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**HOW THE BIG FIVE AND OTHER LEAGUES FACE THE BIG
FIGHT AGAINST COVID-19**

*A comparative analysis of measures to combat the effects of COVID-19
on the football industry*

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Introduction

On 7 April 2020, FIFA enforced with immediate effect, certain guidelines 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.¹ 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 the global football community is certainly united in its effort to minimize the impact of the pandemic on it, the measures adopted by each of them are bound to differ, considering the circumstances and laws prevalent in each jurisdiction.

This prompted the Sports Law and Policy Centre to undertake a survey, jointly with LawInSport, which sought to review recent developments, highlight best practices, and offer solutions to face the crisis, while above all providing readers and the wider sporting community with the opportunity to “rethink football”

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¹ The FIFA COVID-19 FOOTBALL REGULATORY ISSUES – V 1.0 (April 2020) are available at <https://img.fifa.com/image/upload/zyqt4bxgupp6pshcrtg.pdf>.

and make it more sustainable. The survey (updated to 5 May 2020) is freely available and accessible at www.slpc.eu.

To provide a snapshot, an overview of the measures taken by the ‘Big Five’ European Leagues and those in 20 other jurisdictions has been set out below (section I and II respectively).

I. THE ‘BIG FIVE’ EUROPEAN LEAGUES

(England, France, Germany, Italy and Spain)

1. *Where do we stand at the moment?*

At the time of writing, the championships in four of the top five leagues in Europe, have been suspended with effect from mid-March 2020.

Remarkably, on 28 April 2020, contrary to the recommendations issued by the relevant association of sports doctors, the Government in **France** imposed a ban on all sports events, even if conducted behind closed doors, until September 2020. Relevant professional leagues will therefore be obliged to pass a decision accordingly, while amateur championships had been stopped on a permanent basis. The Professional Football League expectedly declared an end to their professional championships on 30 April 2020, with PSG awarded the title based on matches completed thus far. Legal action by clubs that were relegated and missed out on European competition places as a result of the early termination of the season, has been threatened.

With France being the first of the ‘big 5’ European leagues to take this measure, it remains to be seen whether this move will have a negative knock-on effect on other countries and football competitions.

In **England**, the championships of all professional football leagues are presently suspended but the FA hopes to resume the Premier League in the beginning of June. 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). In the meantime, most professional players will be on personal training programs given to them by their clubs.

In **Germany**, all football championships at professional and amateur were originally suspended.

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 up to 4-7 players.

Nevertheless, with Germany ahead of the curve and winning the battle against coronavirus, on 7 May 2020 Chancellor Angela Merkel provided the green

light for the restart of fixtures taking place behind closed doors amid a ban of mass gatherings in Germany until at least 31 August.

The government has stated that the Bundesliga and second-tier 2 could re-start in the second half of May adding that the German football league (DFL) would decide on the exact dates. The DFL have recently confirmed that games will resume on 16 May 2020.

As far as amateur teams are concerned, team training is still suspended. While there is a possibility that amateur leagues will be cancelled, nothing has been decided at the time of writing.

On 26 April 2020, in *Italy*, the government authorized Serie A football clubs to return to individual training on 4 of May and team training on 18 May 2020.

This means that the Serie A could potentially resume playing games in June, though the Italian Prime Minister stated that a decision will not be made until a later date, having taken into account the protocol issued by the FIGC Medical Committee, whilst the Italian Association of Sports Doctors has made clear its negative opinion on restarting competition.

The Italian Football Association has stated that it would defer the formal end of the season from 30 June 2020 to 2 August 2020 to allow time for remaining games to be played.

In *Spain*, the Government has declared a state of emergency, leading to the confinement in mid-March. However, even before that, the Spanish Football Federation took the decision to suspend certain matches. All professional football competitions are currently suspended. With respect to training, clubs have, as a general rule, suspended their activities. In fact, when Real Sociedad announced the return of their team to collective training, they were warned by the Sports Supreme Council not to do so.

2. *National government measures to tackle the crisis and their application to sport*

In general, all governments have adopted specific, urgent, and even extraordinary measures to tackle the economic crisis and its impact on work.

In *England* (and more in general in the UK) the Government introduced a 'Job Retention Scheme' (the "Scheme") for all employees, 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. Football clubs are entitled to apply for the scheme. Employers are entitled to 'top up' the furloughed salary to 100% if they wish.

