

FIFA®

COVID-19




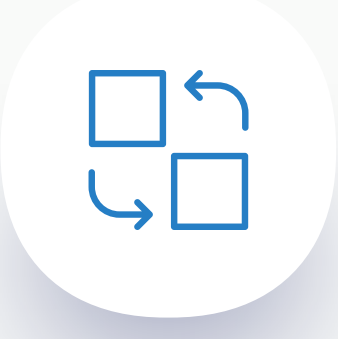


FOOTBALL REGULATORY ISSUES

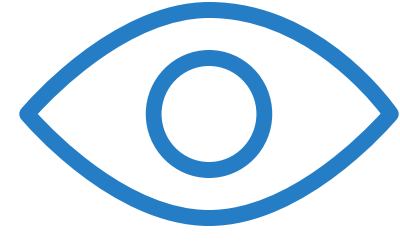


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Introduction

The COVID-19 outbreak



The COVID-19 outbreak has disrupted everyday activities around the world and been declared a pandemic by the World Health Organization. Football too has been affected, with football activity suspended in almost every country or territory in the world.

This is an unprecedented situation for football. There has not been a similar shutdown of organised football since World War II.

This has naturally led to several regulatory and legal issues for FIFA member associations (MAs) and their stakeholders. In this context, FIFA has received numerous enquiries and requests, the majority related to the FIFA Regulations on the Status and Transfer of Players (RSTP).

As world football's governing body, FIFA has a responsibility and mandate to provide appropriate guidance and recommendations to MAs 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.

As a threshold issue, FIFA is not in a position to instruct MAs or make a determination on when football should recommence in each country or territory. That decision must be made by each MA on the advice of its relevant national public health authorities. Health should always be the guiding principle for FIFA, its MAs, and stakeholders when rendering decisions in this particular context.

On 18 March 2020, the Bureau of the FIFA Council (the Bureau) established a working group in response to COVID-19 to examine, inter alia, the need for amendments to or temporary dispensations from the RSTP to protect contracts for both players and clubs and for adjustments to player registration periods.¹ The Bureau recognised that the disruption to football caused by COVID-19 was a case of force majeure.

Article 27 of the RSTP states that cases of force majeure shall be decided by the FIFA Council, whose decisions are final. The COVID-19 situation is, per se, a case of force majeure for FIFA and football.

Following the mandate of the Bureau, the working group, chaired by Vittorio Montagliani, chairman of the FIFA Football Stakeholders Committee and composed of representatives from the FIFA administration, confederations, MAs, the European Club Association (ECA), FIFPRO and the World Leagues Forum, held meetings via videoconference on 26 March and 2 April 2020.

Among many different issues analysed during these meetings, there were three core matters that the working group considered relevant to address:

- (i) expiring agreements (i.e. agreements terminating at the end of the current season) and new agreements (i.e. those already signed and due to commence at the start of the next season);
- (ii) agreements that cannot be performed as the parties originally anticipated as a result of COVID-19; and
- (iii) the appropriate timing for registration periods (“transfer windows”).

The following guidelines represent the outcome of various discussions among the members of the working group about the above-mentioned matters and were adopted unanimously.

The principles set out in points 1 and 2 of this document are to be considered as general (non-binding) interpretative guidelines to the RSTP.

FIFA expects the necessary level of cooperation and compliance with this document from the MAs and other football stakeholders.

This is version 1.0 of this official FIFA document. FIFA, in consultation with the MAs and the relevant stakeholders, may update the guidelines contained in this document, where appropriate, over the course of this pandemic.

¹ www.fifa.com/who-we-are/news/bureau-of-the-fifa-council-decisions-concerning-impact-of-covid-19

Expiring agreements and new agreements



Employment agreements and transfer agreements in football are generally tied to the registration periods (colloquially known as “transfer windows”) which are set by each MA within its jurisdiction in accordance with the RSTP.

This makes sense from a sporting perspective, as the opening of the first registration period generally coincides with the first day of the new season.

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

Notwithstanding this, MAs are required to input dates for a “season” in 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 paragraph 1 of the RSTP mandates that players may only be registered during one of the two annual registration periods fixed by the relevant MA.

Given the postponement or suspension of MA and league competitions, and the overwhelming desire of MAs and leagues for those competitions to be completed, it is very likely that those competitions will take place after the original end date of the season (input in TMS). This will naturally cause the original start date of the next season to be impacted. Issues thus arise where:

- (i) employment agreements are due to expire at the original end date of the season;
- (ii) loan transfer agreements (and related employment agreements) are due to expire at the original end date of the season;
- (iii) (permanent and loan) transfer agreements (and related employment agreements) are due to commence at the original start date of the next season; and

- (iv) employment agreements are due to commence at the original start date of the next season.

Article 18 paragraph 2 of the RSTP states: “The minimum length of a contract shall be from its effective date until the end of the season, while the maximum length of a contract shall be five years.”

Article 18 paragraph 3 of the RSTP provides that “[a] professional shall only be free to conclude a contract with another club if his contract with his present club has expired or is due to expire within six months”.

