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LATE WAIVERS: AN ANALYSIS OF THE COURT OF ARBITRATION FOR SPORT'S INTERPRETATION OF DISPUTES ARISING FROM THE ELECTRONIC PLAYER PASSPORT (EPP) PROCESS

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ABSTRACT

This article analyses the jurisprudence of the Court of Arbitration for Sport (CAS) in disputes related to the Electronic Player Passport (EPP) process, which has been in place since the advent of the FIFA Clearing House (FCH) in November 2022. Particular focus is placed on cases where the player's new club (in a transfer or first professional registration) has produced a specific and decisive document late in the process: the waiver by a training club of its entitlement to training rewards (training compensation or solidarity contribution). In examining the admissibility and validity of waivers, CAS has not followed a consistent approach, but some trends can be identified. The article highlights the considerations and decisions of CAS and offers critical reflections and ideas on the right balance between procedural diligence and substantive fairness within the regulatory framework for training rewards.

KEYWORDS

FIFA Clearing House, Electronic Player Passport, Training Rewards, Waivers, Admissibility, Validity, CAS.

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LATE WAIVERS: AN ANALYSIS OF THE COURT OF ARBITRATION FOR SPORT'S INTERPRETATION OF DISPUTES ARISING FROM THE ELECTRONIC PLAYER PASSPORT (EPP) PROCESS

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[1] The authors wish to thank Miguel Liétard (FIFA Director of Litigation) for his valuable comments and suggestions.

Summary: 1. Introduction. 2. From a claims system to the Electronic Player Passport (EPP) process. 2.1. The Electronic Player Passport (EPP) process. 2.2. Legal basis for CAS appeals. 3. Analysis of CAS appeals related to EPP and Allocation Statement determinations. 3.1. Overview of the appeals. 3.2. The admissibility of waivers not submitted during the EPP process: a new landscape. 3.3. The validity of training reward waivers according to CAS jurisprudence. 3.4. CAS jurisprudence on late waivers – the acceptance of waivers not submitted during the EPP process. 4. Main takeaways and impact on the EPP process.

1. INTRODUCTION

Respect for the principles of transparency and integrity is essential to promoting the development of football globally and to protecting the game. In this regard, FIFA introduced a revolutionary initiative in November 2022: the FIFA Clearing House, which ensures the correct calculation and distribution of training rewards to training clubs through the implementation of an automatic, centralised and integrated system.

Moreover, it makes an immense contribution to the prevention of financial fraud through the creation of the FIFA Clearing House entity (FCH SAS), which ensures compliance with financial regulation and processes those payments. Since the entry into force of the FIFA Clearing House and up to 1 October 2026, more than USD 1 billion has been allocated to thousands of training clubs worldwide, of which more than USD 800 million has been paid out in full.

In this context, FIFA has issued thousands of decisions granting training reward entitlements to training clubs and ordering payments via the FCH. These decisions, namely the EPP and Allocation Statement determinations, may be appealed to CAS, in accordance with the FIFA regulatory framework.

Among the FCH decisions that have been appealed to CAS to date, one specific subject stands out, not only because of the substantive issues involved, but mainly because it raised a new procedural matter: the acceptance of waivers issued by training clubs after the EPP process has concluded and the FIFA decision has been taken.

2. FROM A CLAIMS SYSTEM TO THE ELECTRONIC PLAYER PASSPORT (EPP) PROCESS

The substantive rules on training rewards (training compensation and solidarity contribution) have remained largely untouched for the past 20 years. However, the process for identifying and distributing training reward

entitlements has changed drastically since the Clearing House went live in November 2022.

Previously, training clubs carried the burden of identifying training reward triggers and lodging claims if they had not received the training rewards due from the new club. This posed great difficulties for clubs, owing to a lack of resources and the challenge of tracking player transfers and registrations around the world. As a result, around 80% of entitlements were lost.[2]

With the advent of the Clearing House, training rewards are identified automatically through the integration of the national registration systems of all FIFA Member Associations with the FIFA Transfer Matching System (TMS), and are then calculated through the EPP process; at the end of this process, the player's exact career history is established and the exact amounts to which each training club is entitled are set out in the corresponding FIFA decisions.

2.1. THE ELECTRONIC PLAYER PASSPORT (EPP) PROCESS

Whenever an international transfer, a national transfer with fees or a first professional registration is declared by a Member Association, a provisional EPP is automatically generated in TMS. An inspection phase of ten days allows any interested Member Associations and clubs to request to participate in the process.[3]

If the international dimension required under the FIFA regulations for training clubs to be entitled to training rewards is confirmed, the FIFA general secretariat opens the EPP review process in TMS and invites the parties to participate; Member Associations can request to add, delete or amend the registration information of the player on their own initiative or at the request of their affiliated club(s), while clubs can provide relevant documentation that affects the distribution of training rewards, such as contract offers and waivers.[4] Waivers are the most common and important type of document provided by the player's new club.

The FIFA general secretariat evaluates and assesses all the relevant information and documentation provided (validation phase) and, if needed, requests clarification and additional information (completion phase) before

2 Fédération Internationale de Football Association (FIFA), *FIFA Clearing House Annual Report 2024* (Zurich: FIFA, 2025), 15, https://inside.fifa.com/transfer-system/clearing-house/annual-report.

3 Article 8, paragraphs 1, 2 and 3 of the FIFA Clearing House Regulations (FCHR).

4 Article 9 of the FCHR.

a final decision is taken.[5] In the case of waivers, the FIFA general secretariat assesses the validity of the waiver and, where appropriate, sends it to the training club concerned for confirmation or comments.

The final decision is taken by the FIFA general secretariat. In cases of legal or factual complexity, however, the Dispute Resolution Chamber (DRC) of the Football Tribunal is responsible for deciding on the final EPP.[6]

2.2. LEGAL BASIS FOR CAS APPEALS

At the end of the process described in section 2.1, the FIFA general secretariat issues the EPP determination. Where training clubs are entitled to training rewards, the FIFA general secretariat also issues a second decision: the Allocation Statement determination, which sets out the amounts to be distributed to training clubs, as calculated automatically by TMS.

In cases of training compensation, both determinations are issued at the same time,[7] whereas in cases of solidarity contribution, the Allocation Statement is tied to the upload in TMS of the proof of payment of the transfer compensation,[8] which is the basis for calculating the solidarity contribution.

It should be noted that both EPP and Allocation Statement determinations are final decisions issued by FIFA and may therefore be appealed to CAS within 21 days of receipt of the decision.[9]

Although both decisions can be appealed to CAS, they have different natures and, consequently, different scopes. Whereas the EPP determination defines the registration history of the player (including, but not limited to, the dates on which they were registered with a club, their status at that club and the training category of the club in question) and determines whether or not training clubs are entitled to training rewards, the Allocation Statement calculates the exact amount that each training club is entitled to receive from the engaging club. Consequently, they constitute separate and independently appealable decisions.

Where the EPP and Allocation Statement determination(s) are issued and notified on the same date, they may be jointly appealed to CAS. However, if they are issued and notified on different dates, each decision can only be

5 Article 10, paragraphs 1 and 2 of the FCHR.
6 Article 10, paragraph 3, letter c) of the FCHR.
7 Article 12, paragraph 3, letter a) of the FCHR.
8 Article 12, paragraph 3, letter b) of the FCHR.
9 In accordance with Article 50, paragraph 1 of the FIFA Statutes, Article 10, paragraph 5, letter b) of the FCHR, and Article R47 of the Code of Sports-related Arbitration (CAS Code).

appealed within 21 days of its own notification. Consequently, a party cannot use an appeal against the Allocation Statement to revisit aspects of the EPP determination that were not appealed in a timely manner.

3. ANALYSIS OF CAS APPEALS RELATED TO EPP AND ALLOCATION STATEMENT DETERMINATIONS

3.1. OVERVIEW OF THE APPEALS

To give a sense of the scale and volume of cases generated by the FIFA Clearing House system, it should be noted that, as a general rule, an EPP is generated for each trigger event[10] that may give rise to a training reward entitlement for training clubs. For each EPP that is not discarded,[11] an EPP determination is issued by FIFA and notified to the parties. Depending on the training reward trigger and the entitlement of training clubs, one or more Allocation Statements may be generated per EPP and notified to the relevant parties.

