited company is the legal form that all sports clubs need to adopt when competing at a professional level in official state-wide competitions.

Sports public limited companies are something relatively new in Spain and the history behind may be briefly summarized as follows.

Before the creation of sports public limited companies all of the exiting sports associations has the legal form of a club, which entailed that the applicable regulations were way more flexible than those applicable to, for instance, corporate companies. It was discussed whether such an un-complex legal form was adequate for rather already rather big and professionalised entities participating in official competitions and, at the end of the day, managing huge business structures. The Spanish legislator came to the conclusion that professional sports clubs required additional legal and financial control and, to such purposes, such clubs, under certain circumstances, needed to come closer to the legal forms of corporate companies.

⁵ Article 18: name, object and registered office, terms and conditions to become a member, rights and obligations of the members, governing bodies and representatives, directors' liability aspects, disciplinary regime, economic and financial aspects, rules applicable to the modification or amendment of the by-laws, winding up and liquidation proceedings.

On the grounds above, in 1998, the Spanish Parliament passed a law⁶ by virtue of which, under certain requirements, most of the existing Spanish sports clubs were required to adopt the legal form of a sports public limited company⁷. In practical terms, this change meant that sports clubs would now be applied a narrowly modified version of the legal regime of standard public limited companies.

On an exceptional basis, audited football clubs that had shown positive assets in their balance sheets were allowed to maintain the legal form of sports clubs⁸.

As previously stated, the foregoing shows the legal regime set forth in the Spanish Sports Act, regardless any applicable particularities contained in the relevant regional laws⁹ that should be studied on a case by case basis.

2. How are sports clubs / players grouped? Are they administrative bodies, associations, federations etc.? Please provide a few examples.

Under the Spanish Sports Act¹⁰, there are three types of collective administrative bodies within which clubs and player group up, i.e., (a) federations, (b) leagues and (c) sports promoting entities.

(a) Federations

There are federations at both a state level and an autonomic level.

Spanish federations are private entities, with legal personality, whose territorial scope included all of the Spanish territory. They are integrated by autonomic federations, sports clubs, sportsmen, coaches, judges, referees, professional leagues and other collectives contributing to the development and promotion of sports.

Very briefly, Spanish federations, in coordination with the relevant public authorities, are in charge for the organization of official competitions, the promotion of sport, the preparation of coaches and trainers, the relevant disciplinary proceedings and the control and administration of public subsidies, among other responsibilities.

⁶ Law 50/1998, of 30 December, on tax, administrative and social measures (*Ley 50/1998, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social*).

⁷ More than 120 football clubs and 90 basketball clubs.

⁸ Only FC Barcelona, Real Madrid CF, Athletic Club de Bilbao and Club Atlético Osasuna (from Pamplona).

⁹ For instance, the legal form of FC Barcelona is a sports associations under the Catalan sports law (*Decret Legislatiu 1/2000, de 31 de juliol, pel qual s'aprova el Text únic de la Llei de l'esport in the original Catalan*).

¹⁰ Articles 30 and so forth.

It is worth highlighting that the Spanish Sports Act is clear when stating that there shall only be one Spanish federation per particular sport with the only exception of multisport federations for handicapped people¹¹.

Autonomic federations have similar authorities at a regional level¹².

(b) Leagues

Within those Spanish federations where there are official state professional competitions, there are leagues that are exclusively integrated on a mandatory basis by those clubs participating in such competitions.

Leagues also have their own legal personality and are in charge for organizing their own competitions in coordination with the corresponding federation and exercise the disciplinary authorities that may correspond in accordance with the Spanish Sports Act.

(c) Sports promoting entities

Sports promoting entities are clubs associations or entities whose exclusive objective is to promote and organize sporting events for ludic, formative or social purposes.

In order for a sports promoting entity to be officially recognized as such, it is necessary for it to have a minimum of 100 associations or sports clubs associated and to carry out its activities in 6 different Autonomous Communities, at least.

3. What is the relevant regulatory framework for sports associations/clubs/etc. in your jurisdiction? Is State legislation applicable or is self-regulation applicable? Please provide a few examples.

In line with all the foregoing, the backbone of the legal regulations applicable to sports entities is the Spanish Sports Act, although there are of course a number of particularities to be considered depending on what entity we refer to.

