

Updating Members on regulatory changes linked to the COVID-19 disruption

The COVID-19 crisis has disrupted the football industry in ways not seen before. The extent and speed at which the crisis has impacted the game has placed most, if not all ECA Members, in a precarious position.

This has led football authorities to look at ways to best confront these challenges in order to help clubs survive this period of pain and continue to build for the future. For example, the different approaches across Europe to completing the 19/20 season are calling into the question the applicability of rules relating to player contracts which were specifically designed around this well-defined calendar. A central element of football's response has therefore been to review the regulatory regime which governs the game, and which has been framed for times of stability, and consider ways to adapt it to support clubs at this time of crisis.

On 7 April 2020, FIFA published a set of Guidelines on player contracts and transfer-related matters in light of the disruption to football caused by COVID-19 (the "Guidelines"). On 11 June 2020, FIFA has published a document containing responses to [Frequently Asked Questions](#) which FIFA received from various stakeholders regarding the Guidelines (the "FIFA FAQs"). With this document FIFA seeks to provide additional detail on certain items which were set out in the Guidelines, whilst simultaneously addressing new issues which required a regulatory response to address this emergency period. The process undertaken around the Guidelines and the FIFA FAQs has involved extensive ECA and stakeholder engagement. The stakeholder engagement process is, by its very nature, a process of collaboration and compromise between different (sometimes divergent) concerns. As always, ECA's position has been to seek to ensure club interests are protected and that the market is provided with as much certainty as possible.

As we did for the first version of the Guidelines¹, ECA has prepared a Note (attached hereto) which seeks to highlight specific key topics addressed in the FIFA FAQs. The Note covers aspects of the 3 main areas addressed by the FIFA FAQs: (i) expiring contracts; (ii) transfer windows; (iii) salary reductions/deferrals. **Our objective in this note is to focus on particular questions/concerns received from ECA Member Clubs on the Guidelines.** The questions addressed in the attached Note will reflect the following main general principles which, in our view, emerge from the Guidelines/FIFA FAQs:

- **Contractual autonomy** - Contracts between clubs and players expiring on 30 June are not automatically extended to reflect new end dates of the 19/20 season. The extension of contracts (as well as other contractual adjustments) is a matter for bilateral agreements between the relevant parties.
- **Window flexibility** - National Associations/Leagues have been provided with significant flexibility to amend their upcoming transfer window so as to adjust to revised sporting calendars. This includes the possibility to open the window even if the 19/20 has not yet finished (max 4 week overlap) and to split the upcoming window in two (e.g. open for a short period in July for necessary registrations and still have the possibility to align the remaining weeks with other Leagues). It will be for each NA/League to define the exact dates of their upcoming window. In order to preserve some order in the market, ECA will advocate for a harmonised end date for the upcoming window.
- **Integrity of competitions** - In case of any overlap between the upcoming window and the final phase of the 19/20 domestic league, new players joining clubs are ineligible before the 20/21 season.

Any members seeking further clarification on the matters addressed in the accompanying Note are invited to reach out to José Luis Andrade (General Counsel) joseluis.andrade@ecaeurope.com or Daan de Jong (Head of Sports Legal) at daan.dejong@ecaeurope.com.

¹ <https://www.ecaeurope.com/media/4722/20200408-memo-on-fifa-guidelines.pdf>

ECA NOTE ON FIFA FAQs²

1. Contracts expiring before the postponed end of the 19/20 season & contracts starting before the postponed start of the 20/21 season

Are existing employment contracts automatically extended until the new end date of the 19/20 season and is the start date of new contracts automatically postponed to the new start date of the 20/21 season?

- The short answer is “no”.
- The fact that a National Association extends the current 19/20 season or delays the start of the 20/21 season in principle does not automatically alter the expiry date or the commencement date of an employment contract. **Existing employment contracts can in principle only be extended by mutual agreement between the club and the player** (if a contract provides that it is valid until 30 June 2020, then, except if the parties mutually agree to amend it, it will expire on 30 June 2020). The same applies to the postponement of the start date of new contracts (if a contract provides that it will commence on 1 July 2020, then, except if the parties mutually agree to postpone the start date, it will be in force as of 1 July 2020).
- There is one **possible exception** to the above. If an employment contract has been entered into with reference to “seasons” (e.g. the contract is valid for “3 seasons” or the contract is valid for the “18/19 and 19/20 seasons”) rather than with reference to a specific date (e.g. the contract is valid until “30 June 2020”), then it could be argued that the contract is valid until the moment when the season is actually completed (even if this is after the original date of the season), without any extension necessarily having to be agreed upon.