While the players do not cease to be employees of football clubs if/while they are furloughed, they are not permitted to carry out any "work", in any capacity for their employer. This would include participating in club organized, group training sessions at respective training grounds. However, 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.

Clubs have made individual decisions on whether to furlough players and if so, whether to 'top up' furloughed players' salaries to 100%.

In **France**, the Government has facilitated the use of a partial unemployment scheme and it has even extended this to professional football. In practice, the club would compensate its players (and more generally all its employees, including non-playing staff) at 70% of their gross remuneration (approximately 84% net). Then the State reimburses the Club, up to a limit of 4,850 euros per employee.

Nevertheless, by putting players on a partial unemployment scheme, clubs are able to make considerable savings, financially. In fact, the compensation paid to the players is not subject to deductions for social charges.

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

In **Germany**, under certain circumstances, employers can invoke a so called "Kurzarbeit" (short-term working schemes), whereby the state steps into fund employee salaries, for up to 12 months. A reduction to "Kurzarbeit Null" (reduction to zero) is also possible, thereby absolutely absolving employers from their obligation to pay wages. As compensation, employees affected by such measures are receiving "Kurzarbeitergeld" (short-time allowance) by the government that amounts up to 87 % of their latest net income.

The Kurzarbeit and Kurzarbeitergeld are also available to sports clubs. However, since the Kurzarbeitergeld cannot exceed EUR4,623 per month net of tax, top earners like professional footballers, do not stand to benefit, as their loss of income would be far greater than the amount, they would be able to recuperate from the state.

In **Italy**, workers who are unemployed as a result of Covid-19 are entitled to be compensated. Such compensation differs based on their status. In addition to support from the central Government, the local authority in each region may further compensate the affected population. It remains to be seen whether these measures apply to football players.

In **Spain**, the government has enforced mechanisms to ensure that employment contracts are respected during the crisis. In addition, the Spanish government has also established that fixed term contracts must remain uninterrupted while sporting activities are suspended. An expedited system for the application and allowance of unemployment benefits has also been implemented.

3. *Measures taken by sports associations*

In **England**, the Premier League has advanced £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.

Interestingly, the players' union (the PFA) also has a hardship fund to which players can apply to claim assistance.

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. EUR224.5 million) to make up for the shortfall in broadcast rights monies caused by the termination of the 2019-20 season.

In **Germany**, the football federation is negotiating with banks and hedge funds for lines of credit for clubs that struggle financially. The Deutsche Fußball Liga ("DFL") has made available a reserve fund of EUR50 million for time of crisis.

Particularly significant, and surely an example to be followed in other member associations, Germany's UEFA Champions League representatives, namely Bayern Munich, Bayer Leverkusen, Borussia Dortmund and RB Leipzig decided to forgo EUR20 million and donate it to clubs suffering from financial difficulties.

Meanwhile the DFL and most of the TV broadcasters (in particular "Sky", "DAZN" and "ARD") reached an agreement regarding the broadcasting rights. In May, 1/3 of the outstanding broadcast amounts will be payable, while the remaining 2/3 will be payable in instalments on each matchday. In return for their willingness to pay 1/3 upfront, the TV broadcasters will benefit from a discount on the overall rate. Notably, the DFL and broadcasters have agreed upon a mechanism that would allow broadcasters to claim a refund of the 1/3 paid upfront, in the event that the season is cancelled. Details of this agreement have not been released in the public domain. According to media coverage, so far, no agreement could be reached with "Eurosport/Discovery".

In **Italy**, the Professional League of Serie A has proposed a common approach to be adopted by all clubs, with respect to pay cuts. According to this proposal, 4 months of players' salary will be deducted in the event of an early cancellation of the Serie A season and 2 months deductions in case of postponement and eventual conclusion of the season.

In **Spain**, the football federation (the "RFEF") has announced aid in the form of a preferential state treasury advance of EUR4 million. Notably, such aid seeks to support national level, non-professional clubs and futsal clubs with professional football players in their teams. These grants are intended to support clubs paying the salaries of players and coaches.

4. *Negotiations at collective level*

In *all 'Top Five' leagues*, football trade unions are striving to negotiate with clubs on behalf of players where possible, but at the time of writing, no result has been achieved.

