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SPORT

Coronavirus: Impact on football

On 30 January 2020, the World Health Organization declared the existence of a public health emergency of international importance (PHEIC) and classified the virus SARS-CoV2 as a pandemic on 11 March 2020. Around the world, governments and organisations are seeking to introduce contingency rules to deal with the epidemic and the disease (COVID-19) caused by it.

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This situation has had an enormous effect on football, with the suspension of virtually all football competitions across the globe. At the moment, for example, the competitions represented in the World Leagues Forum (www.worldleaguesforum.com), founded in 2016, which represents the main professional leagues of national football associations, have all been suspended or postponed, as you can see in the following table:

AFRICA	
Algeria	Postponed until 5 April
Kenya	Postponed until 4 April
Morocco	Postponed for an indefinite period
Namibia	Postponed for an indefinite period
Nigéria	Postponed for an indefinite period
Senegal	Postponed until 15 April
South Africa	Postponed for an indefinite period
Zimbabwe	Season start postponed to 18 May
ASIA	
Australia	Postponed for an indefinite period
India	Season ended
Japan	Postponed until 2 April
Malaysia	Postponed for an indefinite period
Qatar	Postponed for an indefinite period
Korea	Season start postponed
Saudi Arabia	Postponed for an indefinite period
Thailand	Postponed until 18 April
United Arab Emirates	Postponed until 11 April

CENTRAL AND SOUTH AMERICA	
Costa Rica	Postponed until 10 April
Honduras	Postponed for an indefinite period
Mexico	Postponed for an indefinite period
Panama	Season ended
United States	Postponed until 10 May
SOUTH AMERICA	
Argentina	Postponed until 31 Março
Colombia	Postponed for an indefinite period
Ecuador	Postponed for an indefinite period
EUROPE	
Austria	Postponed until beginning of May
Azerbaijan	Postponed until 14 April
Belgium	Postponed until 30 April
Czech Republic	Postponed until 11 April
Denmark	Postponed for an indefinite period
England	Postponed until 30 April
Finland	Postponed until 31 May
France	Postponed for an indefinite period
Germany	Postponed until 2 April
Greece	Postponed for an indefinite period
Israel	Postponed for an indefinite period
Italy	Postponed until 3 May
Kazakhstan	Postponed until 15 April

Latvia	Season start postponed
Lithuania	Postponed until end of March
Netherlands	Postponed until 6 April
Northern Ireland	Postponed until 30 April
Norway	Season start postponed
Poland	Postponed until 26 April
Portugal	Postponed for an indefinite period
Romania	Postponed until 16 April
Russia	Postponed until 10 April
Scotland	Postponed until 30 April
Serbia	Postponed for an indefinite period
Slovakia	Postponed for an indefinite period
Spain	Postponed for an indefinite period
Sweden	Season start postponed to June
Switzerland	Postponed for an indefinite period
Turkey	Postponed for an indefinite period
Ukraine	Postponed for an indefinite period

This is an unprecedented situation in football and, since World War II, we have not witnessed a general suspension of competitions like the one we are seeing now.

This suspension is creating a number of very significant problems that are now beginning to have an impact. FIFA recently published a first document called 'COVID 19 - Football Regulatory Issues - FIFA Working Group - March 2020' in which it addresses a wide range of problems that football is facing at the moment.

First, **the resumption of competitions.**

FIFA considers that does not have the power to give specific indications regarding the date of resumption of competitions in each country or territory.

Therefore, it recommends that this decision be made by each of its members, in accordance with the recommendations of the public health authorities of each country. It adds that, in this particular situation, health should be the guiding principle for FIFA, its member associations and other stakeholders in the footballing world.

However, FIFA has acknowledged that it has a responsibility to provide appropriate guidance and recommendations to its members and their stakeholders to both mitigate the consequences of disruptions caused by COVID-19 and ensure that any response is harmonised in the common interest.

