

Football Agents Forum · Bellerivestraße 29 · CH-8008 Zurich

**Fédération de Football de la République Islamique de
Mauritanie**

President Ahmed Yahya and Board Members

Route de l'Espoir

Nouakchott

Mauritania

18. Okt. 2019

Recommendations of FIFA and Football Stakeholders Committee

Dear President Yahya and Board Members,

the FAF is an association of player advisors headquartered in Switzerland. Our goal is to protect the rights of football players and assure professional standards for agents acting on behalf of the players. This includes, above all, compliance with the law, transparency in handling potential conflicts of interest and protecting minors. Protecting the freedom of football players includes our fight against the current transfer system as currently practiced, which above all hinders the rights of football players to freely choose their place of employment.

We have learned that FIFA is planning to introduce substantial changes to the current player's agent regulations, published by the FIFA Football Stakeholders Committee on 8 October 2019 concerning the introduction of so-called "caps". We do not see how these restraints to free competition to the detriment of our members that would result from the planned measures can be upheld under antitrust law. Therefore, we continue to hope that FIFA and you will understand the situation and refrain from implementing the proposals and that you will instead enter into an open dialog with us and all stakeholders. If not, the courts will have to decide about the validity and compensation for the incurred damages.

We assume that you and not FIFA is supposed to implement the proposals. Please, consider this letter as an advance notice that we and our members will exhaust all legal remedies against FIFA and your association, in order to prevent the implementation of these proposals. To the extent legally possible, we will not only seek cease and desist orders against you and file complaints for

damages, we will also hold individuals involved in the efforts to implement the proposals personally liable for all incurred damages.

We regret that we are now forced to commence legal actions. Enclosed please find our letter which we have send today to FIFA Council for your information. In its annex you will also find an overview of the legal and damage risks.

There is a great deal at stake for everyone in this matter. Therefore, to the extent legally possible, we will hold, in addition to the associations, the acting individuals personally liable for the expected damages, and we will cooperate closely with the public authorities in Europe and the USA.

Yours sincerely,



Mino Raiola



Roger Wittmann



Jonathan Barnett

To the Members of FIFA Council

17.Okt. 2019

Recommendations of FIFA and Football Stakeholders Committee

Dear Members of FIFA Council,

the FAF is an association of player advisors headquartered in Switzerland. Our goal is to protect the rights of football players and to assure professional standards for agents acting on behalf of the players. This includes, above all, compliance with the law, transparency in handling potential conflicts of interest and protecting minors. Protecting the freedom of football players includes our fight against the transfer system as currently practiced, which above all hinders the rights of football players to freely choose their place of employment.

Our members bear substantial business risks. This is only possible where they can engage in their activities without legal impediments within the free market guaranteed to them by law. Attacks on this freedom are, thus, attacks on the existence of our members, which we will fight against with all available means, either on our own or by supporting our members.

Player advisors make important contributions to the development of football. The more it is possible to cooperate and to work together with other stakeholders in football on a basis of trust, the more success we will have all in this regard. In this spirit, we would like to inform you today that we consider the proposals published by FIFA Football Stakeholders Committee on 8 October 2019 concerning the introduction of so-called "caps" to be an attack on our freedom to engage in business activities guaranteed under the law.

We assume that the national associations and not FIFA are supposed to implement the proposals. Please, consider this letter as advance notice that we and our members will exhaust all legal means against FIFA and the national associations, in order to prevent the implementation of these proposals. To the extent legally possible, we will not only seek cease and desist orders against the associations and file complaints against the associations for damages, we will also hold individuals involved in the efforts to implement the proposals personally liable for all incurred damages. Enclosed please find a brief overview in this respect.

The planned rules are supposedly a first step in reforming the transfer system. We are not convinced. We believe instead that this is a distraction and an attempt to maintain the present transfer system work as long as possible. In fact, because of this effect the proposed new rules are, within Europe, a further attack on the players' fundamental right of free movement of workers under the European Treaty as reflected in Article 45 of the Treaty on the Functioning of the European Union.

As you know, a transfer system is only permissible to the extent reasonably necessary for sporting reasons. The current system of player contracts with long fixed terms, however, does not serve the purpose of retaining the working life of the player for as long as possible. The primary and often sole goal of clubs is to gain a legal position which will entitle them to cash in. We consider such an approach to be an abuse of law. There are situations in which a player's move to another place of employment has failed, not because the old club wanted to actively use the player again, but simply because the club holding the player's contract could not agree with the potential new club on the amount of the transfer payment. The consequence is often a great harm or even the end of a player's career.

Based on European law, we intend to bring these cases before the labour courts, in order to achieve shorter fixed terms and maximum terms for player contracts, and, as a consequence, to achieve a reduction in transfer payments. We would have liked to see reforms start on these aspects. The money that would then become available could be invested in developing young talents and providing increased payments to the clubs which provide the training.

We see no reason why specifically our profession has been singled out for this diversionary manoeuvre. We are not the problem; the problems are to be found elsewhere, for example, in the area of sponsoring contracts. It is common here that 13-year-old players have been confronted with sponsoring contracts which tie them for the next 10 years to conditions which are extremely one-sided and completely economically unreasonable. The player and his family are simply overrun. Our profession also stands by the players in this field.

We regret that our profession has not been given appropriate opportunity to contribute our experience and positions in the present discussion at FIFA and as a result we are now forced to commence legal actions. We would have preferred to show you what our members can contribute and the high-quality standard our members bring to the table. Many successful players would not have had careers without the services provided by our members. This is true for both famous players as well as lesser known players who all contribute greatly to the sporting and economical success of football as a whole. The professional members in our field are the only professionals who enable the players to plan for the long term. The clubs, however, frequently focus on different interests.