Moreover, the position remains the same across all five leagues – even if an agreement with respect to salary cuts/arrangements is reached on a collective level – the specific economic conditions set out in individual employment agreements will still prevail. In other words, from a legal standpoint, no player can be obliged to accept a salary cut even if all teammates have accepted it.

It is worth noting that in **France** there were negotiations with the players' union (UNFP – national union of professional footballers) which resulted in declarations of principle which do not prevail on each employment contract. Those declarations concern reducing wages by 30% during the crisis and reimbursement of wage cuts after the crisis.

In **Italy**, clubs are negotiating with their respective players. The results will of course depend upon the agreement reached with each of the players.

Spain has seen some players voluntarily waive part of their remuneration, as demonstrated by the players of Atlético Club of Bilbao. Moreover, the Supreme Sports Council (Consejo Superior de Deportes) announced an agreement with the RFEF and La Liga, pursuant to which it would (a) invest/distribute part of the media revenues generated by football to other Olympic and Paralympic sports federations; and (b) create a EUR10 million fund to support vulnerable athletes. The Spanish football players' association (AFE) and other prominent associations have also been invited to partake in this initiative.

5. *Nature and scope of the clubs' negotiations with Players*

There is no common approach on the negotiations that Clubs and Players are currently having with regard to salaries in the light of the disruptions caused by the pandemics.

In **England**, given the varying degrees of financial health amongst clubs in the English Football League (i.e. the Premier League, the Championship and Leagues One and Two), a “one size fits all” solution is impossible to achieve.

While certain clubs continue to pay salaries and benefits in full, some have opted for relief from the UK government's ‘furlough’ scheme.

In addition, clubs have also asked their players to defer a fixed percentage of their salary and/or benefits to a later date. This would allow them to deal with cash flow shortages resulting from the suspension of professional football championships.

Other clubs have requested 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 the revenue authorities (HMRC) under the furlough 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 continue to negotiate a pay cut with their players, reported to be in the region of 10%.

Premier League players across all clubs, through a collective initiative called ‘Players Together’, have pledged a percentage of their earnings towards the National Health Service (NHS).

With respect to varying existing contracts, 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), 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, of 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 in this manner.

In **France**, clubs currently apply the above-mentioned partial unemployment benefits (*see paragraph 2 above*) and try to negotiate wage cuts with their players.

In **Germany**, some clubs (e.g. Eintracht Frankfurt) have applied for ‘Kurzarbeit’, (*see paragraph 2 above*) for their non-playing employees. In many cases, players agreed to temporary wage reductions, e.g. 20 % (Bayern Munich, Eintracht Frankfurt) or 10-20 % (Borussia Dortmund), valid in most cases until 30 June 2020.

In **Italy**, all clubs have suspended the payment of the salaries due from March, while negotiations at central level (League and trade union) are pending. Juventus, Rome but also Cagliari and Sassuolo were able to reach an agreement with the player for a reduction up to four months’ salary in case the Serie A will not be able to resume.

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

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 (but without 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.

6. *Relevant legal and contractual principles*

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

In practice, if a club unilaterally imposes a pay cut/deferral, players would have the option to terminate the contract. However, filing a claim for losses is a time-consuming process, with the added unlikelihood surrounding the player's ability to join another club until football resumes. This could potentially leave players without income for prolonged periods of time; meaning players are encouraged to consider their financial situations before making such decisions.

The Premier League and EFL standard contracts (collectively negotiated 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 employment contracts are frustrated pursuant to a government instruction (or, indeed, other circumstances) which prevents employers from providing work to its employees, and similarly, the employees from performing the work. It remains to be seen whether this approach to the doctrine of frustration will apply in the context of Covid-19. In any event, frustration of employment contracts under English law will turn on the specific facts and circumstances of each case. As far as we are aware, no club has sought to rely on force majeure and/or the doctrine of frustration at the time of writing.

In **France**, the employment contracts of professional footballers are framed by law pursuant to the French Sports Code and the Labour Code. These contracts are known as "specific fixed-term contracts". They can only be brought to an end for the following reasons, as established in law: (a) agreement of the parties, (b) serious misconduct, (c) inaptitude of the employee, (d) signing of an open-ended employment contract, (e) 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 (i.e. for the remaining part of the contractual duration) is justified. However, the crisis will necessarily be temporary, and force majeure can at best only lead to a "suspension" (partial unemployment).

