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CORONAVIRUS AND ITS IMPACT ON FOOTBALL

A SPORTS LAW AND POLICY CENTRE AND LAWINSPOORT JOINT SURVEY

Version 2.0 (5 May 2020)

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Foreword

This is an independent, open-source initiative based on a series of questions sent to leading international sports lawyers from 25 countries worldwide, with further countries to be added in the coming weeks. The aim is to provide an overview of the measures adopted at national level by governments national football associations, leagues, clubs and player associations against the Coronavirus pandemic.

This report contains an [Executive Summary](#) and 25 jurisdictional questionnaires, divided into the following sections¹:

1. ***The “Big Five” Leagues*** (*France, England, Germany, Italy, and Spain*)
2. ***Other UEFA Federations*** (*Belgium, Croatia, The Netherlands, Portugal, Romania, Russia, Switzerland, Turkey, and Ukraine*)
3. ***Americas*** (*Argentina, Brazil, Chile, Mexico, Paraguay and Uruguay*)
4. ***Africa, Asia and Oceania*** (*Australia, China, India, Japan, and South Africa*)

This version of the survey (V.2) is up to date to 4 May 2019,² and will be updated on a bi-weekly basis.

Brussels, London, Mumbai, 5 May 2020

Michele Colucci, Sean Cottrell, Rustam Sethna

¹ Each section has been arranged in alphabetical order.

² Version 1.0 was up to date to 20 April 2020 and it is available at <http://www.sportslawandpolicycentre.com>.

Executive Summary

A comparative analysis of the measures adopted in 25 jurisdictions around the world to counter the effects of COVID-19 on the football industry.

By **Michele Colucci**³, **Durante Rapacciuolo**⁴, **Rustam Sethna**⁵ and **Sean Cottrell**⁶

On 7 April 2020, FIFA issued guidelines (“[COVID-19 Football Regulatory Issues](#)⁷”) to mitigate the impact of COVID-19 on the football industry and to ensure as far as possible, harmony in measures taken by member associations. These guidelines were formulated after a consultation with members from the FIFA administration, the six confederations, member associations, the European Club Association, FIFPro (the world player’s union) and the World Leagues Forum.

However, as highlighted by FIFA, the guidelines remain subject to the domestic laws of each of its 211-member associations. Therefore, while global football community is certainly united in its effort to minimize the impact of the pandemic on it, the measures adopted by each member association, league, and club are bound to differ, considering the circumstances and laws prevalent in each jurisdiction.

The aim of this survey is to offer an independent review of the developments, identify best practice and solutions to face the current crisis; above all, take this experience as an opportunity to “rethink football” and make it more sustainable.

For ease of reference, we have highlighted notable efforts taken by governments, leagues, federations and others in:

- (A) the “big five” federations; and,
- (B) 20 other federations across the globe based on the findings of the [survey](#)⁸.

This Executive Summary provides a general overview of the main trends and observations set out in the survey (see: Sections [I](#), [II](#), [III](#) and [IV](#) below). The Report intentionally focuses on central themes to take a pragmatic approach to analysing the trends and therefore by its nature we do not address every scenario by jurisdiction due the volume of permutations that can occur in each case.

A. An overview of the ‘Big 5’ European Nations

(England, France, Germany, Italy and Spain)

- 1. Cancelled Seasons:** With four of the five first division leagues suspended, [France](#) remains the only nation to have definitively cancelled their 2019-20 season, with the

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⁷ FIFA COVID-19 Football Regulatory Issues, V1.0, 7 April 2020.

⁸ Published on www.sportslawandpolicycentre.com and www.lawinsport.com.

Ligue 1 title awarded to Paris Saint-Germain. Legal action by clubs who were relegated and those that missed out on European places, has been mooted.

In [England](#), all football outside the first four divisions, has been cancelled for the season. While [Germany](#) looks to be the first federation to recommence competition, a start date is yet to be determined by relevant authorities on 6 May 2020. [Italy](#) and [Spain](#) have recently notified measures for the return to training in a phased manner, with recommencement targeted for June 2020.

- 2. Government Measures:** In [England](#), pursuant to the government's 'Job Retention Scheme' football clubs are permitted to 'furlough' employees and apply for a grant from the government that covers 80% of their usual monthly wage costs, up to a maximum of £2,500 a month. Similar government schemes have also been implemented in [France](#), [Germany](#), [Italy](#) and [Spain](#).
- 3. Federation Measures:** The Premier League in [England](#) has advanced £125 million to the English Football League (i.e. divisions 2-4) and National League (divisions 5 and below). The EFL has also set up a £50m relief fund for its clubs.

The [German](#) federation is negotiating lines of credit/alternate funding with private financial institutions (funds and banks) for clubs in financial turmoil, while the The Deutsche Fußball Liga has made available a €50 million relief fund.

- 4. Broadcasting Revenue:** In [France](#) the league on 4 May 2020, adopted a resolution that would enable the them to take out a state-guaranteed loan (of approx. €224.5 million) to make up for the shortfall in broadcast rights monies caused by the termination of the 2019-20 season⁹.

In [Germany](#), the The Deutsche Fußball Liga reached an agreement with its broadcast partners for the payment of fees in tranches, partly payable upfront and partly, as and when competition resumes, while in [England](#), broadcasters were reported to be considering legal action against the Premier League, to recoup a chunk of their investment in the event that the remainder of the 2019-20 season is cancelled¹⁰. Similar action by broadcasters in [Italy](#) has also been mooted¹¹.

- 5. Player Associations/Collective Bargaining:** Football trade unions in all 5 nations are striving to negotiate with clubs on behalf of players. In addition, the player's union in [England](#) has a system of providing hardship loans to players in need. The player's union in [France](#) reached an 'in-principle' with clubs for the reduction of wages by 30%, although this is unlikely to be binding at an individual level.

⁹ Martin Ross, "LFP turns to €224.5m state guaranteed loan to plug TV rights gap" SportBusiness, 4 May 2020, available online: <https://www.sportbusiness.com/news/lfp-turns-to-e224-5m-state-guaranteed-loan-to-plug-tv-rights-gap/>

¹⁰ Ed Dixon, "Premier League Clubs to fight UK 750 million fine threat from Sky and BT", SportsPro Media 18 March 2020, available online: <https://www.sportspromedia.com/news/premier-league-tv-rights-fine-threat-sky-bt-coronavirus-covid-19>.

¹¹ Paolo Macchi, "The Impact of Coronavirus on Italian Football Media Right" Mondaq, 24 April 2020, available online: <https://www.mondaq.com/italy/litigation-contracts-and-force-majeure/922772/the-impact-of-coronavirus-on-italian-football-media-rights->

6. Player-club negotiations: There have been instances of clubs arriving at agreements with their players for the reduction of their salaries. Examples include, Athletic Bilbao in [Spain](#), AS Roma and Juventus in [Italy](#), Arsenal and Aston Villa in [England](#) and Bayern Munich, Eintracht Frankfurt and Borussia Dortmund in [Germany](#).

Notably, Germany’s four UEFA Champions League clubs have also decided jointly contribute €20 million to clubs lower down the German football pyramid, while a group of Premier League players in [England](#) have donated funds to the National Health Service through a combined initiative named ‘Players Together’.

Key contractual and legal principles at play:

a. Termination for ‘force majeure’

[Spain](#) is relying on an ‘ERTE’ system (see below) to either suspend or modify employment contracts for *force majeure* reasons (clubs are prohibited from terminating contracts on grounds of the pandemic). In [France](#), while the COVID-19 crisis might qualify as a *force majeure* event, it is unlikely that provisions under national legislation will be enforceable, given that the crisis is likely to be temporary. Provisions allowing clubs in [Germany](#) to terminate the services of their players are considered difficult to invoke. While clubs in [Italy](#) are legally permitted to terminate contracts for *force majeure* (although considered a rarity in practice).

Standard professional player contracts in [England](#) do not contain a *force majeure* clause. As with other common law jurisdictions, *force majeure* is a contractual right and therefore not applicable in the way it would be in civil law jurisdictions. However, the doctrine of *frustration* permits contracts that are impossible to be performed to be brought to an end. However, this is unlikely to be applied, particularly in an employment context.

Termination for *force majeure* in employment contracts: a snapshot

	Permitted	Not permitted	If provided for in contract
England			✓ (not the case with standard player contract)
France	✓ (force majeure event must be considered final)		
Germany	✓ (exceedingly difficult to invoke)		
Italy	✓		
Spain		✓	

b. Unilateral suspension or modification of player contracts

In [England](#), the terms of an employment agreement can only be changed by mutual agreement. The position in [Germany](#) is similar. As with termination for *force majeure*, the principles governing the suspension and/or modification of employment contracts in [Spain](#),

are founded in domestic employment law (the “ERTE” system), under which there is a general prohibition for employees to waive legally recognised rights.

Similarly, with [France](#) suspension or modification, as opposed to termination in accordance with national legislation is a more practical if likely outcome. In [Italy](#), the terms of an employment agreement can only be changed by mutual agreement. However, in case the parties do not reach an agreement, it is reasonable expect a unilateral modification of the agreement by the club. Said decision will be subject to the judgement of arbitration bodies and the FIFA guidelines may be taken into due account.

Unilateral suspension, or modification: a snapshot

	Permitted	Permitted with conditions	Mutual consent only
England			✓
France	✓		
Germany			✓
Italy		✓ <i>(in the event that individual negotiations/collective bargaining fails)</i>	
Spain	✓		

B. An overview of other countries

(Argentina, Australia, Belgium, Brazil, Croatia, Chile, China, India, Japan, Mexico, Paraguay, Portugal, Romania, Russia. South Africa, Switzerland, The Netherlands, Turkey, Ukraine, and Uruguay)

Following a comparative analysis of the measures taken by the ‘Big 5’ European leagues to combat Covid-19, it is opportune to provide a short overview of how other countries propose to tackle the crisis from a footballing perspective.

A summary of measures taken in other jurisdictions has been set out below:

- 1. Cancelled seasons:** in addition to France (previously examined above) it appears that the federations from [Argentina](#) and [The Netherlands](#), have put an end to their respective championships.
- 2. Government measures:** certain national authorities have adopted special *temporary employment allowances/benefits*, for all employees (thereby including football players) up to certain amounts. In particular [Australia](#), [Belgium](#), [Brazil](#), [The Netherlands](#), [Portugal](#), [Romania](#), [South Africa](#), [Paraguay](#) and [Uruguay](#) are a few countries to have announced employment related benefits.

Generally, national governments have not adopted specific financial measures for the football sector.

3. **Federation measures:** With respect to federations, it is interesting to note that only a handful, namely [Japan](#), [The Netherlands](#) and [Portugal](#) have created and can rely on *special funds* to face emergencies such as the one at stake. In particular, the J-League ([Japan](#)) has announced emergency funding in the form of uncollateralized loans for its clubs.
4. **Employment status of football players:** In [Croatia](#), [Romania](#) and [India](#) football players are classified as being ‘self-employed’, or ‘service providers’ rather than ‘employees’. As such they are unable to benefit from the measures in place to protect employees/workers. Players in other jurisdictions that classify footballers as ‘self-employed’ as opposed to being ‘employees’ are likely to be similarly affected. However, it is to be noted that the Romanian Government has decided to treat players as if they are employees for the purposes of benefits, during the lockdown period.
5. **Broadcasting revenue:** A handful of national governing bodies (for e.g. [Argentina](#), [Chile](#), [Croatia](#)) are still receiving and distributing revenue from their respective TV broadcasting deals, despite the fact that the footballing season has been suspended/cancelled.
6. **Player associations/collective bargaining:** Football trade unions (they do not exist in Mexico and in China), are engaged in collective bargaining/negotiations with clubs to facilitate an agreement with respect to the payment, reduction or a suspension of player salaries, with unions playing a relatively more active role in [Brazil](#) and [Uruguay](#). Unfortunately, no concrete result has been reached thus far.
7. **Player-club negotiations:** Collective bargaining aside, clubs and players across the world have been and continue to engage in negotiations, in their individual capacities, with a handful of clubs having reached agreements in certain jurisdictions.

The terms of such settlements vary on a case to case basis. However, the quantum of payment deferred or reduced (as the case may be) is linked to the income each player receives – the higher the income, the greater the salary deferral/reduction, as applicable. This is a general principle followed across the board.

For example, all 28 players of *Japanese club, Hokkaido Consadole Sapporo* have agreed to return a portion of their salaries to the club in order to help the management to face the crisis and the operational costs involved, while clubs across all professional divisions in [China](#) have agreed to a salary cut until the 2020 season commences.

In [Australia](#), 7 of the 11 clubs in the Hyundai A-League, who less financially robust, have let go of their players and staff with no further payment. The remaining 4, better resourced clubs continue to meet their obligations to players. Staff at some Australian clubs appear to have taken paid leave in order to cushion the financial impact upon their employers.

Key contractual and legal principles at play:

As a general remark, it should be noted that football clubs are still obliged to pay their players in full, unless an agreement is reached with the players or where *force majeure* is considered appropriate grounds to terminate the employment contract.

a. Termination for force majeure

The position in [The Netherlands](#) is similar, where *force majeure* cannot be invoked to unilaterally terminate an employment contract, although a salary reduction might be possible. However, in other countries, such as [Argentina](#) and [Croatia](#), *force majeure* clauses may generally lead to the suspension or even termination of a contract, with a provision for a reduced compensation (and in Argentina’s case, subject to the government’s latest decree).

In [Romania](#), footballer contracts can be terminated for *force majeure* on account of the fact that they are classified as civil contracts rather than employment contracts under national law.

The legislation in [Ukraine](#) and [Uruguay](#) does not provide employers with the ability to unilaterally terminate, even in *force majeure* circumstances, while in [Turkey](#) a *force majeure* clause can trigger the termination of a contract.

[Switzerland](#) permits any party to terminate an employment relationship with immediate effect, where there is ‘good cause’. While the pandemic might well constitute a *force majeure event*, it is unlikely that such termination by clubs would be upheld by the courts.

In [Australia](#), [India](#) and [Japan](#) the applicability of *force majeure* contracts depends upon the wording of the relevant contracts. Therefore, in the absence of an applicable *force majeure* or similar provision permitting termination, both clubs and football players are obliged to fulfil their contractual and economic obligations.

In common law jurisdictions, the doctrine of *frustration* may provide a remedy to parties who wish to terminate a contract where circumstances outside their control deems the contract impossible to perform.

Termination for force majeure in employment contracts: a snapshot

	Permitted	Not permitted	If provided for in contract
Argentina	✓ <i>(with reduced redundancy package and subject to government decree)</i>		
Australia			✓
Croatia	✓ <i>(with reduced redundancy package)</i>		
India			✓
Japan			✓
The Netherlands		✓	
Romania	✓ <i>(player contracts specifically)</i>		
Switzerland		✓	
Turkey	✓		
Ukraine			✓

Uruguay		✓	
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b. Unilateral suspension or modification of player contracts

In [Belgium](#), *force majeure* clauses may trigger the suspension but not termination of an employment contract. Contracts in [Brazil](#) may be unilaterally suspended, if provided for by a collective bargaining agreement.

In [The Netherlands](#), modification of salary is only possible as a last instance measure, and in the event that negotiations at both collective and individual levels do not lead to a fruitful solution.

In [Portugal](#), salary reductions are only permissible where (a) the employee mutually consents to it; or (b) the working hours of employees are reduced so as to reflect a proportionate reduction of salary.

In [Chile](#) as well as in [South Africa](#), unilateral termination or modification is not permissible. Contracts may only be terminated or modified if mutually agreed to between the parties. Similarly, in [Russia](#), employment contracts can only be altered by the mutual consent of the parties, subject to certain exceptions prescribed by law. Interestingly, the pandemic (thus far) cannot be considered to be one of those exceptional circumstances.

In [Mexico](#), contracts can theoretically be suspended in the event of a government-declared ‘health contingency’. However, the government to date, has avoided invoking this provision, thereby encouraging employers to pay full salaries or mutually agree to any variations.

Unilateral suspension or modification: a snapshot

	Permitted	Permitted with conditions	Mutual consent only
Belgium	✓		
Brazil		✓ <i>(if provided for under a CBA)</i>	
Chile			✓
Mexico		✓ <i>(in the event of a ‘health contingency’)</i>	
Portugal		✓ <i>(employee entitled to 75% salary)</i>	
Russia			✓
South Africa			✓
The Netherlands		✓ <i>(last resort, in the event that individual/collective negotiations fail – applicable to modification of salary, not suspension.)</i>	

Conclusions

While each member association will be faced with its unique set of challenges in combating the impact of the Covid-19 pandemic, the above comparative analysis seeks to highlight examples and best practices that could be replicated by other member associations, subject of course to domestic law.

Indeed, the measures taken across the board have been varied.

For instance:

- All *governments* from the Big 5 leagues have adopted exceptional measures to safeguard employment. Some have adopted unemployment benefit schemes while others have opened lines of credits for those affected, including football players and non-playing football club staff.
- In every country, clubs are *attempting to negotiate* salary cuts from a minimum of 10% (as in England and Spain) up to a maximum of 70% (for example, in accordance with Spanish law).
- *FIFA and UEFA* have allocated financial resources to their national member associations while a few, namely the *German and English federations*, have created special reserve funds for the clubs in need due to the current crisis.
- Top clubs in Germany have similarly *donated money* to those facing bankruptcy.
- *Players unions* such as the PFA in England have dedicated hardship funds to which players can apply to claim assistance.
- Finally, some *players have voluntarily waived* part of their remuneration, as is the case with those from Atlético Club of Bilbao, AS Roma and Juventus.

The current crisis has left clubs with glaring cash flow problems for the next few months, with potentially fatal knock-on effects. As such, it is imperative to look at the medium to long term, in order to minimize the impact of Covid-19 on the football industry.

In an attempt to harmonize national measures from a mere employment and contractual point of view, it is argued that all contracts should ideally be brought in compliance with the FIFA Guidelines. However, the reality that such amendments would always be subject to domestic laws, cannot be ignored. This, coupled with the fact that one cannot state with certainty when this crisis will end, highlights the need for greater financial sustainability in football going forward.

We should, thus, take this crisis as an opportunity to make football more sustainable by:

- setting up specific “reserve” funds which cover future *force majeure* events. Clubs of all categories would contribute a sum proportionate to their financial health/ranking, with reserves being utilized at a time of crisis;

- revisiting amounts payable as solidarity mechanisms and training compensation both at national and at international level, to potentially support clubs at grassroots/lower levels; and
- reforming the accounting rules and procedures of all clubs, in order to make the managers and CEOs really and effectively responsible for the budget at their disposal.

The fact that football clubs – some of them among the world’s most financially powerful entities are now clamouring to negotiate wage cuts/deferrals with their players, is indeed a paradox of the times we live in. Once society emerges from the crisis, will football clubs and institutions continue to spend (sometimes) large sums of money on star players and broadcast deals, or will Covid-19 trigger a radical correction in the market, better equipping the industry crises of the future?

This pandemic has changed the way sport and more specifically, football will approach legal and contractual relationships. Both commercial (i.e. sponsorship or broadcasting) and employment-related contracts will provide for more robust *force majeure* clauses (or clauses with similar effect), while players will bargain (whether individually or collectively) for measures to protect themselves legally and contractually going forward. And while all stakeholders hope to never witness a catastrophe of this magnitude again, it is certainly hoped that the industry will be better prepared for the future.

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SECTION I

THE “BIG FIVE” LEAGUES

ENGLAND

By *Tiran Gunawardena*¹²

- 1. *What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?***

In England, all professional football leagues are presently suspended up to 30 April 2020, including training and matches. This will certainly be extended further given the government has recently confirmed a 3 week extension to the nation-wide lockdown. All amateur football is also presently suspended to the same date. In the meantime, most professional players will be on personal training programs given to them by their clubs.

With respect to the main professional leagues (i.e. Premier League, Championship, League One and League Two), no decision has yet been made as to how to determine the league seasons if no further matches are played. The Football Association (“The FA”) has taken the decision to cancel all the seasons for the leagues below the National League (i.e. 8th division and below) and expunge the results (i.e. it will be as if the season never happened). Legal action has been mooted.

It’s worth noting that the decision about the Premier League’s season will be made by the Premier League Board (on behalf of the 20 member clubs), and the decision regarding the Championship, League One and League Two will be made by the English Football League (“EFL” - on behalf of its member clubs). Due to the structure of English football, those decisions will not be taken by the national association (i.e. The FA). However, The FA will certainly be involved in discussions/negotiations with both the Premier League and English Football League (“EFL”).