Among many different issues, FIFA identified three core matters that need to be addressed urgently:

- Expiring agreements (agreements terminating at the end of the current season) and new agreements (those already signed and due to being at the start of the next season);
- Agreements breached or frustrated as a consequence of COVID-19;
- The appropriate timing for registration periods ("transfer windows");

Accordingly, on 18 March 2020, the Bureau of the FIFA Council set up a working group to examine, among other things, the need to make changes to the Regulations on the Status and Transfer of Players (RSTP). These changes should provide for temporary suspensions of the application of the RSTP to protect contracts for both players and clubs, and for adjustments to transfer periods.

Moreover, the Bureau also decided that the situation of COVID-19 should be considered a *force majeure* event. Article 27 provides that matters not expressly provided for in the RSTP and cases of *force majeure* will be decided by the FIFA Council and that its decisions are final.

A task force was set up in 2017 to make changes to the RSTP and the Council has decided that this task force will look into what changes are necessary. It will coordinate this work with the newly created working group.

Faced with the current situation, the Council has proposed a set of guidelines to the task force and has shared them with its member associations and other football stakeholders for consideration and comments.

EXPIRING AGREEMENTS AND NEW AGREEMENTS

Employment agreements and transfer agreements in football are generally tied to the registration periods (commonly known as “transfer windows”) which are set by each member association for their own jurisdiction and in accordance with the RSTP.

From a sporting point of view, the opening of the first registration period generally coincides with the first day of the new season.

The RSTP defines a “season” as the period starting with the first official match of the national league championship and ending with its last official match.

Notwithstanding this provision, the national associations are required to input dates for each “season” into the FIFA Transfer Matching System (TMS) which cover a full calendar year.

The majority of the leagues that are most affected by COVID-19 have input their season start date as 1 July and season end date as 30 June.

Article 6(1) of the RSTP provides that players can only be registered during one of the two annual registration periods fixed by the relevant member association.

These periods are commonly known as “transfer windows”.

Most championships and league competitions that were underway have been postponed or suspended, and most associations and leagues have an overwhelming desire for those competitions to be completed. Therefore, it is very likely that they will take place after the original end date of the season that was input into the TMS.

This circumstance will necessarily impact the start date of the next season. This means issues will arise where:

- Employment agreements are due to expire at the original end date of the current season;
- Loan transfer agreements (and related employment agreements) are due to expire at the original end date of the current season;
- Permanent and loan transfer agreements (and related employment agreements) are due to begin on the original start date of the next season; and
- Employment agreements are due to begin on the original start date of the next season;

Article 18(2) of the RSTP provides that the minimum length of a contract is from its effective date until the end of the season, while the maximum length of a contract is five years.

Article 18(3) of the RSTP provides that professionals are only free to conclude a contract with another club if their contract with their present club has expired or is due to expire within six months.

Notwithstanding the provisions in national law on the beginning and end of contracts, the true intention of the parties should be the main factor when determining the period of validity of the contracts of players and coaches when competitions resume.

The intention of parties making an agreement that is expected to end at the end of the season, or to begin at the beginning of the next season is clear: the club is agreeing to make an employment agreement with the player or coach for the whole of the season.

Based on this, the FIFA Council makes the following proposals:

Under article 18(2) of the RSTP, in sports employment agreements:

- Where an agreement is due to expire at the original end date of a season, as the season has to be prolonged, the expiry will be postponed until the new end date of the season;
- Where an agreement is due to come into effect at the beginning at the original start date of the season, as the new season has had to be postponed, the effective date of the agreement will be delayed until the new start date of the new season;
- If seasons or registration periods overlap, and unless all parties agree otherwise, priority will be given to the former club to complete their season with their original squad, to safeguard the integrity of the leagues and competitions in question.

"Obligation is extinguished when the performance becomes impossible for a reason not attributable to the party obliged to perform it."

The considerations described above will apply to international transfer agreements by analogy. In addition, for international transfer agreements:

- Notwithstanding the recommended changes to agreement dates, any payment that contractually falls due before the new effective date of an agreement should be delayed until the new start date of a new season, or to its first transfer window.

WHEN IT IS OBJECTIVELY IMPOSSIBLE TO PERFORM AGREEMENTS

The concept of objective impossibility of performance is clear in both common law and civil law systems. Article 119 of the Swiss Code of Obligations provides that an obligation is deemed extinguished when its performance is made impossible by circumstances not attributable to the party obliged to perform it. In Portugal, the solution is similar. Article 790(1) of the Civil Code provides that the obligation is extinguished when the performance becomes impossible for a reason not attributable to the party obliged to perform it.

