

Football:

A legal tour through the new FIFA Clearing House

A closer look at the underlying thoughts of the Clearing House and the most relevant provisions under the FIFA Clearing House Regulations

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Introduction

On 26 October 2018, the FIFA Council approved the first package of measures under the reforms of the international transfer process.² Part of this was setting up a “clearing house” to better administer and process transfers with the aim of protecting the integrity of football and preventing fraudulent actions.

The objectives of the so-called “*FIFA Clearing House*” are to centralize and automate payments between clubs, primarily with regard to the payment of training fees and solidarity contributions, and subsequent phase payments to agents and transfer fees.

FIFA wants the circulation and distribution of the money circulating in the football world to be more insightful and transparent. In addition, FIFA wants the distribution of funds to be fairer, in the sense that clubs that are entitled to training fees and solidarity contributions in accordance with the *FIFA Regulations on the Status and Transfer of Players* (“RSTP”), because of their previous investments in the training of former players would actually receive these allowances.

The FIFA Clearing House has been active since 16 November 2022. With this, FIFA expects to take a big step in the context of financial transparency and integrity within the international transfer system.³ This article will explain how FIFA is planning to

take this step. First, the underlying thoughts of the Clearing House are outlined. Subsequently, the process and operation of the Clearing House will be discussed, focusing on the most relevant provisions under the *FIFA Clearing House Regulations* (“FCHR”).

Underlying thoughts

The Clearing House generally aims to protect the core objectives of the transfer system as referred to in the statutes of FIFA and the RSTP.⁴ This includes ensuring contractual stability, encouraging the development of youth players and promoting solidarity between professional and amateur football. The specific purposes associated with the Clearing House are to process payments related to transfers of players between clubs, protect the integrity of the transfer system, improve, strengthen and promote financial transparency and prevent fraud.

To achieve these goals, the Clearing House will act as a middleman and intermediary for the payments of solidarity contributions and training fees covered by the RSTP.⁵ At least, that is the first step in which, in the next phase, payments to agents and transfer fees may also go through the Clearing House, as indicated in the introduction. The Clearing House may not make a profit on the amounts receivable and the transactions it carries out.⁶

FIFA found that training “rewards” (payments for training compensation and solidarity contribution) were too often not paid to clubs that were entitled to them and that there was insufficient insight into the amounts paid and distributed in football.⁷ For example, the *FIFA Global Market Transfer Report 2020* showed that only a fraction of the training rewards that clubs had to pay were actually

¹ BMDW, Advocates, Haarlem, The Netherlands. Website: <https://bmdw.nl> (accessed 8 June 2023).

² FIFA Circular nr. 1817, dated 8 November 2022.

³ “FIFA Clearing House begins operations”, FIFA, 16 November 2022, available at www.fifa.com/legal/news/fifa-clearing-house-begins-operations (accessed 8 June 2023).

⁴ FIFA Statutes, Regulations Governing the Application of the Statutes.

⁵ Art. 1 FIFA Clearing House Regulations, October 2022 edition.

⁶ Art. 3.2 FIFA Clearing House Regulations, October 2022 edition.

⁷ See “Explanatory notes on the FIFA Clearing House Regulations”.

paid.⁸ It is estimated that only 70-80 million of the in total nearly US\$ 400 million was actually received by clubs.⁹ The Clearing House, operating as an independent entity vested in Paris in accordance with the Payment Services Directive (EU) 2015/2366, must now solve this problem.¹⁰ This moves away from a system in which clubs that believed they were entitled to compensation had to actively claim their compensation and has now switched to a system of automatic entitlement.

It goes beyond the scope of this article to go into detail about the system of training rewards, but by this FIFA refers to the fees by which training clubs are compensated for their contribution to the education and training of young players, divided into training compensation and solidarity contributions in accordance with the RSTP.¹¹

A club may receive a training compensation for the training and education of a player between the ages of 12 and 23.¹² This fee is paid to a player's training club when a player is first registered as a professional footballer and with any transfer made by this footballer until the end of the calendar year of his 23rd birthday.¹³ The solidarity contribution covers transfers of professional footballers to a new club, whereby the player's training clubs receive 5% of the transfer fee, excluding the training compensation paid to his previous club.¹⁴ Both compensations are calculated pursuant to art. 20 and 21 and the corresponding annexes 4 and 5 of the RSTP respectively.