- 2. *What are the specific measures taken by:***

- a. *The Government (unemployment benefits foreseen for workers in general? Other specific measures?)***

The Government has introduced a ‘Job Retention Scheme’ (the “Scheme”) for all employees in the UK, under which a company can furlough employees and apply for a grant from the Government that covers 80% of their usual monthly wage costs, up to a maximum of £2,500 a month. The Scheme has been designed to avoid mass redundancies across the UK. Football clubs are entitled to apply for the scheme – although politicians have used this as an opportunity to argue that footballers shouldn’t be put on the Scheme even if they’re entitled to be. Employers are entitled to ‘top up’ the furloughed salary to 100% if they wish.

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The employment status of players doesn't change while they're furloughed, but the players/employees are not permitted to do any work in any capacity for their employer. As players are currently at home and unable to play football in any event, in practical terms there is no difference for the players. Training at home is permitted while on furlough.

You would likely have seen in the press that some Premier League clubs have sought to furlough their non-playing staff, which has been a PR disaster. Liverpool and Tottenham Hotspur initially took the decision to furlough their non-playing staff, despite their respective owners being billionaires and their players earning hundreds of thousands of pounds a week. The negative publicity forced those two clubs to reverse their decision. Newcastle United furloughed all non-playing staff and have, thus far, refused to reverse that decision despite the negative publicity.

Non-playing staff and also players lower down the English football pyramid have been furloughed. Clubs have made individual decisions as to whether to 'top up' furloughed players' salaries to 100%.

b. The Federation and/or the League (common funding? Others?)

The Premier League has advanced funds of £125m to the EFL and National League. The EFL has created a £50m relief fund (which in effect is an advance on broadcasting payments), under which clubs will receive a grant and also be eligible to apply for interest free loans. Further measures will undoubtedly be required over the next few months. The players' union (PFA) also has a hardship fund from which players can apply to claim assistance.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

There is no association of sports doctors that make any decisions which are binding on the football leagues.

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

In short, there is no common approach.

The financial situation of English football clubs varies significantly from the top of the Premier League (e.g. Manchester City / Liverpool / Manchester United) down to the Championship and below. There is even quite a big disparity between clubs in the Championship. So it is all but impossible for there to be a 'one size fits all' solution.

Some clubs are continuing to pay salary and benefits in full but are using the Scheme for financial assistance. Other clubs are asking players to defer a fixed percentage of their salary and/or benefits to a later date, so they can deal with cash flow issues resulting from the suspension of professional football. Other clubs are asking players to take a temporary pay cut to salary and benefits. The size of the cut varies from club to club, but some are asking players to cut their salary to what the club can recoup from HMRC under the Scheme (i.e. 80% of salary up to £2,500 per month). By way of some recent high profile examples, Arsenal players have accepted a 12.5% pay cut subject to performance incentives,

Aston Villa players have deferred 25% of salaries for 4 months, whilst Chelsea are still negotiating a pay cut with their players which is reported to be around 10%.

Some clubs are pushing players to accept pay cuts/deferrals on the basis of financial difficulty but are also simultaneously being linked in the press with new players in the transfer market. Their players have been more reluctant to take pay cuts/deferrals. At the top of the Premier League, although the players are on high salaries there appears to be a reluctance to accept pay cuts/deferrals. However, players at clubs such as Manchester United have instead of taking pay cuts/deferrals, donated 30% of their wages to the National Health Service (NHS).

The players are being advised to insist that any deferrals entered into are repaid in full before their club can access the transfer market, when it opens. This “embargo” is putting some clubs off the idea of cuts or deferrals for the sake of it.

Lower down the football pyramid (mainly in the Championship), as many players are refusing to accept pay cuts / significant wage deferrals. The EFL and the PFA have agreed that deferrals can be discussed on a club by club basis, up to 25% for Leagues One and Two. But cuts have been ruled out by the players. In the absence of agreements, clubs have mooted some radical/controversial solutions - including league wide group administration or a £6k/week salary cap to try and force players’ hands. Whether such measures will be pursued (if they are even legal) remains to be seen. However, it does reveal the desperation of the situation. It is predicted that dozens of clubs in the EFL could potentially face administration/insolvency in the next few months if things continue like this.

(For full disclosure the author is currently advising the PFA and its members throughout the COVID-19 crisis)

4. Do clubs negotiate with players, individually?

Yes. The PFA has been attempting to negotiate with clubs on behalf of players where possible, however individual clubs are pursuing negotiations with its players depending on their respective financial situations.

5. Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?

See the answers to 3 and 4 above. We understand that Premier League clubs are liaising with each other and similarly EFL clubs are also liaising with each other. There is also constant dialogue between the leagues, The FA, and the PFA. However, there are no ‘collective decisions’ being made per se, as it is up to each individual club and player to determine how it will proceed.

However, if any of the Leagues wish to change their Regulations – which would then impact on the players - then such matters need to go through the Professional Football Negotiation and Consultation Committee (PFNCC) – the collective bargaining body in England.

6. What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of

salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)

The terms of an employment agreement can only be changed by mutual agreement. An employer who imposes a contractual change (such as suspension of wages, wage cuts or deferrals) without the employee's express or implied agreement will be in breach of contract and the original terms of the contract will remain in place.

The Premier League and EFL standard contracts (collectively bargained between the leagues and PFA) do not contain a *force majeure* clause. The common law doctrine of frustration is rarely applied, particularly in an employment context. Ordinarily, it is unlikely that employment contracts are frustrated because this would require the position to be so fundamentally different to that envisaged that performance becomes impossible. However, it is possible that where a government instruction (or, indeed, other circumstances) prevent an employer from providing work to its employees, and prevents the employees from performing the work, employment contracts may be frustrated. Unfortunately, it is too soon to tell whether this will apply during the Covid-19 pandemic and it will remain a fact-specific question in any event. As far as we are aware, no club has sought to rely on *force majeure* and/or frustration as yet.

In practice, if a club unilaterally imposes a pay cut/deferral etc. players could choose to terminate the contract. However, filing a claim for losses would take some time and the player will also likely not be able to join another club until football resumes. As a result, the player could be without an income for quite some time if he chooses to terminate. So the player would need to strongly consider his financial situation before making such a decision.

7. Is there any official reaction at national level to the FIFA guidelines on Coronavirus?

There has not been any official reaction as such. However, it is clear that some of FIFA's recommendations cannot be enforced under English law.

For example, FIFA has proposed that expiring contracts (due to expire on 30 June 2020) are "extended until such time that the season actually does end." However, as per question 6 above that cannot be unilaterally imposed by clubs on players under English employment law. If a player wishes to become a free agent on 30 June 2020 when his contract is set to expire, then he will be entitled to do so. Whether it makes financial sense for him to do so is a different question.

Unless a solution is agreed between pending free agents and clubs (e.g. a short extension), it is estimated that there could be almost 1,000 free agents in English football come 30 June 2020.

FRANCE

By Jean-Michel Marmayou¹³

1. *What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?*

In France, in March 2020 the President of the Republic announced a general containment measure across the country. As a consequence, the Government prohibited “*any gathering, meeting or activity bringing together simultaneously more than 100 people in an enclosed or open environment [...]*” within the territory of France.

This ‘lockdown’ initially planned until 15 April 2020 was extended for the first time until 11 May 2020.

As of March 13, 2020, the Ligue de Football Professionnel’s (“LFP”) Board of Directors announced the suspension of the Ligue 1 and Ligue 2 professional championships.

As of this date, each club had played 28 of their 38 matches, with the exception of RC Strasbourg and PSG, who had played 27 matches each when the league was suspended.

After the Prime Minister's decision taken on 28 April 2020, to ban all football matches until September 2020, the Professional Football League expectedly declared an end to their professional championships on 30 April 2020.. This makes France the first of the ‘big 5’ countries to formally end their seasons with

- PSG being awarded their seventh title in eight years
- Amiens S.C and Toulouse FC relegated to Ligue 2,
- Lyon finishing seventh, missing out on next season’s Europa League, and
- Amiens and Lyon were reported to be considering legal action against this decision¹⁴.

With regard to the amateur categories, on 16 April 2020 the Fédération Française de Football (“FFF”) decided to:

- definitively stop all the championships with effect from 13 March 2020.
- freeze the results of the rankings acquired at the time of the stoppage, according to the number of points obtained / number of games played in order to neutralize the effect of the matches carried over; and
- limit the number of clubs relegated to one per group but fix the number of promoted clubs according to the relevant competition’s regulations.

No decision has been taken yet about the standings but in compliance with UEFA declarations, if the professional championships are not completed, there will be no “saison

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Directeur du Centre de droit du sport, Aix en Provence Marseille.

¹⁴ The Guardian, “*Amiens and Lyon threaten further action after Ligue 1 issues final table*”, dated 1 May 2020, available online: <https://www.theguardian.com/football/2020/may/01/amiens-vow-to-fight-ligue-1-relegation-after-injustice-of-season-resolution>

blanche” (white season), meaning champions will be declared based on performance thus far and the season will not be considered void (i.e. as if it never happened).

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

The Government has facilitated the launch of a partial unemployment scheme which has been extended to professional football. In practice, the club compensates its players (and more generally all its employees) at 70% of their gross remuneration (approximately 84% net). Then the State reimburses the Club, up to a limit of €4,850 per employee.

The savings are significant for non-sports personnel but much less for players. In fact, the employer will only be reimbursed a marginal part of the salary due to the players.

Nevertheless, by putting the players on a partial unemployment scheme considerably takes the pressure off club finances.

In fact, the compensation paid to the players is not subject to social charges.

Finally, the French government has also set up a bank loan guarantee mechanism for all companies. Clubs are therefore able to negotiate state-guaranteed loans with their respective banks.

b. The Federation and/or the League (common funding? Others?)

The terms of a collective solution are under discussion and will depend on the possibility of a continuation of the championship and especially on the payment of TV rights by broadcasters.

On 28 April 2020, the TV broadcasters agreed to pay a sum corresponding to the matches already played, but after negotiations with representatives of professional clubs, such broadcast payments were made at discounted prices.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

Just before the Prime Minister's decision not to allow the resumption of the championships, the Association of French Professional Club Doctors (“AMCFP”) sent its recommendations for the resumption of Ligue 1 and Ligue 2.

While no longer relevant, the plan was to commence football in a phased manner as follows. This included a first phase of testing followed by 7 days of individual training after which training in small groups would be permissible in the 7 days that followed. Measures included:

- taking the temperature of all those who entered training grounds (closed to the public);
- the requirement for players to wear masks at all times when not doing physical exercise;
- implementation of social distancing norms, even during training;
- disinfecting equipment; and

- equipping medical rooms to treat players if required.
3. *How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)*

They currently apply the above mentioned partial unemployment benefits and try to negotiate wage cuts with their players.

4. **Do clubs negotiate with players, individually?**

French law requires clubs to negotiate individually. They can always try to negotiate at a collective level, but it is each employment contract that is legally binding. A player cannot be obliged to accept a salary cut even if all his teammates have accepted one.

5. *Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?*

There were negotiations with the national union of professional footballers (“UNFP”) which resulted in declarations of principle which are not binding on each employment contract:

- reduce wages by 30% during the crisis; and
- reimbursement of wage cuts after the crisis.

6. *What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)*

The employment contracts of professional footballers are framed by law pursuant to the Sports Code as well as by the Labor Code. These are fixed-term employment contracts known as “specific fixed-term contracts”. They can only end for the causes that the law provides for:

- Agreement of the parties
- Serious misconduct
- Inaptitude of the employee
- Signing of an open-ended employment contract
- *Force majeure*: the COVID 19 crisis may constitute a case of *force majeure* but to cause a permanent breach of the employment contract it is necessary that the impossibility of work be final (i.e. the performance of the entire remainder of the contract must be impossible). However, the crisis will necessarily be temporary, and force majeure can at best only lead to a "suspension" of employment (partial unemployment).

7. *Is there any official reaction at national level to the FIFA guidelines on Coronavirus?*

No official reaction. In any event, the FIFA guidelines recognize the pre-eminence of national law and government decisions. The LFP and the FFF are obliged to take into account the decisions taken by the French government first.

GERMANY

By Philipp S. Fischinger¹⁵

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

All football championships and league games at professional and amateur levels continue to be suspended and remain unfinished. On its latest general meeting, the Deutsche Fußball Liga, German Football League (“DFL”) on 23 April 2020 stuck to the plan that at least the First Division (Bundesliga) and Second Division (2. Bundesliga) shall recommence in May (in order to benefit from TV transfer fees). The DFL hoped that these divisions will recommence on 9 May 2020. However, at a (virtual) meeting of the German Chancellor and the Prime Ministers of the federal states (Bundesländer) on 30 April 2020, the recommencement of football was postponed further, with the originally anticipated date of 9 May 2020 off the table. The next decision on this matter is due to be taken on 6 May 2020.

There is no doubt about that, if at all, only “Geisterspiele” (ghost games = games without spectators) will be allowed and that the number of people permitted to be present in the stadium will be limited to an absolute minimum of round about 300 persons. At the end it will be up to the politicians to decide whether a restart of the season is possible and, if so, under what conditions.

Team training on club grounds was interrupted for about 2-3 weeks and players underwent individual, technically monitored training plans at home. Slowly and within the boundaries set by the respective health authorities, professional clubs started team training on club grounds again, mostly in small groups of up to 4-7 players. As far as amateur teams are concerned, team training is still suspended.

The DFB-Pokalfinale (cup final), originally scheduled for May 23, has been postponed indefinitely.

The 3rd division (3. Liga) has been suspended. On a meeting on April 27, the clubs voted for a continuation of the season (if allowed by the government).

The amateur leagues might be cancelled but nothing has been decided at present. As all sport complexes had to been shut down due to governmental orders, amateur team training remains completely suspended. On 24 April 2020 the DFB announced the convening of a meeting of its members. It is anticipated that a decision on the continuation of the amateur leagues will be taken on 6 May 2020.

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

¹⁵ Fischinger holds the Chair for Private Law, Labor Law, Commercial Law and Economic Law and Sports Law at the University of Mannheim, Germany.

Under certain circumstances, employers in Germany can order the so called “Kurzarbeit” (short-time work) for up to 12 months. Even a reduction to “Kurzarbeit Null” (reduction to zero) is possible. Thus, the employer does not have to pay wages anymore. As a compensation, employees affected by such a measure are receiving “Kurzarbeitergeld” (short-time allowance) by the governance that amounts up to 87 % of the last net income. The Kurzarbeit/Kurzarbeitergeld is also available for sport clubs. However, as the Kurzarbeitergeld cannot exceed € 4623 per month net of tax, it is rather uninteresting for top earners as the income loss is extremely high.

b. The Federation and/or the League (common funding? Others?)

There are rumours but it is still difficult to tell what exactly is going to happen. E.g., the Frankfurter Allgemeine Zeitung reported alleged plans by the DFL with the Japanese investment bank Nomura and/or hedge funds like KKR and Apollo about lines of credit for clubs that struggle financially. The Deutsche Fußball Liga seems to have a reserve fund of €50 million, however, as yet no information has been published on how that money is proposed to be used.

Fritz Keller, president of the DFB, announced in a press release that the regional associations will receive subsidies: €12 million from the DFB to the regional associations that, normally, is paid over a period of 12 months, is now available immediately to the full extent.

In addition, there has been an initiative by Bayern Munich, Bayer Leverkusen, Borussia Dortmund and RB Leipzig (Germany’s representatives in the 2019-20 UEFA Champions League) to forgo €20 million and donate it to clubs that are in need of money. The DFL has decided to use part of this amount (€7.5 million) to help the clubs of the 3rd Division (3. Liga) and those of the Female 1st Division (Frauen-Bundesliga)¹⁶. Each of these clubs will receive the same amount. Moreover, Keller, president of the DFB, announced that the DFB will subsidise other sports without releasing further details.

There are also private initiatives, e.g. “We kick Corona” by the German national players Joshua Kimmich and Leon Goretzka (both FC Bayern Munich), that has raised close to €4 million so far to help smaller clubs. The DFL will devote €500.000 euro to the general public in order to expand the testing capacities further.

Meanwhile the DFL and the most TV broadcasters (in particular “Sky”, “DAZN” and “ARD”) reached an agreement regarding the broadcasting rights. In May, 1/3 of the final outstanding instalment will be paid, with the remaining 2/3 payable upon the completion of each match day. In return for their willingness to pay 1/3 upfront, TV broadcasters will benefit from a discount on the overall rate. If, however, the season is cancelled, the 1/3 paid upfront, is required to be refunded back to these broadcasters, at least in part. Further details are yet to be released. According to media coverage, so far, no agreement could be reached with “Eurosport/Discovery”.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

¹⁶ From this solidarity acts exempted are clubs whose first team or male team plays in the 1st Division.

The DFL established a “Task Force Sportmedizin/Sonderspielbetrieb” (Task Force Sports Medicine) in March 2020 with the goal to ascertain if a continuation of championship games seems to be justifiable from a medical point of view and to recommend specific measures to prevent the spread of the virus. This Task Force meanwhile published its findings¹⁷. It proposes strict hygienic measures, close-meshed testing and permanent monitoring. Germany seems to have more than enough test capacities. The DFL makes use of these suggestions to convince the government to allow “Geisterspiele”. An alternative approach would be to isolate all players of all teams for a couple of weeks in a separate location. This, however, raises difficult employment law questions and would most likely only be possible if the players consent with it. The use of protection masks – as discussed by some politicians – during games seems to be rather unlikely.

3. *How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)*

According to media reports, this issue is approached very differently. Some clubs (e.g. Eintracht Frankfurt) ordered Kurzarbeit (for their “normal” employees). In many cases players agreed to temporary wage reductions, e.g. 20 % (Bayern Munich, Eintracht Frankfurt) or 10-20 % (Borussia Dortmund), in most cases for limited periods, until 30 June 2020.¹⁸ Uli Hoeness, former president of Bayern Munich, announced that the wage reductions at his club shall be in force until games with spectators are possible again.

4. (and 5.) *Do clubs negotiate with players, individually? Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?*

Although there exists a player’s union (“Vereinigung der Vertragsspieler”, VDV), collective bargaining agreements and agreements with works councils are virtually non-existing in German football. Therefore, all negotiations have to take place between the clubs and the individual players.

6. *What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)*

Termination of contract: If a club decides to reduce the number of players it wants to employ it can terminate contracts with “surplus” players under German Labour Law. However, this is very difficult and hardly realistic.

Dismissal with the option of altered conditions of employment: In Germany it is possible to terminate and at the same time offer the continuation of the contract with altered condition (eg. reduced wages). However, such a termination with the goal of wage reductions is possible only under extreme conditions (it must be the last measure for the employer to avoid insolvency).

¹⁷ Cf https://media.dfl.de/sites/3/2020/04/2020-04-23-Task-Force-Sportmedizin_Sonderspielbetrieb_2.pdf

¹⁸ Cf overview at <https://www.sport.de/diashow/sl4707/gehaltsverzicht-bundesliga-uebersicht-geld-prozent-bvb-fc-bayern/text/#slide=1>;

Suspension of salary is not possible under German law without the consent of the employee. Salary cuts: While the season 2019/2020 is on hold, the clubs don't have to pay premiums (e.g. for playing in a game [Einsatzprämie] or for winning games [Siegprämie]). The question, if they have to pay the base salary is currently under debate among German scholars. I am of the opinion that the clubs still have to pay base salary and expect the courts to decide accordingly. The legal approach might (!) be different if the duty to pay wages becomes existence-threatening for the club. However: Although the Federal Labour Court ("Bundesarbeitsgericht") mentioned this potential exception of the duty to pay wages, it never actually applied it. Therefore, it is highly uncertain, if a labour court will apply this exception.

7. Is there any official reaction at national level to the FIFA guidelines on Coronavirus?

The "DFB" ("Deutscher Fußballbund") adapted its Spielordnung ('rule of the game') thus making an extension of the season beyond June 30 possible. In particular it declared that in such a case the players' licences to play for their current club will continue to be valid in July etc. It also proclaimed its willingness to apply for a shift of the "Wechselperiode I" (transfer periode I, commonly referred to as the summer transfer window¹⁹).

¹⁹ Cf overview at <https://www.dfb.de/news/detail/wechsel-fristen-nachwuchs-die-dfb-anpassungen-im-ueberblick-214634/>.

ITALY
By Salvatore Civale²⁰

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games) , championship over?

On 26 April 2020, the Italian Government authorized athletes to return to individual training on 4 May 2020 and team training on 18 May 2020.

Serie A has been suspended since 9 March 2020, when the government ordered a nationwide lockdown.

