



### FIFA'S NEW APPROACH TO THE ENFORCEMENT OF MONETARY DECISIONS

#### Introduction

In recent years, the FIFA Disciplinary Committee has noted that a very high number of football stakeholders, mainly clubs, continue failing to respect decisions, namely those that were passed by the Dispute Resolution Chamber or the Players' Status Committee.

In order to improve the current system and ensure that the aforesaid decisions are respected as soon as they are issued, FIFA published Circular Letter no. 1625 introducing the new Article 24bis of FIFA Regulations on the Status and Transfer of Players ("RSTP"), and FIFA Circular Letter no. 1628, providing for the new approach under Article 64 FIFA Disciplinary Code ("FDC"). The above-mentioned provisions have already entered into force and have a limited scope of application (*i.e.* debtor players or clubs), as it will be outlined below.

#### 1. Impact of the new Art. 24bis RSTP

Prior to the amendments of the RSTP introduced by Circular no. 1625, when a debtor did not comply with a monetary decision passed by the FIFA Judicial Bodies, the creditor was obligated to initiate disciplinary proceedings before the FIFA Disciplinary Committee and request that the latter impose the appropriate sanctions in accordance with Article 64 FDC. The aforementioned procedure was the target of considerable criticism among the football stakeholders often highlighting the heavy delays creditors suffered to enforce such decisions.



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As a matter of fact, and based on our professional experience, the backlog of unresolved claims by the FIFA Disciplinary Committee combined with the dilatory tactics used by the debtors in the previous procedure, ended up benefiting the latter who would take advantage of it to delay the effective payment. In fact, with the former system, years could go by from the moment the claim was lodged before the FIFA Judicial Bodies until the moment the creditor actually received the amounts due.

The bottleneck created at FIFA's Disciplinary Committee was grossly unfair for creditors - who had respected the FIFA regulations - and contributed to an imbalanced system where the debtor found itself in a position to unfairly defer compliance with the monetary decision as long as possible. Faced with having to wait so long to obtain payment from the debtor, the creditor was often forced to enter into a settlement agreement - usually including debt forgiveness - in order to finally recover at least part of the amounts due once and for all.

With the introduction of Article 24bis, which only applies to clubs and players<sup>1</sup>, FIFA proposes a solution where the world football's governing body grants the PSC, the DRC, the Single Judge or the DRC judge powers to directly impose disciplinary sanctions on players (prohibition to play in official matches for up to six months) and clubs (ban from registering new players for up to three consecutive registration periods) should a debtor not comply with a monetary decision in a timely fashion. In other words, in the event a debtor fails to adhere to a monetary decision within a grace period of 45 days, FIFA will automatically impose the above-mentioned sanctions upon the liable parties, thus substantially reducing the period of time from the moment the claim is filed until the defaulting party is effectively sanctioned.

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<sup>1</sup> According to FIFA Circular letter and the new Regulations, Article 24bis does not apply, for the moment, to other FIFA members such as coaching staff or intermediaries, who will therefore not enjoy the same level of protection as players and clubs.





It shall be underlined that even if the debtor is liable to pay a small amount to the other party according to the monetary decision, such decision will nonetheless include a transfer ban or a prohibition to play as a provisional sanction. The only discretion that FIFA's judicial bodies possess is the possibility to impose longer or shorter transfer bans or prohibitions to play<sup>2</sup>.

As mentioned above, FIFA will automatically apply the sanction to the liable party once the 45-day grace period has lapsed. If the debtor still does not comply with its monetary obligations despite the imposition such sanctions, the creditor will have no other choice but to initiate disciplinary proceedings before the FIFA Disciplinary Committee to request the imposition of further sanctions under Article 64 FDC.

On a *prima facie* basis, it seems the new Article 24bis RSTP will have a deterrent effect against defaulting parties, which will be forced to abide by the monetary decisions, hopefully resulting in less undue delays for creditors.

### **2. Subsequent modification of Art. 64 FDC**

As stated above, and following the implementation of Article 24bis FIFA RSTP, Article 64 FDC introduced a new procedure that has been applied to disciplinary cases from 23<sup>rd</sup> May 2018 onward. In its Circular Letter no. 1628, FIFA has decided to vary the procedure with the aim of ensuring that all decisions are respected as soon as they are issued, without the need for intervention from the FIFA Disciplinary Committee.

In fact, the FIFA Disciplinary Committee has applied the new framework in a series of recent decisions: it has already imposed the adequate sanctions on several clubs<sup>3</sup> who were found guilty of failing to comply with previous

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<sup>2</sup> For instance, the imposition of a warning or a reprimand will not be permitted under the umbrella of this new RSTP provision.