If we decide to extend our contract with a player, are other existing contractual commitments automatically re-arranged?

- The short answer is “no”.
- When clubs and players are considering extending an employment contract to allow the player to complete the 19/20 season with his current club, it is **necessary to consider what the impact of this could be on other existing contractual commitments**. For example, when:
 - the season of the current club is extended until 31 July 2020 and the player has already concluded an employment contract with a new club which is due to start on 1 July 2020;
 - i. the player and his current club must agree to extend the contract; and
 - ii. the player and his new club must agree to postpone the start date of the contract.
 - the season of the current club is extended until 31 July 2020 and the current club has already concluded a transfer agreement for the transfer of the player to a new club effective on 1 July 2020;
 - i. the player and his current club must agree to extend the employment contract;
 - ii. the current club and the new club must agree to amend the terms of the transfer agreement; and
 - iii. the player and his new club must agree to postpone the start date of the employment

² This Note must be read in light of, and in accordance with, the content of the Guidelines and the FIFA FAQs. In case of any potential inconsistency, the Guidelines and FIFA FAQs should be deemed to prevail.

contract (assuming it has already been signed).

- the season of the club where a player is on loan is extended until 31 July 2020, but the loan between the parent club and the current club expires on 30 June 2020.
 - i. the player and his current club must agree to extend the contract, and;
 - ii. the club where the player is on loan and the parent club must extend the duration of the loan agreement.
- In all the examples above, the existing contractual arrangements between the parties are the starting point and any amendments to these arrangements must be made consensually between the relevant parties. In case an agreement between the relevant parties cannot be found, the contractual terms and obligations in the original contract(s) in principle prevail and this may prevent the player from staying with his current club until the new end date of the season.

In case the loan of a player is set to expire on 30 June and is not extended until the new end date of the 19/20 season, can the player immediately return to the parent club?

- The player will be able to return and be registered by the parent club **only when the transfer window** of the parent club **opens**. Although he cannot be registered until the window opens, the player may, however, return to the parent club for training and friendly matches (subject to any other restrictions that may exist at national level).
- As set out in the answer to the next question below, please note that, in case the transfer window of the parent club opens whilst the 19/20 season is still on-going (overlapping), the player may be registered for the parent club but will be **ineligible** before the start of the 20/21 season.

Will my club be able to bring in and field new players for the remainder of the 19/20 season in case it faces a shortfall of players to complete the season?

- The short answer is **“no”**. FIFA has allowed the upcoming summer window to overlap with the final rounds of the 2019/20 season for a **maximum of 4 weeks**. Therefore, registration of new players is possible whilst the 19/20 season is on-going, but FIFA has declared that those players will **not be eligible** to participate in official league matches. Those players would only be eligible for matches of 2020/21 season – see Question 2, p. 18 of the FIFA FAQs.
- FIFA has, however, recommended that if there is a shortfall of players, clubs be permitted to register and field youth/academy players who are already under contract (in certain instances this may already be a possibility under existing national rules. Clubs are advised to liaise with their NA/League to check what the situation is) – see Question 4 p. 20 of the FIFA FAQs.
- In addition, there are two – very limited – circumstances where FIFA has not categorically stated that players joining new clubs would necessarily be ineligible for the remainder of the 19/20 season. Clubs are therefore advised to **carefully assess the NA/League’s position with regard to eligibility** in these two following circumstances before signing a player with the expectation that he could be available for the remainder of the 19/20 season.
 - In case a player whose contract end date is “at the end of the 19/20 season” (with no reference to any specific date), and the season has been **prematurely cancelled** (e.g. through government intervention or NA or league decision), this player may be immediately registered by a new club. For example, a player who had a contract with a Dutch club valid for the “19/20 season” saw his contract essentially come to an end with the cancellation of the Dutch domestic league. This player may be immediately registered by a new club (as mentioned, does not mean he will necessarily be immediately eligible). This same principle applies in case a player was on loan to a club and the **premature cancellation** of the league caused the loan (and the respective employment contract between the player and the club on loan) to expire. This player may return

to and be registered with his parent club (as mentioned, does not mean he will necessarily be immediately eligible) – see Question 26 p. 13 of the FIFA FAQs.