The process

The FCHR describes in detail how the process and the

⁸ FIFA Global Market Transfer Report 2020.

⁹ "FIFA concludes Clearing House webinars with member associations", FIFA, 14 October 2022, available at www.fifa.com/legal/news/fifa-concludes-clearing-house-webinars-with-member-associations (accessed 8 June 2023).

¹⁰ "French banking supervisory authority grants licence to FIFA Clearing House", FIFA, 29 September 2022, available at www.fifa.com/legal/media-releases/french-banking-supervisory-authority-grants-licence-to-fifa-clearing-house (accessed 8 June 2022). The FIFA Clearing House is a separate entity as a financial services company and independent in its regulated activities. However, FIFA retains some control over the FIFA Clearing House through the shareholding, full funding, and service agreement.

¹¹ FIFA Regulations on the Status and Transfer of Players, edition October 2022.

¹² Training compensation is in principle payable until the age of 23, for training received until the age of 21, unless it appears that a player has already completed his training period before the age of 21. In that case, the training allowance is payable from the age of 12 until the age at which it is established that the training has ended. See Annex 4 of the FIFA Regulations on the Status and Transfer of Players, edition October 2022.

¹³ Art. 20 FIFA Regulations on the Status and Transfer of Players, edition October 2022.

¹⁴ Annex 5 jo. art. 21 FIFA Regulations on the Status and Transfer of Players, edition October 2022.

various components of the Clearing House work. The FCHR has a structure with five sections, from which three main steps to distribute the training rewards result:

- 1 identifying the claim to the training rewards;
- 2 creating an *electronic player passport* ("EPP"); and
- 3 processing the amounts between the clubs via the Clearing House.¹⁵

FIFA will use the existing "platforms" FIFA Connect and FIFA Transfer Matching System ("TMS") for this process. FIFA Connect is a platform made available by FIFA to the member football associations to register players from the age of 12. The other platform, TMS, is used for all national and international transfers of players.

Training rewards

The process starts with identifying "training rewards triggers" based on the information that clubs and affiliated associations provide to FIFA. Examples of triggers are an international transfer, a national transfer with an international dimension or a first professional registration.¹⁶ Member associations must register players in the systems of the relevant national association from the age of 12. Associations should integrate their national systems, such as an electronic player registration system and an electronic transfer system, with FIFA Connect. The first registration of a player as a professional is then entered into FIFA Connect by the relevant association via the national systems. TMS will then further analyze the information provided by the federation, which may result in an activation of a claim for training rewards under the RSTP.¹⁷ International transfers of players must be completed in TMS in accordance with Annex 3 of the RSTP, whereby a training reward in accordance with the RSTP is, in principle, not included in the transfer amount.¹⁸

Electronic player passport

When a training reward trigger has been identified, a conditional electronic player passport will be created by TMS, which can then be checked by all relevant associations and clubs for a period of 10 days after creation. A federation or club that believes that it should be included in the conditional EPP can request this during these 10 days. After this period of audit, FIFA's General Secretariat will review the conditional EPP for relevance and accuracy.¹⁹

The secretariat then opens a so-called "EPP review process", in which the relevant associations, the relevant clubs, the new club and federation, as well as any association deemed relevant by the FIFA General Secretariat, will be parties. This period, which also lasts 10 days, gives clubs

¹⁵ FIFA Circular nr. 1817, dated 8 November 2022.

¹⁶ See "Explanatory notes on the FIFA Clearing House Regulations".

¹⁷ Art. 5 FIFA Clearing House Regulations, edition October 2022.

¹⁸ Art. 6 FIFA Clearing House Regulations, edition October 2022.