Going back to the existing legal forms that sports entities may adopt under the Spanish Sports Act, this matter may be briefly addressed as follows:

As previously stated, elementary sports clubs are ruled by the relevant applicable legal regulations. They might have their own by-laws but they are not required to do so.

¹¹ Article 34

¹² In practical terms, each Autonomous Community has its own federations, all of which are members of the corresponding Spanish federations and exercise their authorities in coordination with them

As for basic sports clubs, they are actually required to approve their own by-laws, which shall of course be in line with the relevant applicable legal regulations.

Sports public limited companies also have the obligation to have their own by laws, which shall be in line not only with the relevant sports laws applicable but also with the Spanish Corporate Companies Act¹³.

Also federations and leagues are required to have their own by-laws in line with the terms of the Spanish Sports Act.

Finally, once again, it is worth insisting that, in general terms, all sports-related entities shall refer to the relevant regional laws and regulations that may apply in each specific case.

4. Are there any sport-specific risks that you may think of? Are there specific legislation for such risks? The following should be considered:

In general terms, the Spanish legislator(s) has passed laws and other legal regulations to cover most of the risks listed below, which will now be briefly addressed one case at a time.

- Finance in connection with donations or subventions, misappropriation of money

There is not a specific legal framework regarding the several funding strategies sports entities might follow or benefit from. In other words, sports entities are subject to general anti-corruption and anti-fraud laws, namely, the Spanish Criminal Code¹⁴, the relevant anti-money laundering regulations¹⁵ and other applicable administrative rules related to public funding and subsidies.

- Decision making process: nepotism, corruption regarding election or selection of the site for a big sport event

Once again, there are not specific rules for sports entities and these matters are applied the corresponding general regulations.

¹³ *Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital.*

¹⁴ *Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*

¹⁵ *Ley 10/2010, de 28 de abril, de prevención del blanqueo de capitales y de la financiación del terrorismo and related regulations.*

- Health-issues (doping)

In this case, there actually is a specific law dealing with health issues and sports, i.e., the Organic Law 3/2013, of 20 June, of protection of sportsmen's health and fight against doping in sports¹⁶.

Organic Law 3/2013 is a comprehensive regulation that deals with a wide range of doping related issues. The law's objective is well defined in its article 1: to establish a general legal framework for health, prevention and fight against doping within sport, particularly within the scope of organized sport, in accordance with the international commitments undertaken by Spain¹⁷, to the purpose of achieving an environment where fair play, personal overcoming and healthy personal fulfilment prevail.

- Competition: match fixing, etc.

There is a specific criminal offense for match fixing within the Spanish Criminal Code¹⁸ affecting the directors, managers, employees or collaborators of a sports entity, whatever its legal form, as well as sportsmen, referees or judges, for any action taken to the purpose of wrongfully pre-determining or altering the outcome of a game, match or sports competition of special relevance.

Games, matches or sports competitions of special relevance will be those in which a majority of participants are being remunerated for such participation as well as those included by the competent federation within the official annual calendar of a particular sport, category or discipline.

- Online gambling

Gambling in general –thus including online gambling- is duly regulated by Law 13/2011, of 27 May, on gambling¹⁹.

It worth highlighting that this rather new gambling regulation was actually a consequence of the new gambling forms that became popular during the previous years, including, if course, online gambling, which is specifically mentioned in the law's preamble.

¹⁶ *Ley Orgánica 3/2013, de 20 de junio, de protección de la salud del deportista y lucha contra el dopaje en la actividad deportiva.*

¹⁷ Mainly, the UNESCO International Convention against Doping in Sport, of 19 October 2005

¹⁸ Article 286bis.4 and concordant

¹⁹ *Ley 13/2011, de 27 de mayo, de regulación del juego*

The case for compliance

5. **How are risks to be evaluated with regard to corruption, fraud and other white-collar crimes? Are there internal control systems? Transparency criteria? Compulsory controls by auditors / administrative?**

Risks and the relevant controls pretty much depend on both the particular legal entity we refer to and its size.

As previously stated, sports entities, whatever they legal form, are applied the general anti-corruption, anti-fraud and, in general anti-other white collar crimes regulations.

The Spanish Sports Act sets forth generic transparency and “good faith” obligations all sports entities need to observe. More interestingly, sports public companies, are subject to the same compulsory control measures other traditional businesses are, among others, the audit and publication of their annual accounts.