Twelve rounds remain in Serie A, plus four other games that were postponed. The Italian Cup was suspended after the first leg of the semi-finals.

The latest move means that Serie A could potentially resume playing games in June, though the Italian Prime Minister said a decision on that will not be made until a later date. The Italian Football Association (FIGC) has already said it would push back the formal end of the season from 30 June 2020 to 2 August 2020 to allow time for remaining games to be completed, in accordance with guidelines issued by UEFA (to allow for the completion of UEFA competitions during the month of August 2020, if practical).

The focus appears to be on completing the Serie A in order to avoid high losses, not only for the clubs but also for the football industry.

As of 4 May 2020, public parks will re-open in Italy and people will be able to visit relatives who live in other cities, with travel limited to regional borders only.

Some regional Governments (Lazio, Campania, Emilia Romagna to name a few) have authorized professional football clubs based in their territories to return to training, if the club's premises have measures in place to respect social distancing norms, individual itineraries for players to travel to the training ground and a specific plan of disinfection at end of each session.

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

Workers who stay at home because of the virus Covid-19 receive varying quantities of compensation based on their status. In addition to the central Government, the local authority in each Region will provide further compensation to help the affected population.

Moreover, for sports workers in the amateur sector, the central Government has granted a monthly financial aid of €600.

b. The Federation and/or the League (common funding? Others?)

²⁰ President of the Italian Association of Sports Lawyers (AIAS), Managing Partner of Civale Law Firm.

No concrete actions have been taken in this respect from the Federation, apart from the organization of specific committees to tackle the problem and find a solution. The League has proposed a common approach for all the clubs with respect to the pay cut; with 4 months deduction in case of early cancellation of the championship of Serie A and 2 months deductions in case of postponement and conclusion of the season. Other stakeholders are open to the dialogue.

The league, representing the 60 Clubs of the third division is currently working with the central Government to grant a monthly compensation in favour of all employees at the clubs.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

The Association of sports doctors first provided a negative opinion on the opportunity to continue sports activities during the months of March and April and more recently expressed their concerns about concluding the season in general. Also called into question was the requirement for sports doctors to resume their duties at football clubs during these challenging times.

Another crucial point highlighted was the liability of sports doctors in the unfortunate event that a player contracts and falls victim to Covid-19. The Federation is not bound by the opinion of this Association while in fact, preferring to create a specific Medical Committee to establish the protocol to follow when the training will resume.

The protocol adopted by the Italian Football Federation has been declared “unsatisfactory” by the Ministry of Sport and the Scientific Committee of the Central Government. A new protocol, which takes note of the adjustments required, is under process.

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

It seems that all clubs are suspending the payment of the salaries due from March while negotiations at a central, collective level (League and trade union) are far from a positive conclusion.

Players from AS Roma and Juventus FC have agreed to salary deferrals/reductions for four months each²¹. Players at Parma FC and Cagliari have also agreed to reductions.

4. Do clubs negotiate with players, individually?

Clubs are negotiating with all players and of course, all settlement agreements reached will be signed by each player in the form of individual agreements with their respective clubs.

5. Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?

²¹ Juventus Company Notice: <https://www.juventus.com/en/news/news/2020/company-notice-2803.php>; The Guardian, “We are in this together: Roma players agree to go without pay for 4 months.” <https://www.theguardian.com/football/2020/apr/19/roma-players-agree-to-go-without-pay-for-four-months>

Nothing at moment, just a dialogue between Leagues and Trade Unions.

6. What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)

Only the Clubs can take a unilateral decision, due to *force majeure*, with an impact on the employment contract.

According to Italian Law if the obligation cannot be performed due to *force majeure*, the latter represents a cause of termination. Surely, the clubs will aim to adopt the same measures for all players by trying as far as possible to avoid termination on these grounds. Indeed, in doing so, players become ‘free agents’ meaning terminating clubs would not stand to benefit from potential transfer fees following the subsequent sale of the player to another club. Therefore, it is more realistic, in case an agreement is not reached between the Players and the Club, that a unilateral pay cut will be applied by the Clubs.

However, in that case, the risk of litigation is very high, and the arbitration bodies will be hired in accordance with the provision of the collective bargaining agreements.

Of particular note is position of a second division club (Ascolit of Serie B) who decided to terminate the employment contract of their Coach (Mr. Stellone) because it could not afford to pay his salaries.

7. Is there any official reaction at national level to the FIFA guidelines on Coronavirus?

Not yet, but discussions about the application of these guidelines by national arbitration bodies, in the event of disputes are in process.

SPAIN

By Josep Francesc Vandellos Alamilla²²

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

On 14 March 2020, the Spanish Government passed the Royal Decree 463/2020²³, of March 14, declaring a state of alarm for the management of the health crisis caused by COVID-19. Article 10 par. 3 of the Royal Decree 463/2020 suspended, amongst other things, the²⁴. The Royal Decree establishes also severe restrictions to the freedom of movement of the population but expressly allows the population commuting to the place of work. There is certain vagueness as to whether or not professional sports clubs could continue training. However, in practice even if clubs were entitled to call their players for training, as a general rule, they have all suspended all activities, with clubs like Real Sociedad warned by the Sports Supreme Council against returning²⁵.

When it comes to football, the Royal Spanish Football Federation (“RFEF”) was the first national organization to react against the risks derived from the COVID-19 pandemic, even before the Government. On 11 March 2020,²⁶ suspended all non-professional football, women’s football and futsal competitions of state level for two weeks.

A day after, on 12 March 2020²⁷, LaLiga followed, by deciding to postpone the next two fixtures in the calendar, citing the Royal Decree 664/1997 on the protection of workers against risks related to exposure to biological agents at work.

Subsequently, in view of the evolving the situation, on 23 March 2020²⁸, the Delegate Committee of the Royal Spanish Football Federation (RFEF) announced the suspension until the Government of Spain consider it appropriate to re-start the leagues without any risk to the health of footballers, coaching staff, club’s employees and fans. The RFEF requested at the same time to all the territorial football associations to adopt the same measure with respect to regional competitions. The same decision was adopted the same day by LaLiga, with regards to the indefinite suspension of all professional competitions. To this date, all football competitions remain suspended.

²² Sports lawyer. He sits as member of the Editorial Board of LawInSport and is an arbitrator at Sport Resolutions UK. He is also the Academic Director of the Global Master in Sports Management and Legal Skills ISDE-FC Barcelona (on-line ed.).

²³ Available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-3692

²⁴ On 10 April 2020, the state of alarm was extended for a second time, until 26 April 2020 by means of the Royal Decree 487/2020. Available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-4413

More recently, on 22 April 2020, the state of alarm was extended for the third time until 10 May 2020 by means of the Resolution of the Congress.

<https://boe.es/boe/dias/2020/04/25/pdfs/BOE-A-2020-4648.pdf>

²⁵ <https://www.rtve.es/deportes/20200412/csd-desautoriza-vuelta-entrenamientos-real-sociedad/2011880.shtml>

²⁶ See: <https://rfe.es/noticias/comision-delegada-rfef-aprueba-suspension-todos-partidos-futbol-y-futbol-sala-masculino-y>

²⁷ Available at: <https://www.laliga.com/noticias/laliga-acuerda-la-suspension-de-la-competicion>

²⁸ Available at: <https://www.rfef.es/noticias/rfef-aprueba-suspension-todas-competiciones-no-profesionales-que-autoridades-consideren-que>

On 28 April 2020, the Spanish Government approved a “*Transitional plan to a new normality*” divided into four different phases of a two-week period each. During the first phase, professional leagues may resume basic training.

In that context, on 30 April 2020 a health protocol was approved, in order to allow the progressive resuming of training in professional sport as of 4 May 2020²⁹. More recently, the President of the Spanish Government also announced that professional competitions may be able to resume in June 2020.

2. *What are the specific measures taken by:*

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

On 17 March 2020, the Spanish Government approved the Royal Decree-Law 8/2020, on extraordinary urgent measures to face the economic and social impact of COVID-19³⁰ with the objective of establishing mechanisms to ensure that employment contracts are maintained during the health crisis situation. For the purposes of suspending contracts or reducing working hours and expediting the processing of employment regulation procedures, duly proven losses incurred as a result of COVID-19 will be considered as a matter of law, to be based on *force majeure*.

Likewise, on 27 March 2020, the Spanish Government also approved the Royal Decree-Law 9/2020³¹, adopting complementary measures in employment matters in order to mitigate the effects derived from COVID-19. Amongst these measures for instance article 2 explicitly states that causes related to COVID-19 (e.g. force majeure, or other objective causes) will not justify the termination of employment contracts; and article 5 establishes the interruption of the duration of fixed-term contracts during the period of suspension; or the expediting of proceedings to apply for unemployment benefits.

b. The Federation and/or the League (common funding? Others?)

On the RFEF announced a preferential treasury advance aid of €4 million on the occasion of COVID-19³² addressed to non-professional clubs and futsal clubs of national category with professional football players in their teams. These grants are meant to help clubs paying the salaries of players and coaches of their first teams.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

On 15 March 2020 the AEPSAD (Asociación Española de Protección de la Salud en el Deporte), the SMD (Sociedad Española de Medicina del Deporte) and the General Counsel of Official the Professional Associations of Doctors of Spain (CGCOM) issued joint

²⁹ Available at: <https://www.boe.es/boe/dias/2020/05/03/pdfs/BOE-A-2020-4793.pdf>

³⁰ Available at: <https://www.boe.es/boe/dias/2020/03/18/pdfs/BOE-A-2020-3824.pdf>

³¹ Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2020-4152&p=20200328&tn=1#a5>

³² Available at: <https://www.rfef.es/federacion/concursos/convocatoria-ayudas-avance-tesoreria-preferencial-motivo-del-covid-19>

recommendations related to the trainings of athletes during the state of alarm³³. The Spanish sports Federations are not bound by these recommendations.

On 11 April 2020, the AFE (Spanish Footballers trade union) also released medical guidelines for the return to competition³⁴.

The following day, on 12 April 2020, the medical services of the RFEF issued their recommendations in that regard³⁵.

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

Most sports clubs with professional athletes are relying on the so-called ERTes (the acronym of “expediente de regulación temporal de empleo”) a measure expressly provided for in the Statute of Workers for periods of crisis (objective causes) and for situations of *force majeure*. In brief, through an ERTE, employers can request, to either temporarily modify employment contracts by e.g. reducing the working hours and salary (between min. 10% max. 70%³⁶); or to temporarily suspend the employment contracts. In cases of suspension of employment contracts, employees will receive the unemployment allowance³⁷ and possibly, if negotiated it with the employer, other complements.

Contracts affected by an ERTE will automatically be reactivated and return to the initial terms once the state of alarm is lifted.

Currently, around 20 clubs in the two divisions of professional football in Spain (including FC Barcelona, RCD Espanyol, Atletico de Madrid) have filed ERTes reducing the working hours and salaries proportionally (not suspending contracts) based on *force majeure* in order to confront the crisis generated by the COVID-19 pandemic. Many other football clubs have proceeded similarly in lower tier divisions.

4. Do clubs negotiate with players, individually?

An ERTE, when based in *force majeure* (and not on other objective criteria such as economic, technical or market causes), is a measure undertaken individually by each employer without having to negotiate with the employees and their representatives.

³³ Available at: http://www.fede.es/documentos/Recomendaciones_entrenamiento-COVID.pdf

³⁴ Available at: <https://www.afe-futbol.com/web/noticia-detalle/consideraciones-sanitarias-por-la-covid--19-para-la-vuelta-a-la-competicion>

³⁵ Available at: <https://www.rfef.es/noticias/servicios-medicos-rfef-elaboran-borrador-unas-pautas-vuelta-segura-competicion-0>

³⁶ By way of example, if a club reduces the player’s working hours in 70% and that player has a yearly salary of 365.000 Euro, the salary reduction will be calculated on the basis of his/her daily salary for the period of state of alarm (i.e. 70% reduction over 1.000 euro/per day) vid. article written by Santiago Nebot in <https://elpais.com/deportes/2020-03-31/el-impacto-de-los-erte-en-el-futbol.html>

³⁷ It is important to note, that the unemployment allowance will be limited to the economic thresholds established by law for any employee, i.e. 1.411,83 euro per month maximum (if the employee has two sons) regardless of the monthly salary.

However, nothing impedes clubs to enter into directly with players, or players voluntarily waiving part of their remuneration, as is the case of the players of Atlético Club of Bilbao³⁸.

5. *Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?*

To this date there is no decision taken at a collective level between player's associations, clubs, leagues or federations, although negotiations are being held³⁹.

Remarkably, on 20 April 2020 the Supreme Sports Council (Consejo Superior de Deportes) announced⁴⁰ an agreement with the RFEF and LaLiga for the return to trainings in professional football, which, for the time being, will remain subject to the evolution of the pandemic and to the decisions of the Ministry of Health. Through this agreement, the parties also committed to investing part of the media revenue generated by football to federations of other Olympic and Paralympic sports; and to creating a €10 million fund to help the most vulnerable athletes, while inviting the football player's association (AFE) and other associations to join.

The parties will also draft a code of conduct for football applicable to all officials, directors and other stakeholders that will serve as a reference to other professional sports and commit to collaborate in a coordinated manner to strengthen the reputation of Spain as a safe country for sport internationally.

6. *What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)*

The legal and contractual principles in Spain at the basis of the suspension, modification or termination of employment contracts are strictly based in those set forth in employment national law (the Statutes of Workers), the dispositions of which are of mandatory nature. The hierarchy of sources of labour law established by the Statutes of Workers places the law and regulations at the top of the pyramid, followed by collective bargaining agreements, the pact between the parties and customary law and professional practices at the bottom. A basic pillar of employment law is the general prohibition for employees to waive legally recognized rights.

7. *Is there any official reaction at national level to the FIFA guidelines on Coronavirus?*

Neither the RFEF nor LaLiga have adopted to this date, a specific position with regards to the FIFA guidelines on COVID-19. However, both organizations had expressed, on 17 March 2020, their will to follow any UEFA and FIFA recommendations, their preference for competitions to be finished by extending the current season, and for contracts to be extended accordingly.

³⁸ See <https://iusport.com/art/104743/el-athletic-club-y-la-plantilla-acuerdan-una-rebaja-salarial>

³⁹ See <https://www.lavanguardia.com/deportes/20200406/48346215694/david-aganzo-afe-liga-csd-recorte-de-salarios-calendario.html>

⁴⁰ See: <https://www.csd.gob.es/es/el-csd-laliga-y-la-rfef-pactan-el-futuro-retorno-del-futbol-y-un-rescate-al-deporte-y-los-deportistas>

SECTION II

OTHER UEFA FEDERATIONS

BELGIUM

By *Sébastien Ledure*⁴¹

1. *What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?*

The Pro League (1st and 2nd division) has followed the Federal Government's lockdown measures as decided on 12 March 2020 and immediately suspended its competition (just before the 30th and last round of the regular season and the subsequent playoffs). The Pro League's Board has issued a recommendation for the general assembly – which vote has been repeatedly delayed and is now scheduled to take place on 15 May 2020 – whereby the 2019-2020 competition will not be resumed, current ranking maintained and decisions with respect to relegation, European cup qualification and 2020-21 competition format referred to an ad hoc task force. UEFA has apparently shown its discontent with the competition's possible cancellation, but reports say that the Pro League would nonetheless follow its Board's recommendation. Professional teams have all ceased practices, though some teams are looking to pick up training in small groups.

Regarding amateur football (women's, youth and men's football as of 3rd division), the Royal Belgian Football Association ("RBFA") has put an end to all competitions for the remainder of the 2019-2020 season and validated 12 March 2020 rankings for the determination of promotion and relegation of teams.

2. *What are the specific measures taken by:*

a. *The Government (unemployment benefits foreseen for workers in general? Other specific measures?)*

On 15 April 2020, the Federal Government ordered an extension of the lockdown until 3 May 2020 with a forecast of possible, slow and very gradual deconfinement afterwards. In any event, mass public events (such as i.e. football games with a stadium audience) are not allowed until 31 August 2020 at least. Belgian social security offers the possibility for all employers (including football teams) to have their workers apply for a temporary unemployment allowance. This allowance is being paid by the state administration (through unions or dedicated payroll agencies) directly to the workers and amount to 70% of their monthly gross salary. However, for players earning more than € 2.352,21 gross per month and coaches earning more than € 2.754,76 per month, the allowances are capped at € 1.646,55 and € 1.928,33 per month, respectively (i.e. 70%). Belgian government has decided to increase this usual allowance with an additional and exceptional "COVID-19" supplement of € 5,63 per day.

⁴¹ Sébastien Ledure, managing partner sports law boutique Cresta in Brussels (Belgium) - www.crestafirm.com – s.ledure@crestafirm.com

b. The Federation and/or the League (common funding? Others?)

Besides measures on cancellation of games and team practices, no specific measures have been taken by the RBFA or the Pro League. There is no specific compensation fund created by the Pro League, the RBFA or another entity to provide financial or material support to players, coaches or club employees affected by the COVID-19 crisis. On the contrary, Pro League advised its clubs not to call upon the abovementioned temporary unemployment allowances, as those clubs already benefit from important reductions on their tax and social security contributions. For amateur clubs however, the RBFA decided not to claim the usual club contributions (i.e. some kind of tax) for the second quarter of 2020.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

There is no specific association of sports doctors. General guidelines on sports exercise by the Federal Government apply, allowing e.g. to work out individually or to go out for a jogging or a bike ride with no more than one companion and with respect of social distancing (1,5m).

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

Broadly, clubs have been taking the following approaches:

- a. Clubs continuing to fully honour contracts towards players and staff, meaning that salaries and benefits are granted in full.
- b. Clubs suspending all payment of player and staff wages, referring everybody to the system of unemployment allowance (cf. supra). Often teams allow that contractual benefits such as car and housing put at the players' and staff's disposal are maintained.
- c. Clubs agreeing with players and staff to amend their employment agreement and lowering the monthly salary on a temporary basis. Witnessed examples range from a single, one-month salary waiver to a 50% reduction of the gross monthly salary. Agreements in place with respect to the payment of signing-on fees and employer contributions to pension insurance funds are nonetheless still being fully executed; and
- d. Clubs paying a forfeited monthly supplement on top of the unemployment allowance.

4. Do clubs negotiate with players, individually?

There is no mechanism of mandatory collective negotiation. At their own level, teams try to propose solutions for the entire group of players and coaches. However, not all players accept the proposed terms.

5. Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?

The main players union is active in every club through a designated player representative and tries to participate in the discussions with the club's management in order to reach a

collective deal. At this point, no formal collective talks have been launched at the level of the national joint committee for sports.

6. What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)

Clubs rely on general principles of civil law for them to invoke the suspension of the employment agreements, i.e. *Force Majeure* being a situation which requires an unpredictable and irresistible event that is not due to the parties' behavior. Since case law qualifies the "irresistible" event as the absolute impossibility to pursue the execution of contract obligations⁴², this criterium is *in casu* satisfied by reference to the *factum principis* or "fait du prince", being the decision of a superior authority (in case the Federal Government) not to allow any public gatherings and events.

The consequence is the suspension of the employment agreement, meaning that reciprocal obligations have temporarily ceased: clubs are no longer required to pay salaries and players/coaches are no longer required to perform services. This also entails that clubs are not entitled to impose individual training schemes on their players.

As such, the temporary suspension of the employment agreement does not entitle the players and coaches to use this event as triggering event for contract termination. Obviously, usual contract termination options under Belgian employment law (being the general Act of 3 July 1978 on employment contracts and the more specific Act of 24 February 1978 on paid sportsmen) still apply.

7. Is there any official reaction at national level to the FIFA guidelines on Coronavirus?

Not yet.

⁴² An event that renders the execution of a contractual obligation more difficult yet not impossible, does not qualify as a *force Majeure* event.

CROATIA

By Vanja Smokvina⁴³

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

In Croatia, all sports activities, leagues and competitions have been suspended⁴⁴. Players are training at home via group conference calls. Since 20 April 2020, some football clubs from the first division (the only full professional championship) started to train individually at their training centers (2-4 players on a football pitch). Training in small groups, while following social distancing norms, will be permissible with effect from 27 April 2020.

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

The government, after the amendments to the Sports Act (passed in the Croatian Parliament on 17 April 2020) secures the minimum wage (3.250,00 HRK, approx. €433,00 for March and 4.000,00 HRK, approx.€ 533,00 for April and May) for those sport officials, administration and coaches who are in a labour relationship, the number of people estimated to benefit from these measures is approximately 3,000. Professional athletes (except a small number approx 15 employment contracts in football) are generally ‘self-employed’, without labour and social law protection. As such they do not stand to benefit from minimum wage state aid.

b. The Federation and/or the League (common funding? Others?)