¹⁹ Art. 8 FIFA Clearing House Regulations, edition October 2022.

and unions the opportunity and obligation to submit all relevant information, including employment contracts and waivers of training rewards.²⁰ After the evaluation of the EPP has been completed, TMS automatically makes a calculation and a so-called “Allocation Statement” about the amounts to be paid and distributed to the clubs.²¹

In accordance with art. 11 of the FCHR, in the case of international transfers, new clubs must enter proof of this in TMS within 30 days of payment. For national transfers, this must be done within the same period via the national transfer system at FIFA Connect.²²

Processing payment through the FIFA Clearing House

After an Allocation Statement from TMS has been sent to the FIFA Clearing House containing all the information needed to receive the relevant amounts and distribute the payments to the training clubs, the FIFA Clearing House will start a “Compliance Assessment”.²³ The Clearing House has a legal obligation to check with all parties whether they comply with national and international legislation, including on international payment sanctions, money laundering, corruption, bribery and terrorism. Individuals, clubs and associations are required to cooperate actively with requests for information from the FIFA Clearing House.²⁴

If a club fails the initial Compliance Assessment, the Clearing House will notify the club and will not process the transaction or any other payments related thereto. A second Compliance Assessment will be set up six months after the club has been informed of the failure of the test, although this can be started earlier at the request of the club.²⁵ In addition, the party is subject to disciplinary proceedings. For a new club of the player, this means at least a levy of 2.5% of the training rewards to the training club(s) and also a reprimand and/or fine. For a training club, the sanctions can be a reprimand and/or fine.²⁶

When a club has passed the test, the FIFA Clearing House will send a *Payment Notification* to the new club with a detailed overview and a total amount to be paid. The new club will have to transfer this amount to the FIFA Clearing House within 30 days. If it fails to do so, the club will be charged with a levy of 2.5% of the amount in question, which will then be paid to the training club(s), instead of interest resulting from non-compliance with the payment obligation. In this case, the club in question has a period of

7 days to make the payment.²⁷ If the club also fails to make the payment within these 7 days, it may be sanctioned in accordance with art. 17 of the FCHR with a fine and a ban on registering players, nationally or internationally. This prohibition applies until the amount has been paid.²⁸ After the FIFA Clearing House receives the payment, it will then pay the training club(s) and send a “Distribution Statement”, outlining the purpose and source of the payment.²⁹

If the FIFA General Secretariat has evaluated the EPP, the so-called “EPP review process”, and considers that the situation is legally or factually complex, the Secretariat will then refer the matter for resolution to the Dispute Resolution Chamber (“DRC”) of the FIFA Football Tribunal, which adjudicates on the international training reward disputes.³⁰ The road to the DRC is also open to clubs that were not part of the EPP review process and believe that they are entitled to training rewards as a result of a so-called “bridge transfer” – to put it simply: a transfer in which a club is inserted by the selling and purchasing club to avoid payments.

These final decisions are subject to appeal to the CAS.³¹

Concluding remarks

Compared with the previous system, where the training clubs themselves had to track their claims for training rewards by players and they then had 2 years (and 30 days) to claim their fees based on the RSTP, failing which the DRC could no longer process the claim, FIFA is making an absolute step forward through the newly established Clearing House. Bearing in mind that only a fifth of the payments related to training rewards were made, this problem will now be permanently eliminated.

After all, the training clubs are now being made aware that they are entitled to a training compensation or a solidarity contribution, also knowing that the penalty of a ban on registering players until payment has been made will have such adverse consequences for clubs that clubs are very keen to pay. In short, an automatic system in which the process will be completed within 120 days can rightly be seen as improvement.³²

The FIFA Clearing House will, as explained in this article, receive a large amount of information and process it appropriately. The federations and clubs play an essential role in this, now that they have to provide this information

27 Art. 13 FIFA Clearing House Regulations, edition October 2022.

28 Art. 17.6 FIFA Clearing House Regulations, edition October 2022.

29 Art. 14 FIFA Clearing House Regulations, edition October 2022.

30 Art. 10.3 FIFA Clearing House Regulations, edition October 2022.

31 Art. 18 FIFA Clearing House Regulations, edition October 2022 and art. 5bis Regulations on the Status and Transfer of Players, edition October 2022.