6. **How is compliance applied to sports-organization? What differences are there compared to the “traditional” business world?**

Compliance as regards prevention of corruption, fraud and, in general, other white collar crimes apply to sports entities in the same way they do traditional businesses. The only practical differences will be those deriving from the relationship of the corresponding entity with the sports world but, again, such differences will be practical rather than truly conceptual from the legal perspective.

Specific aspects of internal compliance are detailed in the next answer.

7. **Could you give examples of internal compliance process / internal decision-making processes?**

Compliance, and particularly criminal law compliance, acquired a whole new dimension for Spanish entities following the amendment of the Spanish Criminal Code in 2010²⁰.

²⁰ Organic Law 5/2010 (*Ley Orgánica 5/2010, de 22 de junio, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal* in the original Spanish)

In particular, the aforementioned amendment included the brand new article 31 bis, under which, for the first time in the Spanish legal history, legal entities may be held criminally liable for certain crimes²¹.

The Spanish Criminal Code provides for certain duties that, in case they are proved to have been diligently fulfilled by Spanish Companies, may partially or totally mitigate the company's criminal liability when one of the crimes previously referred to has been committed.

Specifically, in relation to crimes committed by the company's legal representatives or managers, the company's criminal liability may be mitigated provided the following conditions are fulfilled.

1. The directors or the board, as applicable, adopted and implemented organization and management patterns that included surveillance and control measures that were adequate to prevent the crimes committed or to significantly reduce risks.
2. Monitoring the said organization and management patterns was entrusted to the adequate individuals within the company.
3. The individuals who committed the crime wrongfully disregarded the said organization and management patterns.
4. There has not been a lack of diligence or control over the said organization and management patterns.

On the other hand, in relation to crimes committed by individuals under the authority or control of legal representatives and managers and who were able to perform the relevant wrongful activities because of the lack of supervision, control or surveillance of such legal representatives and managers, the company's criminal liability may be mitigated provided the company adopted and implemented organization and management patterns that included surveillance and control measures that were adequate to prevent the crimes committed or to significantly reduce risks.

The Spanish Criminal Code clearly establishes that the said organization and management patterns shall in any event meet the following requirements:

1. Identification of the activities in relation to which the crimes to be prevented might be committed.
2. Adoption of protocols and procedures regarding decision-making aspects within the company.

²¹ (a) Crimes committed on their name or behalf and to their direct or indirect benefit by their legal representatives or managers, (b) Crimes committed by individuals under the authority or control of the said legal representatives and managers and who were able to perform the relevant wrongful activities because of the lack of supervision, control or surveillance of such legal representatives and managers.

3. Adoption of financial resources management patterns that are adequate to avoid commission of the prevented crimes.
4. Adoption of adequate reporting duties within the company.
5. Adoption of disciplinary measures against individuals failing to fulfill the company's policy for prevention of crimes.
6. Periodic revision of the company's policy for prevention of crimes.

In accordance with the foregoing, an adequate and up to date criminal law compliance should put companies in a safer position in case crimes are committed within or by it.

The foregoing, of course, fully applies to sports entities.

The issue of sanctions

8. According to which provisions (e.g. criminal law, regulatory law, and administrative law, etc.) may a sports association be sanctioned in your jurisdiction?

From the legal perspective, sports associations or clubs are but specialized legal entities. In this sense, they are subject to general legal provisions the same way other legal entities are, plus specialized sports regulations.

It has already been stated how sports associations and clubs may be held criminally liable under the Spanish Criminal Code and, in the same way, they might very well commit administrative and civil law fouls and breaches.

On the above grounds, it might be worth going a bit deeper on the disciplinary legal regime set forth in specialized sports regulations.

The Spanish Sports Act includes one section integrally dealing with sports disciplinary aspects²². In particular, the Spanish Sports Act defines the scope of its own disciplinary legal regime as that affecting activities or competitions at a state and an international level, as applicable, and the persons participating in such, and it covers the breach of game and competition rules set forth in the Spanish Sports Act itself as well as the breach of any other related legal provisions.

As regards jurisdiction aspects in connection with the enforcement of the sports disciplinary legal regime, the Spanish Sports Act includes the list of persons, officers and bodies with disciplinary authorities, which may be summarized as follows.