<sup>3</sup> For more information please check the following link:

<https://www.fifa.com/governance/news/y=2018/m=7/news=six-clubs-face-bans-from-registering-players-as-fifa-disciplinary-committee-impl.html>





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decisions of a FIFA body or a decision from a subsequent CAS appeal ordering them to pay significantly overdue amounts of money to players.

Before the issuance of the aforesaid Circular, whenever a club was found to have infringed Article 64 FDC in relation to a financial decision, the FIFA Disciplinary Committee sanctioned the debtor by ordering it to pay a fine and granting it a final period to settle its debt to the creditor. In those cases where the debtor still failed to comply with the relevant decision by the stipulated deadline, upon request of the creditor, the FIFA Secretariat would submit a written request to the debtor's association to implement a specific sanction (e.g. point deduction). Should the relevant payment still not have been made by the debtor after the imposition of the aforementioned sanctions, the matter was submitted again to the FIFA Disciplinary Committee in order to possibly apply a harsher sanction, such as for instance, relegating the debtor's first team to a lower division.

Under the new procedure, if a party is found to be in violation of Article 64 FDC, the FIFA Disciplinary Committee will still pronounce a sanction against the debtor, *inter alia* ordering the debtor to pay a fine and granting a final deadline to settle its debt with the creditor. However, should the debtor not pay the relevant amount due in full within the aforementioned final deadline, the **debtor's association** will have the obligation to check whether the decision has been complied with by that deadline and **will be required to automatically apply the point deduction and/or the ban from registering any new players**<sup>4</sup>. If the debt has not been fully paid after all sporting sanctions have been fully served, the creditor may request - in writing - that the case be resubmitted to the FIFA Disciplinary Committee in order to potentially impose additional sanctions as grave as the relegation of the debtor's first team to a lower division.

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<sup>4</sup> The transfer ban can be imposed either nationally or internationally, for one or more entire and consecutive registration periods.





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The key difference between the previous procedure and the new one introduced by Circular Letter no. 1628 is the **member Association's obligation to enforce the penalty** from the beginning of the process. In other words, the onus to assist FIFA in reducing the enforcement deadlines of its decisions is, in effect, transferred to the associations who must now adopt a procedure to certify that the debtor clubs comply with the decisions.

With regards to the implementation of sporting sanctions by the member association under the new procedure, FIFA has clarified that, in what concerns the imposition of a point deduction, the member association will be required to automatically implement it unless the debtor provides evidence that the amount has been duly paid before the expiration of the deadline<sup>5</sup>. On the other hand, with regards to the application of the transfer ban, FIFA states that – aside from the automatic implementation of a transfer ban by the secretariat to the FIFA Disciplinary Committee - the **member association concerned will be required to automatically implement such sanction at national level**, unless the debtor demonstrates that it has paid the amount due<sup>6</sup>.

It shall be also noted that in the event a member association fails to automatically implement the aforesaid sanctions and provide the FIFA Secretariat with the relevant proof of implementation of the latter, disciplinary proceedings may be opened against the association concerned, which could **lead to expulsion from all FIFA competitions**.

Last but not least, FIFA also announced the effects of entering into a settlement agreement and/or a payment plan during the disciplinary proceedings. In this context, FIFA **will no longer enforce financial decisions if the parties reach a settlement agreement** after the decision has been notified. In such cases, the conclusion of an agreement between the parties will **automatically lead to the**

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<sup>5</sup> According to FIFA, if the point deduction is to be implemented after the last match of the relevant season in which the debtor club is participating, such sanction will have to be implemented in the next season. Moreover, it will not be possible to avoid the implementation of the point deduction (or to lift it, once implemented) even if the debtor complies with the decision after the expiration of the final deadline.

<sup>6</sup> Contrary to what is stated on footnote 4 above, a transfer ban may be lifted both at national and international level only by the FIFA Disciplinary Committee prior to its complete serving upon the confirmation of receipt of payment by the creditor.





**closure of disciplinary proceedings**, and any claim resulting from the breach of such agreements will have to be lodged before the Players' Status Committee or Dispute Resolution Chamber, as the case may be, or before the competent bodies at the national or international level mutually agreed by the parties.