Since the launch of the FIFA Clearing House, more than 26,500 EPP determinations and more than 45,000 Allocation Statements have been notified to the parties, amounting to more than 71,500 appealable FIFA decisions in relation to the FCH.

Of this total, as at 1 October 2026, 156 cases have been appealed to CAS, which corresponds to 0.2% of the decisions issued by FIFA. If one considers that decisions could potentially be appealed to CAS by multiple parties (normally the engaging club that has to pay, but also training clubs challenging the amount in an Allocation Statement), this ratio would be lower still.

Of those cases, 108 have led to a final decision by CAS. The outcome of the decisions rendered by CAS also confirms the success and effectiveness of the Clearing House: only nine appeals were upheld and three partially upheld.

10 Training reward trigger events are the first professional registration of a player, the national transfer of a player with payment of compensation, and the international transfer of a player. To date, more than 76,000 EPPs have been generated.

11 In accordance with Article 8, paragraph 4 of the FCHR, an EPP may be discarded in cases where, according to the registration information available in the provisional EPP, there is no indication that the player was registered with a different Member Association.

None of these appeals contested the automatic calculation of training rewards performed by TMS, which confirms the accuracy of the system. In the few cases where the amount due was challenged, it was the information provided by the Member Association in the EPP (e.g. incomplete training period, incorrect club category) affecting the calculation of training rewards that was contested, and not the calculation *per se*. A few other cases concern, *inter alia*, the validity of a contract offer or the player's status with the former club in cases of first professional registration.

However, the vast majority of the FCH decisions appealed concern the late submission of waivers by the player's new club.

3.2. THE ADMISSIBILITY OF WAIVERS NOT SUBMITTED DURING THE EPP PROCESS: A NEW LANDSCAPE

The high volume of EPP cases (compared with the number of claims under the previous system) and the automation and efficiency of the system have drastically changed the obligations and responsibilities of clubs in relation to the distribution of training rewards via the EPP process.

It must be highlighted that the EPP process was built and designed to accommodate the right of training clubs to waive their training rewards voluntarily. To that end, the FIFA Clearing House Regulations (FCHR) provide that, where a training club waives its entitlement to training rewards, proof of the waiver must be uploaded by the new club during the review phase of the EPP process (which lasts at least 15 days).[12] In other words, one phase of the EPP process is specifically dedicated to the submission by the new club of waivers signed by the training clubs.

Similarly, if a valid waiver is uploaded by the new club in due time, the EPP process allows the club that has allegedly waived its right to training rewards to challenge the validity of that document.[13]

In this regard, the advent of the FIFA Clearing House introduced a new and strict approach to waivers in the context of training rewards, under which clubs must meet procedural deadlines for training reward waivers to be duly accepted or challenged.[14]

12 Article 9, paragraph 7 of the FCHR.

13 Article 9, paragraph 8 of the FCHR.

14 Despite this strict approach, the system allows a certain flexibility in favour of clubs: during the EPP review process, in addition to the 15-day window for submitting waivers, clubs are generally invited by the FIFA general secretariat to submit waivers at different stages before the EPP determination is issued.

This new procedural dynamic has, in turn, given rise to a new issue in CAS appeals, namely the admissibility of documents that clubs did not submit in a timely manner during the EPP process.[15]

It should be emphasised that CAS has long been ruling on waivers in the context of training rewards. However, until the introduction of the FCH, this discussion was limited to the substantive validity of the waivers submitted; in this regard, the interpretation by CAS and the DRC of the requirements for a waiver to be considered valid had been settled long before the entry into force of the FCH.

3.3. THE VALIDITY OF TRAINING REWARD WAIVERS ACCORDING TO CAS JURISPRUDENCE

Before turning to the debate on whether CAS should accept waivers that have not been submitted during the EPP process, it is important to step back and clarify the concept of a waiver and the requirements for it to be considered valid.

In the same way that the parties involved in a given agreement are free to decide on the terms and conditions of a specific transfer, clubs that are entitled to receive training rewards under the FIFA Regulations on the Status and Transfer of Players (RSTP) may also choose to waive such rewards. However, if they do so, it is extremely important that the document that reflects this intention is legally correct and in accordance with the requirements established by the DRC and CAS. In The Jurisprudence of the FIFA Dispute Resolution Chamber, Frans de Weger states the following:[16]

> "[...] *for the new club it is of utmost importance that provisions in that respect will be drafted in a legally correct manner and in accordance with the basic principles of well-established jurisprudence. For example, the entitlement for training compensation cannot be excluded by an agreement between the new club and a player, an intermediary or any other third party, not being the club that is entitled to receive training compensation in accordance with the RSTP".*

In other words, the document must leave no doubt that the club which would otherwise be entitled to training compensation is clearly waiving that right in favour of the new club that would otherwise have to pay it.

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15 It should be noted that, in order to avoid the costs of a CAS appeal, nothing prevents the parties from agreeing on the (partial or total) reimbursement of the training rewards once they have been paid via FCH SAS; the fact that clubs must pass the FCH SAS compliance assessment guarantees that such an agreement does not lead to any circumvention of the system (in terms of compliance with financial regulation).

16 Frans de Weger, *The Jurisprudence of the FIFA Dispute Resolution Chamber*, 2nd ed. (The Hague: T.M.C. Asser Press, 2016), 410.

CAS has extensively examined the validity of training reward waivers, noting that parties may voluntarily waive their rights unless the waiver is contrary to law, public policy or good morals.[17] Accordingly, since neither the FIFA regulations nor Swiss law prohibits parties from waiving their rights to training rewards, a waiver may be considered valid as long as it does not conflict with public policy or good morals. Given the nature of the rights concerned, such waivers are unlikely to affect public policy or good morals; indeed, to the authors' knowledge, no waiver has ever been declared invalid on those grounds.

Moreover, the well-established DRC and CAS jurisprudence on the validity of waivers has established three main requirements that a waiver must meet to be considered valid: (i) the document must contain a clear and unequivocal renunciation of the training reward; (ii) it must be issued by the party concerned by such renunciation; and (iii) the person renouncing must have the capacity or authority to do so.

Regarding the first criterion, it is extremely important that the document shows which training rewards are being waived by the training club and leaves no room for interpretation. Vague wording such as "*the club waives compensation*" or "*the club waives development rights*" is not sufficient to identify the right being waived, and documents worded in this way will not be considered valid waivers under CAS jurisprudence.[18]

In addition, documents that do not clearly identify the "beneficiary" of the waiver will not be considered valid waivers. In recent CAS jurisprudence concerning loan agreements, where the waiver formed part of a loan agreement between a player's former club and a training club, the waiver was not deemed valid because the new club was not party to the loan agreement, which is binding only on its signatories. In this context, the obligation to pay the training reward rests with the new club (and the right to receive it remains with the training club), and that obligation cannot be

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17 See, e.g., CAS 2025/A/11492 Club Deportivo Leganés, S.A.D. v. Cheman des Parcelles Assainies & Fédération Sénégalaise de Football & FIFA; CAS 2023/A/9976 Klubi I Futbollit Vllaznia Shkoder v. Valletta FC.

18 CAS 2023/A/9775 & 9776 C.D. Tenerife SAD v. Waa Banjul FC & Banjul Football Academy & FIFA, para. 151: *"Since it is the new club – in the present case, the Appellant – that wishes to limit its liability to pay training rewards, the Appellant bears the onus of ensuring that any waiver is clearly drafted to show that the Player's former club or clubs have waived an entitlement to 'training rewards' as that term is defined in the FIFA RSTP. Since 'development rights' are undefined and are not 'training rewards' as that term is defined in the FIFA RSTP, the Sole Arbitrator finds that the Waiver Letter does not clearly and unequivocally show that Banjul FC waived its right to receive training compensation, and determines that the Waiver Letter is invalid."*

waived through the terms of a loan agreement concluded between other parties.[19]

Regarding the second criterion, it is fundamental that the party waiving its entitlement is the entity entitled to training rewards. Only the club with the right to receive such rewards can waive its entitlement, and no third party can do so on its behalf. In other words, if a player's last training club waives its right to training compensation, this waiver applies to that training club only, and not to any other club that may have trained the player during their career. Consequently, neither the player nor a third club has the authority to exclude the entitlement of the training club in an agreement concluded with the new club.

In a CAS case concerning a club's authority to waive the training rewards in dispute,[20] CAS found that the waiver submitted by the Appellant had been issued by another entity. Although both entities had similar names, it was established that they were in fact separate entities and, therefore, the waiver was not considered valid.