²² Title XI, articles 73 *et seq.*

- (a) Judges or referees are in charge of enforcement during the relevant sporting events.
- (b) Sports associations and clubs have jurisdiction over their members, sportsmen, managers, directors and staff, in general.
- (c) Federations have jurisdiction over all persons of their structure, sports clubs and their sportsmen, managers and directors, judges and referees and generally over all persons and entities developing their activities at a state level.
- (d) Professional leagues have jurisdiction over the professional clubs or associations participating in their competitions as well as over sportsmen, managers and directors.
- (e) The Spanish Disciplinary Sports Committee²³ has jurisdiction over the same persons and entities the federations do as well over the federations themselves and the professional leagues, along with their respective managers and directors.

It is finally worth highlighting that there are other bodies and public authorities involved in the enforcement of specific sport-related legal provisions, such as the State Commission against Violence, Racism, Xenophobia and Intolerance in Sport²⁴ or the Spanish Agency for the Protection of Health in Sports²⁵, with jurisdiction in doping cases, among other authorities.

9. Who may be sanctioned within the association (e.g. the association itself, the board, an employee)? Please provide examples of applicable sanctions in the recent years.

As advanced in the previous answer, all persons and legal entities involved in sports are subject to the relevant disciplinary legal regime and may thus be held liable for breaches of the applicable regulations. This includes sports clubs and associations, sportsmen, managers, directors or board members, federations and leagues.

²³ *Comité Español de Disciplina Deportiva* in the original Spanish.

²⁴ *Comisión Estatal contra la Violencia, el Racismo, la Xenofobia y la Intolerancia en el Deporte*, in the original Spanish, regulated by the Organic Law 19/2007, of 11 July, against Violence, Racism, Xenophobia and Intolerance in Sport (*Ley 19/2007, de 11 de julio, contra la violencia, el racismo, la xenofobia y la intolerancia en el deporte*).

²⁵ *Agencia Española de Protección de la Salud en el Deporte*, regulated by the Organic Law 3/2013, for the protection of sportsmen's health and fight against doping in Sports activities (*Ley Orgánica 3/2013, de 20 de junio, de protección de la salud del deportista y lucha contra el dopaje en la actividad deportiva*).

Some examples of different sanctions that were imposed in recent times might be the following.

- (a) Sportsmen: different sportsmen are regularly sanctioned on a weekly basis for the infringement of basic competition rules²⁶. However, there are some more peculiar cases arising from time to time which entail good portions of polemics due to the particular interpretation of the applicable regulations on which the relevant sanction is based. In a very recent case, FC Barcelona player Luis Suarez was suspended for addressing some impolite remarks to the rivals after a Spanish Cup game against RCD Espanyol²⁷. This sort of cases are tricky because the relevant disciplinary authority need to decide whether such remarks are to be legally regarded as insults (4 to 20 games of suspension depending on the seriousness) or simple scorns²⁸ (2 to 3 games of suspension)²⁹. Since the criteria to distinguish scorns from insults and *viceversa* are not clear enough, whenever similar cases arise, there is always a sense of broad and somehow unjustified discretion in the disciplinary committee's resolutions.
- (b) Clubs: a very popular case took place in January 2016, when Real Madrid CF was banned from the Spanish Cup for lining up a player who had been suspended during the previous season³⁰. The case was loud but the Spanish Football Federation Disciplinary Code is clear enough when stating that clubs lining up suspended players in play-off competitions shall be banned on a definitive basis.
- (c) Club directors: Sanctions to club directors or board members of sports entities are not usual at a professional level but there are some cases where officers are held liable for different breaches of the applicable sports regulations at lower levels, none of which is worth highlighting.
- (d) Federations: there have been no recent cases of Spanish or territorial federations sanctioned by the Spanish Disciplinary Sports Committee. There was however a loud case involving the Catalan Hockey Federation, when back in 2014 the Spanish Olympic Committee studied the possibility of sanctioning the said territorial federation for some demonstrations for the independence of Catalunya that took place before some friendly games of the (unofficial) Catalan national team. Catalan

²⁶ We refer, for instance, to suspensions taking place when one player accumulates a certain number of bookings in football competitions.

²⁷ Specifically, Suárez called RCD Espanyol's players a "waste" (*desecho*, in Spanish).

²⁸ What sometimes is commonly referred to as "trash-talking".

²⁹ Articles 94 and 107 of the Spanish Football Federation Disciplinary Code.