The Croatian Football Federation (“CFF”) does not have a common fund for the benefit of its member clubs. However, clubs have received their respective shares of the outstanding broadcast revenue, which are in general very modest. To offer perspective, broadcast revenues to be shared among all 10 clubs belonging to the first division amount to 15 million HRK (i.e. €2 million). The CFF and the first division clubs are hoping the UEFA solidarity payments will be paid earlier than it was planned.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

No position has been taken. The nation follows the National Epidemiologists rules set by the National Crisis Management Committee.

⁴³ Assistant Professor, University of Rijeka, Faculty of Law, Rijeka, Croatia. Croatian Football Federation Arbitration Tribunal Arbitrator. CAS Arbitrator (general and football list).

⁴⁴ Only in basketball has the championship been declared over without a champion being announced, i.e. the season has been ‘voided’.

3. *How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)*

Football clubs are trying to reach an agreement with players. Each case is different but in general terms, a combination of reduction and deferral is agreed and the "cut" differs depending on the income each player receives, mostly because it is a percentage cut (33% or 25% immediately with a further cut to follow). For instance, according to club officials and players (reported in the media) the situation is as follows:

- **Dinamo Zagreb** – for the next 6 months the players accepted to be paid 33% of their “salaries”, 33 % in the period of 6 months after the re-start of the season while 33% they will not receive in the next 6 months.
- **Rijeka** – the players accepted to be paid 33% of their “salaries”, 33 % in the period of 6-16 months depending on the club’s financial situation while they will not receive 33% in the next 6 months.
- **Hajduk Split** – players will receive 40% of the “salary”, with the next 40% being received after the anti-pandemic measures have been lifted (but in no case later than 6 months). The players have accepted to forego the remaining 20% of their salaries for a period of 6 months.
- **Osijek** – the players receive 50% of their “salaries”, the remaining 25% will be paid when the season re-starts while they have agreed a salary cut for the remaining 25%, for the duration that the season remains suspended.

4. *Do clubs negotiate with players, individually?*

In general, negotiation tends to take place between each club and the respective team captains and other players acting on behalf of the group. Once an agreement is reached, every player signs it.

5. *Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?*

No decision or agreement was reached at the collective level since in Croatia professional athletes generally do not have enjoy the status ‘employees’. As such, collective agreements are not in force. The social dialogue although quite often used, in this case was not carried out because the Croatian Football Federation has made amendments to the Regulations unilaterally without consultations with the Players Association HUNS (a FIFPro member). After the amendments had been implemented, a meeting between the Federation representatives and the Players Association HUNS representatives was been organized in the third week of April 2020.

6. *What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)*

Under Croatian law, contracts can be terminated for *force majeure*, but with compensation mutually determined by the parties themselves or by a tribunal. Since players are mostly self-employed and do have a civil law contract, the Civil Obligations Act is applied⁴⁵.

Thus, a club may offer to vary the terms of a player's contract (usually in the form of a reduction of the remuneration). If the player does not agree to this variation/reduction, the player is entitled to appeal this decision to the CFF Arbitration Tribunal within 5 days of such decision, in accordance with the *CFF Regulations on Status and Registrations*. The CFF Arbitration Tribunal will analyze whether the club's decision is well-founded, made in good faith and proportionate, by considering, without limitation whether the club had attempted to reach a mutual agreement with its player(s); the economic situation of the club; the proportionality of any contract amendment; the net income of the players after contract amendment; whether the decision applied to the entire squad or only specific player. If such reduction of salary was found to be inadmissible and/or inappropriate, the tribunal has the power to order the enforcement of the contract in its original form.

7. Is there any official reaction at national level to the FIFA guidelines on Coronavirus?

The Croatian Football Federation has published the FIFA guidelines on its official webpage and social media handles. The Executive Committee is preparing various options for the restart of the season and the Executive Committee has approved the amendments to the Regulations on the Status and Transfer of Players on 15 April 2020, in the context of the FIFA Guidelines.

⁴⁵ Civil Obligations Act; Variation or Termination of Contract in Case of Change of Circumstances
Requirements for Termination

Article 369

(1) Should, after entering into a contract, extraordinary circumstances arise, that it was impossible to foresee at the time of entering into a contract, making it excessively onerous for one party to perform or if under such circumstances a party would suffer an excessive loss as a result of the performance, it may request variation or even termination of the contract.

(2) Variation or termination of a contract may not be requested by a contracting party invoking the change of circumstances if that party was obliged to take into consideration such circumstances at the time of entering into a contract or if it could have avoided or overcome them.

(3) A party requesting variation or termination of the contract may not invoke a change of circumstances that occurred after the expiry of the time limit for performance of the obligation.

(4) Where a party requests termination of a contract, the contract shall not be terminated if the other contracting party offers or agrees to an equitable change in the relevant provisions of the contract.

(5) Where a court declares termination of a contract, the court shall, at the request of the other party, oblige the party applying for the cancellation, to compensate the other party with an equitable amount for the damage suffered due to the termination.

THE NETHERLANDS

By *Laurens Korbee and Kevin van den Oetelaar*⁴⁶

1. *What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?*

Both professional football leagues (i.e. the ‘Eredivisie’ (Dutch premier league) and the first division) matches are cancelled. The Royal Netherlands Football Association (KNVB) announced that for the season 2019-2020 no champions will be proclaimed; relegation nor promotion will take place and the European club football tickets will be distributed according to the current place on the ranking. Several clubs have contemplated the possibility of taking legal action against these decisions.

No matches will be played (with or without an audience) until at least 1 September 2020.

Regular training sessions have been suspended until at least 19 May 2020. However, top athletes (presumably including professional footballers) are allowed to resume their (individual) training at appointed training locations, provided that the 1.5-meter social distancing rule is adhered to.

The amateur leagues have also all been cancelled. No final score has been drawn up, nor promotion or relegation will take place.

2. *What are the specific measures taken by:*

a. *The Government (unemployment benefits foreseen for workers in general? Other specific measures?)*

Since 6 April 2020, the government has mandated that all businesses that suffer from a revenue decrease of at least 20% over three consecutive months, when compared against 25% of the average revenue of 2019 (i.e. the average revenue of 2019 divided by 4), and comply with all the conditions of this (emergency) measure are eligible for relief from the government. Pursuant to this relief program, the government will reimburse up to a maximum of 90% of the company's wage bill, depending on the loss of turnover (the so-called ‘NOW-regulation’). This measure however only applies to salaries up to €9.538 per month and for this reason, the NOW-regulation does not fully cover the company’s wage bill for several professional football clubs.

b. *The Federation and/or the League (common funding? Others?)*

An emergency fund of €11 million has been set up by the Royal Netherlands Football Association (“KNVB”), Dutch internationals and the ING bank (main sponsor KNVB) which

⁴⁶ Legal Counsels of the Dutch Federation of Professional Football Clubs (FBO).

will be shared 50/50 between the professional clubs and the amateur clubs. The professional clubs still receive their share regarding the TV rights, notwithstanding the cancellation of the league.

In a passionate plea, the KNVB asked the Dutch government for support, due to the estimated €300-400 million loss of income in the professional football industry.

The KNVB will furthermore accelerate provision of funds and the suspend of the repayments on the loans that some clubs have with the association for six months.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

Not that we know of.

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

Clubs are still paying the salaries of their employees. In fact, this is one of the requirements to apply for the NOW regulation. However, the employer's organization (the Dutch Federation of Professional Football Clubs "FBO") and the player's unions are consulting the possibility of collective financial measurements (e.g. postponement of the payment of the holiday allowance and a cut on salary).

4. Do clubs negotiate with players, individually?

Discussion about suspension of any salary payments first takes place at a collective level (see hereinafter). Possible negotiations between clubs and individual players may take place too.

5. Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?

The FBO is currently in discussions with the players' union regarding potential measures at a collective level. These include potential salary cuts.

6. What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)

It is not possible to unilaterally terminate an employment contract despite the existence of a *force majeure* event. In the matter at hand, suspension of salary is not legitimate and besides, a part of a club's company's wage bill is likely to be covered by the government. A lawful reduction of the salary can be an *ultimum remedium* (the last resort) in the event that negotiations on both collective and individual levels do not lead to a fruitful solution. According to the Dutch Civil Code, a unilateral reduction of an employer's salary is only

legitimate in case certain strict criteria have been met⁴⁷. It is not clear yet whether and when an appeal to this Article of the Dutch Civil Code may succeed.

7. *Is there any official reaction at national level to the FIFA guidelines on Coronavirus?*

No, not yet. However, trade unions and FBO are attempting to arrive at mutually agreeable solutions, on a collective and individual level in acknowledgement of the FIFA guidelines.

⁴⁷ This depends on the following scenarios:

1. If an employment contract provides a written stipulation which gives the employer the right to change a condition of employment (*e.g.* a decrease of salary), the employer is only able to invoke such a written stipulation if the interests of the employer outweighs the interests of the employee, who would have been harmed as a result of this change, on grounds of reasonableness and fairness.
2. If an employment contract does *not* provide a written stipulation which gives the employer the right to change a condition of employment, in short, the following criteria must be met to give the employer the right to change such a condition:
 - Changed circumstances induce the change of (the conditions of) the employment contract;
 - The proposal of the change of a condition must be reasonable, in the context of all circumstances; and
 - Acceptance of the proposal can in reasonableness be demanded from the employee.

For the sake of clarity, the above-mentioned criteria are just briefly described. And, in general, almost all employment contracts of football players do *not* provide for a written stipulation which gives the employer the right to change a condition of employment.

PORTUGAL
By Rui Botica Santos⁴⁸

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

On 12 March 2020, the Portuguese Football Federation (“PFF”) decided to suspend all its football and futsal competitions for an indefinite period, which includes the third division championship, the Portuguese cup and the youth categories.

On the same day, the Portuguese League officially announced the immediate suspension of first and second division professional football competitions, also for indefinite period. In that statement it was also recommended the immediate suspension of trainings and all sports agents are advised to adopt social containment measures.

A majority of the players are on personal training programs given to them by their clubs.

The situation appears to be changing as at 27 April 2020 when the PFF announced that the championship will resume in June/July. The PFF is contemplating to have all the matches played the same region to avoid movement of players in addition to other measures such as, playing behind closed doors and no access to the changing rooms, which means players will have to arrive in their kit and go home to shower. There is also a pending discussion in relation to restrict certain players’ behaviors when playing a match. The referees should not allow “concentration” of players in certain instances. This will give rise to lots controversies during the match and it remains to be seen how the referees will put this into practice.

In furtherance of the intent to finish the pending championships and if necessary, to extend the original deadlines and play additional matches per week, the Portuguese prime minister announced on 30 April 2020 that the Primeira Liga (first division) would resume (behind closed doors) on 30 May 2020, subject to the approval of health authorities and the obedience of certain security measures.

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

For the protection and maintenance of employment contracts the Portuguese Government issued the Decree Law no. 10G/2020 of 26 March 2020 with a simplified *lay-off* regime which entails exceptional measures for the companies which face a situation of crisis caused by the COVID-19.

The applicability of simplified *lay-off* regime to football clubs is polemic because it results in the allowance for the companies to reduce or suspend the labour activity. Its applicability is not disputed with regards to the club’s employees which have contracts of non-sporting

⁴⁸ Partner of Coelho Ribeiro & Associados (CRA), CAS Arbitrator

nature. But when it comes to players and coaches, this regime would result in the suspension of their labour contract. The suspension of the labour contract discharges the employee from providing their services, which means, in the case of a football player, that they could refrain from training if football clubs choose the simplified *lay-off* to tackle the salary issues.

However, as there is a plan to recommence competitions players are training to maintain their physical form. Therefore, it is unlikely clubs will invoke the suspension of the labour contract when the players are still providing their services by preparing for a return to action.

b. The Federation and/or the League (common funding? Others?)

To face the COVID-19 crisis, the PFF has created a support fund of €4.7 million to allow the associations, and the football and futsal clubs, which take part in national non-professional competitions, to fulfil their obligations towards players and coaches.

PFF has also suspended all disciplinary proceedings as well as having postponed the execution of fines to the following season.

The TV rights are still being distributed and some football clubs have even been able to anticipate the payment due during the second half of the year.

The Portuguese League has also implemented an economical support plan with additional measures, one of them being the prorogation of deadline to provide the requirements needed for the licensing of the professional competitions, amongst others, which aim to immediately help the treasury of the sports company.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

No specific and official position has been taken yet. According to majority opinion of the doctors the return of the competitions is conditioned by the evolution of the pandemic, and although the predictions are positive, football will follow the instructions of the Portuguese National Health Authority (DGS).

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

Sporting Lisboa Club recently announced that their players will take a 40% pay cut for the next 3 months. Benfica and Porto clubs are in talks with their players to reduce their salaries. Their players' salaries have been renegotiated and reduced, however, if certain sporting goals are met, the salary reduction will be reset as a bonus. The rest of the clubs are yet to take an official position although we expect them to follow suit. Belenenses SAD is the only first division club to apply the *lay-off* regime thus far.

4. Do clubs negotiate with players, individually?

All negotiations have been carried on an individual basis. Although the Portuguese player's union has come out to publicly criticize some of the measures being contemplated by the clubs, the union has not been involved in the negotiations.

5. *Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?*

The player's union do not seem to have been directly engaged although they have raised its public opinion.

For the time being it seems to be talks between the players and their respective clubs are done on mutual agreement basis. The federation and the league are closely monitoring the developments and we expect them to play an active role.

6. *What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)*

In Portugal a salary reduction is only possible either if the employee agrees or if there is a reduction of the working period where the reduction of the salary becomes proportionate.

In *force majeure* situations, pursuant to the labour code, it is possible the temporary closing of activity and the employee in these situations is entitled to 75% of his salary (*lay-off* regime).

In order to face the COVID-19 the Government has issued different regulations to help employees and employers. One of the implemented measures is the approval of a simplified *lay-off* regime, as commented in point. 2a) above, where the employee is entitled to 2/3 of their normal gross remuneration. This financial support has the duration of 1 month with the possibility of extension up to a maximum of 3 months.

7. *Is there any official reaction at national level to the FIFA guidelines on Coronavirus?*

The PFF has always worked together with FIFA and I believe they will take these guidelines into account for the good of Portuguese football.

ROMANIA
By Adrian Stângaciu⁴⁹

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

All football competitions (in fact all sports competitions) are suspended. The Romanian Football Federation was the first Romanian sports federation to decide the suspension of the competitions at all levels, even before⁵⁰ the state of emergency was instated by the Presidential Decree no.195/16.03.2020.

The working group involving all the stakeholders (players union, league, clubs competing in the Romanian first, second and third division's) decided competitions could be resumed on the 16 May 2020⁵¹. However, due to the state of emergency being prolonged until 14 May 2020, this is no longer valid. However, it is certain that everybody involved in professional football competitions consider necessary to resume the championships at a later stage, whenever this will be possible.

The Suceava Football County Association decided to end all the competitions organized by it, including the 4-th League due to the situation in the Suceava County (one of the most affected regions in Romania by coronavirus).

On 29 April 2020, the Romanian Football Federation decided to annul all the youth competitions⁵² (youth women football competitions and youth futsal competitions included), except the Elite U19 League because this competition has to end based on the sporting merit in order for the winner to play in UEFA Youth League 2020/2021. It has to be determined when the Elite U19 League, 2019/2020 will resume. The annulment of all the youth competitions of the season 2019/2020 means that no clubs will be considered champions, nor would any be relegated (as though the season never existed). In any event, most youth competitions do not involve the relegation of clubs at the end of each season).

2. What are the specific measures taken by:

⁴⁹ Head of the Romanian Football Federation Legal Department and member of the UEFA Legal Committee. He is specialized in sports law disputes acting also as President of the Disciplinary Committee of the Romanian Tennis Federation and member of the Appeal Committee of the Romanian Handball Federation. He is also acting as president or member of several Romanian Football Federation Committees (i.e Legal, Antidoping etc).

⁵⁰ Please see The Emergency Committee Decision of 12.03.2020 available at: <https://www.frf.ro/comunicari/comunicate-frf/hotararea-comitetului-de-urgenta-din-12-martie-2020/> and the Decision of the Emergency Committee of 17.03.2020 available at: <https://www.frf.ro/comunicari/comunicate-frf/hotararea-comitetului-de-urgenta-din-17-martie-2020/>

⁵¹ Available at: <https://www.frf.ro/featured/prima-concluzie-a-grupului-de-lucru-format-de-frf-competitiile-interne-nu-se-pot-relua-mai-devreme-de-16-mai-2020/>

⁵² <https://www.frf.ro/comunicari/comunicate-frf/toate-cele-31-de-competitii-de-copii-juniori-si-grassroots-din-sezonul-2019-2020-organizate-pe-teritoriul-romaniei-au-fost-anulate-cu-exceptia-ligii-elitei-u19/>

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

The Labour Ministry recommended that during the state of emergency the employment contract shall not be terminated, although no legal provision in this respect was issued.

On 18 March 2020, the Government issued the Emergency Ordinance no. 30/2020 stating that during the state of emergency, for the period of temporary suspension of the individual employment contract, at the initiative of the employer⁵³, the allowances received by the employees are set at 75% of the basic salary, but not more than 75% of the gross average wage stipulated by the Law of the state social insurance budget for 2020 no. 6/2020 (i.e. approx.. €850 gross; approx. €500 net). Such amounts will be paid by the authorities from the unemployment insurance budget.

With regard to sporting activity contracts⁵⁴, the Government applied a similar provision during the period of emergency established by Decree no. 195/2020 regarding the establishment of the state of emergency in the territory of Romania. This provides for players to be entitled to an allowance of 75% of their remuneration, but no more than 75% of the gross average wage stipulated by the Law of the state social insurance budget for 2020 no. 6/2020 (i.e. the same amount as mentioned above, app. €850 gross; app. €500 net). This measure would take effect while sporting activity remains temporarily suspended, as notified by relevant authorities. The allowance is borne by the state budget.

These measures are notwithstanding that footballers in Romania are considered 'self-employed' rather than 'employees'.

The amount will not be attractive to cases of the players in the First League.

On 30 March 2020, the Government issued a new Emergency Ordinance adding to the provisions with regard to sporting activity contracts mentioned in GEO 30/2020 a new paragraph allowing the clubs to negotiate with the players in order to pay more than the allowance mentioned above. In addition to the allowance provided for the players, the sports structures have the possibility to negotiate, and jointly determine, the payment of other compensatory allowances granted by the sports structure to compensate for the diminution of the financial consideration.

With regard to the employment contracts, the Government stated in the GEO 32/2020 that the amount provided in the GEO 30/2020 may be supplemented by the employer up to 75% of the wages mentioned in the contracted only in case the budget of the employer with regard to salaries allows.

b. The Federation and/or the League (common funding? Others?)

No concrete measures at this time, except postponing deadlines for the first and the second league licensing process for the next season.

⁵³ According to art. 52 paragraph (1) lit. c) of Law no. 53/2003 - The Labor Code,

⁵⁴ Only a limited number of players and officials are concluded an employment contract, most of them signed sporting activity contracts (civil contracts).

c. *Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?*

There is no decision taken by the Romanian Football Federation Medical Committee binding on the football competitions at this moment. Before the season will resume, the Medical Committee will issue a set of instructions in order to be applied by all the clubs when an official game has to be organized.

3. *How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)*

It seems that clubs can be placed into three categories:

- Negotiating with the players in order to reduce the remuneration due for several months.
- Paying all the wages as provided by the contract between the parties⁵⁵; and
- (the majority) Applying the legal provisions allowing them to unilaterally suspend the contract during the state of emergency (i.e. until 14 May 2020 for the time being).

4. *Do clubs negotiate with players, individually?*

Only a small number of clubs decided to negotiate and to reach an agreement with any single player (i.e. FC Viitorul⁵⁶), most of them just imposed the legal provisions that allow the clubs to unilaterally suspend the player's contracts.

5. *Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?*

No. At first, when the state of emergency was instated (starting on 16 March 2020), the federation, the league and the player's union made several public statements⁵⁷ urging all the parties involved in football to act rationally and to show solidarity between all of them. However, after several clubs decided to unilaterally suspend the players contracts, any agreement became impossible to be implemented.

6. *What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)*

In the present circumstances, most of the clubs applied the legal provisions in force during the state of emergency (see the answer at question 2 letter a above, GEO 32/2020).