In the same award, the Sole Arbitrator also highlighted the following:[21]

> *"The agreement on amicable termination of the employment contract whereby the Player undertook to bear the costs of any training compensation in connection with the registration with FK Vozdovac is completely irrelevant with respect to the Appellant's obligation towards the Respondent."*

Furthermore, it should be emphasised that the person renouncing a right on behalf of a club must have the capacity or authority to do so. CAS jurisprudence[22] has held that a waiver must be signed by a person with the authority and capacity to execute and deliver the statement and to assume the obligations agreed.

3.4. CAS JURISPRUDENCE ON LATE WAIVERS – THE ACCEPTANCE OF WAIVERS NOT SUBMITTED DURING THE EPP PROCESS

Having addressed the criteria for the validity of waivers, this article now turns to the consequences of the new club's failure to submit waivers in a timely manner during the EPP process, analysing some of the cases appealed to CAS on this matter – the so-called "late waivers" jurisprudence.

19 CAS 2024/A/10694 JSC FC Lokomotiv v. FC Mariupol.
20 CAS 2022/A/8634 FK Vozdovac v. FC Kolomyagi.
21 CAS 2022/A/8634 FK Vozdovac v. FC Kolomyagi, para. 135.
22 See CAS 2017/A/5277 FK Sarajevo v. KVC Westerlo; CAS 2023/A/9976 Klubi I Futbollit Vllaznia Shkoder v. Valletta FC

CAS 2023/A/9682 Tuzlaspor A.S. v. FIFA

This case was one of the earliest CAS awards addressing the consequences of a new club's failure to submit a valid waiver within the deadline prescribed by the FCHR. Following the relevant EPP process, Tuzlaspor filed an appeal against the EPP determination and the corresponding Allocation Statement ordering the club to pay training compensation.

Tuzlaspor's main argument was that it had obtained waivers from the training clubs but had been unable to upload them during the EPP process because the devastating earthquakes that struck Turkey had prevented it from connecting to TMS. The club invoked *force majeure* to justify its failure to submit the documents during the EPP process. After examining Tuzlaspor's argument and concluding that the club had failed to provide sufficient evidence to justify its delayed response to FIFA's requests, the Sole Arbitrator reaffirmed the strict procedural framework established by the FCHR.

In particular, the Sole Arbitrator emphasised that, as a matter of principle, training reward waivers must be provided during the review phase of an EPP in order to be taken into account; any negligence on the part of the new club in submitting valid waivers in due time will result in such documents not being considered in the decision on the distribution of training rewards.

The Sole Arbitrator went on to conclude that, if a negligent club, through its own fault, fails to comply with the time limits set out in the FCHR, it should not be permitted to remedy its culpable inaction by filing an appeal accompanied by the missing waivers. This would constitute an abuse of rights and would compromise the efficiency and reliability of the entire process.

As a result, the appeal was dismissed, thereby confirming FIFA's decision ordering the club to pay training compensation.

CAS 2023/A/9940 & 9941 1927 FK Shkupi v. FIFA & FC Aarau & FC Baden

In other awards, however, CAS has shifted its jurisprudential position regarding the acceptance of waivers not submitted during the EPP process. It held that, even though the club acted negligently in failing to submit the waiver during the EPP review process, there was no abuse or bad faith that would justify excluding the evidence under Article R57(3) of the CAS Code. CAS consequently held that the waivers not uploaded by the new club during the EPP process were admissible, valid and legally effective.

In these cases, the disputes concerned two appeals against an EPP determination and the related Allocation Statement, which ordered the new club to pay training compensation.

In his decision, the Sole Arbitrator recognised that the waiver produced before CAS by the Appellant had never been submitted during the EPP process, despite their having been invited to do so by FIFA on numerous occasions. The Sole Arbitrator also recognised and endorsed the purpose of the Clearing House and the rules governing the proper functioning of the EPP process.

However, in the Sole Arbitrator's view and in accordance with the *de novo* principle, evidence that was not submitted by a party at first instance may be considered by CAS, unless the applicable rules and regulations dictate otherwise or Article R57(3)[23] of the CAS Code applies.

The Sole Arbitrator added that there was no provision in the FIFA regulatory framework requiring an exception to the *de novo* principle in the case at hand, i.e. restricting the analysis by CAS of waivers not provided by the parties during the EPP process.

In his conclusions, the Sole Arbitrator agreed that the Appellant had acted negligently by not submitting the waiver on time but held that, in the absence of abuse, justice was better served by admitting evidence that had already been available when the Appealed Decisions were issued. The Sole Arbitrator confirmed not only the admissibility but also the validity of the waivers; the decisions issued by FIFA were therefore set aside and the obligations to pay training compensation revoked.

CAS 2023/A/10041 FC Noah v. FIFA

As in the previous cases, FC Noah filed an appeal against the EPP determination and the corresponding Allocation Statement ordering it to pay training compensation.

In its appeal, the club argued that a valid waiver signed by the entitled club had been uploaded in TMS with the corresponding transfer instruction and that, although the document had not been submitted during the EPP process and had not been translated into one of FIFA's official languages, it should have been considered a valid waiver, since it reflected the parties' intentions in the context of the player's transfer.

[23] According to Article R57(3) of the CAS Code: "The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered."

The Sole Arbitrator noted that, despite the waiver having been uploaded by the Appellant in TMS, it had not been provided during the EPP process. Furthermore, the document provided in TMS was not in one of FIFA's official languages.

Besides the Appellant's failure to submit a translated version of the waiver at first instance, another key issue was discussed in this case: the lack of passive mandatory joinder. In FIFA's view, the entitled training club had a legitimate interest in the outcome of the case, and the fact that the club was not named as a Respondent in the CAS proceedings violated the principle of passive mandatory joinder, which constituted sufficient grounds for dismissing the appeal.

In this regard, the Sole Arbitrator noted that the entitled training club did indeed have a legal interest in the proceedings and would be affected by an award that merely annulled the appealed decision. However, in the Sole Arbitrator's view, the club would not be affected if the case were referred back to the first instance, since the training club would then have the opportunity to challenge the validity of the waiver within the EPP process.

Accordingly, since the Appellant had provided a translated version of the waiver in the CAS proceedings, the Sole Arbitrator decided to refer the case back to FIFA and reopen the EPP process to determine, in the light of that translation, whether the training club had validly waived its entitlement.

The above interpretation of the lack of passive mandatory joinder appears, however, to be an exception in CAS jurisprudence and a potential violation of the training club's right to be heard in the CAS proceedings, which cannot be remedied by referring the case back to FIFA.

CAS 2023/A/10002, 10009 & 10010 FK Liepāja v. FIFA

Although the appeal arose from the Appellant's failure to provide the relevant waivers in time during the EPP process, the key issue was that the Appellant named FIFA as the sole Respondent and did not include as parties to the CAS proceedings the training clubs that had allegedly waived their entitlements to training rewards (the creditors).

In its defence, the Appellant argued that the training clubs had no "*direct and legitimate interest in the dispute*", contending that the dispute was purely "*vertical*", between the Appellant and FIFA.

In the Sole Arbitrator's view (in line with FIFA's arguments), the training clubs entitled to training compensation had a legitimate interest in the dispute, and by not naming them as Respondents the Appellant had deprived them of the opportunity to challenge the validity of the waivers, in violation

of the principle of passive mandatory *litis consortium*. Consequently, the appeals were dismissed.

This interpretation is also confirmed by the majority of CAS awards in similar cases.[24] In summary, CAS has held that, by not naming the training clubs concerned (or, in certain cases, the relevant Member Association)[25] as Respondents, the Appellants prevent them (once again) from defending their legal and financial interests. In the view of the CAS panels that have addressed the issue, training clubs must be named as Respondents in CAS proceedings where their entitlement to compensation is directly challenged.

4. MAIN TAKEAWAYS AND IMPACT ON THE EPP PROCESS

Less than four years after the FIFA Clearing House went live, it has proved very successful and has become increasingly consolidated over time. At the foundation of that success lies the EPP process, which records the player's full history and calculates the training rewards owed by the new club to the training clubs.

The EPP process has been widely accepted by the parties involved, principally clubs and Member Associations. More than 99.8% of decisions issued by FIFA became final and binding without being contested; most importantly, not a single decision has been challenged on the grounds of an incorrect calculation of training rewards.