³⁰ Denis Chéryshev, who had been signed back from Villarreal CF after playing there on loan.

federation members, along with players and managers could have been sanctioned in this case. Eventually, nothing happened.

- (e) Leagues: There have been non recent significant cases of Spanish leagues sanctioned by the competent authorities.

In conclusion, although there are quite specific legal tools available, in general terms, it is difficult to find good examples of heavy sanctions within Spanish sports at the highest level, whereas of course routine sanctions for minor breaches are recurrent.

10. How do those sanctions interact with decisions from State courts? Is there a need for enforcement of the sanctions (i.e. is there a filter / exequatur process by State courts, as in arbitration)? Is there a possibility for State courts to consider a case also examined by a regulatory body, e.g. a federation (i.e. is there a risk of “double jeopardy”)?

This is a particularly complex matter in the case of Spain. One of the main problems in connection with the judicial enforcement of sanctions imposed by regulatory bodies -mainly federations- is the hybrid private-public nature of such federations. Quite clearly, the Spanish Constitutional Court has stated that federations are private associations with attributed public authorities³¹.

Consequently, there is a need to distinguish between cases in which federations exercise private authorities and cases in which the same federations are exercising public authorities. This dichotomy has been broadly dealt with in case law and, as it happens, such a distinction is not always as clear as it could be expected first-hand, among other reasons, because the vast range of applicable laws, regulations and rules might be somewhat confusing or, at best, uncertain. Thus, the criteria remain to a certain extent blurry. The risk of double jeopardy is nevertheless low; courts will typically intervene as a higher instance for the purposes of reviewing the resolutions of the competent regulatory bodies.

A good example of federation exercising public authorities by delegation is doping. Disciplinary authorities in relation to doping are by law³² attributed to the Spanish Superior Sports Council³³ and, by delegation, to the several sports

³¹ Spanish Constitutional Court Sentence no. 67/1985

³² Article 33.1.f of the Spanish Sports Act

³³ *Consejo Superior de Deportes* in the original Spanish; the maximum public authority as regards sports within Spain.

federations existing in Spain. Thus, it is perfectly possible that doping-related cases end up in ordinary courts³⁴.

Case studies: Online gambling, doping scandals and whistleblowing

11. What are the legal consequences with regards to match-fixing in your jurisdiction? Please specify the relevant legal framework.

As advanced in question 4 hereinabove, match fixing is a criminal offense in accordance with the Spanish Criminal Code³⁵. In such sense, directors, managers, employees or collaborators of a sports entity, whatever its legal form, as well as sportsmen, referees or judges, who take any kind of action to the purpose of wrongfully pre-determining or altering the outcome of a game, match or sports competition of special relevance might be held criminally liable.

The penalties contemplated in the Spanish Criminal Code are (i) prison from 6 months and up to 4 years, (ii) professional disqualification from 1 and up to 6 years and (iii) economic penalty equivalent to three times the value of the benefits obtained.

The above penalties might be modulated in consideration of the seriousness and particular circumstances of each case.

12. How is online gambling considered in your jurisdiction and how is it dealt with in case of fraud?

Gambling, including online gambling, is specifically regulated within the Spanish legal system by Law 13/2011, of 27 May, on regulation of gambling³⁶.

In the sense above, online gambling is regarded as another gambling modality and it is subject to the same substantial rules. Needless to say, online gambling sites need to fulfil with the relevant regulations applicable to online service

³⁴ A very renowned case was that of Spanish cyclist Roberto Heras to whom the Spanish Supreme Court (*Tribunal Supremo*) reintegrated the title of Champion of the 2005 edition of the Spanish *Vuelta Ciclista* after years of judicial struggle before both the sports and the ordinary courts of justice.

³⁵ Article 286bis.4

³⁶ *Ley 13/2011, de 27 de mayo, de regulación del juego*

providers in general as regards aspects such as the clarity and truthfulness of the relevant services³⁷.

Most gambling fraud cases will be related to match-fixing or other forms of alteration of results of sporting events and thus the main consequences will be those detailed in question 11 hereinabove. As a matter of fact, Law 13/2011 includes a comprehensive disciplinary regime³⁸ that does not specifically refer to fraud, since the sort of potential breaches and fouls therein mentioned are defined to have administrative nature, whereas fraud cases are typically regarded to have a criminal nature.