It is clear and obvious that the situation caused by COVID-19 has made it impossible to perform sports employment agreements on a global level. The obligations on the parties to these agreements have become impossible to perform. Players and coaches are unable to work. In addition, clubs are unable provide players and coaches with work or even allow them to work, and they are not in a position to pay compensation for the work not done.

Ultimately, the employment laws of each of the affected jurisdictions or their insolvency laws may provide an immediate response to questions concerning the viability of sports employment contracts that cannot be performed.

What must be avoided is football stakeholders receiving drastically different treatment or resolution on a global basis despite being in similar circumstances, whether from national courts, employment tribunals, or the FIFA judicial bodies.

As a result, FIFA recommends some guiding principles to find a fair solution for clubs and their employees while safeguarding their contracts of employment as far as possible.

Based on this, the FIFA Council makes the following proposals:

The FIFA Council has made proposals to guarantee some form of payment of salaries to players and coaches, avoid litigation, protect contractual stability, and ensure that clubs do not go into insolvency. The Council has also taken into account the impact of COVID-19 on the financial situation of clubs. The proposals are that:

- Clubs and employees (coaches and players) be encouraged to work together to find appropriate collective solutions to postpone and/or reduce wages to reasonable amounts for the period of suspension of work;

The FIFA Task Force can establish guidelines that can be followed to help associations and the bodies that organise competitions;

- Alternatively, all agreements between clubs and employees should be “suspended” during any suspension of work (that is, suspension of footballing activities), provided proper insurance coverage is maintained, and adequate alternative income support arrangements can be found for employees during the period in question;

This proposal is intended to respond to the following issues: unilateral termination of contracts/agreements based on COVID-19; clubs that refuse to pay their employees; employees who refuse to appear for work; and clubs that do not provide to their employees with appropriate work, facilities for training, or medical assistance;

- The scope and funds allocated to the newly created FIFA Fund for Professional Players (FIFA FFR) to face situations caused by COVID-19 should be expanded.

"FIFA recommends some guiding principles to find a fair solution for clubs and their employees."

REGISTRATION PERIODS ("TRANSFER WINDOWS")

Article 6(1) of the RSTP provides that players can only be registered during one of the two annual registration periods fixed by the relevant member association. These periods are commonly known as “transfer windows”.

Article 6(2) read with article 5(1) of Annex 3 of the RSTP determines how the football associations must set the dates of the registration periods and ask for any changes. For ease of reference, these are the provisions referred to above:

6 Registration periods

2.
The first registration period shall begin after the completion of the season and shall normally end before the new season starts. This period may not exceed 12 weeks. The second registration period shall normally occur in the middle of the season and may not exceed four weeks. The two registration periods for the season shall be entered into TMS at least 12 months before they come into force (cf. Annexe 3, article 5.1 paragraph 1). FIFA shall determine the dates for any association that fails to communicate them on time.

5 Obligations of the associations

Associations must use TMS in connection with international transfers of players.

5.1 Master data

1.
The start and end dates of both registration periods and of the season, if applicable for male and female players separately, as well as of possible registration periods for competitions in which only amateurs participate (cf. article 6 par. 4 of these regulations), shall be entered in TMS at least 12 months before they come into force. Under exceptional circumstances, associations may amend or modify their registration period dates up until they commence. Once the registration period has begun, no alteration of dates will be possible. The registration periods shall always comply with the terms of article 6 paragraph 2.

Article 5(1) of Annex 3 of the RSTP provides that associations may change or modify the above dates in "exceptional circumstances" up until the period begins. The situation relating to COVID-19 should clearly be considered an exceptional circumstance.

Article 5(1) of Annex 3 of the RSTP also provides that once the registration period has begun, no alteration of dates will be possible. This provision is applied strictly.

Despite this, on 28 February 2020, the FIFA Platers' Status Committee decided that the Chinese Football Association could extend the first player registration period due to COVID-19. This decision is subject to ratification by the FIFA Council on 27 March 2020 .