A second indicator of success is that, among the decisions appealed to CAS (the remaining 0.2%), the issue accounting for the largest number of appeals is late waivers. This demonstrates that most of these appeals relate to the parties' failure to comply with procedural deadlines for submitting documents, rather than to a disagreement regarding the substance of the matter or the decision itself.

Although CAS's position on late waivers was initially inflexible, a different interpretation has emerged in recent decisions, with CAS accepting late waivers.

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[24] See, e.g., CAS 2024/A/10718 KAA Gent v. FIFA; TAS 2024/A/10858 Guidars FC c. FIFA; CAS 2024/A/10478 Hapoel Tel Aviv FC v. FIFA.

[25] In TAS 2024/A/10858 Guidars FC c. FIFA, the Sole Arbitrator found that the participation of the training club's Member Association in the appeal was necessary under the principle of passive mandatory *litis consortium*, given the subject matter of the appeal, i.e. the period during which the player was registered with the training club, and the fact that a Member Association is responsible for the registration information submitted to the EPP for its affiliated clubs.

A further trend has also emerged in CAS decisions: instead of ruling on the validity of the waivers, CAS refers EPPs back to FIFA so that (i) the Appellant has the opportunity to submit the waiver and (ii) the corresponding training club has the opportunity to challenge the document. This new trend (as opposed to CAS issuing a new decision) is welcome, since it allows FIFA to carry out all administrative tasks within the EPP process, as instructed by the relevant CAS panel, so that the different stages of the process are respected while ensuring transparency for all participants.[26]

An exception applies in cases involving passive joinder. Where the affected training clubs (or the corresponding Member Associations) are not named as Respondents in the CAS proceedings, the prevailing view at CAS is that the appeal should be dismissed for violation of the principle of passive mandatory *litis consortium*. This approach seems reasonable, since (i) any decision to the contrary would violate the right of training clubs to be heard at CAS; and (ii) referral back to FIFA would not remedy any violation of due process or of the right to be heard of parties that were not named as Respondents in the relevant CAS proceedings.

What, then, are the lessons learnt from CAS jurisprudence, and what is its impact on EPP cases?

From the perspective of the system and of FIFA's role as regulator, setting and respecting deadlines in the EPP process remains extremely important. More than 70,000 decisions have been issued, and the process must remain automatic, fast and efficient, mainly to protect the legitimate interest of training clubs in receiving their training rewards in a timely manner. This argument is all the more compelling given that the Allocation Statements are subsequently sent to FCH SAS for compliance checks and further processing (good reason), which take a few months. This is impossible to achieve without a clear and enforceable process.

Even though the most recent CAS jurisprudence establishes that new evidence may be admitted on appeal after the EPP determination has been issued (in the absence of bad faith and provided that the evidence was already available when the original decision was issued), the balance struck between procedural diligence and substantive fairness remains reasonable.

The acceptance of *de novo* material and respect for passive mandatory litis consortium have led to fairer decisions in individual cases, without giving the parties an incentive to disregard the EPP process. Indeed, the costs of the CAS appeals could have been avoided had the parties complied with

[26] See, e.g., CAS 2025/A/11492 Club Deportivo Leganés, S.A.D. v. Cheman des Parcelles Assainies & Fédération Sénégalaise de Football & FIFA; CAS 2024/A/10673 Torres Srl v. FIFA & Club Atlético Independiente & Asociación Atlética Argentinos Juniors.

the deadlines established by the FCHR. This effect is confirmed by the fact that parties are becoming increasingly familiar with the system: while the number of EPP and Allocation Statement decisions has increased steadily since 2023, the number of appeals has followed the opposite trend.

Only in the (very unlikely) event of a proliferation of CAS appeals on the grounds of late waivers should CAS – through its jurisprudence – or FIFA – through its regulatory powers – reconsider the threshold of (in)flexibility with regard to the admission of late evidence in the EPP process.

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THE FIFA RSTP 2027: REBUILDING THE TRANSFER SYSTEM THROUGH DIALOGUE AND ACCOUNTABLE AUTONOMY

Michele Colucci

ABSTRACT

The revised FIFA Regulations on the Status and Transfer of Players, which enter into force on 1 January 2027, rewrite, among other things: (i) the rules on compensation for breach of contract; (ii) the joint and several liability of the player's new club; (iii) the international transfer certificate; and (iv), for the first time, the direct participation of players in the transfer fees paid for them. The reform follows the judgment of the Court of Justice of the European Union in *Diarra*, which found several provisions of the previous regulations disproportionate and contrary to the freedom of movement of workers and EU competition law.

This article describes the process through which FIFA and the stakeholders sought to bring the transfer regulations into line with EU law. That process began with an *interim* regulatory framework, followed by a global consultation involving FIFA, FIFPro, UEFA, CONMEBOL, the World Leagues Association and European Football Clubs. The article then reviews the main features of the reform, placing them within the two-step method conceived by the Court in *Meca-Medina* and since applied in ROGON and RRC Sports and to a wider array of sporting rules: in exercising its regulatory autonomy, a sports governing body must apply transparent, objective, non-discriminatory and proportionate criteria.

The core argument of the analysis is that the compatibility with EU law, durability and credibility of the new transfer system depend not only on the quality of the new provisions but also on the stakeholder consensus method that underpins the reformed regulations.

KEYWORDS

Accountable Autonomy – Transfer System – Social Dialogue – Compensation for Breach of Contract – Inducement – International Transfer Certificate – Player Participation in Transfer Fees – Proportionality

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THE FIFA RSTP 2027: REBUILDING THE TRANSFER SYSTEM THROUGH DIALOGUE AND ACCOUNTABLE AUTONOMY

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Summary: 1. Introduction. 2. From *Bosman* to the 2001 Agreement: The Origins of a Negotiated System. 3. The Judicial Trigger: *Meca-Medina*, the 2023 "Christmas" Judgments and *Diarra*. 4. Rebuilding the System Through Dialogue: The Road to the RSTP 2027. 5. A New Method of Regulation: Consensus as a Source of Rules. 6. The Reformed Article 17: Compensation for Breach of Contract. 7. Extended Contracts for Young Players. 8. Player Participation in Transfer Fees: A Redistributive Innovation. 9. The International Transfer Certificate: From Obstacle to Facilitator. 10. Enforcement and Dispute Resolution. 11. Continuity: Training Compensation and the Solidarity Mechanism. 12. The Reform Through the Lens of Accountable Autonomy: The 2026 EU Jurisprudence. 13. Concluding Remarks – Selected Bibliography.

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The views expressed in this article are exclusively those of the author and do not reflect, and should not be attributed to, the official position of the European Commission.

1. INTRODUCTION

On 1 January 2027, a revised version of the FIFA Regulations on the Status and Transfer of Players (hereafter "RSTP") will enter into force.[2] The reform reaches the core of the international transfer system: the consequences of a breach of contract, the joint and several liability of a player's new club, the issuance of the international transfer certificate and, for the first time in the history of the regulations, the direct participation of players in the transfer fees paid for them.[3] What sets this reform apart from earlier revisions of the RSTP is the open, structured process of dialogue among FIFA, the players' union FIFPro, clubs and leagues through which the new regulations were developed.[4]

This article examines both the process and the substance of that reform. It recalls, briefly, the origins of the transfer system as a negotiated compromise between the free movement of workers and the organisational needs of professional football. It then turns to the judgments in which the Court of Justice of the European Union has tested that compromise against EU law over three decades, culminating in the judgment of 4 October 2024 in *Diarra*.[5] It reconstructs the path from that judgment to the new regulatory framework, a path covering an interim regime adopted within weeks of the judgment[6] and a global negotiation that closed, formally, on 10 June 2026.[7] It then examines the substance of the reform: its new method of rule-making (arguably the reform's most significant innovation), the rebuilt Article 17 on compensation, the extended contracts available to clubs that train young

2 FIFA Regulations on the Status and Transfer of Players, January 2027 edition (RSTP 2027). The regulations were approved by the Bureau of the Council on 10 June 2026 and enter into force on 1 January 2027; see FIFA, "Bureau of the Council approves new regulatory framework for the global football transfer system", inside.fifa.com, 10 June 2026.

3 RSTP 2027, Article 17 (Consequences of a Breach of Contract), Article 9 and Annexe 3 (International Transfer Certificate) and Article 21bis (Player Participation in Transfer Fees).