In **Germany**, if a club decides to reduce the number of players it employs, it may choose to terminate contracts of “surplus” players under German Labour Law. However, this provision is very difficult to invoke and is hardly realistic.

Clubs may also terminate and at the same time offer the continuation of the contract with altered conditions (e.g. reduced wages). However, termination with a view to wage reduction is possible only under extreme circumstances (it must be the last measure for the employer to avoid insolvency).

Suspending employee salaries is not permissible under German law without the consent of the employee.

With regard to salary cuts, while the season 2019/2020 is on hold, the clubs do not have to pay premiums (e.g. for playing in a game [Einsatzprämie] or for winning games [Siegprämie]).

In **Italy**, only Clubs, being the employer, can unilaterally terminate employment contracts for force majeure. Nevertheless it is very likely that clubs will attempt to reach agreements on salary cuts or on deferral of payments with the players in order to avoid (a) the loss of valuable team assets; and (b) the loss of (re-)sale value for players who would otherwise have been sold for significant transfer fees, had their contracts not been unilaterally terminated.

In **Spain**, the legal and contractual principles which form the basis of suspension, modification or termination of employment contracts are strictly based on domestic employment law (the Statutes of Workers) rules. The hierarchy of sources of labour law established by the Statutes of Workers places (a) the law and regulations at the top of the pyramid; followed by (b) any collective bargaining agreements; (c) the agreements reached between the parties; and (d) customary law and professional practices at the bottom. However, it must be noted that a basic tenant of employment law is the general prohibition for employees to waive legally recognized rights.

7. *Official reactions to the FIFA guidelines on Coronavirus*

With the exception of **Spain**, none of the ‘top five’ European leagues have reacted to the FIFA Guidelines on Covid-19, issued on 7 April 2020 (“FIFA Guidelines”).

The FIFA Guidelines recognize the pre-eminence of national law, collective bargaining agreements and government decisions. The LFP and the FFF (in **France**) are obliged to consider the decisions taken by the French government first.

In **England** some of the FIFA guidelines 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, such provision cannot be unilaterally imposed by clubs on players under English 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.

In **Germany**, the “DFB” (“Deutscher Fußballbund”) adapted its “Spielordnung”, thus making an extension of the season beyond 30 June 2020 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 and so on. It also proclaimed its willingness to apply for a shift of the “Wechselperiode I” (transfer period I, more commonly referred to as the summer transfer window).

In **Spain**, the RFEF and La Liga have expressed their will to follow the FIFA recommendations and their preference for competitions to be finished by extending the current season, with contracts extended accordingly. For that purpose, the RFEF plans to release (this week) an official position in line with the definition of “season” in the FIFA RSTP.

II. THE OTHER LEAGUES

(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.
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		✓	

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		✓ (if provided for under a CBA)	
Chile			✓
Mexico		✓ (in the event of a 'health contingency')	
Portugal		✓ (employee entitled to 75% salary)	
Russia			✓
South Africa			✓
The Netherlands		✓ (last resort, in the event that individual/collective negotiations fail – applicable to modification of salary, not suspension.)	

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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.

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 world have been varied.

For instance:

- All governments from the big 5 leagues have endorsed 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 of them 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 clubs 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 (*Spain*) while all 28 players of Hokkaido Consadole Sapporo (*Japan*) have returned a portion of their salaries to the club to help the management with its operational cost.

The current crisis has left clubs with glaring cash flow problems for the next few months. However, it is equally important 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 to keep it afloat.

Thus, sports stakeholders should take this crisis as an opportunity to make football more sustainable by, for instance:

- 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;
- 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 clamoring to negotiate wage cuts/deferrals with their players, is indeed a paradox of the times we live in. Once the world and its globally digitalized society emerge from this crisis, will football clubs and institutions continue to spend 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?

What is certain however, is that 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.