Based on this, the FIFA Council makes the following proposals:

Taking into account this specific situation, which qualifies as an exception to article 5(1) of Annex 3, the Task Force recommends that decisions should be taken on a case-by-case basis. However, taking into account the need for global coordination, it proposes the following guidelines:

- All requests for an extension of the current season finishing date should be approved;
- All requests to extend or amend registration periods that have already started should be approved, provided their duration complies with the maximum limit (16 weeks) established in the RSTP;
- All requests to amend or postpone registration periods that have not yet started should be approved, provided their duration complies with the maximum limit (16 weeks) established in the RSTP;
- Football associations should be authorised to change the dates of their seasons and registration periods, either through the TMS (provided this is technologically possible) or manually by expressly notifying FIFA;

"The Task Force recommends that decisions should be taken on a case-by-case basis."

OTHER LEGAL OR REGULATORY MATTERS

Besides the core issues addressed above, the FIFA working group has identified some other matters that may require overall guidelines for its member associations.

Therefore, in addition to defining a general principle for each of the situations identified, FIFA has opened up the possibility of further

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discussion if that is considered necessary.

Moreover, FIFA believes situations that have not yet been identified may come up in the near future that it will be appropriate to resolve jointly. For this reason, it reserves the possibility to include them on the list when they arise.

Accordingly:

Release of players to national teams

Article 70 of the FIFA Statutes provides that the Council will organise an international match calendar that will be binding on the confederations, member associations and leagues, after conferring with the confederations.

Article 1 (men's football), article 1bis (women's football), and article 1ter (futsal) of Annex I to the RSTP oblige clubs to release players to national teams and oblige players to accept call-ups to national teams for international matches held in designated international windows in the international match calendar.

On 13 March 2020, the Bureau decided that the rules that normally require clubs to release players to national teams will not apply for the international windows in March and April 2020. The core decision was:

- Clubs are not obliged to release their registered players to national teams.
- If a club agrees to release a registered player to a national team, the player may decline the call-up.
- Any decisions provided for in a) and b) above will not be subject to disciplinary measures;
- If a player is unable to resume duty with their club by the applicable deadline due to COVID-19, neither the association nor the player may be subjected to any future restrictions or disciplinary measures;
- This decision applies to the following windows in the international calendar:
 - i) 23-31 March 2020 (men's international match calendar)
 - ii) 6-15 April 2020 (women's international match calendar)
 - iii) 6-15 April 2020 (futsal international match calendar)

On 6 April, the same decision was made regarding the next window scheduled in the international match calendar for June, and it is likely a similar decision will be made for July;

Issues relating to employment agreements and transfer agreements

- Consideration of a transitional period to implement the recent amendment to article 10 of the RTSP (loans) by the FIFA Council;
- Application of Article 5.4 of the RTSP (players registered by three clubs can participate in official games for two clubs for each season) if the dates of the season are changed;
- Unilateral termination of agreements;
- Refusal of clubs to pay coaches;
- Coaches or players refusing to appear for work;
- Coaches or players leaving their home country during the work stoppage;
- Clubs not providing players or coaches with suitable working conditions or training facilities;
- Clubs not providing players or coaches mandatory medical assistance;
- Discrimination based on nationality (for example, refusal to pick or use of players, or refusal to play against players who have travelled or originate from affected areas);
- Conditional payments and options provided for in agreements that are not being respected or complied with;

- Loan agreements being terminated and previous clubs refusing to allow the players to return;
- Parties refusing to comply with any (financial) decision of any FIFA judicial body;

Anti-doping issues

- Players and teams able to comply with the provisions relating to their whereabouts;
- Practical issues relating to testing outside competition periods;

Compliance with the FIFA Regulations

- Continuation of the use of the FIFA TMS platform, for example, completion of transfers and player registration;
- Implementation of the rules on the transfer clearing house, for example, the electronic player registration system, the electronic player passport, and integration with the Connect System;
- Extension of deadlines to complete cases before the FIFA judicial bodies, for example, The Dispute Resolution Chamber and the Player's Status Committee);
- Enforcement of definitive decisions taken by the Dispute Resolution Chamber and the Player's Status Committee;
- Publication in March by the associations of annual data relating to transactions with intermediaries; ■