### 3. Practical implications of the latest amendments

First and foremost, it shall be underlined that FIFA's aim with the introduction of Article 24bis is to reduce the procedural delays and to lower the number of cases for the FIFA Disciplinary Committee to handle. However, it is worth mentioning that if the debtor still fails to obey the FIFA decision after the imposition of the pertinent sanction, then the next step for the creditor would still be to revert to the FIFA Disciplinary Committee to open disciplinary proceedings and impose further sanctions under the new version of Article 64 FDC.

Moreover, it shall be underlined that Article 24bis explicitly indicates that the relevant FIFA decision-making body "*shall*" include the specified sanction that will apply in the event of non-compliance with such decision. In other words, a sanction will be imposed to the liable party in any case.

In this sense, this scenario may lead to the imposition of two (or more) sanctions of a different nature in one single decision: those foreseen in Article 12bis concerning overdue payables, those established on Article 17, par. 3, 4 or 5, in addition to the new sanctions foreseen in Article 24bis.<sup>7</sup>

This is corroborated in Article 24bis, par. 2, which refers to the possibility of imposing other "*possible sporting sanctions*". Therefore, Article 24bis does not exclude the application of other "*sporting sanctions*" such as those defined, for instance, in Articles 17 par. 3, 17 par. 4, 17 par. 5 or Article 12bis.

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<sup>7</sup> See: "FIFA's regulatory reform, and the crack down on compliance with FIFA decisions" By Paolo Lombardi and James Mungavin (Lombardi Associates).







At first, it seems that the two categories of sanctions described above could theoretically co-exist, since they have a different nature and purpose. Indeed, it might be possible to see both appearing together in the same FIFA decision in the near future: (i) one (permanent - *Article 12bis* or *Article 17 RSTP*) sanction applied to punish a party for a specific violation of the RSTP, and (ii) another (temporary - *Article 24bis RSTP*) sanction to punish any non-compliance with the decision. However, it is likely that, initially, FIFA will take a prudent approach and possibly avoid the overlapping of sanctions in practice.

Concerning the application of Article 64 FDC, we can affirm that there are at least three practical implications which deserve a deeper analysis. Firstly, one shall note the positive changes on the duration of enforcement proceedings, which, prior to the amendments, were part of a staged process requiring heavy involvement from the FIFA Disciplinary Committee to enforce decisions under the former procedure, thus causing serious, unfair delays in the execution of such decisions.

The second practical implication of the new Article 64 FDC is the new requirements and responsibilities placed upon the member associations to ensure that FIFA Decisions are complied with in a timely manner. This burden on national associations will work as an additional tool for creditors to effectively enforce decisions, given that failure to do so could lead to serious penalties, such as the association's exclusion from all FIFA competitions.

Finally, as a warning to those who normally prefer to reach an amicable solution after a financial decision has been notified, it shall be reiterated that settlement agreements will most likely fall in disuse since, in such cases, the conclusion of an agreement will automatically lead to the closure of disciplinary proceedings, and thus the creditor will need to start from the beginning and lodge a new claim before the competent body for the payment to be enforced.

#### **4. Conclusion**

The recently announced amendments, as outlined in FIFA Circular letters 1625





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and 1628, are significant changes that represent a progressive and natural evolution of the measures already established by the FIFA regulations with regards to the enforcement of decisions.

One can say that, by including these new amendments, FIFA's ultimate goal is to strengthen the existent system with shorter deadlines and, to reduce the Disciplinary Committee's workload by vesting other Judicial Bodies with the authority to impose sanctions on the defaulting parties. Hence, the new system will provide a new method to pressure the debtor since the sanctions will be applied automatically by its national association.

In this regard, it seems that FIFA's aim is to tackle one of its main points of criticisms: the delays suffered by creditors which were entitled to a specific sum of money. These amendments shall be seen as a positive step since monetary decisions issued by FIFA Judicial Bodies will, in principle, be complied with in a shorter period of time compared to the previous procedure.

The modifications introduced by Article 24bis RSTP and Article 64 FDC will, ideally, contribute to a lower incidence of non-complied financial decisions, not only due to the introduction of an automatic sanction on the final decisions, but also due to the burden that has been placed upon the debtor's national association to do whatever it takes to ensure that its members comply with FIFA decisions in a timely manner.

Finally, it goes without saying that attention shall be drawn to the appeals lodged before the Court of Arbitration for Sport ("CAS") in case FIFA decides to reject a claim and, as a consequence, fails to impose a sanction under Art. 24bis. With regards to this particular situation, the application of such Article by the CAS in case the latter decides to overturn a FIFA decision has yet to be evaluated since, according to Art. 24bis, such sanction can only be imposed by FIFA bodies.