Nel presente volume sono pubblicati i seguenti saggi:

ABUSI SESSUALI E BULLISMO NELLO SPORT

di *Renato Grillo*

L'Autore ha inteso svolgere uno studio, avente carattere di novità, sul complesso fenomeno degli abusi sessuali e del bullismo nello sport, partendo dal quadro di riferimento normativo delle varie condotte abusive esistente nell'ordinamento penale italiano, per poi effettuare una visione panoramica del fenomeno sia all'estero che in Italia e delle relative strategie di contrasto, corredato anche dai risultati di alcune ricerche svolte in diversi paesi esteri ed in Italia da studiosi del settore.

Una parte significativa dello studio è stata riservata all'esame comparativo statistico di dati ricavati dall'analisi di un consistente numero di sentenze emesse dalla Corte di Cassazione Penale sulla materia degli abusi sessuali in ambito sportivo nell'ultimo decennio e di altro gruppo di sentenze sullo stesso argomento emesse dai giudici sportivi negli ultimi otto anni, per poi passare all'esame delle differenze intercorrenti tra il procedimento penale ed il procedimento disciplinare sportivo ed alcuni rilievi critici.

L'ultima parte del lavoro è dedicata, oltre che all'esame del fenomeno del bullismo nello sport, anche alle iniziative in concreto esperite negli ultimi anni dal massimo Organo dell'Accusa nell'ordinamento sportivo rappresentato dalla Procura Generale dello Sport presso il CONI, nonché ad una sintesi di un'intervista rilasciata dal Procuratore Generale dello Sport presso il CONI su alcuni temi nodali relativi alla materia, ed, infine, alle riflessioni conclusive integrate da una serie di proposte per il futuro.

LO SPORT MONDIALE DI FRONTE ALLA SFIDA DEL COVID-19. TRA SOSPENSIONE DELLE COMPETIZIONI, STABILITÀ DEI CONTRATTI, DEFINITIVA EMERSIONE DEGLI E-SPORTS, IN VISTA DI UNA DIFFICILE RIPARTENZA

di *Alessandro Coni*

In questo 2020 il mondo sta affrontando un'emergenza globale a causa della diffusione del virus Covid-19. L'OMS ha dichiarato lo "stato pandemico" sollecitando i governi a prendere urgentemente provvedimenti per gestire il picco di contagio. Tuttora si assiste ad un'estrema incertezza in merito alle misure da adottare. In tale scenario, il mondo dello sport deve affrontare una crisi senza precedenti. Il primo approccio da parte delle autorità sportive di tutto il mondo non è stato uniforme. Tuttavia, al crescere della epidemia, le soluzioni sono divenute convergenti. La scelta comune è stata quella di sospendere qualsiasi evento,

considerando questa come la misura più adeguata anche in ragione della responsabilità che, a vario livello, federazioni, leghe e società sportive assumono nei confronti della salute pubblica e della sicurezza degli atleti. Tale decisione mette a rischio la stabilità dei contratti sportivi (ad es. i contratti di lavoro, le sponsorizzazioni, gli accordi sui diritti audiovisivi), nonché l'intero sistema. Molti considerano che la pandemia possa costituire una causa di forza maggiore idonea a sollevare le parti contraenti dalle loro obbligazioni. Tuttavia, l'applicazione di una siffatta categoria giuridica, sebbene riconosciuta a livello transnazionale, non appare applicabile in modo uniforme in tutte le giurisdizioni. Gli ordinamenti nazionali hanno una profonda comprensione di questo tema, sebbene risulti eterogeneo l'approccio a seconda del sistema giuridico preso in considerazione. Anche gli organi di giustizia sportiva hanno maturato una consistente casistica al riguardo, sviluppando un test rigido circa la sua applicazione. Rispetto alla condizione di crisi generalizzata, vi sono anche settori che prosperano. La mancanza di eventi dal vivo hanno condotto sia gli organizzatori di eventi sia i fan a rivolgersi verso le competizioni di eSports, che continuano a svolgersi, rimanendo per loro possibile giocare anche da remoto. Nonostante il successo degli eventi sportivi virtuali, permangono alcune perplessità sul rapporto tra sport tradizionali ed eSports.

