

## FIFA COVID-19

*While COVID-19 will have an unprecedented major impact on (almost) all sectors, the multi-million dollar football industry cannot escape it either. The virus outbreak is likely to cause some substantial (future) problems. On Friday, April 3, 2020, FIFA issued a number of guidelines in order to manage these problems in the best possible way.[1] In this article we discuss the established guidelines and adapted regulations.*

### Consequences COVID-19

The Coronavirus pandemic is recognised by FIFA Council as a *force majeure* and for this reason, under Article 27 of the FIFA Regulations on the Status and Transfer of Players (hereinafter the 'FIFA RSTP'), the FIFA Council decides on the consequences of this pandemic. Consequently, the FIFA Council set up a working group to examine the need for amendments and for temporary derogations from the FIFA RSTP.[2][3] Among the various issues dealt with by this working group, three are the most relevant:

- the expiry and effective dates of contracts;
- the agreements that cannot be honoured as originally intended as a result of COVID-19;
- the start and expiry dates of transfer periods.

It is important that the guidelines drawn up for issues 1 and 2 are non-binding and interpretative (also because the contracts are subject to national law and to ensure party autonomy). However, FIFA expects that members and stakeholders will cooperate and comply with the guidelines.[4]

### The guidelines

- Expiring and incoming contracts[5]

Employment and transfer contracts are often linked to transfer periods, which are set up by FIFA's affiliated members (national football associations) in accordance with the FIFA RSTP. The transfer of Hakim Ziyech from Ajax to Chelsea can be used as an example. The clubs have agreed that Ziyech will be transferred to Chelsea on 1 July 2020, the starting date of the transfer market.[6] Due to the temporary postponement or suspension of the playing of matches, it is likely that – if competitions are to be played out – this will happen (partly) after the original end date of the season. This will result in player contracts expiring during the football season – as, for example, is optional in the case of Ziyech.[7] It is possible that a competition played out at a later point in time will also affect the start of the next football season, thereby also affecting contracts with such an effective date.

In principle, FIFA's starting point is that contracts should end at the end of the season (ex Article 18(2) FIFA RSTP), but also that it is necessary to safeguard the integrity of football competitions. FIFA has therefore drawn up the following guidelines:

- contracts that expire on the original end date of the season are extended until the new end date of the season;
- agreements that start on the original starting date of a new season are postponed until the new starting date of the new season;
- in the event of overlap, the contract of the original club takes precedence in order to maintain the integrity of a domestic competition, **unless the parties jointly agree otherwise**;
- for international transfers, the above rules apply by analogy and payments contractually due at the time of the new starting date of an agreement must be postponed until the new starting date of a new season or the first transfer period of the season[8].
- Agreements that cannot be honoured to their original intent by COVID-19[9]

Acute questions concerning the viability of a football employment contract should be answered in accordance with the national law of the different FIFA members (or, where applicable, collective agreements). FIFA does, however, ask for goodwill from clubs and employees in the application of these

rules in order to 'guarantee salary payments to employees, prevent litigation, protect contractual stability and ensure that clubs do not go bankrupt':[10] The guidelines in this area:

- Clubs and employees are encouraged to jointly agree on the terms of employment during the period that the competition is suspended by the Coronavirus. Preferably, collective agreements are made at club or competition level.[11]
- Unilateral decisions to change the employment contract shall only be recognised in so far as they are in conformity with national law or collective agreements. If clubs and workers cannot reach an agreement and national law does not provide a definitive answer to the situation, unilateral decisions to change the terms and conditions of employment or employment contracts will only be recognised if they are taken in good faith and if the agreements are reasonable and proportionate.[12]
- It is possible to suspend all employment contracts during the suspension of competitions, provided that adequate insurance cover is guaranteed and adequate alternative income support schemes for workers are provided during the period.
- Entry and conclusion of the transfer period[13]

Football associations may change or modify the dates of the transfer period only in exceptional circumstances before the beginning of a transfer period, and COVID-19 is, according to FIFA, covered by such a circumstance.[14] FIFA examines on a case-by-case basis – bearing in mind the worldwide coordination of transfer periods – whether such a request from a football association can be accepted. The starting point here is that, in principle, all requests to extend the current end of the season and all requests to extend, modify or postpone transfer periods will be approved (provided that the transfer period does not exceed the maximum of 16 weeks).[15] In addition, players whose contracts have expired or been terminated (as a result of COVID-19) will be allowed to be registered by clubs outside a transfer period. Since decisions on transfer periods will ultimately depend on the different calendars of the different national competitions, this issue will be continuously monitored and assessed by FIFA.

#### **Other regulatory matters**[16]

- It has previously been decided that the rules obliging clubs to make players available to national football associations in March and April do not apply. The same decision is made for international matches from 1 to 10 June.[17]
- The entry into force of the FIFA RSTP amendments relating to international players' leases due to enter into force on 1 July 2020 is postponed until further notice.[18]
- The rulings of FIFA's decision-making bodies containing any financial decisions are not influenced by COVID-19 and federations, clubs, players and coaches are expected to comply with these decisions[19].
- Any requests for postponement of deadlines in FIFA procedures will be assessed on a case-by-case basis. However, specific requests related to COVID-19 will, in principle, be accepted. The maximum number of days for which an extension may be granted is extended from 10 days to 15 days.
- If clubs are unable to use the postal services in contractual offers – as required by FIFA Article 6(3) of Annex 4 of the FIFA RSTP – by means of a government decision, an offer by e-mail is sufficient. This is subject to the condition that the former club receives confirmation from the player that he has received a copy of the offer.
- The period laid down in Article 6(3) of FIFA's rules on working with intermediaries has been extended until 30 June 2020.

#### **Review**

It is good that FIFA offers some (non-binding) clarity. However, FIFA explicitly mentions that this concerns version 1 of the 'COVID-19 Football regulatory issues'. [20] It is therefore not certain whether these guidelines and rules remain in place and whether they will be modified. In recent weeks it has become clear – in the Netherlands and elsewhere – that making decisions about the progress of the competition and payment is seen as difficult. UEFA does not make it any less difficult by stating that the

discontinuation of competitions now could have consequences for participation in European club competitions.[21] The financial aspect of football competitions probably also plays a major role in this respect.[22] We will all have to wait and see how this situation develops. I would like to end with the words of FIFA President Gianni Infantino: "*Health comes first, well before football*".

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