- In case an employment contract is unilaterally terminated by a club or a player *as a result of COVID-19*, this player may be immediately registered by a new club (as mentioned, does not mean he will necessarily be immediately eligible). FIFA has not defined what should be deemed termination “as a result of COVID-19”, but it is our understanding that this exception should be construed narrowly. The termination must relate directly to the pandemic, such as, for example, when national law allows a club to terminate a contract due to force majeure and COVID-19 has been deemed to constitute a case of force majeure in the country at stake. We advise clubs to proceed with care when considering this exception, not only because of the undetermined notion of “termination as a result of COVID-19”, but also due to the potential consequences of signing a player who could be deemed to have terminated his former contract without just cause – see Question 26 p. 13 of the FIFA FAQs.

What should be the remuneration of the player in case it is mutually decided to extend his contract until the new end date of the 19/20 season?

- FIFA has not issued any recommendation as to the remuneration that should be paid to a player in case a contract is extended to allow the player to complete the 19/20 season with his current club. In the context of their agreement, **the club and the player should also have to specifically agree on what the remuneration should be for the extended period.**
- FIFA has stated, however, that all parties should negotiate any extensions or delays in good faith and in **terms that are equitable and reasonable.** Against this background, in case clubs experience unreasonable demands from players in order to extend contracts, they should remind players of FIFA’s indications in this regard - see General Introduction p. 5 of the FAQs.
- The club and the player evidently have different possibilities. For example, (i) agree that there should be no additional payment to the player as a result of the extension of the contract (e.g. on the basis that the number of matches will still be the same as originally envisaged); (ii) agree that the remuneration originally agreed to will be increased *pro rata* in order to cover the additional period; or (iii) agree that the remuneration originally agreed to will be increased by some other measure in order to cover the additional period.
- In this regard and for illustrative purposes only, please note that the Spanish La Liga appears to have recommended that the extension of the current 19/20 season should not lead to any increase in the remuneration which had been originally agreed to with between club and player (as typically contracts are entered into for seasons and the number of matches will presumably be the same as originally anticipated). It is, however, important to emphasise that, ultimately, the remuneration should have to be bilaterally agreed between the parties.

2. Transfer windows

What will be the actual dates of the transfer window in my country?

- It will be up to each NA/League to decide the dates of its window, within the limitations set by FIFA.
- So as to preserve some order in the market, ECA is advocating for dual-year leagues to seek to align on a **harmonised end date** for the upcoming window. For the opening of the window it will be inevitable that there will be some lack of coordination, but in ECA’s view a harmonised end date is more important.

What will be the maximum possible duration of the next transfer window?

- Dual-year Leagues (e.g. Germany, Spain): 12 weeks.
- Calendar-year leagues (e.g. Finland, Sweden): 4 weeks.
 - However, in calendar-year leagues, the particular time period of the previous window that was impacted by COVID-19 may be deemed void and “added” to the upcoming window. For example, in an NA following a calendar-year season, if COVID-19 impacted 3 weeks of its first window, those 3 weeks may be added to the 4 weeks (for a total of 7 weeks) of the upcoming window – see Questions 20-22 p. 12 of the FIFA FAQs.

When can the upcoming summer window open in dual-year leagues (e.g. Germany, Spain)?

- In principle, the 12-week transfer window should only open once the domestic league has ended. However, FIFA has created an exception to this principle. The summer window for the 2020/21 season may overlap with the final rounds of the 2019/20 season for a **maximum of 4 weeks**. For example, if the 2019/20 season in an NA ends on 30 July 2020, the summer window may be open as of 1 July – see Question 2 p. 18-19 of the FIFA FAQs.
- In case an NA decides to open the transfer window whilst the 2019/20 season is still ongoing, new players may be registered but will **not be eligible** to participate in official league matches during the remainder of the 2019/20. Those players would only be eligible for matches of 2020/21 season – see Question 2 p. 18-19 of the FIFA FAQs.

If my NA opens the window too early, it will also have to close earlier than many other leagues, which could be problematic

- This is not a new problem, but it is true that it is aggravated by domestic leagues ending at different points in time.
- In this regard, FIFA has offered a new solution which may allow for better harmonisation among European leagues, at least on the closure of the transfer window. FIFA has decided that, exceptionally, NAs may have maximum of **three registration periods** during a season (as opposed to the current two) under the following conditions - see Question 24 p. 13 of the FIFA FAQs.