⁵⁵ <https://liga2.prosport.ro/seria-1/echipa-din-liga-2-care-nu-ia-in-calcul-reducerea-salariilor-jucatorilor-in-aceasta-perioada-de-criza-daca-esti-conducator-faci-rost-de-bani-vinzi-ceva-si-platesti-19128959>

⁵⁶ Info available at: <https://www.digisport.ro/fotbal/liga-1/mentalitate-de-campion-reactia-unui-jucator-de-la-viitorul-dupa-ce-i-a-fost-redus-salariul-825945>

⁵⁷ One of them available at: <https://www.frf.ro/comunicari/comunicate-frf/apel-la-solidaritate-la-adresa-tuturor-membrilor-familiei-fotbalului-romanesc/>

Theoretically, as the players are considered service providers and also the draft⁵⁸ of the sporting activities issued by the Romanian authorities contains a *force majeure* clause such a clause can be applied in order to terminate a contract. However, it is not clear if such an approach will succeed in front of judicial bodies and/or civil courts.

7. Is there any official reaction at national level to the FIFA guidelines on Coronavirus?

The FIFA Guidelines were published on the RFF official website⁵⁹ and also a working group⁶⁰ involving all the relevant stakeholders was established in order to analyze and to draft the provisions applicable with regard to contracts, transfers and how the matches shall be organized in the present context. The first e-meeting of the working group is scheduled to take place after the Easter Holiday in Romania (i.e. after April 20, 2020).

However is worth mentioning that it will not be possible (even if the federation, the league and the players union agree that this is the right thing to do) to extend the contracts that have to expire at any date before the actual end of the season. The extension can be reached only by mutual agreement between the parties (player and club).

⁵⁸ The draft can be found here <https://lege5.ro/Gratuit/ge3dkmrtgm2a/ordinul-nr-631-890-2017-privind-aprobarea-modelului-cadru-al-contractului-de-activitate-sportiva>

⁵⁹ Available at: <https://www.frf.ro/featured/noi-recomandari-fifa-privind-contractele-jucatorilor-si-perioada-de-transferuri/>

⁶⁰ Available at: <https://www.frf.ro/comunicari/comunicate-frf/grup-de-lucru-creat-de-frf-pentru-norme-speciale-dedicate-acestei-perioade-in-roaf-si-rstjf/>

RUSSIA
By Anna Smirnova⁶¹

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?) , championship over?

In accordance with the Order No. 216 of the Russian Ministry of Sport, dated 16 March 2020, it was recommended to the sporting federations to cancel or suspend all official sports competitions on the territory of the Russian Federation from 21 March 2020 until special notice. Therewith it was also recommended that the regional executive authorities impose limitation on the work of sporting organizations for the period from 21 March 2020 through 10 April 2020.

On 17 March 2020, Football Union of Russia (“FUR”) suspended all football competitions in Russia until 10 April 2020; however, on 1 April 2020 the Bureau of the FUR Executive Committee decided to extend the period of suspension until 31 May 2020 inclusive. Thus, all the competitions in all football disciplines (except online football competitions) organized by FUR, including competitions organized by leagues, regional federations and associations under the umbrella of FUR are suspended in Russia for the time being.

So far, the deadline of 31 May 2020 is not final and can be reconsidered depending on the overall situation in the country and particular instructions from the state and regional authorities.

On the date of this survey, following the recommendations of UEFA to complete the championships by 2 August 2020, the Russian Premier League suggested two calendar options to its clubs, re-starting either on 21 June 2020 or on 28 June 2020; both options will also take into account the Cup Matches, on which the decision will be taken by FUR at a later stage.

In other sports disciplines the situation in the very beginning was similar. For instance, on 16 and 17 March 2020 Russian Basketball Federation and Continental Ice-Hockey League accordingly decided to suspend their competitions until 10 April 2020; however, already by 27 March 2020 both of them announced the early termination of their respective sporting seasons. Handball and volleyball championships of this season are also already terminated.

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

In terms of employment situation in Russia for the period of pandemic, relevant are the two orders of the President of Russia, namely Order No. 206, dated 25 March 2020 and Order No. 239, dated 2 April 2020. In accordance with these Orders, the period from 30 March 2020 through 30 April 2020 shall be considered as paid non-working days. Exceptions are

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made for medical organizations and pharmacies, food supply organizations, state authorities and media, industrial companies where it is technically impossible to suspend the activities, and some other essential businesses.

For the implementation of the Presidential Orders, the Ministry of Labour in Russia issued the relevant recommendations. Therewith it is specified that such “non-working days” shall not be considered either days-off or holidays; certain employees may continue their work on remote basis, whereas their wages shall remain the same.

The financial measures of support implemented by the Russian Federal authorities provide for the increased unemployment benefits, maximal unemployment payments for the individuals dismissed during the period from 1 March 2020 through 30 June 2020, some other social benefits for certain groups of citizens. Additional specific regulations and support measures are applied by the regional authorities.

b. The Federation and/or the League (common funding? Others?)

In accordance with the Decision of the Bureau of the FUR Executive Committee, dated 1 April 2020, it was recognized that the spread of COVID-19 is a *force-majeure* for football in Russia and all of its participants; therefore, accordingly the suspension of activities in football clubs shall be considered as caused by the reasons unrelated to the employers and employees. This statement obviously will need further clarification, particularly in the view of the considerations made by the Supreme Court of Russia few weeks later (*cf.* point 6 below).

According to media, FUR has initiated research among clubs and leagues in order to analyse whether the governmental support is needed to keep alive clubs, academies, schools and stadiums.

In the meantime, the support measures for the Russian sport in general are being developed by the Ministry of Sport.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

There is no specific association for doctors in the field of sports. Medical recommendations remain the same as generally disseminated by the Ministry of Health of Russia and may be further developed by the regional health-protection authorities. The Ministry of Sport in Russia remains in contact with the medical staff of the Russian Olympic Committee and the Federal Medical and Biology Agency in terms of organization of the medical researches and examinations for athletes and their health protection as soon as their full-time return to sporting activities will be allowed by the public authorities.

3. How clubs are currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

Russian Labour Code provides for the right of an employer to reduce the salaries of an employee by 30% in cases of forced downtime. However, according to the available information, so far Russian football clubs did not use this opportunity provided by law.

Moreover, many clubs, including FC Zenit Saint-Petersburg, PFC CSKA, FC Spartak, Rubin Kazan, *etc.* announced their success in negotiation with the players for the reduction of their salaries during the outbreak.

4. *Do clubs negotiate with players, individually?*

So far there was no available information about the arrangements between clubs and individual players. However, as mentioned above certain football clubs were able to reach an agreement at the level of the entire team.

5. *Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?*

Unfortunately, there is no one single trade union in Russia which could represent the interests of the players' majority. None of the existing players' unions in Russia have been reported to be engaged in the ongoing negotiations between the players and clubs.

6. *What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of the salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)*

In accordance with Russian law, salary is the essential condition of the employment contract and it can be altered only upon mutual consent of the parties or in the cases expressly provided in the Labour Code, such as "change of organizational and technological labour conditions", however in the latter case mandatory procedure for such reduction will take at least two months, which is hardly convenient in current situation. The outbreak as is cannot be considered as "change of organizational and technological labour conditions".

As regards the general guidance for the interpretation of an outbreak as a possible force-majeure, on 21 April 2020, the Supreme Court of the Russian Federation issued the Review with respect to the practical matters related to the fight against COVID-19. Therewith the Supreme Court specified that the outbreak as well as the measures undertaken by the state authorities as such cannot be considered as a universal force-majeure condition; in each particular case the overall circumstances must be assessed in order to recognize or not the existence force-majeure.

7. *Is there any official reaction at national level to the FIFA guidelines on Coronavirus?*

In the meantime, nothing particular came out. On 1 April 2020, the President of the Russian Premier League declared that the FIFA guidelines will be duly examined and discussed between clubs in order to reach the common understanding.

SWITZERLAND

By Kai Ludwig⁶²

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

On 12 March 2020, the Federal Council declared a state of emergency for the whole of Switzerland because of the COVID-19 pandemic.

Since 21 March 2020, meetings of more than five people are prohibited in public. If five or less than five people meet, they must maintain a distance of more than two metres between them (social distancing). Restaurants, shops, markets, leisure and sports facilities, as well as facilities where the distance rules cannot be observed, were closed; only grocery stores and health care facilities were allowed to remain open. The borders with all neighbouring countries are controlled; all persons are refused entry into Switzerland (exceptions are possible, for example for persons living or working in Switzerland).

On 13 March 2020, the Swiss Football Association (SFA) decided to completely suspend match operations for all categories and age groups until further notice. The Swiss Football League (SFL; 1st and 2nd division) has also suspended match operations; there are still 13 match days to be played in the 2019/20 season. As a result of the measures decided by the Federal Council (see above), training operations were also completely suspended with effect from 16 March 2020.

On 29 April 2020, the Federal Council decided to ease various measures to contain the coronavirus due to the decreasing number of infections. Gradually, public institutions, schools, restaurants and shops will be reopened. From 11 May 2020, sports facilities will also be allowed to reopen. For the training of professional athletes, the maximum number of persons present (5 persons) and the distance rules will be lifted; the condition is a concept of the Clubs to protect the athletes from infection. From 8 June 2020, professional sports competitions (without spectators) and meetings of more than 5 persons will also be possible again.

Despite the easing of the COVID-19 measures by the Federal Council, the SFA decided on 30 April 2020 to cancel all currently suspended championship and cup competitions of the 2019/20 season with the exception of the Super League, the Challenge League (1st and 2nd division) and the Helvetia Swiss Cup. There will be no valuation of the season (no champions, no promotions and relegations)⁶³. Except for the two professional leagues and the CUP, the 2019/20 season in Swiss football (women, amateurs, juniors, etc.) is thus definitely finished.

The SFL teams can resume team training on 11 May 2020. The SFL has not yet decided on the continuation of the current championship in the two highest divisions (Super League and Challenge League), which is in principle possible from 8 June 2020⁶⁴.

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⁶³ <https://www.football.ch/SFV/News-Seite/abbruch-der-saison-2019-20.aspx>

⁶⁴ <https://www.sfl.ch/news/news/artikel/sfl-nimmt-sich-zeit-zur-klaerung-wichtiger-fragen/>

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

Companies that may not have been open due to official regulations or other circumstances beyond the employer's control have the option of applying for short-time work for their employees. Short-time work is defined as the temporary reduction or complete cessation of work in a company, while maintaining the contractual relationship under labour law; in return, the employee waives 20 percent of his salary for the duration of the short-time work.

Unemployment insurance covers employers affected by short-time working for a proportion of their salary costs for a certain period. The aim is to avoid terminations of the employment contract (employer who receive compensation for short-time work cannot terminate contracts).

Unlike unemployment compensation, benefits are paid to the employer. However, every employee has the right to refuse short-time work compensation. The employer then must continue to pay the full salary to these employees. However, the employee then runs an increased risk of receiving the termination notice.

The maximum amount of the insured salary is CHF 12,350 per month in the case of short-time work (of which the employee receives 80 percent, i.e. CHF 9,980, in the case of short-time work).

In football, the problem arose that the short-time working regulation was not applicable to fixed-term employment contracts; this restriction was provisionally lifted by a decision of the Federal Council on 20 March 2020. Moreover, many players (at least in the highest division) earn more than the monthly ceiling of CHF 12,350; accepting short-time work would therefore imply a salary reduction of (sometimes significantly) more than 20%. However, players and clubs can agree on additional payments from the employer in this case to compensate for the employee's loss of salary.

b. The Federation and/or the League (common funding? Others?)

Besides measures on cancellation of games and team practices, no specific measures have been taken by the SFV or the SFL. There is no specific compensation fund created (yet) by the SFV, the SFL or another entity to provide financial or material support to players, coaches or club employees affected by the COVID-19 crisis.

However, the Federal Council has announced that it will support Swiss sport with a total of CHF 100 million: CHF 50 million in the form of interest-free loans for professional sport and CHF 50 million in the form of non-repayable contributions for amateur sport, which are intended to protect organizations in the sports sector from insolvency⁶⁵.

⁶⁵ <https://www.baspo.admin.ch/de/aktuell/covid-19-finanzhilfen-sport.html>

- c. ***Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?***

The Swiss Society for Sports Medicine (SGSM) has not (yet) taken a specific position on the current situation.

3. ***How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)***

Professional clubs can roughly be divided in two categories:

- a. Clubs that continue to respect their contracts with players and staff and therefore continue to pay salaries and benefits in full.
- b. Clubs that have agreed with players and staff on a temporary adjustment of their employment contracts and, as a result, a temporary reduction in salaries. The amount of the reduction is usually not disclosed; examples from lawyers' practice show reductions ranging from 10 to 60 percent of the basic salary, usually limited to the period during which no team training can take place. Already due salary components (signing fees etc.) are usually excluded from these agreements. This includes the clubs that receive short-time work compensation for their players. Since the short-time work compensation is paid to the employer, the club is additionally relieved (up to an amount of 9,980 monthly per player). For high earning players, the clubs thus effectively only pay the difference between the short-time work compensation and the agreed (reduced) basic salary.

A special case is FC Sion, which has asked all players to accept short-time work compensation without additional payment (players should therefore only receive a maximum monthly salary of CHF 9,980). After the proposal was rejected by all players, FC Sion terminated the employment contracts with nine players with immediate effect, citing *force majeure*. Thereafter, the remaining players agreed to FC Sion's proposal. FC Sion was then able to reach a settlement with some of the players who were dismissed, while others have announced that they will take legal action against the termination of the contracts before national courts or FIFA DRC.

It should be further noted that all performance-related salary components are currently not being paid, which - especially in the case of highly performance-related contracts - results in an additional, significant reduction in player salaries.

4. ***Do clubs negotiate with players, individually?***

Although there exists a player's union (Swiss Association of Football Players, SAFFP), there is no mechanism of mandatory collective negotiation; collective bargaining agreements are virtually non-existing in Swiss Football. Therefore, all negotiations take place between the clubs and the individual players. At club level, the team council or team captain often coordinates the players' negotiations with the clubs and the players jointly propose a general waiver or Clubs try to propose solutions for the entire group of players and coaches. Finally, however, a modification of the employment contract must be agreed with each player individually, which means that in some circumstances, individual agreements may be made that differ from the proposed general arrangement.

5. Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?

See above; although a players' union exists, it is rarely involved in negotiations between clubs and players.

6. What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)

The employment contracts of professional footballers are fixed-term contracts and cannot be terminated prematurely. In exceptional cases, any party may terminate the employment relationship with immediate effect at any time for “good cause” in accordance with article 337 para. 1 Swiss Code of Obligation (SCO)⁶⁶. Good cause is defined as any circumstance which - from a subjective as well as objective point of view - makes it unreasonable in good faith for the party terminating the employment relationship to continue the employment relationship until the next ordinary termination date or until the end of the fixed term of the contract. The term “good cause” in article 337 para. 1 is congruent with the term “just cause” in article 14 FIFA RSTP.

The COVID-19 pandemic is to be qualified as a *force majeure* event not only under FIFA regulations, but also under Swiss law. However, a termination with immediate effect based on *force majeure* and economic reasons would hardly be protected by the courts under the current legal situation and would rather be qualified as inadmissible, even if the effects on the respective company are serious.

Even a complete lack of financial resources clearly do not entitle the employer to terminate the employment contract with immediate effect, nor does the fact that the employer is unable to assign or offer the employee work due to official closure of the business or termination of the season.

The reason for this is that, according to case law and doctrine, the operational and economic risk of a company lies exclusively with the employer, who must therefore also bear the economic consequences of a pandemic. Consequently, termination with immediate effect due to the effects of the COVID-19 pandemic is not permitted; should it be declared, under Swiss law it will nevertheless terminate the employment relationship with immediate effect, with the employer being obliged to pay damages (positive interest).

Since the operational and economic risk of a company is borne by the employer, the prevailing opinion is that the employer is obliged to continue to pay the salary even if the company is closed down by the authorities or if the employer is unable to assign or offer the employee work; in this case the employer must continue to pay the employee the *full* salary.

⁶⁶ <https://www.admin.ch/opc/en/classified-compilation/19110009/index.html>

However, if the closure is due to an official instruction without fault, the employee may be obliged to make up for his "missed" working hours under certain circumstances due to his duty of loyalty.

It is questioned, however, whether in cases of *force majeure* (pandemic), work obstructions lasting several months or even longer as a result of company closures or official prohibitions - in accordance with the principle of "no work, no pay" - will at some point render the obligation to continue to pay salaries void. However, this would require that the operational and economic risk be at least partially passed on to the employee. Whether this is permissible appears at least questionable; there is no case law of the Swiss Federal Tribunal yet.

7. *Is there any official reaction at national level to the FIFA guidelines on Coronavirus?*

Not yet.

TURKEY

By Anil GURSOY ARTAN⁶⁷

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

On 10 March 2020, the first COVID-19 case has been declared by the Turkish Government.

On 13 March 2020, it is declared by the Turkish Football Federation that the games will be played behind closed doors.

On 19 March 2020, President, Minister of Youth and Sports, Presidents of Turkish Football, Basketball and Volleyball Federations met and at the end of the meeting they declared that all the leagues have been postponed until a further notice.

As of 24 April 2020, the Turkish clubs' association was reported to have arrived at a "provisional decision" to recommence the Turkish Super League during the weekend of 12-14 June 2020, with league and cup matches to be completed by 26 July 2020⁶⁸.

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

On 18 March 2020, the Prime Minister declared an economic support program. As from that day, additional several support topics have been declared. It has a very wide range of different support topics; postpone on credit pay-backs, postponing collecting tax, paying 1000€ to each family in need, ban on terminating employment contracts for three months, etc.

b. The Federation and/or the League (common funding? Others?)

No.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

No.

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

⁶⁷ Sports lawyer.

⁶⁸ TRT World, "Turkey plans to resume Super League in June", 24 April 2020, available online: <https://www.trtworld.com/turkey/turkey-plans-to-resume-super-league-in-june-35731>

Even though there has not been any official declaration from any club, we know that nearly all of them suspended payments. Since it is unofficial, we have no knowledge how long it will take.

4. Do clubs negotiate with players, individually?

Especially after FIFA's COVID-19 Guideline has been declared, the Super League clubs began to discuss about any possible amendment to the existing Employment Contract. Although no official statement has been made from the Clubs, we expect most of them would ask from players for an increase and/or deferral in payments.

5. Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?

Only, Union of Super League Clubs, which is a foundation in terms of legal personality, declared that clubs may ask amendments on the existing contracts. Other than that, there has not been any declaration. I should also inform you that, there is no player's union in Turkey.

6. What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)

Force majeure has been defined under Turkish Code of Obligations and consequences thereof has also been foreseen. It is quite similar with any continental law systems. In case of performance becomes impossible or hard due to a reason which cannot be attributable to the debtor, the Code gives right to terminate the contract, demanding an amendment from Judge or partial performance.

When it comes to the question that how the law will apply to existing employment contracts, the answer lies under the discretion of judge or judging authority's (Turkish Football Federation's National Dispute Resolution Chamber) discretion.

7. Is there any official reaction at national level to the FIFA guidelines on Coronavirus?

Turkish Football Federation just interpreted the guidelines and shared it with clubs. However, there has not been any official reaction to the guidelines.

UKRAINE

by Yuliya Bogdanova⁶⁹

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

Presently, all sports activities, leagues and competitions remain suspended in Ukraine. Football players are now training individually at home or under club staff control in small groups consisting of 2-4 players on the pitch, keeping minimum 1,5 metres distance between each other.

Ukrainian Association of Football (“UAF”) and leagues are discussing a possibility to provide the clubs with a period of at least two weeks of training before competitions restart.

There is also a possibility that the second league (third tier) will not continue the competitions due to economical (low finances) and sporting reasons (in third tier teams play with each other in three rounds, as for now all teams have already played against each other twice and to finish the competitions could be fair from sporting perspective).

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

None.

b. The Federation and/or the League (common funding? Others?)

No financial support has been extended, yet.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

Ukraine does not have an association/union of sports doctors.

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

Most Premier League clubs have not taken measures to reduce players’ salaries as yet. The clubs of second and third tier are doing their best to reach the agreements with the players. Of course, each situation is different, but to summarise – salary reductions do not go beyond 20-30% and 50% in the rarest of cases.

4. Do clubs negotiate with players, individually?

⁶⁹ CEO of "Box-to-Box" LLC, sports lawyer, Ukraine.