The planned impact on free markets will throw us all back to times and regimes which we thought had been overcome. We work and invest in the free world with the firm conviction that highly regulated markets have never resulted in maximum performance and will also never do so. Anyone who wants the best for football cannot destroy the foundation for maximum performance, but that is exactly what the proposals will do if they are actually implemented.

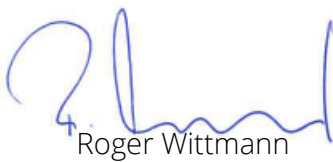
We are firmly convinced that FIFA and the national associations do not have the legal ability to influence free markets the way legislatures can. We also do not see how the restraints to free competition to the detriment of our members that would result from the planned measures can be upheld under antitrust law. Therefore, we continue to hope that FIFA and the national associations will understand the situation and refrain from implementing the proposals and that they will instead enter into an open dialog with us and all stakeholders. If not, the courts will have to decide about the validity of the intended regulations and the compensation for the incurred damages. We are already fully prepared for this alternative.

There is a great deal at stake for everyone in this matter. Therefore, to the extent legally possible, we will hold, in addition to the associations, the acting individuals personally liable for the expected damages, and we will cooperate closely with the public authorities in Europe and the USA.

Yours sincerely,



Mino Raiola



Roger Wittmann



Jonathan Barnett

Jurisdiction	Relevant law	Violating conduct	Exposure
<p style="text-align: center;">EU</p> <p>Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Ireland, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Spain, Slovakia, Slovenia, Sweden and the United Kingdom (UK)</p>	<p>Art. 101 TFEU</p> <p>Prohibits inter alia any decision by an association of undertakings which has as its object or effect a restriction of competition within the internal market.</p> <p>Explicitly prohibited are decisions which “directly or indirectly fix purchase or selling prices or any other trading conditions.”</p> <p>Exceptions may apply for restrictions which are necessary to achieve economic efficiencies or for sporting rules which pursue legitimate objectives within sports by appropriate means.</p>	<p>Any football federation’s regulation on player’s agents amounts to a decision of an association of undertakings, which restricts free competition on a market for player’s agents’ services.</p> <p>A fixing of maximum prices is among the most severe (so-called <i>hardcore</i>) restrictions known within antitrust law.</p> <p>It’s highly uncertain whether an exception applies. The European Court of First Instance considered a regulation of player’s agents to fall outside of sporting rules (CFI, T-193/92 – <i>Piau</i>). Economic efficiencies hardly ever prevail for hardcore restrictions.</p>	<p><u>Federation:</u></p> <p>Administrative orders to stop or change illegal rules.</p> <p>Administrative fines – Antitrust authorities (e.g. the European Commission) can impose fines of up to 10% of total annual group turnover (which could well mean cumulative turnover of all members).</p> <p>Damage claims – It’s a requirement under EU law that has to be implemented in every Member State that player’s agents can claim reimbursement of any damage they suffered because of illegal restrictions (Directive 2014/104/EC).</p> <p><u>Acting individuals:</u></p> <p>Personal exposure to fines and damages in many Member States.</p> <p>Details depend on Member State law (e.g. in Germany fines of up to €1 mio.; liability for damages either as offender via Sec. 9 OWiG or abettor via § 830 BGB)</p>
	<p>Art. 102 TFEU</p> <p>Prohibits any abuse by one or more undertakings of a dominant position within the internal market.</p> <p>An abuse may consist, for example, in an imposition of unfair terms and conditions or in a foreclosure of a certain market.</p> <p>Exceptions may apply where conduct is objectively justified.</p>	<p>The CFI held that football federations have a dominant position when organizing leagues and competitions.</p> <p>The regulations imposed upon agents restrict free access to the market. They could also be considered abusive.</p> <p>Objective justification is highly uncertain.</p>	

<p>USA</p>	<p>Sec. 1 Sherman Act</p> <p>Prohibits agreements that unreasonably restrain trade.</p> <p>Agreements between “horizontal competitors” that set or limit the price, output, or market divisions are (almost always) illegal “<i>per se</i>,” i.e., automatically and without analysis of market power or actual competitive effects.</p> <p>A “rule of reason” exception may apply where agreements also have substantial procompetitive effects (e.g. are necessary for a product – such as a sports league – to exist at all), unless there is a substantially “less restrictive alternative” to achieve the procompetitive purpose.</p>	<p>FIFA rules would likely be viewed as an agreement formed by horizontal competitors, namely, the member national federations. The intended caps on provisions would limit prices and could therefore generally be illegal <i>per se</i>.</p> <p>It’s highly uncertain whether plausible procompetitive justifications exist for the intended, very restrictive regulations, and whether there would be less restrictive alternatives to achieve procompetitive effects.</p>	<p><u>Federation:</u></p> <p>Injunctions barring the illegal conduct or requiring that some other terms be set.</p> <p>Damage claims – player’s agents could claim treble damages, i.e. compensation for monetary damages, which would automatically be tripled.</p> <p>Criminal fines – for corporations, up to \$100 million per offense</p> <p><u>Acting individuals:</u></p> <p>Acting individuals could have severe personal exposure to criminal sanctions.</p> <p>Criminal fines - for individuals, up to \$1 million per offense.</p> <p>Imprisonment up to 10 years.</p>
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