For NAs with dual calendar year seasons (2019/20, 2020/21):

- NAs may divide the first (summer) registration window **into two parts** (not exceeding a cumulative total of 12 weeks). For example, an NA may open the window on 1 July for 1 week whilst scheduling the remaining 11 weeks between August and October.
 - This can be an interesting solution, for example, for those clubs that have contracts with new players coming into force on 1 July, but where the start of the 20/21 season has been postponed. Indeed, in certain countries, clubs can only have players train and being paid after they are registered. If an NA opens the window for a short period of time at the beginning of July, then the club may register those players, whilst the League will still have the possibility to align the majority of its window to that of other Leagues.

For NAs with single calendar year seasons (2020, 2021):

- NAs may divide the second registration window into **two parts** (not exceeding a cumulative total of 4 weeks (or the longer period, as may be applicable in case of re-assignment of “lost” weeks of the previous window, as per the above)). For example, an NA may open the window on 1 July for 1 week whilst scheduling the remaining 3 weeks in October.
- It must again be noted that, if any window (or part thereof) overlaps with the final stages of the current 19/20 season, any new players coming in will be **ineligible** before the 20/21 season.

Will a club be able to sign new players during the transfer window and field them in the remainder of the 19/20 UEFA Club Competitions?

- FIFA has left it up to each Confederation to decide on its eligibility rules regarding the current 19/20 season. Therefore it will be for UEFA to decide on this. It is expected that this decision will be announced after the UEFA ExCo meeting which is taking place on 17 June 2020.

3. Player remuneration whilst leagues are suspended (salary reductions and deferrals)

- The Guidelines provided that unilateral salary reductions by clubs could be possible where (i) permitted under the national law applicable to the contract or (ii) where national law does not address the situation or collective agreements with a players' union are not an option or not applicable, said reduction is carried out in a reasonable and proportionate manner (with FIFA setting out some criteria that should be examined with regards to *reasonableness*).

What happens if my club reaches an agreement for a salary reduction with the majority of the squad, but a few players refuse to agree?

- Given the contractual autonomy of the parties, it may not be possible for all players in a squad within the specific negotiation to collectively agree on salary reductions. The question therefore arises as to whether salaries can be reduced unilaterally regarding those players who refuse to agree.
- In case the contracts of the players who refuse a collective agreement are governed by national law and such national law allows for unilateral reductions of salary, then said reductions should be recognised. This is matter of national law and national tribunals.
- In case the contracts of the players who refuse a collective agreement are subject to FIFA jurisdiction, then FIFA will recognize salary reductions where (i) permitted under the national law (*if* said law is applicable to the contract) or (ii) where national law does not address the situation or collective agreements with a players' union are not an option or not applicable, said reduction is carried out in a reasonable and proportionate manner. Only if (i) or (ii) are complied with will a unilateral reduction of salary be recognised by FIFA. In that case, clubs should be able to reduce the salaries of the players who refuse to agree, as long as said reduction is deemed *reasonable*.
- If a club wishes to rely on the possibility set out in item (ii) above, we recommend that clubs document all attempts to negotiate collective agreements (relevant correspondence; invitations to attend meetings; minutes of meetings; record of attendance at meetings). This applies not only to attempts to negotiate bilaterally with the squad and/or with the players in question, but also the attempts to engage with the local players' Union (if existing). If negotiations between the clubs and a players' Union were conducted by the League, clubs should also seek to ensure that those discussions have been documented by the League.

If a former player files a claim with FIFA against my club in connection with a salary reduction, how do we prove that (i) the reduction was carried out according to national law/CBA and/or (ii) that there was a good faith attempt to negotiate with the player and the Union?

- In relation to item (i), as FIFA judicial proceedings are conducted in writing and without a hearing, we would suggest that one appropriate piece of evidence could be a Legal Opinion from a qualified legal practitioner in the relevant jurisdiction which confirms that the unilateral variation was a valid exercise of the national law/CBA.
- As far as item (ii) is concerned, please see previous question, where clubs are advised to properly document all attempts to negotiate with clubs and Unions (either directly or through the League).

Would FIFA accept/recognise a unilateral reduction of a salary for season 20/21 on the basis of the Guidelines?

- The recommendations concerning reductions/deferrals of salaries set out in the Guidelines (and the FAQs) only apply during the period of suspension of competitions. At the moment, clubs should not rely on the Guidelines for the purposes of reducing salaries in connection with next season - see General Introduction p. 8 the FIFA FAQs.

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