RESPONSABILITÀ CIVILE DEGLI INSEGNANTI PER I DANNI CAGIONATI DALL'ALLIEVO AD UN ALTRO ALLIEVO O A TERZE PERSONE NELL'ESERCIZIO DELL'ATTIVITÀ SPORTIVA SVOLTA IN AMBITO SCOLASTICO

di *Francesca Mite*

Il contributo delinea i fondamenti della responsabilità civile degli insegnanti e dei genitori per i danni cagionati dall'allievo ad un altro allievo o a terze persone nell'esercizio dell'attività sportiva svolta in ambito scolastico. A fronte della crescente casistica in tema di infortuni sportivi in ambito scolastico, l'A. fa una ricognizione delle più significative pronunce di legittimità e di merito intervenute in materia. Il problema della prova liberatoria, attraverso la quale insegnanti e genitori possono sottrarsi alla responsabilità civile ex art. 2048 c.c., si rivela di complessa risoluzione quando la responsabilità per il fatto dell'allievo venga imputata a titolo di "culpa in vigilando e in educando". L'orientamento della giurisprudenza di legittimità formatosi in materia tende ad escludere l'antigiuridicità della condotta posta in essere dall'allievo ove il danno sia ricondotto al "rischio sportivo" consentito. Infine, l'A. si sofferma sulla riforma del sistema della responsabilità civile del personale scolastico statale intervenuta al fine di agevolare la posizione di questa categoria, prima dell'intervento riformatore assoggettata ad un trattamento eccessivamente rigoroso, e di favorire la soddisfazione delle pretese risarcitorie del danneggiato prevedendo la sostituzione del MIUR agli insegnanti statali nel giudizio di risarcimento dei danni.

UN NUOVO RUOLO PER I TIFOSI (RIFLESSIONI INTORNO ALL'ARTICOLO 4 DELLA LEGGE N. 86/2019)

di *Piero Sandulli*

Prendendo le mosse dall'analisi dell'articolo 4 della legge n. 86 del 2019 l'autore esamina i poteri e le funzioni che sono stati assegnati agli organismi dei tifosi, ma rilevando la inconsistenza di essi, dopo aver esaminato la normativa 231/2001, recentemente estesa all'organizzazione sportiva, e la possibilità, per le organizzazioni dei tifosi, di fruire dell'azione di classe (art. 840 bis e seguenti c.p.c.) formula ipotesi per coinvolgerli fattivamente nella gestione dell'evento sportivo.

LE COOPERATIVE SPORTIVE: UN MODELLO VIRTUOSO PER IL DILETTANTISMO

di *Stefano Gianfaldoni*

Negli anni si è assistito ad un'esplosione del fenomeno sportivo, soprattutto dilettantistico, in ragione di politiche comunitarie volte alla promozione del benessere e della salute dell'individuo e dello sport in generale oltre che a politiche nazionali espansive dell'attività attraverso modelli di semplificazione (art. 90 l. 298/2002). Il contributo prende, dunque, spunto dall'analisi specifica delle principali caratteristiche degli enti sportivi dilettantistici sulla base della normativa vigente e mira a consolidare l'orientamento che ne evidenzia le incompatibilità con i tipi di società per azioni e società a responsabilità limitata. Ciò in quanto, più di altri, gli enti sportivi dilettantistici sono caratterizzati per lo scopo non profit e il rispetto dei principi di democrazia e uguaglianza interna e presentano, dunque, molteplici affinità soprattutto con il modello di società cooperativa. Un modello, quest'ultimo, che potrebbe anche essere adottato in specifici casi, con particolari vantaggi, per svolgere attività sportive nel terzo settore e perseguire a pieno lo scopo di solidarietà e utilità sociale.

COMMISSIONE v. TRIBUNALE DELL'UE: 0 A 1 – LA COMMISSIONE “LASCIA IN PANCHINA” IL CRITERIO DELL'OPERATORE ECONOMICO IN UN'ECONOMIA DI MERCATO

di *Ilaria Sticchi*

Mentre, almeno in apparenza, il mondo dello sport sembra essersi fermato in ragione dell'emergenza sanitaria globale Covid-19, per la Corte di Giustizia e il Tribunale “*the show must go on*”.

Così, il 12 marzo 2020 il Tribunale pronuncia due sentenze (T-732/16 e T-901/16) con le quali annulla la decisione della Commissione relativamente ad un aiuto di Stato concesso ad una società sotto forma di accordo volto a compensare

la mancanza di un trasferimento immobiliare inizialmente concordato con una parte terza.