32 After that period, the DRC could bring the claim for limitation within the meaning of art. 23 para. 3 of the Regulations on the Status and Transfers of Players, edition October 2022.

20 Art. 9 FIFA Clearing House Regulations, edition October 2022.

21 Art. 10.4 FIFA Clearing House Regulations, edition October 2022.

22 Art. 11 FIFA Clearing House Regulations, edition October 2022.

23 Art. 12 FIFA Clearing House Regulations, edition October 2022.

24 Art. 15 FIFA Clearing House Regulations, edition October 2022.

25 Art. 16 FIFA Clearing House Regulations, edition October 2022.

26 Art. 16 and 17.7, FIFA Clearing House Regulations, edition October 2022.

correctly and completely. In view of the fact that associations, players and clubs are subject to the sanctions in accordance with art. 17 of the FCHR, the parties concerned may be adversely affected and it is important to carefully maintain the administration and information.³³ The clubs should, therefore, not take this lightly and be aware of these obligations, all the more so because deadlines of 10 days are short. Experience shows that clubs do not always consistently consult the online tools made available by FIFA. The correct and consistent use of the tools to provide the right information is now becoming even more important, in the knowledge that, once the EPP has been definitively adopted, only an appeal to the CAS is possible.

Another consequence of the possible success of the FIFA Clearing House will undoubtedly be that more training reward cases will go to the CAS considering the possibilities to appeal before the CAS based on the FCHR. By the same token, it is to be expected that significantly more cases will end up before the DRC. In fact, more payments will be imposed on clubs, so it is not excluded that more objections will be made to the payments for that reason alone, resulting in filing a claim before the DRC. After all, many cases did not come before the DRC, for the simple reason that the majority of clubs was not aware of its entitlement to any compensation. That is absolutely different from now on. This could include, for example, discussions about payments in previous “*bridge transfers*” and player exchanges. As we see, such constructions are sometimes set up to avoid payments.

In addition to the above, it is also recommendable that FIFA's General Secretariat will securely consider what concern more complex matters that should be forwarded to the DRC. After all, it is the General Secretariat that determines, at first stage, whether there is a legal or *factual complexity*. In case of any doubt, it is advisable that the case is forwarded to the DRC, in order to obtain a more balanced opinion from a, preferably, three-member panel that then expresses itself on the more complex issue, also to give direction as from the beginning as how to decide on certain new issues that come along with the introduction of the FIFA Clearing House.

In this regard, it will be interesting to see whether the FIFA Clearing House system will have any effect on the line currently taken in DRC case law on training rewards. Although no major changes are to be expected, from that perspective, it is also important that the complex cases are dealt with by the right counter (read: the DRC) to guard that line in case law and to maintain consistency.

All in all, the authors of this article expect that the advantages of the FIFA Clearing House, such as more financial transparency, which gives training clubs the compensation to which they are entitled under the FIFA RSTP, will undoubtedly outweigh any possible disadvantages that will most likely also come along with the new system.

If the FIFA Clearing House succeeds in its mission, the international football industry will not only have an efficient and fairer system in terms of distributing training rewards, but the FIFA Clearing House will have more relevant information and knowledge.

It cannot be ruled out that the approach to training rewards will give a boost to make the industry more insightful and transparent with regard to other payments. As such, FIFA has already indicated that the FIFA Clearing House is expected also to look at the agent and transfer payments between clubs (that is, not being the training rewards). The near future will have to show whether the FIFA Clearing House will work as well, in practice, as it, at least now, seems on paper.

³³ Art. 17 FIFA Clearing House Regulations, edition October 2022. Penalties may include reprimands, fines, refunds or forfeiture of training rewards and a ban on player registration.