4 See *infra*, Section 4. On the sectoral social dialogue mechanism, established under (what is now) Article 155 of the Treaty on the Functioning of the European Union (TFEU), see European Commission, Directorate-General for Employment, Social Affairs and Inclusion, "Professional football – Sectoral social dialogue"; and, for its early history in football, M. Colucci and A. Geeraert, "Social Dialogue in European Professional Football", The International Sports Law Journal, Asser Press, issue 3–4, 2011.

5 Judgment of 4 October 2024, FIFA v BZ ("*Diarra*"), C-650/22, ECLI:EU:C:2024:824.

6 FIFA Circular no. 1917, "Interim regulatory framework: amendments to the FIFA Regulations on the Status and Transfer of Players and the Procedural Rules Governing the Football Tribunal", adopted by the Bureau of the Council on 23 December 2024.

7 FIFA, "Bureau of the Council approves new regulatory framework for the global football transfer system", cited above.

players, the new right of players to participate in transfer fees, the reform of the international transfer certificate, and the enforcement architecture, noting that the existing training compensation and solidarity mechanisms have been preserved, possibly with a view to a future reform.

Finally, it situates the reform within the broader doctrinal development of EU sports law through the concept of "*accountable autonomy*", developed in light of the Court's recent case law.[8]

This analysis does not treat the RSTP 2027 as a closed chapter. A number of its provisions will only be tested once disputes reach the FIFA Football Tribunal and the Court of Arbitration for Sport (CAS).

What certainly stands out is the way in which the reform has been conceived and drafted. As a negotiated instrument rather than an act unilaterally imposed on the stakeholders, it responds directly to a concern that has run through the case law of the Court of Justice: the private regulatory power exercised by a sports governing body must rest on transparent, objective and non-discriminatory substantive criteria and be subject to detailed procedural rules. The legitimacy of such regulatory power therefore depends not only on the content of the rules adopted, but also on the conditions and procedures governing their adoption and application.[9]

2. FROM *BOSMAN* TO THE 2001 AGREEMENT: THE ORIGINS OF A NEGOTIATED SYSTEM

The FIFA transfer system has never been a purely private construction. Its contemporary form dates from the aftermath of the 1995 *Bosman* judgment, which held that the international sporting rules requiring a transfer fee to be paid after the expiry of a player's contract and imposing quotas on foreign

8 The term "accountable autonomy" was proposed in the sports law context by Stefano Bastianon and subsequently developed, in the sense used in this article, in S. Bastianon and M. Colucci, "Accountable Autonomy: The Diffusion of the *Meca-Medina* Method in *FIGC and CONI*, *NADA Austria*, *CD Tondela*, *ROGON* and *RRC Sports*", in *Twenty Years after Meca-Medina: The Enduring Legacy of the CJEU's Sports Law Revolution* (SLPC, October 2026). See *infra*, Section 12.

9 Judgment of 21 December 2023, *European Superleague Company*, C-333/21, ECLI:EU:C:2023:1011, paragraphs 143–152, in particular paragraph 151; judgment of 21 December 2023, International Skating Union v Commission, C-124/21 P, ECLI:EU:C:2023:1012, paragraphs 125–136. See also judgment of 18 July 2006, *Meca-Medina* and Majcen v Commission, C-519/04 P, ECLI:EU:C:2006:492; on appeal from the judgment of 30 September 2004 of the Court of First Instance, T-313/02, ECLI:EU:T:2004:282.

players were contrary to the free movement of workers.[10] The ruling provoked a strong reaction from football associations, which invoked the specificity of sport, a notion later given formal recognition in a declaration annexed to the Treaty of Amsterdam and a declaration of the Nice European Council.[11]

It took six years, and one failed attempt at compromise in 1997, for FIFA and UEFA to reach what became known as the Gentlemen's Agreement with the European Commission, announced in March 2001.[12] The agreement allowed FIFA to introduce a system built on contractual stability, training compensation and protection for minors, in exchange for which the Commission closed its antitrust proceedings.[13] Commissioner Mario Monti described the outcome as one that found "*a balance between the players' fundamental right to free movement and stability of contracts together with the legitimate objective of integrity of the sport and the stability of championships*".[14]

Two features of that early episode deserve to be recalled here because, a quarter of a century later, they remain part of the reform examined in this article.

First, the 2001 agreement was not imposed by the Commission on FIFA; it was negotiated, over several years, with FIFA, UEFA and FIFPro all party to the discussion. Second, the resulting rules were not exhaustive: they left open questions – among them the calculation of compensation for unilateral termination and the principle of joint liability – that would resurface in litigation over the next two decades and lie at the core of the 2027 reform.

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10 Judgment of 15 December 1995, Union royale belge des sociétés de football association ASBL v Jean-Marc *Bosman*, C-415/93, ECLI:EU:C:1995:463.

11 See Declaration No 29 on Sport annexed to the Final Act of the Treaty of Amsterdam, 1997; Declaration on the Specific Characteristics of Sport and its Social Function in Europe, of which account should be taken in implementing common policies, Annex IV to the Presidency Conclusions of the Nice European Council, 7–9 December 2000.

12 European Commission, "Outcome of discussions between the Commission and FIFA/UEFA on FIFA Regulations on international football transfers", Press release IP/01/314, 6 March 2001.

13 On the negotiating history of the 2001 agreement, see B. García, "The 2001 Informal Agreement on the International Transfer System", in M. Colucci (ed.), Contractual Stability, SLPC, 2011, 25, describing it as an episode "where the art of politics and persuasion is as important as the hard facts of legal reasoning".

14 Statement IP/02/824 of 5 June 2002 of Commissioner Mario Monti: "FIFA has now adopted new rules which are agreed by FIFPro, the main players' union, and which follow the principles acceptable to the Commission. The new rules find a balance between the players' fundamental right to free movement and stability of contracts together with the legitimate objective of integrity of the sport and the stability of championships. [...] Football now has the legal stability it needs to go forward."

3. THE JUDICIAL TRIGGER: *MECA-MEDINA*, THE 2023 "CHRISTMAS" JUDGMENTS AND *DIARRA*

The framework within which the transfer system has since been tested was set by the Court of Justice in 2006, in *Meca-Medina*.[15] A sporting rule that has an economic effect is not exempt from EU law merely because it is characterised as sporting; it may nonetheless remain outside the reach of Articles 101 and 102 TFEU if its restrictive effects are inherent in the pursuit of a legitimate objective connected to the organisation of sport and go no further than necessary to attain that objective.[16] The test, itself an adaptation to sport of the approach the Court had developed a few years earlier for the regulation of the professions in *Wouters*,[17] became the standard against which every subsequent challenge to a sports governing body's regulatory power would be measured.

On 21 December 2023, the Court applied and refined that standard in three judgments delivered on the same day, concerning *European Superleague Company*, the *International Skating Union* and *Royal Antwerp Football Club*, a trilogy commonly referred to, after the date of its delivery, as the "Christmas" judgments.[18] Rules of prior authorisation and eligibility, the Court held, place the body that organises competitions in the position of also regulating access to them; for that reason, they must rest on criteria that are transparent, objective, precise, non-discriminatory and proportionate, and must be open to effective judicial review.

The "Christmas" judgments introduced a further refinement with direct consequences for the transfer system. They emphasised, in the sporting context, a distinction already well established in general competition law. Restrictions that merely have the effect of restricting competition may still benefit from the legitimate-objectives defence recognised in *Wouters* and *Meca-Medina*. By contrast, restrictions that are anti-competitive by their very nature, or "by object", can be justified, if at all, only under the considerably more demanding efficiency-gains exemption of Article 101(3) TFEU.[19]

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15 Judgment of 18 July 2006, *Meca-Medina* and Majcen v Commission, C-519/04 P, cited above (note 9).

16 Ibid., paragraphs 42 to 47.

17 Judgment of 19 February 2002, Wouters and Others, C-309/99, ECLI:EU:C:2002:98.

18 *European Superleague Company*, C-333/21, and International Skating Union v Commission, C-124/21 P, both cited above (note 9); judgment of 21 December 2023, Royal Antwerp Football Club, C-680/21, ECLI:EU:C:2023:1010.