Niente di nuovo sotto il sole si potrebbe dire, se non fosse che stiamo parlando di due club calcistici spagnoli, e che solo un anno fa il Tribunale aveva annullato, in altre due cause (T-865/16² e T-791/16³), già commentate su questa Rivista, la decisione della Commissione sugli aiuti di Stato concessi al Barcellona, al Real Madrid, all'Atletico Osasuna e all'Atletic Club sotto forma di privilegio fiscale relativo all'imposta sulle società.

Eppure, la lezione da trarre da queste cause dovrebbe essere oramai chiara per la Commissione: maggior rigore nell'applicazione delle regole processuali in materia di aiuti di Stato, soprattutto con riferimento al test dell'operatore economico in un'economia di mercato.

E ciò anche alla luce dell'improvvisa emergenza legata all'epidemia da Covid-19 dei primi mesi del 2020, che ha richiesto un pronto intervento a livello europeo, concretizzatosi nell'adozione di norme maggiormente flessibili in materia di aiuti di Stato,⁴ al fine di consentire agli Stati membri di adottare misure di sostegno al tessuto economico in deroga alla disciplina ordinaria in materia.

Questo si è tradotto – e si sta traducendo – in una serie di decisioni della DG Concorrenza prese in temi strettissimi, e le cui valutazioni potrebbero rivelarsi, ad un esame più approfondito, non così accurate come richiesto dai giudici del Lussemburgo.

La riflessione ulteriore che si può quindi trarre dal combinato disposto del contesto attuale in materia di aiuti di Stato e dalla tendenza della giurisprudenza europea a pretendere un maggior rigore di indagine da parte della Commissione nelle sue richieste di recupero, è che tanto i beneficiari della misura di aiuto quanto la Commissione dovranno essere vigili nell'assicurare che sia legittimo e compatibile con il mercato interno, onde evitare di aggiungere ulteriori danni all'attuale crisi.

LO STATUTO GIURIDICO DELLO SPORTIVO DILETTANTE NELLA SENTENZA *TOPFIT eV E BIFFI* DELLA CORTE DI GIUSTIZIA

di *Giacomo Gattinara*

Con la sentenza del 13 giugno 2019 in causa C-22/18, *Topfit eV e Biffi*, la Corte di giustizia dell'Unione europea sancisce la contrarietà agli artt. 21 (libera circolazione dei cittadini dell'Unione), 18 (divieto di discriminazioni in base alla cittadinanza) e 165 TFUE (competenza di sostegno dell'Unione in materia, tra l'altro, di sport) di una regola adottata dalla federazione tedesca di atletica leggera, in virtù della

² Sentenza del 26 febbraio 2019, *Fútbol Club Barcelona/Commissione*, causa T-865/16, ECLI:EU:T:2019:113, impugnazione: causa dinanzi alla Corte C-362/19 P.

³ Sentenza del 22 maggio 2019, *Real Madrid Club de Fútbol/Commissione*, Causa T-791/16, ECLI:EU:T:2019:346.

⁴ Comunicazione della Commissione “*Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak - COM 2020/C 91 I/01*”.

quale la partecipazione di uno sportivo dilettante – che, cittadino italiano, si era stabilito in Germania in cui risiedeva da più di dieci anni – ad una competizione sportiva nazionale nella categoria senior era subordinata al possesso della cittadinanza tedesca. Secondo la Corte, sono incompatibili con il diritto dell’Unione in quanto contrarie al divieto di discriminazioni in base alla cittadinanza quelle regole, anche adottate dalle associazioni sportive, che impediscono ad un cittadino dell’Unione, che abbia esercitato il proprio diritto alla libera circolazione, di potersi integrare nella società dello Stato membro che lo ospita. La sentenza costituisce il primo precedente nella giurisprudenza della Corte di giustizia con cui si riconosce che lo sport ricade nel diritto dell’Unione non solo quando è oggetto di un’attività economica, ma anche quando costituisce un aspetto in grado di condizionare l’effettivo esercizio della libera circolazione da parte dei cittadini dell’Unione. Sancendo dunque il diritto di uno sportivo dilettante, cittadino dell’Unione residente in un altro Stato membro, di partecipare ai campionati nazionali di tale Stato, la Corte definisce per la prima volta il valore sociale dello sport nel diritto dell’Unione europea.