The general principle established in article 18 paragraph 2 of the RSTP – contracts end at the end of the season – in combination with the need to ensure the integrity of football competitions, must be the primary factors when determining the contractual and registration status of players and coaches following the recommencement of MA and league competitions.

PROPOSED GUIDING PRINCIPLES



It is acknowledged that, as a general rule, employment agreements shall be governed by national law and the contractual autonomy of the parties. Having said this, and consistent with article 18 paragraph 2 of the RSTP, it is proposed that:

- (i) Where an agreement is due to expire at the original end date of a season, such expiry be extended until the new end date of the season.
- (ii) Where an agreement is due to commence at the original start date of a new season, such commencement be delayed until the new start date of a new season.
- (iii) In the event of overlapping seasons and/or registration periods, and unless all parties agree otherwise, priority be given to the former club to complete their season with their original squad, in order to safeguard the integrity of a domestic league, MA competition and continental competition.

The above shall apply to international transfer agreements by analogy. Furthermore, for international transfer agreements (whether a permanent transfer or loan transfer):

- (iv) Notwithstanding the recommended amendment to agreement dates, any payment that contractually falls due prior to the new commencement date of an agreement should be delayed until the new start date of a new season or its first registration period.



Agreements that cannot be performed as the parties originally anticipated

It is clear that the COVID-19 outbreak might lead to situations whereby agreements cannot be performed worldwide as the parties originally anticipated. The obligations placed on the parties will potentially be made impossible: players and coaches will be unable to work, and clubs will be unable to provide work.

Ultimately, national employment and/or insolvency laws (or collective bargaining agreements (CBAs), where in force) will answer immediate questions regarding the viability of a football employment agreement that can no longer 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.

It is incumbent on FIFA to recommend guiding principles which find a fair solution for clubs and employees, while protecting jobs as much as possible.

PROPOSED GUIDING PRINCIPLES



In order to guarantee some form of salary payment to players and coaches, avoid litigation, protect contractual stability, and ensure clubs do not go bankrupt, while considering the financial impact of COVID-19 on clubs, it is proposed that:

- (i) Clubs and employees (players and coaches) be strongly encouraged to work together to find appropriate collective agreements on a club or league basis regarding employment conditions for any period where the competition is suspended due to the COVID-19 outbreak.

Such agreements should address, without limitation: remuneration (where applicable salary deferrals and/or limitation, protection

mechanisms, etc.) and other benefits, government aid programmes, conditions during contract extensions, etc.

Where the relevant social partners exist, agreement should be reached within CBA structures or another collective agreement mechanism.

- (ii) Unilateral decisions to vary agreements will only be recognised where they are made in accordance with national law or are permissible within CBA structures or another collective agreement mechanism.

Where:

- a. clubs and employees cannot reach an agreement, and
- b. a. national law does not address the situation or collective agreements with a players' union are not an option or not applicable,

Unilateral decisions to vary terms and conditions of contracts will only be recognised by FIFA's Dispute Resolution Chamber (DRC) or Players' Status Committee (PSC) where they were made in good faith, are reasonable and proportionate.

When assessing whether a decision is reasonable, the DRC or the PSC may consider, without limitation:

- a. whether the club had attempted to reach a mutual agreement with its employee(s);
 - b. the economic situation of the club;
 - c. the proportionality of any contract amendment;
 - d. the net income of the employee after contract amendment;
 - e. whether the decision applied to the entire squad or only specific employees.
- (iv) Alternatively, all agreements between clubs and employees should be "suspended" during any suspension of competitions (i.e. suspension of football activities), provided proper insurance coverage is maintained, and adequate alternative income support arrangements can be found for employees during the period in question.

Registration periods ("transfer windows")



Article 6 paragraph 1 of the RSTP mandates that players may only be registered during one of the two annual registration periods fixed by the relevant MA (colloquially known as "transfer windows").

Article 6 paragraph 2 read together with article 5.1 paragraph 1 of Annexe 3 to the RSTP govern how associations must fix registration periods and request to amend, extend, or cancel registration periods. For ease of reference, they are included in full below:

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.

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.

The second sentence of article 5.1 paragraph 1 of Annexe 3 provides that prior to a registration period commencing, associations may amend or modify the dates under “exceptional circumstances”. The COVID-19 outbreak is clearly an exceptional circumstance.

PROPOSED GUIDING PRINCIPLES



In view of the current situation, on a case-by-case basis following analysis by the FIFA administration while bearing in mind global coordination, it is proposed that:

- (i) all requests for an extension of the current season finishing date be approved;
- (ii) all requests to extend or amend registration periods that have already commenced be approved, provided that their duration complies with the maximum limit (i.e. 16 weeks) established in the RSTP;
- (iii) all requests to amend or postpone registration periods that have not commenced be approved, provided that their duration complies with the maximum limit (i.e. 16 weeks) established in the RSTP;
- (iv) MAs be permitted to amend season dates and/or registration periods, either within TMS or by otherwise notifying FIFA; and
- (v) as an exception to article 6 paragraph 1 of the RSTP, a professional whose contract has expired or been terminated as a result of COVID-19 has the right to be registered by an association outside a registration period, regardless of the date of expiry or termination.