19 R. Houben, "Shaping the Sports Regulatory Framework in Compliance with *Meca-Medina*", in Twenty Years after *Meca-Medina*: The Enduring Legacy of the CJEU's Sports Law Revolution SLPC, October 2026, Section 2, discussing the Court's refinement, in *European Superleague Company*, C-333/21, International Skating Union

The distinction matters because a "by object" classification forecloses, at the outset, the very inquiry into legitimate objectives and proportionality on which the *Meca-Medina* test rests.

Diarra, decided the following October, applied the same structure to the transfer system.[20] The Court accepted that the RSTP pursued a legitimate objective, namely maintaining a degree of contractual stability capable of ensuring the regularity of competitions between clubs, while clarifying that contractual stability is itself only a means to that end, not a free-standing objective in its own right.[21]

What the rules then in force could not survive was the proportionality stage of the test, examined at several levels. The criteria that FIFA itself labelled "objective" for calculating compensation were found, on inspection, not to be applied with sufficient consistency to support the claim that the system rested on ascertainable, verifiable standards.[22]

The Court's reasoning is worth setting out. The "law of the country concerned", although listed as a criterion, was found in practice never to be applied: FIFA's own Commentary confirmed that the Dispute Resolution Chamber applied FIFA's own regulations and, only subsidiarily, Swiss law. The "specificity of sport" criterion fared no better: without a precise definition, it left the calculation open to an application the Court described as "unpredictable and difficult to verify", notwithstanding its formal label as an "objective criterion". Even the criteria the Court treated as more objective on their face, such as the remuneration due to the player under a new contract, were found to go beyond what the stability objective could justify, since they concerned an employment relationship distinct from the one that had ended.[23]

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v Commission, C-124/21 P, and Royal Antwerp Football Club, C-680/21 (all cited above), of the distinction between restrictions of competition "by object" and restrictions "by effect": only the latter remain eligible for the legitimate-objectives defence of Wouters and *Meca-Medina*, while the former can be justified, if at all, only by the considerably more demanding efficiency-gains exemption of Article 101(3) TFEU.

20 For a detailed, article-by-article analysis of the *Diarra* judgment, see S. Bastianon and M. Colucci, "The Evolution of FIFA Transfer Football Regulations: Challenges, Opportunities, and Innovative Approaches in the Wake of the *Diarra* Judgment", Rivista di Diritto ed Economia dello Sport (RDES), 2024, 1–43, on which this Section draws.

21 *Diarra*, C-650/22, cited above, paragraphs 99 and 102 (rejecting the protection of professional footballers as a stand-alone justification available to FIFA, and treating contractual stability not as a legitimate objective in itself but as one of the means capable of contributing to the pursuit of the legitimate objective of ensuring the regularity of inter-club competitions).

22 Ibid., paragraph 106.

23 *Diarra*, C-650/22, cited above, paragraphs 105 to 107. A further asymmetry within the same provision went unexamined, because it was not raised before the

The joint and several liability imposed on a player's new club, together with the accompanying sporting sanctions, applied automatically, without any mechanism for taking the circumstances of the individual case into account.[24]

The Court restated that sporting sanctions may be imposed only within a framework of criteria that are themselves transparent, objective, non-discriminatory and proportionate. The automatic sanction under the former Article 17(4) RSTP did not meet those criteria.[25]

The practical difficulty of obtaining an international transfer certificate while a compensation dispute remained pending completed the picture, since the relevant provision made no allowance for provisional registration.[26]

The question left open by the judgment is how contractual stability and free competition can be reconciled in practice, rather than simply restated as competing values.[27]

Diarra's reasoning was not confined to free movement law. Examining the same rules from the standpoint of competition law, and applying the refined framework of the "Christmas" judgments, the Court went a step further: read together, the former Article 17 RSTP and the accompanying rules on joint liability and the international transfer certificate ensured, the Court found, "*in practice, that each club is certain, or virtually certain, that it will be able to keep its own players*" until it chose to release them.[28]

Court. The criteria for compensation owed by a player were more elaborate than those for compensation owed by a club, and that elaboration came at a cost: greater unpredictability. The club's side of the calculation, by contrast, remained comparatively undeveloped, and its likely outcome lower.

24 Ibid., paragraphs 110 to 112.

25 Ibid., paragraph 112: "[s]uch a sporting sanction, which the bodies competent to apply it do not have the power to adapt on a case-by-case basis according to specific criteria or circumstances, appears [...] manifestly to bear no relation of proportionality to the breach attributed to the new club concerned".

26 *Diarra*, C-650/22, cited above, paragraphs 108 and 109.

27 Such a question has been taken up directly by Abreu, one of the editors of the collective commentary drawn on throughout this article, in a separate contribution devoted to it. See G. Abreu, "How to Reconcile Contractual Stability in Football with Free Competition? Lessons from the *Diarra* Case", FIFA Legal Journal, Vol. 1, No. 1, 2026, 12–39.

28 *Diarra*, C-650/22, cited above, paragraph 141 ("in practice, that each club is certain, or virtually certain, that it will be able to keep its own players for as long as the contract or succession of contracts concluded with them has not reached its term"). See also ibid., paragraph 145 ("[the rules] lead to the artificial partitioning of national and local markets, to the advantage of the clubs as a whole") and paragraph 146 (describing the rules as equivalent, in combination, to "a general, absolute and permanent ban

The Court likened such a state of affairs to a no-poaching agreement between clubs, one that presented, by its very nature, "*a high degree of harm*" to the competition the clubs would otherwise be able to engage in, "*accordingly* [with] *no need to examine* [its] *effects*".[29]

That classification, "by object" rather than merely "by effect", carried a specific and severe legal consequence: unlike the free movement analysis recounted above, in which a legitimate objective pursued disproportionately can still, in principle, be redesigned to meet the proportionality standard, a restriction "by object" forecloses the ordinary *Wouters* and *Meca-Medina* defence altogether; it leaves only the considerably more demanding efficiency-gains exemption of Article 101(3) TFEU, one FIFA could not, on the Court's assessment, have satisfied in any event.

It has been suggested that this second, competition-law finding carries a lesson of its own for sport's governing bodies generally: "*when the governing bodies of sport achieve little to no balance between affected stakeholders, a 'by object' qualification will come almost naturally, as the freedom to compete of one or more stakeholders will then often be jeopardised to protect one or more other stakeholders*",[30] hints towards *"a design error of decision making in sport*".[31]

The judgment neither analysed nor declared the FIFA transfer system as a whole incompatible with EU law. Nor did it categorically prohibit the principle of joint liability, the imposition of sporting sanctions for breach of contract, or the requirement of an international transfer certificate. Rather, it required these instruments to be redesigned so that the individual circumstances of each case could be taken into account and the resulting measures subjected to effective, case-by-case review. Read in this light,

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on the unilateral recruitment of players who are already employed"). For this reading of the judgment, see R. Houben, cited above, Section 3.

29 *Diarra*, C-650/22, cited above, paragraph 148: "those rules must be considered to have as their object the restriction, indeed the prevention, of that competition, throughout the territory of the European Union. There is accordingly no need to examine their effects." See R. Houben, cited above, Section 3, drawing the consequence that the ordinary *Meca-Medina* legitimate-objectives defence was, as a result, unavailable to FIFA in *Diarra*, leaving only the stricter efficiency-gains exemption, which the rules could not in any event have satisfied.

30 R. Houben, cited above, Sections 3 and 5.

31 Ibid. The author states: "[f]*rom a stakeholder perspective, it seems that when the governing bodies of sport achieve little to no balance between affected stakeholders, a 'by object' qualification will come almost naturally, as the freedom to compete of one or more stakeholders will then often be jeopardised to protect one or more other stakeholders. This hints towards a design error of decision making in sport*."

Diarra called on FIFA to redesign rather than abolish the transfer system. The RSTP 2027 is a response to that task.

Subsequent case law has added a layer of nuance to the "by object" classification without disturbing it. In *CD Tondela*, decided in the spring of 2026 and concerning a no-poaching agreement concluded between Portuguese clubs and their league during the suspension of the 2019–2020 season on account of the COVID-19 pandemic, the Court held that an agreement simultaneously pursuing an anti-competitive aim and a genuinely pro-competitive one (there, preserving roster stability during a season whose outcome the pandemic had placed in jeopardy) must still, as a rule, be treated as a restriction by object, unless a specific examination of its content, its aims and its economic and legal context indicates otherwise.[32]

As has been aptly observed, the effect is not to exclude the specific characteristics of sport from the analysis, but to consider them at two different stages. They are relevant first "at the threshold of the by-object classification", where *CD Tondela* requires an assessment of the specific context of the sector concerned. They become relevant again "at the justification stage", where the necessity assessment developed in *RRC Sports* must consider the specific context of the sport in question.[33]

This distinction is relevant to the analysis of the RSTP 2027 developed in the following sections. The fact that a rule results from negotiation and institutional consensus does not, in itself, protect it from classification as a restriction by object. Its content, aims and context must still be examined independently. The process through which the rule was adopted may form part of that context, but it cannot determine its classification.