The decision about the reduction of the salary is usually announced to the whole team, but then the club negotiates with each player individually, aiming to sign personal agreements which reflect the agreed reduction of salary.

5. Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?

The working group consisting of the representatives of UAF, leagues and trade union is currently working on finding solutions which are fair and acceptable to all parties.

6. What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)

The UAF Regulations on status and transfer of players contains the following provision: *“issues not covered by the Regulation and unforeseen cases/force majeure are considered by the authorized bodies of the relevant association or the authorities of football justice of UAF in accordance with the relevant provisions of UAF, UEFA and FIFA. In the absence of such provisions, cases are considered in accordance with the laws of Ukraine and the principles of justice and impartiality”* (Article 25 of the RSTP).

Current Ukrainian legislation does not provide a possibility for an employer to reduce or suspend salaries in the situation caused by the measures taken to prevent the spread of Coronavirus. Neither UAF, nor leagues didn't take decisions to reduce the players' salary. The clubs from their side negotiate with the players before any decision about the reduction of the salary is taken by them.

7. Is there any official reaction at national level to the FIFA guidelines on Coronavirus?

The UAF has published the FIFA guidelines on its official website and also has sent it to each club. The UAF Executive Committee is now preparing amendments to the Regulations on status and transfer of the players taking into account the current situation in Ukrainian football due to Coronavirus.

SECTION III

AMERICAS

ARGENTINA By Ariel Reck⁷⁰

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

In Argentina, the football championship was finally cancelled by the Federation (“AFA”) on 28 April 2020 for all categories, including women’s football. All relegations are also suspended for two seasons, until 2022.

As for promotions, the idea is to play matches to define promotions (this will increase the number of teams in each category), but this depends on the evolution of Covid-19.

The cancelation of the seasons means that the best placed teams so far have qualified for the continental competitions, save for the 2 spots that can be obtained via the Argentine Cup and the League Cup. AFA expects to play this competition in the second half of the year, again depending on the evolution of the pandemic.

The current situation also derived in the modification of the season in Argentina. Until now AFA was the only South American Federation win a season running from June to July. Now following the transitional second semester of 2020, in 2021 Argentina will have a January-December league.

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

On 9 April 2020, the government issued a decree to help clubs by reducing or deferring the payment of social security taxes for clubs with less than 100 employees. Clubs with more employees are permitted to sign up to a procedure that grants them financial aid applicable to all employees (i.e. non-playing staff) except the football players.

b. The Federation and/or the League (common funding? Others?)

The AFA is still receiving and distributing TV rights despite no games being played. CONMEBOL has also made an advance payment of 60% of the prize money for the clubs playing in the current stage of Copa Libertadores and Copa Sudamericana (this is USD 1.8 million for Copa Libertadores Clubs and approx. USD 200,000 for Copa Sudamericana Clubs).

⁷⁰ Sports Lawyer.

Recently AFA distributed funds received from FIFA among clubs of all categories to help with the payment of salaries.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

No position yet, but the AFA is preparing a protocol for the return to training and to play. In principle, as other federation. Training in small groups and then games behind closed doors.

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

Football clubs are still obliged to pay full salaries unless an agreement is reached with the players. A few clubs have already reached such agreement. Each case is different but in general terms a combination of reduction and deferral is agreed to and the "cut" differs depending on the income each player receives. The higher the salary, the greater the cuts and deferrals.

In recent weeks more clubs have arrived at agreements with players for deduction and/or deferral of salaries.

4. Do clubs negotiate with players, individually?

In general, negotiation occurs inside each club with the captains of each team, representing the players. Once an agreement is reached, every player signs it.

5. Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?

No decision or agreement was reached at collective level. The Secretary General of the Union opposed a reduction in general terms, arguing that most players receive low salaries already. This explains why agreements are dealt with at the player-club level, directly.

6. What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)

In general terms, *force majeure* affects the validity of contracts and suspension of salary or termination with a reduced compensation is possible. However, when the pandemic started, the government issued a decree prohibiting unjustified dismissal of workers in all areas. Nonetheless, the national labour law permits agreements between employers and employees to suspend or reduce work and compensation, and that's the pathway clubs are taking.

7. Is there any official reaction at national level to the FIFA guidelines on Coronavirus?

There has been no reaction yet. The Federation is preparing a medical protocol for the return to training and there is still to be a decision about the extension of the previous season or the commencement of a new season.

BRAZIL

By *Stefano Malvestio and Vitor Hugo Almeida*⁷¹

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games) championship over?

Brazil is a Federal state where the season runs following the calendar year (starts in January and ends in December). In the first part of the season, State championships are played (for instance those of the States of Sao Paulo, Rio de Janeiro and so on – all organized by the respective state football federations).

When the coronavirus crisis started, and the lockdown measures were adopted, clubs were playing their “state championship”, which have all been suspended now, following decisions adopted by the competent local football federations.

At a nation-wide level, the Brazilian Football Confederation (CBF) also determined the suspension of all competitions, such as the Brazilian Cup, which had already started.

The national championship (“Brasileirão”), which was scheduled to start in May 2020 will be delayed as well, taking into account that all First and Second Division clubs have granted (anticipated) holidays to their players until end of April or early May 2020, thereby suspending all training sessions.

As the end of the holiday period is approaching and the lockdown was extended by the government authorities until at least the middle of May 2020, the most likely solution at the moment is that clubs’ activities will be done through “home trainings” monitored by the coaching staff.

The current debate is therefore focused on how to complete the remaining matches of the state’s championship, the Brazilian Cup and the CONMEBOL competitions without reducing the 38 rounds initially planned for the “Brasileirão”, which would most likely mean that the end of the 2020 season would be postponed to the early months of 2021.

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

The federal government issued a Provisional Measure⁷² (nr. 936/2020) which allows the companies, under specific conditions, to reduce their employees’ wages and work hours from 25% to 70% for up to 90 days and to suspend the employment contracts for up to 60 days.

⁷¹ Lawyers at Bichara e Motta Advogados.

⁷² A provisional measure is a legal act in Brazil through which the President of Brazil can enact laws without approval by the National Congress. There are two requirements for a provisional measure to be used: urgency and relevance of the matter to be regulated.

Workers temporarily put under those conditions are entitled to receive a government aid proportional to their monthly salaries during the period of suspension or salary reduction and also have their employment post guaranteed for the same period.

However, it is debated if this Provisional Measure applies to professional football players, since their employment contracts are regulated by a specific legislation (“Lei Pelé”).

Besides that, a project of law has been approved by the National Congress (and is now pending approval from the President) aiming to extend to players, coaching staff, referees and other sports professionals - who do not have a formal employment and whose monthly family income does not exceed three minimum wages - the possibility of requesting a government aid of 600 Reais (approximately 120 dollars) - that is already being paid to informal workers.

On 19 April 2020, an important decision was taken by the *Supremo Tribunal Federal* (Federal Supreme Court), ruling that individual agreements for the reduction of wages and working hours provided in the Provisional Measure nr. 936/2020 are valid even without the approval of the respective workers’ union.

b. The Federation and/or the League (common funding? Others?)

The Brazilian Football Confederation (“CBF”) announced the implementation of a fund of 19 million Reais (approximately 4 million US Dollars) targeted for third and fourth division clubs and women football. Added to this, as mentioned by Ariel, CONMEBOL anticipated 60% (sixty per cent) of the prize money of its competitions for the clubs playing the Copa Libertadores and the Copa Sulamericana.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

No formal decision has been taken yet. However, a committee of sports doctors from some of the top clubs in Brazil are currently preparing, under the umbrella of the CBF, a medical protocol for the return of activities, including measures such as mandatory mass testing on all players and staff and training organized in groups of five or six players.

On 30 April, the Ministry of Health sent to CBF an opinion favorable to the return of football, considering it relevant to the country and that its return may contribute to reinforce social distancing measures since the people would stay at their homes to watch matches on TV.

At a state level, the Federation of Rio de Janeiro’s State (FERJ) announced an official protocol with guidelines for the return of the activities, valid for their affiliated clubs. The document includes precautions for the training sessions and other related areas, such as transportation of the players, physiotherapy, medical department, nutrition, laundry and the organization of locker rooms.

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

In Brazil, clubs reacted in a variety of different manners, which reflects a situation characterized by a certain legal uncertainty and the absence of a collective bargaining agreement.

Most of the clubs are still paying full salaries for their players. Others, such as São Paulo, Cruzeiro and Atlético Mineiro have unilaterally reduced them.

Finally, other clubs such as Fortaleza, Ceará, Fluminense and Bahia were able to reach an agreement with their employees for the reduction or postponement of the payment of the salaries until when normal activities are resumed. Grêmio postponed image rights payments until when the period of shutdown will be over.

Most of the Brazilian clubs are already struggling financially and probably will not be able to honor their commitments in the next few months if this situation persists. For this, the tendency is to renegotiate overdue payments and installments of transfer fees which due for the next few months, in order to reduce the damages caused by the COVID-19 crisis.

Within this context, certain traditional clubs face serious difficulty to comply with financial decisions of FIFA and CAS, keeping in mind that FIFA has not suspended the execution of its decisions by the FIFA Disciplinary Committee. For instance, Atlético Mineiro received money through a loan from an investor in order to pay a BRL 13,5 million debt (approx. 2.5 million US Dollars) and avoid points deduction. Cruzeiro, who was relegated to the Second Division last year, reportedly shall pay three debts arising from FIFA or CAS decisions by the end of May, for a total amount of R \$ 26 million (approx. 5 million US Dollars).

For the smaller clubs, and particularly for those who only participate to the State Championships, which were schedule to finish in April, the situation is even more dramatic, since most of them cannot afford paying the players' wages until the championship returns.

4. Do clubs negotiate with players, individually?

Usually, these negotiations are realized through collective negotiation with the full squad and/or the captains.

The final agreement must be however accepted and signed individually by all players.

5. Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?

There is a negotiation underway between the clubs and the union of the player and coaches, with no agreement yet, despite several rounds of negotiations.

Clubs initially proposed a wage reduction of up to 50% for the period that the competitions were suspended. After a first denial from the players' union, the clubs then proposed a 25% wage reduction, in addition to the anticipation of twenty days of the player's holidays.

This proposal was also rejected by the players union, who did not accept any salary reduction and proposed the anticipation of thirty days of holidays instead of twenty, while also maintaining the club's obligation to pay the one-third extra holiday pay provided in the Federal Constitution together with April salary.

In addition to this, the players union also proposed that CBF should be the guarantor of any agreement signed between clubs and players, being responsible for the payment in case of non-compliance by the clubs.

Due to these difficulties of reaching a nation-wide collective agreement with the player union, many clubs are choosing to negotiate directly with their employees at a club level.

6. *What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)*

Article 503 of the Brazilian Consolidation of Labor Laws (“CLT”), which was originally enacted in 1943, provides that: *“In case of force majeure or of duly proved loss, a general reduction of the wages of the employees of the undertaking shall be permitted, in proportion to the wages of each employee; nevertheless, the reduction shall not exceed twenty-five per cent., and the minimum wage applicable in the region shall be observed.”*

However, art. 7 lit. VI of the Federal Constitution, establishes the principle that salaries cannot be reduced, except when established in collective bargaining agreement.

In this regard, the prevailing opinion in the legal doctrine is that the abovementioned art. 503 of the CLT was implicitly revoked by the Federal Constitution, a legal source of a higher rank and, as such, cannot apply to the current situation.

7. *Is there any official reaction at national level to the FIFA guidelines on Coronavirus?*

No official reaction yet. In addition to this, contrary to FIFA’s Judicial Bodies, which continue to normally operate during the crisis, the National Dispute Resolution Chamber of the Brazilian Football Confederation (“CNRD”) has temporally suspended the summoning of respondents in new cases filed in the chamber.

CHILE

By Gonzalo Bossart⁷³

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

As the country entered ‘phase 4’ of the pandemic, the Chilean Ministry of Health instructed that all professional and non-professional sporting events (therefore all football activities) remain suspended indefinitely with effect from 21 March 2020.

However, previously, the local football association (“ANFP”), as soon phase 4 was declared and taking into consideration the position adopted by FIFA and CONMEBOL in this respect, determined the suspension of the competitions in professional leagues and women's football for a period of 14 days, starting on Wednesday 18 March 2020.

In accordance with the governmental orders sports venues have closed their doors as well, so no activities of any nature have been developed in them.

As a consequence of the above, professional footballers will be on personal training programs given to them by their clubs and it will be up to each player to ensure it keeps fit in order to return to the practice field in the unknown future.

The Chilean professional tournaments run from January to December, therefore, to date, no decision has yet been made with regards to its possible early termination. However, the ANFP is monitoring the situation. Key to this decision will be the moment when the restrictions to the activity are released, which will mark the point as to whether is possible to shrink the calendar and make the ball roll again or terminate the tournaments earlier.

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

To alleviate the social and economic chaos that the pandemic is leaving behind, the Chilean Government has issued emergency labour regulations - Law No. 21,227, on Employment Protection.

This has allowed many clubs to begin to look at the possibility of seeking pacts to reduce the remuneration of their footballers and workers in general. Other clubs are studying different alternatives provided for in the new Employment Protection Law, such as availing themselves of the suspension of the employment contract, which allows the suspension of the employment relationship in the event of a "total impediment or prohibition" of the provision of services resulting from an act of the health authority, and with it, send the workers to collect the unemployment insurance while the impediment or prohibition lasts.

⁷³ Sports Lawyer from Chile, BMS SPORT LEGAL; former lawyer of the FIFA Players’ Status Department; Arbitrator (TAS-CAS) 2015-2019; Head of Law Module CIES-UST Executive programme; and, Executive Director Deportes Zapallar.

So far, under this law, around 500 thousand Chilean workers have seen their labour relationships suspended.

b. The Federation and/or the League (common funding? Others?)

Despite the health crisis, Chilean football has continued to receive T.V. incomes. Therefore, the ANFP has continued to distribute such income among clubs.

However, since other forms of income (such as matchday tickets, merchandising, sponsorship, etc.) have diminished, the ANFP is negotiating a loan with local financial institutions to cover the losses that the clubs might be suffering.

Furthermore, the ANFP should receive soon fresh cash from FIFA, which will be invested in programs that benefit the clubs.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

There is no association of sports doctors that make any decisions which are binding on the football leagues.

The ANFP has been following the directives and protocols of the Government Health Authorities in this respect. Indeed, they are already working on the necessary protocol to achieve a progressive return to activity.

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

The answer is as diverse as the reality of each club. As mentioned above, some clubs have continued to pay their players full salaries, whereas others have negotiated a salary reduction which varies from club to club, as well as, in consideration to the amount of the salaries. Some others have suspended the labour relationship, which means that the players get paid under the unemployment insurance.

4. Do clubs negotiate with players, individually?

Yes. Negotiations have been carried out with exclusion of the ANFP and the local players' union (SIFUP).

Notwithstanding the above, the SIFUP has been very active in the protection of their affiliates. The Union has raised its concerns to the clubs, and specially with the Government, from which they demand its pronouncement against the possibility of clubs to make use of the new Employment Protection Law, so that they cannot suspend labour relationships with footballers.

5. Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?

No. There are no 'collective decisions' being made.

6. What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)

In Chile, the labour relationship is regulated by law (a special state law)⁷⁴.

This relationship, like the rest of the labour relations regulated by the Chilean Labour Code, is consensual in nature, the parties being the only ones that (by common agreement) can alter or modify it, within the framework of the Law.

That said, in addition to the parties, the State can also alter the regulatory framework and incidentally, the employment relationship, as is now being done through the Employment Protection Law - issued on the occasion of the pandemic. Therefore, no other person or entity (be it FIFA, CONMEBOL or ANFP), can alter labour relations.

As previously mentioned, the suspension of the employment relationship is only possible in the event of a "total impediment or prohibition" of the provision of the contracted services resulting from an act of the health authority (lockout, quarantine, restriction of certain activities, etc.), in accordance with the stipulations of the Employment Protection Law.

The Employment Protection Law also permits parties, upon mutual agreement, to suspend the relationship (when it is not due to an act of the health authority) and to reduce the working hours - salaries in the same proportion.

The Chilean Labour Code -159 No. 6-⁷⁵ makes special mention of *force majeure*, as a reason to terminate an employment contract with just cause. However, regarding the contractual stability principle, the authorities' interpretation for its application in the context of the Covid-19 pandemic has been rather restrictive.

In summary, since football employment contracts are consensual, only the parties -players and clubs- can modify it. The Chilean State, exceptionally, through a law, will also be able to do so, as in the case of the pandemic that is ravaging the entire world. Neither FIFA, Conmebol, or ANFP will be able to intervene in the labor relations of Chilean football players, under no pretext.

7. Is there any official reaction at national level to the FIFA guidelines on Coronavirus?

No official reaction.

⁷⁴ No. 20.178, that "Regulates the Labour Relation of Professional Sportsmen and Workers who Perform Related Activities"

⁷⁵ "The employment contract will end in the following cases: 6. Acts of God or force majeure."

MEXICO

By Ricardo de Buen Rodriguez⁷⁶

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

In general, all football activity remains suspended, including both, games and practices. There is yet to be an announcement about when football is likely to recommence.

Only in the case of the “Liga de Ascenso” (which is the Professional Second Division), the Mexican Federation decided not only to end the tournament with no winner, but to end this division and create a new League with a new format, eliminating the right to ascend and descend for six years. The explanation is that this is a measure that was planned before, but that the crisis derived from Coronavirus led to the change earlier than planned.

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

The government has established that although the majority of companies are not working, they have to pay their workers the complete salary. There is no formal unemployment insurance/benefit scheme, but it is trying to help some low-income people with certain aid.

b. The Federation and/or the League (common funding? Others?)

No specific measures. The Federation and the League have expressed that each club, as employer, has to take its own decisions or to get to arrangements with its players and other employees.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

There is no Association of Sports Doctors in México with the legal power to influence the decisions of the Federation, the League or clubs.

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

Each club is taking different decisions and they are keeping them confidential. Some of them have reduced the salary and other have postponed the payment of part of it. No club, as far as I know, has decided not to pay the players or general employees.

4. Do clubs negotiate with players, individually?

⁷⁶ Sports Lawyer and CAS Arbitrator

Yes, they normally negotiate with each of the players.

5. *Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?*

No. In México we have a Players Association, not a Players Union, with a limited power to negotiate, in a general way, with the League, the Federation or the Clubs. There is no collective labor agreement or anything similar.

6. *What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)*

In the Mexican Labor Law, there is an article establishing that in case an Employer has to suspend the labor relationship with their workers, due to a “health contingency”, it will have to pay its workers one minimum wage per day of suspension to a maximum of 30 days (no matter how long the contingency lasts). However the Federal Government (which is the only one that can declare that kind of contingency) has avoided to expressly declare, at least until today, a “health contingency”, calling it a “health emergency” using this different wording with the intention of avoiding the application of the mentioned article and to make the employers pay the complete salary or to make them negotiate with individual employees or unions.

7. *Is there any official reaction at national level to the FIFA guidelines on Coronavirus?*

Nothing official yet.

PARAGUAY

By Luis Kanonnikoff Dardano⁷⁷

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

The season in Paraguay follows the calendar year, running from January to December each year. The first division championships are divided into two tournaments “*Campeonato Apertura*” and “*Campeonato Clausura*”. On the 13 March 2020, due to COVID-19, the Paraguayan Football Association (“(APF)”) decided to suspend all official competitions including matches and training sessions. Until the date of suspensions of activities only eight journeys have been played in “*Campeonato Apertura*”, the tournament was in its early stages.

The second division tournament, professional category was due to start on the 21 March 2020 and was also suspended due to COVID-19.

All amateur competitions have been suspended before their starting dates. On 15 April 2020, the ExCo of APF decided to cancel youth and grassroots competitions both, male and female, for the entire season.

On 24 April 2020 Julio Mazzoleni the Minister of Health communicated the government’s plans to ease the lockdown and pass to a ‘smart quarantine’ starting from 4 May 2020. In this context, training sessions of professional clubs could resume on 25 May 2020. In light of this development, the ExCo of APF decided to postpone the decision about the recommencement of football to the 28 May 2020, based on the outcome of the ‘smart quarantine’ measures imposed in Paraguay.

In the meantime, Medical Department of APF, together with the doctors of the first division clubs, will continue to work on the health protocol as part of the plan for “*Campeonato Apertura*” restart.

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

The government has launched programs for citizens with low incomes and workers in the informal sector, consisting of one payment of approx. USD 90. The two programs combined have reached a total of 1.8 million citizens of Paraguay, as of date.