Because decisions on registration periods will ultimately depend on the sporting calendar of the different national competitions (which, at the moment, remains uncertain), this issue will be monitored and assessed by FIFA on an ongoing basis.



Other regulatory matters

Aside from the core matters dealt with by the specific guidelines set out above, the working group identified other additional regulatory issues which will require a decision from FIFA.

At this stage, FIFA would like to communicate the following on the main topics below.



Release of players to association teams

Article 70 of the FIFA Statutes provides that “[t]he Council shall compile an international match calendar that shall be binding upon the confederations, member associations and leagues, after conferring with the confederations”.

Articles 1 (men’s football), 1bis (women’s football), and 1ter (futsal) of Annexe 1 to the RSTP oblige clubs to release players to association teams and players to accept call-ups to association teams for international matches held within designated international windows in the international match calendar.

On 13 March 2020, the Bureau decided² that the rules which normally oblige clubs to release players to association teams will not apply for international windows in March and April. The core decision was that:

- (i) Clubs are not obliged to release their registered players to association teams.
- (ii) If a club agrees to release a registered player to an association team, the player may decline the call-up.
- (iii) Any such decisions shall not be subject to disciplinary measures.

² FIFA circular no. 1712 dated 13 March 2020.

- (iv) If a player is unable to resume duty with their club by the relevant deadline due to COVID-19, the association and/or the player shall not be subject to any future restrictions or disciplinary measures.
- (v) The following international windows are subject to this decision:
 - a. 23-31 March 2020 (men's international match calendar),
 - b. 6-15 April 2020 (women's international match calendar),
 - c. 6-15 April 2020 (futsal international match calendar).

On 6 April 2020, the same decision was rendered by the Bureau regarding the next international window in June 2020 (1-9 June 2020, men's international match calendar – 1-10 June 2020, women's international match calendar).



Loans

On 25 September 2019, the FIFA Football Stakeholders Committee submitted to the FIFA Council amendments to the RSTP regarding international loans. These amendments were supposed to enter into force on 1 July 2020.³

On 27 March 2020, the Bureau considered postponing the entry into force of these new provisions until the current situation within the international football market is clarified. A final decision was made that, for the time being, the amendments regarding loans will not enter into force.



Enforcement of decisions rendered by the DRC, the PSC or the Disciplinary Committee in the context of RSTP matters

Although FIFA is fully aware of the potential financial difficulties of some clubs flowing from the obligation to comply with financial decisions rendered by the DRC, the PSC or the Disciplinary Committee, no exceptions will be granted in this regard.

In this context, decisions passed by the above-mentioned judicial bodies must be respected by MAs, clubs, players and coaches without exception. FIFA will continue to apply article 15 of the FIFA Disciplinary Code in the event of failure to respect these decisions.

³www.fifa.com/who-we-are/news/fifa-and-football-stakeholdersrecommend-cap-on-agents-commissions-and-limit-on-



Requests to FIFA, the DRC and the PSC for extensions of deadlines

In general, requests for extensions of a deadline are dealt with on a case-by-case basis. Specific requests related to COVID-19 should in principle be accepted. The current regulatory maximum extension is ten days (article 16 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber), regardless of the type of request.

Given the very exceptional circumstances, it has been decided that the maximum deadline be extended to 15 days, at the prior request of the respective party. This strikes a balance between the rights of the party requesting the extension and those of the counterparty, who may not be affected or delayed by COVID-19 issues.



Contract offer via registered post

According to article 6 paragraph 3 of Annexe 4 to the RSTP:

"If the former club does not offer the player a contract, no training compensation is payable unless the former club can justify that it is entitled to such compensation. The former club must offer the player a contract in writing via registered post at least 60 days before the expiry of his current contract. Such an offer shall furthermore be at least of an equivalent value to the current contract. This provision is without prejudice to the right to training compensation of the player's previous club(s)."

Given the current circumstances and in cases where club representatives are unable to physically use postal services due to administrative measures adopted by the respective government, it would be sufficient for the former club to make the offer by email, provided that the former club obtains confirmation from the player – via any credible means – that he has received a copy of the offer.



Regulatory deadline to publish annual intermediary data

Article 6 paragraph 3 of the FIFA Regulations on Working with Intermediaries provides:

"Associations shall make publicly available at the end of March of every calendar year, for example on their official website, the names of all intermediaries they have registered as well as the single transactions in which they were involved. In addition, associations shall also publish the total amount of all remunerations or payments

actually made to intermediaries by their registered players and by each of their affiliated clubs. The figures to be published are the consolidated total figure for all players and the individual clubs' consolidated total figure.”

Due to the current circumstances, it has been decided that the deadline to publish such data be extended to 30 June 2020.

Point of contact



FIFA is fully committed to assisting MAs and football stakeholders around the world during this special period.

In this context, FIFA is willing to open a direct line of contact for any questions or enquiries you may have about the impact of this document on your respective daily operations.

Please, feel free to contact us at any time regarding any regulatory matters at: legal@fifa.org or visit our dedicated webpage for more information about FIFA's initiatives and programmes in the context of the COVID-19 outbreak <https://www.fifa.com/what-we-do/covid-19/>