32 Judgment of 30 April 2026, CD Tondela and Others, C-133/24, ECLI:EU:C:2026:361, paragraphs 55 to 58; see S. Bastianon and M. Colucci, "Accountable Autonomy", cited above, Section 5.2, noting that the agreement "pursued both an objectively anticompetitive aim, restricting competition on the market for the recruitment of players, and an objectively pro-competitive one, preserving roster stability during a season whose sporting outcome the pandemic had placed in jeopardy", and that the Court "accordingly held that the agreement must, as a rule, be treated as restrictive by object, unless a specific examination of its content, aims and context indicates otherwise".

33 A. Cattaneo, "Beyond *Meca-Medina*: Article 165 TFEU, Judicial Activism, and the Boundaries of EU Sports Competence", in Twenty Years after *Meca-Medina*: The Enduring Legacy of the CJEU's Sports Law Revolution SLPC, October 2026, Section 4.3, citing CD Tondela and Others, C-133/24, cited above, paragraph 75.

4. REBUILDING THE SYSTEM THROUGH DIALOGUE: THE ROAD TO THE RSTP 2027

The response to Diarra unfolded in two stages, one immediate and one deliberative, and along two institutional tracks that ultimately converged.

The immediate stage came within weeks of the judgment. On 23 December 2024, the FIFA Bureau of the Council adopted an interim regulatory framework amending the provisions on compensation for breach of contract, joint and several liability, inducement, the international transfer certificate and the proceedings before the Football Tribunal.[34]

The interim framework was, by its own terms, a targeted adjustment intended to bring the most exposed provisions into closer alignment with the judgment while a broader review was carried out; it was not presented, and should not be read, as FIFA's considered final response to the Court's reasoning.

That broader review took the better part of eighteen months and proceeded on two tracks that, while formally distinct, addressed the same subject matter and, in the end, produced converging results. At global level, FIFA consulted the stakeholders directly affected by the transfer system and received what it described as extensive feedback on possible modifications to the RSTP.[35] At European level, the reform was also examined within the EU Sectoral Social Dialogue Committee for Professional Football, established under the auspices of the European Commission and composed, on the employees' side, of FIFPro Europe and, on the employers' side, of European Leagues and European Football Clubs.[36]

The Committee is not a recent invention created for the purposes of this reform; it has provided a forum for structured dialogue between the football

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34 FIFA Circular no. 1917, cited above; see also FIFA, "Bureau of the Council adopts interim regulatory framework concerning RSTP", inside.fifa.com, 23 December 2024. The interim framework addressed compensation for breach of contract, joint and several liability, inducement, international transfer certificates and proceedings before the Football Tribunal.

35 See FIFA, "FIFA receives extensive feedback on possible modifications to Regulations on the Status and Transfer of Players", press release of 28 November 2024, inside.fifa.com (last consulted 9 October 2026).

36 European Commission, Employment, Social Affairs and Inclusion, "Professional football – Sectoral social dialogue". The Committee, established in 2008, brings together FIFPro Europe on the employees' side and European Leagues and European Football Clubs (EFC) on the employers' side, and covers, among its priorities, the transfer system and its compatibility with the freedom of movement of workers.

sector's own social partners, under the Commission's facilitation, for close to two decades.[37]

On 26 November 2025, at a plenary meeting held in Brussels, the Committee's members, together with UEFA, adopted a joint resolution setting out shared principles for the reform: a transfer system that is simpler, more efficient and more transparent, that continues to redistribute value through training and solidarity mechanisms, and that pays particular attention to the protection of young players and to the strengthening of dispute-resolution structures.[38] The resolution positioned Europe, which accounts for the substantial majority of the global transfer market by value, as a stakeholder with a direct interest in how the new rules would be framed.[39]

The global and European tracks converged in the first half of 2026. On 10 June 2026, following negotiations that involved FIFPro, the World Leagues Association, European Football Clubs, CONMEBOL and UEFA, the Bureau of the Council approved the new regulatory framework that is the subject of this article.[40] These amendments were communicated to member associations by FIFA Circular no. 1970 of 1 September 2026, which set the new RSTP, the FIFA Disciplinary Code (FDC) and the Procedural Rules to enter into force on 1 January 2027, the revised FIFA Governance Regulations having already entered into force on 1 July 2026 so as to allow the Global Social Dialogue Platform to begin operating without delay.[41]

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37 See Colucci and Geeraert, "Social Dialogue in European Professional Football", cited above.

38 European Leagues, European Football Clubs (EFC), FIFPro Europe and UEFA (chairing), *Joint Resolution adopted at the plenary meeting of the EU Sectoral Social Dialogue Committee for Professional Football*, Brussels, 26 November 2025; reported in FIFPro, "European football unites behind key principles of the football transfer system and its reform", FIFPro.org, December 2025. The resolution recorded, among the distinctive features of European football that further reform must reflect, "the role of training clubs and collective governance". It stated that "any further reform requires a delicate balance between legitimate club interests, protecting players' individual rights and freedom of movement, while maintaining economic stability and adhering to EU legal standards", and concluded that "it is crucial that any reform delivers clarity, proportionality and balance, so that clubs can plan and invest with confidence, players can pursue their careers under fair conditions, and the transfer system as a whole remains credible to regulators, courts and supporters".

39 Ibid.

40 FIFA, "Bureau of the Council approves new regulatory framework for the global football transfer system", cited above; the negotiations leading to approval involved FIFPro, the World Leagues Association, the European Football Clubs, CONMEBOL and UEFA.

41 FIFA Circular no. 1970, "Amendments to the FIFA Regulations on the Status and Transfer of Players, the FIFA Disciplinary Code, the Procedural Rules Governing the Football Tribunal and the FIFA Governance Regulations", Zurich, 1 September

The same period saw FIFA and FIFPro conclude and sign a memorandum of understanding, running through 2031, that governs their working relationship on regulatory matters going forward.[42] UEFA, welcoming the reform the following day, noted that the principles set out in the November 2025 joint resolution of the European social partners had been incorporated into the revised regulations.[43]

The RSTP 2027 thus carries the imprint of both processes: a global consultation conducted under FIFA's auspices, and a European dialogue conducted under the Commission's, neither displacing the other.

The reform also left a mark on football's governance architecture beyond the text of the RSTP itself. FIFPro obtained, *inter alia*, an observer seat with speaking rights on the FIFA Council and, at European level, a seat on UEFA's Executive Committee, extending a formal voice to players' representatives in bodies from which they had previously been absent.[44]

It is fair to record, for completeness, that the years following Diarra also saw litigation connected to the pre-2027 transfer system, including a claim brought by the Dutch foundation *Justice for Players* against FIFA and a number of national associations, and that, as part of the arrangements accompanying the reform, FIFPro agreed to withdraw its own pending legal proceedings against FIFA,[45] while the national player unions supporting the reform process were called upon to withdraw their backing for the class action brought by Justice for Players.[46]

The reform recounted in this article cannot be reduced to any single cause, whether principled dialogue or litigation risk; both were, in all

2026, available at https://digitalhub.fifa.com/asset/c973c145-4a64-4f72-a136-6201740462cc/Circular-1970_Amendments-to-the-RSTP-Procedural-Rules-FDC-and-FGR.pdf.

42 FIFPro, "What the FIFPro and FIFA agreement means for players", FIFPro.org, June 2026, describing a memorandum of understanding running through 2031.

43 UEFA, "*UEFA welcomes reform of the international transfer system*", uefa.com, 11 June 2026, noting that the November 2025 joint resolution of the European social partners was "incorporated into" the revised regulations.