⁷⁷ Sports Lawyer. General Secretary of the Paraguayan Football Association (APF). <https://www.apf.org.py/p/la-secretaria-general>

On the other hand, the government also launched a package of measures to protect small and medium companies to provide easy access to credits with special rates of interest.

The government also decided to take a flexible approach to the payment of personal income taxes (IRP) allowing the payment in up to five installments without any interest being applied⁷⁸.

b. The Federation and/or the League (common funding? Others?)

Despite competitions remaining suspended at the moment, the APF continues to distribute broadcast revenue to all professional and amateur clubs. It is also seeking to secure other sources of funds to help the clubs during these difficult times.

Further, CONMEBOL has also made an important contribution to clubs participating in the Copa Libertadores and the Copa Sudamericana cups advancing 60% of the prize money⁷⁹.

Another key support of CONMEBOL is going to be the contribution of USD 14 million of the EVOLUTION program (similar to the FIFA FORWARD program) to its ten member associations⁸⁰.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

There isn't an association of sports doctors, but APF is working through its health commission to establish a medical protocol for the return of activities, a meeting with the medical staff of first division clubs will take place in a few days to continue this work.

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

First and second division clubs are facing challenges to comply with their obligations towards football players and coaches. Attempts are being made reach agreements, such as reductions and deferrals, although every case is different.

The majority of first division clubs have agreed a settlement with their players with respect to salaries for the duration of the pandemic. This process was easier for some than others. For example, a few clubs were already facing financial troubles before the pandemic, and for these clubs things are not quite easy to solve.

4. Do clubs negotiate with players, individually?

In general, negotiation occurs at each club with the captains of each team, who represents the players. Once an agreement is reached, every player signs it.

⁷⁸ <https://www.mre.gov.py/index.php/noticias-de-embajadas-y-consulados/covid-19-el-gobierno-nacional-anuncia-medidas-economicas-y-sociales-para-afrontar-el-coronavirus>

⁷⁹ <http://www.conmebol.com/es/conmebol-anticipara-pagos-clubes-para-mitigar-el-impacto-del-covid-19>

⁸⁰ <http://www.conmebol.com/es/conmebol-entrega-14-millones-de-dolares-del-programa-evolucion-las-asociaciones-miembro-para>

5. *Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?*

No decision or agreement has been reached at a collective level. The president of the player's union in Paraguay (FAP) is advising the players, but as mentioned above, all decisions are at the club level, between the players and clubs.

6. *What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)*

In general terms, *force majeure* affects the validity of contracts, regulated in the Paraguayan Civil Code.

Professional football players are regulated in Paraguay by Law 5322/14 and subsidiarily to the labor law when compatible. The law 5.322/14 is silent in relation to events of *force majeure* and the possibility to terminate contracts, make cuts, or suspend the contracts. Therefore, this calls for an analysis of the labour laws of the country, which regulates these areas (article 71 for suspension of contracts and 78 for termination of contracts).

Article 71 (f) stipulates that contracts can be suspended due to *force majeure*, but this figure is linked to the Social Security in Paraguay. In my opinion, this figure cannot apply to professional football players because they do not contribute to the Social Security scheme.

Article 78 (d) states that contracts can be terminated due to *force majeure*.

Notwithstanding the above, clubs and players are still trying to reach different agreements in order to protect their relationships, in these difficult times for all concerned.

7. *Is there any official reaction at national level to the FIFA guidelines on Coronavirus?*

The document was analyzed in meetings of APF ExCo, and in a meeting with the presidents of first division clubs. APF explained to the clubs that the document contains guidelines and recommendations to use in negotiation with players, while also encouraging mutually agreeable settlements between clubs and players.

URUGUAY
By *Felipe Vazquez*⁸¹

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

On Friday, 13 March 2020 the Uruguayan government issued a decree⁸² for the suspension of all public events. Consequently, the Asociación Uruguaya de Fútbol (“AUF”) decided to suspend all professional and amateur championships.

At that moment, the local championship was in the fourth stage of competition “Torneo Apertura”.

At present, the AUF has not made any public announcement regarding the resumption or restarting of the national championship.

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

In addition to the decree mentioned above, the Government has increased flexibility regarding the labour unemployment insurance and the access to social security benefits because of the potential suspension of labor contracts and reduction of working hours.

Employers, in conformity to the Uruguayan labor law, are enabled to either suspend employment contracts or reduce working hours.

If labor contracts are suspended, the Government pays the employee (player) a percentage of his salary, with a maximum of approximately USD 1000.

If working hours are reduced, up to 25% of the player’s salary is covered by the Government. The remaining part of the salary, proportionally to the time worked must be paid by the employer (club).

b. The Federation and/or the League (common funding? Others?)

As mentioned earlier (see: [Brazil](#) and [Argentina](#)) CONMEBOL announced that clubs participating in continental championships (Copa Libertadores and Copa Sudamericana) can request for an advance of 60% of the prices that CONMEBOL pays for participation.

As FIFA recently announced a distribution of the total amount of USD 150.000.000 between the 211 federation members, AUF decided to distribute the amount received between the affiliated clubs in order to lend support during this financial crisis.

⁸¹ Sports Lawyer

⁸² https://medios.presidencia.gub.uy/legal/2020/decretos/03/cons_min_18.pdf

Given the local association's current financial condition and cash flow, it cannot offer any kind of economic support to local clubs.

But, in collaboration with clubs, the Federation is providing food baskets and other aid to the families of young players.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

No formal decision has been taken. However, AUF and the government, acting through the National Sports Secretary, are taking action by preparing protocols for training and for the return to competition.

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

In Uruguay, clubs have taken different measures in accordance to the labor and social security law.

Some clubs reduce players' working hours and supplement them with a 100% coverage of their regular wages. These clubs have announced that their decision is being reconsidered in light of the unknown prolongation of the pandemic.

Other clubs have suspended the labor contract and decided to complement the players' salaries.

Other clubs do not provide any kind of supplement or complement, and the player only receives what is due from the social security benefits. It is worth noting that in these cases, most or all players continue training alone under instructions of the team's coach. So, in fact, labor contracts are not strictly suspended.

4. Do clubs negotiate with players, individually?

In most cases, the club negotiates with representative players of the team on behalf of all and, in case of agreement, it becomes mandatory for every player of that particular club.

5. Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?

No collective decision or negotiation has been made.

However, in some cases, the Union of Players (Mutual Uruguay de Futbolistas Profesionales) helps the players that want to negotiate with the club regarding the amount of supplemental pay that had been decided.

6. What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)

Considering that we are facing a specific labor contract, the Uruguayan legal contractual principle that applies is “risk alienation” (Principio de Ajenidad de los Riesgos), by which the employee cannot support the economic or financial risk of the company (in this case, the clubs).

At a national level, there is a collective agreement that does not have any prevision in this regard, and, in my opinion, general principles of labor law will apply. Hence, and even though the COVID-19 can qualify as a “force majeure” event, that event don’t exempt the club to pay salaries to the players, or end the contract arguing “just cause”

Taking into account the labor principle, clubs, like any employer, can suspend the contract or reduce working hours. If so, the club must notify the Social Security office in order for the player to receive his due payment.

7. Is there any official reaction at national level to the FIFA guidelines on Coronavirus?

As of now, no official reaction was taken regarding the FIFA guidelines.

SECTION IV

AFRICA - ASIA - OCEANIA

AUSTRALIA

By *Anthony Lo Surdo S.C.*⁸³

1. *What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?*

On 24 March 2020, Football Federation Australia (“FFA”) suspended the Hyundai A-League with 6 games remaining in the regular season which was to be followed by a finals series. That suspension extended to all football-related activities including training.

On 23 April 2020, the FFA Chief Executive Officer, James Johnson released a press statement in which he said there was agreement between the FFA and the clubs that the season would be completed, *“Our goal is to deliver live, professional football and complete the Hyundai A-League 2019/20 season, and we have set a number of criteria that will define when this is going to be possible...”*

“We will resume play as soon as possible, and the first stage would see the players return to training. We would then schedule matches. It is difficult to see that process beginning before the end of May, but we will work with all stakeholders to achieve the earliest possible resumption....”

FFA will continue to work with the clubs as well as our broadcasters and provide a further update in May 2020.”

The season for semi-professional and amateur football leagues across the nation commences in April and ends in August. The commencement of those leagues and training for them has also been postponed indefinitely. Comments from Australia’s Chief Medical Officer, Professor Brendan Murphy made on 23 April 2020, suggests that the first COVID-19 restrictions to be eased may include community sport or amateur sport and a decision may be made by the Federal and State Governments in about mid-May 2020.

2. *What are the specific measures taken by:*

a. *The Government (unemployment benefits foreseen for workers in general? Other specific measures?)*

The Federal Government has introduced a number of measures to provide assistance to workers who have been stood down. Most relevantly, the so-called “Jobkeeper” scheme provides all workers who have been stood down and who otherwise qualify, a payment of \$750 per week. That payment is not means or asset tested. However, it only applies to Australian citizens and, accordingly, professional footballers from abroad will not qualify. No specific measures have been put in place for professional sportspersons.

⁸³ Barrister | Independent Arbitrator | Advanced Mediator; Arbitrator, Court of Arbitration for Sport (Football and General Lists) 12 Wentworth Selborne Chambers, Sydney; Lonsdale Chambers, Melbourne.

b. The Federation and/or the League (common funding? Others?)

It is not apparent that the FFA has provided any specific assistance to any of its member clubs or member federations.

Press reports on 23 April 2020 reveal that the FFA will be paid \$780,000 by FIFA as a crisis fund payment, before football's governing body releases \$230 million to be split between its 211 member federations.

The \$780,000 figure is an initial payment that will be made to every FIFA federation, alongside any remaining entitlements that each federation may be eligible for. FIFA also apparently proposes to pay all operational funding to each federation.

It is not apparent whether any of the Hyundai A-League Clubs or their players will receive any benefit from the payments proposed to be made by FIFA to the FFA.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

The Australian College of Sport and Exercise Physicians (“ACSEP”) is the pre-eminent professional body representing Sport and Exercise Physicians and Sport and Exercise Medicine in Australasia. The ACSEP does not appear to have taken a specific position on COVID-19 apart from emphasising measures that should be taken when exercising to limit the spread of the virus.

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

Recent press reports indicate that of the 11 clubs in the Hyundai A-League, 7 of the smaller and less financially robust clubs have stood down players and staff with no payment. The remaining 4 better resourced clubs continue to meet their obligations to players whilst at some of the Clubs staff have taken paid leave in order to cushion the financial impact upon their employers.

4. Do clubs negotiate with players, individually?

There is no evidence in the public domain to suggest that any of the Clubs are negotiating with individual players.

5. Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?

The Professional Footballers Association (“PFA”) has voiced its concerns publicly, including as recently as 1 April 2020, over decisions made by Hyundai A-League Clubs to stand-down players. The PFA CEO, Mr. John Didiluca, said that he was devastated by the clubs’ “reckless” actions to alleviate the financial impact of the coronavirus pandemic, but conceded he could do little to stop it as the PFA had been denied any negotiating forum by club bosses.

6. What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of

salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)

The relationship between the Clubs and the parties are governed by written contracts which are construed subject to any prevailing FIFA and FFA statutes and contract law which is based on Anglo/Australian common law principles. The terms of individual contracts are confidential as between the contracting parties including as to whether they contain any applicable *force majeure* or other contractual provisions permitting termination, stand-downs or the suspension and/or reduction of salaries in circumstances such as COVID-19.

Anecdotal evidence suggests that player contracts are unlikely to contain such provisions and that the decision by Clubs to suspend salaries may not have any contractual justification and that the decision by Clubs to stand-down players has been driven by economic considerations alone.

In the absence of an applicable *force majeure* or other provision of the contract permitting termination, the common law doctrine of frustration may enable a party to terminate a contract where events that occur post-contract, that were not foreseen by them at the time they entered into the contract and which renders performance pointless, more difficult or more costly and even impossible may result in the termination of the contract by operation of law. Arguably, the legislative, regulatory or executive action of a government, such as the restrictions imposed by COVID-19 may form the foundation, at least, for an argument that players' contracts have been frustrated justifying termination. However, there is no publicly available information to suggest that any Club has sought to terminate any player contracts on any basis.

7. Is there any official reaction at national level to the FIFA guidelines on Coronavirus?

With more than 100 players out of contract after 31 May 2020, if the A-League does resume, competition would almost certainly stretch beyond that date. On 24 April 2020, Mr. Johnson, the FFA CEO said that the FIFA guidelines on COVID-19 allow the FFA to work with clubs and the PFA to find a solution. Mr. Johnson noted that the FIFA guidelines “...are not something we can enforce but they're certainly guidelines that we can use in discussions with the PFA and the clubs to try to find a pragmatic solution once we're a bit clearer on when the date we would resume the A-League is.”

CHINA

By Guo Cai⁸⁴ and Shaun Dong⁸⁵

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

Suspension of sporting activities in China originally dated back to 23 January 2020, when a notice from the Chinese Federation of Automobile and Motorcycle Sports (中国汽车摩托车运动联合会) suggested that all sporting events must be suspended at least until April, as directed by the General Administration of Sport of China⁸⁶.

Football games specifically in China have remain suspended since 30 January 2020, when the Chinese Football Association (CFA) officially announced that football games of all levels and all categories must be postponed due to COVID-19⁸⁷. The announcement was actually preceded by another CFA notice on 25 January 2020 relating specifically to the postponement of the CFA Super Cup, originally scheduled on 5 February 2020 in Suzhou, Jiangsu Province. The CFA Super Cup is the Chinese equivalent to the English FA Community Shield, contested by the winners of top division of professional league (Chinese Super League, “CSL”) and the CFA Cup last season.

Unlike Europe, the 2019 football season in China has fortunately already finished, and the new 2020 season had yet to start when sport was put on hold. This means that legal and regulatory issues arising from the suspension of the season are probably less complex in China compared to Europe, where leagues have been suspended part way through. According to the official timetable announced by the CFA on 22 January 2020⁸⁸, the CSL’s new 2020 season was scheduled to commence on 22 February 2020 and conclude on 31 October 2020. The second division of China’s professional league, CFA China League, was supposed to run between 29 February 2020 and 1 November 2020⁸⁹. The third division was originally scheduled between 11 March 2020 and 1 November 2020⁹⁰.

The date to resume football games and other team sports (or sports involving large gatherings, such as marathons) remains unclear at the time of going to press. On 31 March 2020, the General Administration of Sport issued a notice (Ref. Ti Ban Zi (2020) No. 47) to all provinces, municipalities and in particular, the CFA and the Chinese Basketball Association, which reiterated that “marathon and sporting games involving gathering of people must not be resumed until further notice”⁹¹. The principle was further reiterated by a

⁸⁴ Chinese lawyer specialised in sports dispute resolution and international law, Jin Mao Law Firm, who runs the LexVeritas China Sports Law Blog on LawInSport.

⁸⁵ Director of the China Sports Law Centre.

⁸⁶ NetEase Sports, “The General Administration of Sport Directed All Sporting Events to be Suspended before April”, 23 January 2020, <https://sports.163.com/20/0123/12/F31TULG700058780.html>.

⁸⁷ CFA, “Notice regarding the postponement of the 2020 Football Season”, 30 January 2020, <http://www.thecfa.cn/lstz/20200130/28537.html>.

⁸⁸ CFA, “Notice on CSL 2020 Season Match Schedule”, 22 January 2020, <http://www.thecfa.cn/lstz/20200122/28529.html>.

⁸⁹ Playoffs are to conclude on 14 November 2020.

⁹⁰ Playoffs are to conclude on 14 November 2020.

⁹¹ The General Administration of Sport of China, “Notice on Temporarily Not Resuming Large-Scale Events Such As Marathon”, 31 March 2020, <http://www.sport.gov.cn/n316/n337/c946505/content.html>.

State Council Notice (Ref. Guo Ban Fa Ming Dian No. (2020) 16) issued on 8 April 2020, stating that “*sporting activities involving large gathering such as marathon shall not be held at this moment*”⁹².

While football games are suspended, teams and clubs continue to carry out their respective training programs, although training camps and calling up players from different teams was cancelled in February⁹³. As the situation in China gradually improves, there are positive signs suggesting that football and sports might come back to China in a foreseeable future. On 27 March 2020, China Women’s Football National Team called up players for training in Suzhou (2-30 April 2020)⁹⁴. On 29 April 2020, China Men’s Football National Team called up players for training in Shanghai (10-27 May 2020)⁹⁵.

In addition, gyms and recreational spaces in China have largely reopened as at the time of press, although in Beijing combative sports (involving physical confrontation) and aerobic exercise are still not allowed in gyms.

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

The Chinese Football Association (CFA) has not yet introduced relevant policies on the issue of player wages (the CFA is likely to issue guidance salary reduction).

In general, the government has focused more on resuming economic activities and bringing the workforce back to work, instead of distributing unemployment benefits (if not covered by applicable unemployment insurance) to individuals. Alleviating measures were mostly directed towards small and medium enterprises, such as waiving or extending the deadline to pay tax and employee social insurances. In April, the State Council decided to waive three months of rents payable by certain small enterprises that rent state-owned properties.

Due to COVID-19, the State Council extended the spring festival public holiday (originally ending on 30 January) to 3 February 2020. In some municipalities such as Shanghai, the municipal government directed that work should not be resumed before 9 February. But after 9 February, economic activities in most part of China have gradually resumed, despite initial difficulties for workers to return from their hometown to their workplace due to travel restrictions. As of April 2020, the majority of Chinese cities have almost recovered and city life is relatively back to normal (with appropriate cautions, of course).

b. The Federation and/or the League (common funding? Others?)

⁹² Sports.cn, “The State Council: Temporarily Not Resuming Sport Events Involving Large Gatherings Such As Marathon”, 10 April 2020, <http://www.sports.cn/hyxx/2020/0410/314353.html>

⁹³ On 22 January 2020, the CFA announced that a training camp for women’s football teams in China, originally scheduled between 31 January and 23 February 2020 in Yunnan Province, must be cancelled. Each team may conduct training on its own

⁹⁴ The CFA, “Notice on Organisation of Training Camp for China Women’s Football National Team”, 27 March 2020, <http://www.thecfa.cn/jxtz/20200327/28612.html>.

⁹⁵ The CFA, “Notice on Training Camp for China Men’s Football National Team”, 29 April 2020, <http://www.thecfa.cn/jxtz/20200429/28617.html>.

According to a CFA announcement on 9 April 2020, a salary cut proposal has been agreed for all three tiers of professional football in China. Furthermore, wage cuts are enforced with effect from 31 March 2020 until the start of the next (2020) season. Further details relating to salary cuts remain undisclosed.

Currently, there is no such concept of common funding or other initiatives by the Federation and/or the League. This is partly due to the fact that independent football leagues (such as CSL) and related mechanisms have yet to be fully established, although the plan is currently in the pipeline. On 16 October 2019, the CFA set a rough timetable for establishing an independent CSL, with an announcement that the CFA would withdraw from the operation of CSL to allow its full autonomy. Reference was made to the European leagues and the CFA is anticipated to only perform a supervisory function going forwards⁹⁶. The plan is widely viewed as an essential step towards the professionalisation and commercialisation of Chinese football.⁹⁷ On 14 April 2020, the CFA reiterated in an official announcement that the plan to establish the professional league council has been ongoing.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

Currently there is no association of sports doctors in China.

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

The situation varies among clubs. As far as we know, there are clubs that suspend salary payment, but in some clubs, the annual salary of their players (except for game bonuses) has not been affected. However, in the future, the club may consider CFA guidelines and take certain measures to reduce salary based on consultations with players.

There have been reports regarding salaries owing to players, especially by clubs from lower divisions that lost their registration status for the 2020 season. This makes claiming for outstanding salary even more difficult because the CFA Arbitration Commission arguably loses jurisdiction over clubs that are no longer registered with the CFA. However, such salary issues mostly arise from the concerned clubs' operational difficulty rather than COVID-19 *per se*.

While there are confirmed reports that several CSL clubs have delayed salary payment,⁹⁸ it is also reported that big CSL clubs are well funded and are not concerned about salary reduction.⁹⁹

On 28 April 2020, Xinjiang Tianshan Leopard FC, a club from the second professional division (CFA China League), announced that it had to dismiss its women's team

⁹⁶ People's Daily, *Chinese Professional Football League Will Be Set up Soon*. Page 09, 17 October 2019.

⁹⁷ Cheng Shan, Soccer News, "League Advocates the Supervision Pattern of EPL, CFA Could Have Veto Power on Major Issues", <http://sports.sina.com.cn/china/j/2019-10-17/doc-iicezuev2735378.shtml>.