13. Are any measures foreseen in your jurisdiction for the protection of “whistle-blowers”?

The Spanish Constitution sets forth a generic obligation to collaborate with courts and tribunals as they require³⁹. In development of such a generic obligation, the Spanish Criminal Procedural Act⁴⁰ clearly sets forth that all those residing within the Spanish territory, either nationals or foreigners, that are not impeded have the obligation to appear and deposit their statements before criminal courts when they are summoned in accordance with the law. It is nevertheless possible that persons are reluctant to fulfil such an obligation because they fear potential retaliation. In order to ensure that crucial proof is not missed in criminal proceedings by reason of such a fear, Spain has its own Witness Protection Act⁴¹.

The Witness Protection Act sets forth the possibility for criminal courts to adopt measures to protect critical witnesses in criminal proceedings. This may of course apply when such witnesses act either to fulfil the legal obligation to cooperate with the court or when they intervene on a voluntary basis. “Whistle-blowers” may of course fit both cases.

The contents of the Witness Protection Act are quite generic and courts have plenty of room to determine the relevant measures within such a legal framework. In this sense and in accordance with the Witness Protection Act, courts may adopt the relevant measures *ex officio* or at the request of a party when it is rationally noticeable that there is a serious risk or danger for a witness or related persons.

³⁷ Essentially, those set forth in Law 24/2002, of 11 July, on information society services and e-commerce (*Ley 34/2002, de 11 de julio, de servicios de la sociedad de la información y de comercio electrónico*) and related rules.

³⁸ Articles 36 *et seq.*

³⁹ Article 118

⁴⁰ *Real Decreto de 14 de septiembre de 1882, aprobatorio de la Ley de Enjuiciamiento Criminal*

⁴¹ *Ley Orgánica 19/1994, de 23 de diciembre, de protección de peritos y testigos en causas criminales*

Some specific measures that are expressly contemplated in the Witness Protection Act are the following:

- (a) There might be no identification details of the witness in the records of the corresponding judicial proceedings.
- (b) The witness may remain unidentifiable when acting before the court.
- (c) The witness notification address may be that of the court in order to avoid disclosure of his or her actual address.

In addition to the above measures, which refer to the participation of the witness in the relevant proceedings, it is possible to adopt post-proceedings measures when the danger or risks for the witness remain once the proceedings are over. Such post-proceedings measures may include the special protection of the Spanish police and even the army, new identity documents for the witness and economic help to change residencies.

There are no precedents of such drastic measures adopted in sports related cases and they have been typically related to terrorism or other sorts of violent crimes. Nevertheless, there is no cap or limit based on the proceedings subject matter and thus it would be legally possible for such measures to be adopted on sports-related crimes⁴².

As for whistle-blowers in other scenarios further to criminal proceedings (tax, labour or sports authorities), there are no specific legal provisions available but there are no legal arguments against the adoption of specific negotiated measures within the framework of other legal proceedings lead by such authorities or administrative bodies. It is also worth mentioning that it is usually possible to anonymously report allegedly unlawful activities with no further obligation for the reporting person throughout the relevant administrative proceedings, if any.

14. How is confidential information treated in your jurisdiction? Any risks for whistle-blowers?

Confidentiality or non-disclosure agreements are a very common tool to protect the information exchanged between two or more parties. From the legislative standpoint, this sort of agreement are not specifically regulated under Spanish law, which means that the relevant contents are exclusively based on the will of the involved parties and subject to the limitations of the general provisions of Spanish civil and commercial law. In this sense, confidential information it is either contractually protected or almost non-protected at all from a civil law perspective. Thus, it is usually recommended to enter into specific confidentiality

⁴² *Vid.* answers to questions 4, 7, 8 and 11 herein.

agreements when two or more parties engage in a relationship which may entail the disclosure or exchange of critical information for them. The misuse or wrongful use of the information covered by the relevant agreement by a bound party would be regarded as a contractual breach and thus the enforcement mechanisms available would be those applicable to general contractual obligations.

On an additional note, it is worth mentioning that the Spanish Criminal Code includes a secret revelation and information disclosure crime⁴³, which aims at protecting the documental and communication intimacy of both individuals and legal entities. The relevant provisions in the Spanish Criminal Code entail a generic obligation not wrongfully reveal information that may be proprietary or critical for the relevant owner but it would not cover those cases where such information is proof of any of a crime committed by a sports-related individual or entity.

⁴³ Articles 197 *et seq.* of the Spanish Criminal Code.

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