

Insights

FIRST APPLICATION BY THE FRENCH COMPETITION AUTHORITY OF THE NEW PENALTY REGIME FOR PROFESSIONAL ASSOCIATIONS

Apr 10, 2026

In a decision dated 17 March 2026 (published on 1 April 2026), the French Competition Authority (the "**Authority**") imposed a fine of €3.4 million on the Syndicat National des Moniteurs du Ski Français (the "**SNMSF**"), **for having imposed on its member instructors an exclusivity obligation** prohibiting them from practising their profession outside ESF ski schools.

WHY IS THIS CASE NOTEWORTHY?

Because the Authority is applying for the first time the new provisions of Article L.464-2 **of the French Commercial Code relating to penalties incurred by professional associations.**

Until now, such penalties were capped at €3 million. Since the 2021 reform, this cap is now set at **10% of the sum of the total worldwide turnover generated by each of the members active on the market affected by the infringement committed by the association.** The Authority may also order the association **to issue a call for contributions** from its members in order to guarantee payment of the penalty, in the event that it would not be in a position to pay it, in whole or in part.

A strong signal for professional associations. The first application of the new penalty regime serves as a reminder that vigilance is no longer optional. Not only must associations ensure that their practices strictly comply with competition law, but their members themselves are now on the front line: they may be called upon to contribute to the payment of the penalties imposed. A paradigm shift that should not be underestimated.

WHAT PRACTICES WERE SANCTIONED BY THE DECISION?

In 2006, a motion adopted at the SNMSF's national congress led to the insertion, in the standard agreement binding instructors to their ESF, of a clause prohibiting them from engaging in any teaching activity within a competing structure, whether individual or collective. The possibility of changing ESF remained subject to the prior approval of the director of the original school, and the development of any personal clientele outside the ESF network was prohibited.

At the 2013 congress, the SNMSF, according to the Authority, tightened this exclusivity mechanism in several respects, by providing that:

- Any breach of this obligation would lead to automatic exclusion from the SNMSF and the ESF;
- Instructors would be prohibited from joining any competing union; and
- Instructors who did not channel all of their fees through the ESF could be suspended.

The Authority noted that this exclusivity mechanism covered a very broad scope: it applied to all member instructors, regardless of their status (permanent, non-permanent or trainee), the discipline taught (alpine skiing, snowboarding, telemark, etc.), the format chosen (individual or group lessons) or the level of activity of the ESF. This obligation also applied throughout the entire membership year, and not solely during the winter season.

The Authority concluded that this mechanism had the effect of significantly restricting the professional mobility of ski instructors.

HOW WAS THE NEW PENALTY REGIME FOR PROFESSIONAL ASSOCIATIONS APPLIED?

Whereas associations of undertakings were previously subject to a specific penalty cap of €3 million, this cap was abolished in 2021 following the transposition into French law of the ECN+[1] Directive.

Henceforth, an association of undertakings may be subject to a financial penalty of up to 10% **of its own turnover or 10%** of the sum of the total worldwide turnover generated by each member of the association active on the market affected by the infringement, where the infringement relates to the activities of its members.

Where the financial penalty is imposed on the association taking into account the turnover of its members and the association is not solvent, **the Authority may furthermore order it to issue a call for contributions** from its members to cover the amount of the financial penalty.

The Authority had, however, not yet applied these provisions until now.

This has now been done, as the Authority in this case:

- **Determined the amount of the financial penalty with reference to the total worldwide turnover of all SNMSF member instructors active on the affected market.**

The Authority nevertheless took into account the particular context of the case and the fact that the members were natural persons. It considered that "*the method described in the penalties notice would lead to a disproportionate penalty amount given the SNMSF's own*

*resources and the limited contributory capacity of its members, who are natural persons", and instead adopted a **lump-sum amount**. Any other approach would have resulted in ski instructors bearing amounts that would likely have been very significant.*

With regard to the calculation of the penalty amount, the Authority rejected the union's argument that "any financial penalty other than a symbolic one would exceed its own contributory capacity and that of its members". It noted that, even though the union claimed a financial situation making it difficult to pay a penalty, it was not, as at the date of the decision, in a state of insolvency.

The Authority held in any event that *"since the financial penalty imposed on the SNMSF is calculated taking into account the turnover of its members, **the mere circumstance that the union would not be in a position to pay it from its own resources cannot suffice to justify a reduction of the penalty or the imposition of a symbolic penalty. Indeed, the law provides for a solidarity mechanism designed to enable the recovery of fines in such circumstances"**.*

The Authority thus appears to intend to make full use of the possibility afforded to it to impose heavy penalties on professional associations, irrespective of the fact that their own turnover may be limited.

Ultimately, the penalty imposed, of €3.4 million, corresponds to approximately 1% of the total turnover of the members of the professional union.

- **Ordered the SNMSF to issue a call for contributions from its member instructors in order to guarantee payment of the penalty, in the event that it would not be in a position to pay it in whole or in part.**

The Authority granted the **SNMSF a period of six months from the notification** of the decision to implement this call for contributions, extended where applicable by any instalment plan or additional payment period that may be granted to the SNMSF by the authority responsible for the recovery of penalties (the Direction des créances spéciales du Trésor).

In doing so, the Authority leaves it to the union to determine which members are called upon to contribute and how the amounts are to be apportioned among them.

There is no doubt that this latitude afforded to sanctioned associations will prove to be a delicate exercise for them and a source of conflict with their members.

Finally, the Authority recalled that in the event that the SNMSF would not be in a position to pay the penalty upon expiry of the prescribed period, it could directly require payment of the financial penalty from the undertakings represented in the SNMSF's decision-making bodies

and, where applicable, from any member of the association, provided that such member is active on the market concerned by the infringement.

WHAT OTHER TAKEAWAYS ARE THERE?

This decision confirms that the sports sector remains fully subject to competition rules, [2] in line with the recent case law of the Court of Justice of the European Union.

It also highlights the competition risks inherent in mechanisms aimed at restricting the professional mobility of workers and, consequently, at distorting competition between the operators that use their services. In this regard, the present decision follows in the footsteps of the decision of 11 June 2025, in which the Authority sanctioned no-poach practices in the engineering, technology consulting and IT services sectors.

Lastly, this decision is a further example of the Authority's continued and intensified scrutiny of professional associations over recent years. In the wake of its thematic study of January 2021 on professional associations, which described them as a potential "theatre or catalyst for anti-competitive practices", the Authority has issued several penalty decisions against professional bodies, for example in the fishing and aquaculture sector (Decision of 16 November 2022), and in the sector of judicial officers (Decision of 13 January 2022).

[1] Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

[2] See Decisions Royal Antwerp Football Club of 21 December 2023 (C-680/21), European Superleague Company of 21 December 2023 (C-333/21) and FIFA c. BZ of 4 October 2024 (C-650/22).

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