⁹⁸ PP Sports, "Policy on Salary Reduction Yet to Be Issued; Several CSL Clubs Delayed Salary Payment", 24 April 2020, <http://www.ppsport.com/article/news/905618.html>.

⁹⁹ According to Osports Media, some CSL clubs did not consider deducting players' salary, 22 April 2020, <https://xw.qq.com/cmsid/20200422A0KCE900>.

(established in late 2019) due to the operational difficulties caused by COVID-19¹⁰⁰. Just a few days before (on 24 April 2020), it was reported that the same club's men's team reached agreement on players and coaches salary reduction. The club, players and coaches reached consensus "following three rounds of sufficient communication",¹⁰¹ making it the first professional football club to implement a salary reduction in China.

4. Do clubs negotiate with players, individually?

China has not yet established a nationwide player's union. In general, clubs in China need to negotiate with their players on an individual basis and follow the guidance of the CFA's upcoming salary reduction policy. However, it seems that some clubs are able to negotiate with their players (or coaches) in group meetings and reach consensus on a voluntary basis, as seen in Xinjiang Tianshan Leopard FC discussed above.

It is interesting to note that Hao Haidong, a prominent (former) player and celebrity in the Chinese football community, recently made a public appeal to set up players' union in China¹⁰².

5. Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?

Not yet. Currently, China does not have the infrastructure to facilitate collective bargaining in football, or sports in general.

The professional football clubs reportedly made a collective decision to reduce players' salary subject to further guidelines. On 9 April 2020, the CFA announced that a virtual conference had been convened where representatives of the clubs (from the CSL and the second and third divisions) agreed, in principle, on a reduction of salary provided that clubs and players' representatives held "sufficient discussion". The reduction would be applicable from 1 March 2020 to the commencement of the 2020 season. The CFA announcement was to be followed by detailed guidelines with input from clubs, players, coaches and legal professionals¹⁰³.

It is worth noting that the agreement between Xinjiang Tianshan Leopard FC and its players (as well as coaches) to deduct salary, as discussed under Question 3, came about following the CFA announcement on 9 April.

6. What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)

¹⁰⁰ Sun Zhe, Xinhua News Agency, "Xinjiang Tianshan Leopard FC Women's Team Dismissed", 28 April 2020, <http://www.ppsport.com/article/news/905618.html>.

¹⁰¹ Sun Zhe, Xinhua News Agency, "Xinjiang Tianshan Leopard FC Took the Lead on Salary Reduction for Long-term Development", 27 April 2020, <http://sports.people.com.cn/n1/2020/0427/c22134-31688946.html>.

¹⁰² Hao Haidong's Weibo, 17 April 2020.

¹⁰³ Lanxiong Sports, "The CFA: Consensus on Salary Reduction, Applicable from 1 March to the Commencement of New Season", 9 April 2020, <http://www.lanxionsports.com/posts/view/id/18623.html>.

This is a difficult question to answer from a Chinese perspective, as the legal status of footballers in China is not yet clear.

The PRC Law recognises the doctrine of *force majeure*. More specifically, the principle has been codified in Article 180 of the General Provisions of Civil Law, which provides that “*where the non-performance of civil obligations is caused by force majeure, no civil liability shall arise therefrom, except as otherwise provided by law*”. In the same provision, *force majeure* is defined as “*any objective circumstance that is unforeseeable, inevitable, and insurmountable*”.

Also of relevance might be the “change of circumstances” doctrine recognised in the Interpretation II of the Supreme People’s Court on the PRC Contract Law. Article 26 of this judicial interpretation provides that:

“*where any significant, unforeseeable change of circumstances occurs after the formation of a contract, which shall not be characterised as business risk, and not caused by force majeure, the people’s court could modify or rescind the contract under the principle of fairness case-by-case, should the performance of the contract become manifestly unfair to one party, or the contractual purpose be frustrated*”.

Although Articles 35 and 36 of the PRC Labour Contract Law provide that an employee and employer may reach an agreement to amend or terminate a contract, the provisions do not seem to assist much as issues arise exactly where no agreement could be reached. In addition, there has been increasing consensus found in jurisprudence that the PRC Labour Contract Law does not necessarily apply to professional football players, as there are industry-specific regulations applicable to players’ contracts (namely FIFA and CFA regulations). It is not uncommon for the people’s court or labour arbitration commission to defer employment related cases involving football players to the CFA Arbitration Commission.

7. Is there any official reaction at national level to the FIFA guidelines on Coronavirus?

The CFA-convened virtual conference participated in by club representatives and the subsequent announcement of 9 April 2020 (as discussed under Question 5) is believed to be an official reaction to the FIFA Guidelines. In its announcement, the CFA stated that the virtual conference was convened “in response to the FIFA Guidelines and clubs’ demands”¹⁰⁴. The CFA reportedly exchanged several communications with FIFA regarding salary issues. In a letter addressed to the CFA, Mattias Grafström, FIFA’s Deputy Secretary General (Football), endorsed the “CFA’s proactive approach in assisting the clubs, players and coaches in finding a balanced solution”. “FIFA supported the CFA to form its own guidelines under the FIFA Guidelines, taking into account the national law and local circumstances”¹⁰⁵.

According to media reports, a consultation document was subsequently circulated to clubs providing two potential options:

¹⁰⁴ Lanxiong Sports, “The CFA: Consensus on Salary Reduction, Applicable from 1 March to the Commencement of New Season”, 9 April 2020, <http://www.lanxionsports.com/posts/view/id/18623.html>.

¹⁰⁵ *Ibid.*

- i. Clubs may implement a pay cut of not less than 30% to players and coaches from the same club, in a uniform manner, starting (retroactively) from 1 March until the commencement of the 2020 season; or,
- ii. Alternatively, clubs may pay 10% of the contractual salary (or the local minimum monthly wage, whichever is higher), and compensate the remainder of the contractual salary after the 2020 season commences (which must be paid in full before the finish of the season)¹⁰⁶.

The above plans shall not apply to non-playing staff members.

¹⁰⁶ PP Sports, “CFA Provided Two Options to Clubs for Salary Adjustment”, 22 April 2020, <http://www.ppsport.com/article/news/904177.html>.

INDIA
By *Deep Ray*¹⁰⁷

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

On 14 March 2020, following the issuance of advisories by the Ministry of Health & Family Welfare, Government of India and directives issued by several State Governments, the All India Football Federation (“AIFF”) announced through a statement on its official website that effective from 15 March 2020, all professional and amateur football leagues will remain suspended until 31 March 2020¹⁰⁸. Currently, a nationwide lockdown has been imposed by the Government of India till 3 May 2020, and all sporting activities, including training remains suspended until further notice.

The top professional division in the country, the Indian Super League (ISL), concluded on 14 March 2020, and therefore, remained largely unaffected by this decision (although the final match was played behind closed doors). It is worth noting that the ISL is a closed league, and currently there is no provision for promotion and relegation.

On 21 April 2020, the Executive Committee of the AIFF, issued a media release on the official website¹⁰⁹, wherein it has been stated that the I-League, i.e. the second division is to be considered to have been concluded, and the remaining matches are to be cancelled. Mohun Bagan, the club which had already secured the league title on 10 March 2020¹¹⁰ was officially declared the I-League champion for the 2019-2020 season.

Furthermore, the AIFF has declared that the remaining prize money for the I-League 2019-2020 season, apart from the prize money won by the champions, will be divided equally among the rest of the participating clubs. Although the I-League is an open league, the AIFF has decided that no relegation will take place with regard to the recently concluded season.

With respect to the I-League second division, *i.e.* the third division in the Indian football pyramid, the status remains uncertain. It has however been mentioned in the AIFF media release that the federation intends to discuss with the Asian Football Confederation regarding the feasibility of organizing a shorter duration tournament next season with the possibility of qualification to the I-League. Currently, it is unclear whether the league would recommence from the point at which it was suspended, or whether it would start afresh. As per the AIFF media release, all youth leagues in the current season remain concluded, and will start afresh from 2020-21 season.

2. What are the specific measures taken by:

¹⁰⁷ Sports Lawyer.

¹⁰⁸ AIFF Statement, 14 March 2020, <https://www.the-aiff.com/article/aiff-statement-10>

¹⁰⁹ AIFF Executive Committee approves recommendations of League Committee, 21 April 2020, <https://www.the-aiff.com/article/executive-committee-approves-recommendations-of-league-committee>

¹¹⁰ AFC congratulates ‘FC Goa, Mohun Bagan and ATK for winning season titles’, 16 March 2020, <https://www.the-aiff.com/article/afc-congratulates-fc-go-mohun-bagan-and-atk-for-winning-season-titles>

a. *The Government (unemployment benefits foreseen for workers in general? Other specific measures?)*

On 20 March 2020, the Ministry of Labour and Employment, Government of India issued an advisory to all public and private organizations whereby employers were advised to refrain from terminating the services of their employees or reducing their wages¹¹¹.

It would be pertinent to note that football players in India cannot be considered to be employees in accordance with Indian labour laws. This is because, their contracts are structured as ‘service contracts’ rather than ‘employment contracts’. This effectively means that players are not entitled to certain rights and benefits, otherwise available to employees in India under applicable labour laws.

Hence, it is unlikely that the advisory issued by the Ministry would have much relevance to football players. The relationship between players and clubs would continue to be governed by the terms of the agreements entered into between the parties.

b. *The Federation and/or the League (common funding? Others?)*

No official announcement has been made in this regard by the AIFF, or any of the league governing committees.

c. *Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?*

The Indian Association of Sports Medicine has not issued any guidance on the matter.

3. *How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)*

While several clubs are attempting to negotiate with players in order to find mutually acceptable solutions, there have been reports of clubs suspending salaries indefinitely, or even opting to unilaterally terminate employment agreements contending the occurrence of *force majeure*.

It remains to be seen how the AIFF is going to tackle such issues, since it is inevitable that domestic players (in some cases foreign players) will approach the federation with their grievances against clubs.

4. *Do clubs negotiate with players, individually?*

In some cases, clubs have approached players individually. However, I have received several reports of players attempting to collectively negotiate with their employer *vis-à-vis* pending salaries and possible settlements.

5. *Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?*

¹¹¹ Available at: https://labour.gov.in/sites/default/files/Central_Government_Update.pdf

As per my knowledge, the Football Players' Association of India ("FPAI") is assisting some players in their negotiation with clubs. But since the FPAI is not recognized as an official player representative body by the AIFF (although it is recognised by FIFPro and continues to represent players in disputes when called upon), their power to negotiate with clubs/leagues remains limited.

6. What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)

Most player agreements in India contain a standard *force majeure* clause, which in some cases envisions the option of suspension of the contract due to the impossibility of performance due to an epidemic. It is to be expected that some clubs will attempt to invoke such clauses in order to be absolved from the liability of paying players their salaries during the period in which football activities remain suspended.

In the Indian context, the principle to be borne in mind while interpreting a *force majeure* clause is that it must be narrowly construed¹¹². In my opinion, such *force majeure* clauses have limited applicability in an employment context and may only be invoked in case the unforeseen event results in the impossibility of performance of the obligations stipulated in the contract. Considering the fact that the league seasons in India have not been cancelled, and the leagues have been simply been declared to have been concluded, with the winners being announced and the prize money being distributed, it remains doubtful whether clubs can rely on such *force majeure* clauses to limit their liability.

Clubs could also look to rely on the *doctrine of frustration*¹¹³. In the Indian context, *frustration* is a statutory remedy enshrined in Section 56 of the Indian Contract Act¹¹⁴. It would be relevant to note that there is no general liberty reserved to the courts to absolve a party from liability to perform his part of the contract, merely because on account of an unforeseen turn of events, the performance of the contract may become onerous or commercially undesirable. Consequently, in my opinion, while examining the applicability of *force majeure*, the primary issue to be ascertained is whether the fulfillment of the object of the contract has become impossible due to the pandemic situation.

7. Is there any official reaction at national level to the FIFA guidelines on Coronavirus?

There has been no official statement or reaction to the FIFA guidelines.

¹¹² Energy Watchdog and Ors. v. Central Electricity Regulatory Commission and Ors., (2017) 14 SCC 80, Available at: <https://indiankanoon.org/doc/29719380/>

¹¹³ The doctrine of frustration is present in S. 56 of the Indian Contract Act 1872 wherein it has been stated that any act which was to be performed after the contract is made becomes unlawful or impossible to perform, and which the promisor could not prevent, then such an act which becomes impossible or unlawful will become void.

¹¹⁴ Available at: <https://indiankanoon.org/doc/171398/>

JAPAN
By Takuya Yamazaki¹¹⁵

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

- All J-League football matches after February 28, 2020 have been postponed. The J-League has not decided what to do with matches after May 30, 2020 but has expressed the possibility of matches behind closed doors.
- The Japan Football Association (JFA) Championship has decided to reduce the number of participating teams from 88 to 50 and delay the opening of the tournament from May to September with a shortened knockout format.
- Women's Football, the *Nadeshiko* League, has been suspended with no clear reopening date.
- Many players in the *Nadeshiko* League and are amateur players, so the above analysis covers many amateurs. Amateur athletes in other sports have also stopped training and competition activities due to social distancing requests from the national and local governments.

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

The government has announced emergency funding in the form of low-interest and/or forgivable loans for companies to cover their operating expenses, including payroll costs. The unemployment insurance also helps employers cover a percentage of employees' salaries while on paid furloughs. However, athletes are not considered employees under the current interpretation of Japanese employment law. Therefore, they cannot benefit from such government assistance.

To the extent eligible, some athletes may be able to apply for limited loans and grants as sole proprietors or independent contractors. There is also a 100,000 JPY COVID-19 emergency payment to all Japanese residents.

b. The Federation and/or the League (common funding? Others?)

The J-League has announced emergency funding in the form of uncollateralized loans for its clubs.

¹¹⁵ Sports Lawyer and CAS Arbitrator

- c. *Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?***

There is no association of sports doctors in Japan, thus no official medical position has been taken.

- 3. *How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)***

Discussions about cutting player's wages have emerged in baseball and football, which could pose a serious problem to those players who earn lower wages and those who had a lot of income in the previous year and thus have a high tax bill to pay. The clubs and players' associations are expected to negotiate this issue in the coming months.

In the meantime, all 28 players of Hokkaido Consadole Sapporo have returned a portion of their salaries to the club to help the club with its operational cost.

- 4. *Do clubs negotiate with players, individually?***

Depending on the sport. In sports with organized players' unions, such as baseball and football, the unions will be involved in the negotiations. The heads of The Japan Professional Baseball Players Association ("JPBPA") and the Japan Pro-Footballers Association ("JPFA") have already expressed their reservations about player salary reductions in light of the pay cut discussions, but no formal proposals have been put forward by the leagues or federations. Athletes in sports without organized players associations will be largely left to fend for themselves.

- 5. *Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?***

Not yet.

- 6. *What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)***

Generally speaking, a party is exempt from its contractual obligations if its performance has been rendered impossible by a *force majeure* event, provided that the *force majeure* clause in the contract covers such a situation. Many contracts in Japan either do not have a *force majeure* clause or have a *force majeure* clause that does not cover epidemics or pandemics. Neither the professional football nor baseball standard agreement contains a *force majeure* clause.

- 7. *Is there any official reaction at national level to the FIFA guidelines on Coronavirus?***

Not yet.

SOUTH AFRICA
By Johan van Gaalen¹¹⁶

1. What is the current status of the championships in your country (professional and amateur categories)? Suspension of any sports activity (training and/or games?), championship over?

In South Africa, all professional football leagues and amateur football (therefore all football activities) have been suspended since 18 March 2020, including training and matches.

The South African Football Association (“SAFA”) have announced that domestic competitions can only be preceded with on two conditions, namely that the South African Government declares that it is safe to proceed with football competitions and when domestic flights are reinstated.

The national lockdown has been divided into five (5) levels. As from 1 May 2020 the lesser effected areas will go into a level four (4) lockdown. During this time period no training and/or football of whatsoever nature will be allowed.

Professional players will be on personal training programs given to them by their clubs and it will be up to each player to ensure it keeps fit in order to return to the practice field in the unknown future.

No decision has yet been made as to how to determine the league seasons; however, time is running out and decisions need to be taken as soon as possible.

2. What are the specific measures taken by:

a. The Government (unemployment benefits foreseen for workers in general? Other specific measures?)

The Government has called upon employers (which also includes professional football clubs) who are registered with the Unemployment Insurance Fund (UIF) to apply for the Covid-19 benefits through the Temporary Employer/Employee Relief Scheme on behalf of their employees.

As part of its response to the Covid-19 pandemic, the Government has issued a directive for relief to be provided to contributors who have lost income or required to take annual leave as a result of the Coronavirus breakout.

The claims for relief through UIF will be a percentage of an employee’s salary, according to

¹¹⁶ Sports Lawyer from South Africa, Van Gaalen Attorneys. Member of FIFA Dispute Resolution Chamber and member of the FIFA Players Status Committee. Johan was recognised by Who’s Who Legal as a leading sports lawyer in South Africa since 2013 till to date.

a legislated sliding scale from 38% (for the highest earners) to 60% (for the lowest earners). The maximum benefit is R6,730 a month.

Furthermore, employers can now claim back up to R1,500 a month per employee who earns less than R6,500 (for those younger than 30), and R750 for those 30 and older. These amounts will be paid back every month by the SA Revenue Service (Sars) as part of the Employment Tax Incentive (ETI) program.

b. The Federation and/or the League (common funding? Others?)

Neither SAFA nor the South African Premier Soccer League (“PSL”) have advanced any additional funds.

However, it must be noted that the PSL, even since lockdown has continued to make its monthly grant payment to all professional league clubs.

c. Is there any specific position taken by the Association of sports doctors? If yes, are the federations bound by such a decision?

There is no association of sports doctors that make any decisions which are binding on the football leagues.

Football in South African is only subject to the directives and protocols of the Government.

3. How are clubs currently tackling the salary issue (suspension of payment of salary (for how long)? No payment at all?)

It differs from clubs to clubs. Certain clubs continued to pay their player full salaries, whereas certain clubs unilaterally decided to deduct to the amount of 50% of players’ salaries as from the end of April, despite the Government making provisions for these clubs to claim from the UIF fund and the fact that the PSL continues to pay the monthly grants.

Negotiations have started between certain clubs and players, considering the uncertain time going forward and that Government has not yet made any decision as when sport / football may return to action.

4. Do clubs negotiate with players, individually?

Yes. Certain clubs attempt to exclude the South African Football Players Union (“SAFPU”) from the negotiations, in order to “abuse” the illiteracy of players not knowing their rights and entitlements. SAFPU have been attempting to negotiate with clubs on behalf of players however individual clubs are pursuing negotiations with their players depending on its own financial situation.

5. Have there been any negotiations and/or decisions taken at a collective level between trade unions and clubs/leagues/federations?

No. There are no ‘collective decisions’ being made per se, as it is up to each individual club and player / SAFPU to determine how it will proceed.

6. What are the legal and contractual principles in your country at the basis of any decision taken by the Federation/leagues/clubs with regard to the suspension of salaries due to an event of force majeure like the coronavirus (ex. Termination of the contract? Suspensions of salary? Salary cuts and to what extent?)

The terms of an employment agreement can only be changed by mutual agreement. An employer who imposes a unilateral amendment to an employment contract (such as suspension of wages or wage cuts) without the employee's express agreement will be in breach of contract and the original terms of the contract will remain in place.

Players, due to the Government's promulgated regulations and the present situation caused by the COVID-19 pandemic in South Africa, were therefore unable to render their services, despite the players willing to play and train.

Furthermore, the standard football contract applied to by all professional clubs do not contain a *force majeure* clause, making provision for the suspension of "work" due to a pandemic.

Any club who unilaterally implement the reduction of salary, will be regarded as unlawful conduct.

In terms of Section 34 the South African Basic Conditions of Employment Act ("BCEA"):

"(1) An employer may not make any deduction from an employee's remuneration unless—
(a) subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or
(b) the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award."

The above section of the BCEA even goes further in that if the parties agree to any sort of salary deduction, the deduction per month may not be greater to 25% of monthly salary.

Not only is the unilateral amendment of a player's employment conditions unlawful, it may also result in a breach of contract, which may entitle the player to terminate his employment contract. Therefore, it is important that during these unknown circumstances and times, both parties (club and players) carefully consider how to approach the working relationship going forward during a lockdown period and/or limited times of practice and/or playing matches as a result of a pandemic.

7. Is there any official reaction at national level to the FIFA guidelines on Coronavirus?

No official reaction.