44 R. Houben, cited above, Section 7.

45 FIFPro, 'FIFA and FIFPro sign landmark agreement to usher in new era of collaboration and player representation in global football governance', 10 June 2026; FIFPro, 'What the FIFPro and FIFA agreement means for players', 10 June 2026; See FIFPro Europe, 'FIFPro Europe: Statement', 9 July 2026,

46 Ibid., recording that the reform process coincided with litigation risk connected to the pre-2027 transfer system, including a claim brought by the Dutch foundation Justice for Players against FIFA and a number of national associations, and that the national player unions supporting the reform were asked, as part of the arrangements accompanying it, to withdraw their backing for that claim.

likelihood, present, and this article does not attempt to weigh their respective contributions.

The negotiating process has itself become a subject of reflection, and has been described as "apasionante, dinámico y profundamente enriquecedor" ("exciting, dynamic and profoundly enriching").[47] Academic commentary on the same process has been more circumspect about its institutional novelty, examining whether it amounts to a crisis-driven response to a deeper "legitimacy crisis" in the international transfer system rather than a purely technical exercise.[48]

5. A NEW METHOD OF REGULATION: CONSENSUS AS A SOURCE OF RULES

The most consequential change introduced by the RSTP 2027 may not be found in any single substantive provision but in the regulations' own account of their legal nature.

Article 1 paragraph 2 states that the regulations "*reflect a joint agreement between the representatives of employees (players and their unions) and employers (clubs and leagues*)" and that they are "*based on, and developed through, a social dialogue process under the direction and auspices of FIFA*." With the exception of Annexe 1, FIFA "*shall not amend these regulations without agreement between employees, employers and FIFA*."[49] That process is to take place through a Global Social Dialogue Platform for Professional Football, which FIFA, together with the representatives of employees and employers, may govern through more detailed rules of procedure.[50]

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47 E. García Silvero, "Prólogo", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027: Comentarios Prácticos, ICAD/Ediciones Laborum, Murcia, 2026, 17, at 20–21 ("*Si tuviera que definir el proceso negociador iniciado tras la sentencia Diarra, en octubre de 2024, lo describiría con tres adjetivos: apasionante, dinámico y profundamente enriquecedor*" – "*If I had to define the negotiating process opened after the Diarra judgment, in October 2024, I would describe it with three adjectives: exciting, dynamic and profoundly enriching*"). The author is FIFA's Chief Legal and Compliance Officer.

48 J.E. Confalonieri and M.F. Confalonieri, "El diálogo social en la reforma del Reglamento sobre el Estatuto y la Transferencia de Jugadores de FIFA: Una primera aproximación", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 49, at 50, describing the social dialogue process incorporated into the reform as an institutional response to "una crisis más amplia de legitimidad del sistema internacional de transferencias".

49 RSTP 2027, Article 1 paragraph 2.

50 RSTP 2027, Article 1 paragraph 3.

The significance of this provision lies in the regulatory power it removes from FIFA's hands. Under the pre-2027 regulations, amendments to the RSTP were, formally, unilateral acts of a private association, adopted by the Council after whatever consultation FIFA chose to undertake. Under the 2027 text, at least for the core provisions falling within the scope of the Global Social Dialogue Platform, unilateral amendment is no longer available: a change requires the agreement of the players' and clubs' representatives as well as of FIFA.

Some commentators have gone so far as to describe the RSTP 2027, or the memorandum of understanding underpinning it, as approaching an international collective labour agreement, arguably the first of its kind in professional sport.[51]

Others resist that characterisation as premature, describing the outcome as a hybrid: an international federation regulation built, at least in part, through transnational social dialogue, whose novelty lies in FIFA's acknowledgement that the labour content of the transfer system requires the participation of the social partners, but whose limit lies in the fact that this participation neither eliminates the need for external legal control nor automatically converts the RSTP into a fully-fledged international collective agreement.[52]

Whether either characterisation holds under any given national or international legal order is a question this article does not seek to resolve. What can be said is that the regulations now expressly incorporate a collaborative principle that FIFA has chosen to make part of the framework governing the exercise of its future regulatory authority.

A more precise legal question underlies that practitioners' characterisation: whether the process that produced the RSTP 2027 can benefit from the exemption the Court of Justice recognised, in *Albany*, for collective agreements between management and labour pursuing social-policy objectives, which

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51 The characterisation is that of practitioner commentary rather than of the regulations themselves; see, e.g., the analysis collected in "The New FIFA RSTP: is it the first international Collective Agreement for football?", LCA Studio Legale, 2026. Whether the RSTP 2027, or the underlying FIFA-FIFPro memorandum of understanding, in fact qualifies as a collective agreement under any given national or international legal order is a question that falls outside the scope of this article.

52 J.E. Confalonieri and M.F. Confalonieri, cited above, 58–59, concluding, against FIFA's own suggestion that the RSTP 2027 aims to become "un convenio laboral colectivo de ámbito internacional", that it is "*más adecuado hablar de una fórmula híbrida: un reglamento federativo internacional construido, al menos parcialmente, mediante diálogo social transnacional*", and cautioning that stakeholder participation "*no elimina la necesidad de control jurídico externo ni convierte automáticamente al RETJ en un convenio colectivo internacional plenamente equiparable*".

fall outside the scope of Article 101 TFEU by virtue of their nature and purpose rather than merely benefiting from a justification within it.[53]

If applicable, that exemption would place the negotiated transfer system on considerably more secure legal ground than the ordinary *Meca-Medina* test, since it removes the relevant conduct from the reach of competition law altogether rather than justifying an established restriction.

One commentator has nevertheless perceptively identified three sources of uncertainty that counsel against treating that conclusion as settled.[54] First, the Court has not yet had occasion to determine whether the *Albany* exemption extends to professional athletes, who may be employees in some jurisdictions and self-employed persons in others.

Second, the negotiation that produced the RSTP 2027 differs from the collective bargaining structures considered by the Court in *Albany*, particularly as regards its institutional and procedural framework.

Third, it remains open to question whether a provision such as the reformed Article 17 paragraph 4, concerning damages for breach of contract, itself pursues the improvement of working and employment conditions required by the *Albany* exemption.

None of this detracts from the significance of the consensus-based method examined in this Section. It means only that the method's insulation from competition law scrutiny cannot yet be taken for granted, and that the ordinary *Meca-Medina* and *Diarra* proportionality analysis remains the more secure ground on which to assess the reform's compatibility with EU law.

This is not merely a matter of institutional design. In the Author's view, the involvement of the parties who will be bound by a rule in the process leading to its adoption may strengthen the legitimacy and acceptance of the regulatory framework, particularly when compared with rules imposed unilaterally. This does not mean that consensus establishes the proportionality or legality of

[53] Judgment of 21 September 1999, Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie, C-67/96, ECLI:EU:C:1999:430, holding that collective agreements between management and labour concluded in pursuit of social-policy objectives fall outside the scope of Article 101(1) TFEU by virtue of their nature and purpose. On its possible relevance to the RSTP 2027, see R. Houben, cited above, Section 5.

[54] R. Houben, cited above, Section 6, observing that the Court has not yet ruled on the application of the *Albany* exemption to professional athletes; that the collective bargaining process leading to the RSTP 2027 "seems of self-designed, private nature", with its "procedural safeguards" being "not publicly available"; and that it remains uncertain whether provisions such as Article 17 paragraph 4 pursue the improvement of conditions of work and employment required by the *Albany* exemption.

the resulting rule, which remains subject to judicial scrutiny. Moreover, the process itself supplies part of the answer to the question *Meca-Medina* and *Diarra* ask: whether the restriction in question was, in the circumstances, genuinely necessary. A regulator that has already tested its rule against the objections of those it regulates, and adjusted it accordingly, starts any subsequent proportionality review from a materially different position from one that has not.

6. THE REFORMED ARTICLE 17: COMPENSATION FOR BREACH OF CONTRACT

Article 17 RSTP, on the consequences of a breach of contract, was the provision most criticised in *Diarra* and has been extensively rewritten in the 2027 reform.

6.1. AGREED COMPENSATION AND LIQUIDATED DAMAGES CLAUSES

The parties to an employment contract are now expressly free to agree in advance on non-reciprocal financial compensation payable in the event of a breach. The 2027 text thus abandons in terms the requirement of reciprocity, which earlier practice had treated as a condition of validity.[55]

The Football Tribunal may reduce an agreed amount that is excessively high, but is instructed to do so "with restraint", and may disregard the agreement altogether only where it is manifestly unfair, a power that more plausibly guards against an amount that is too low, since the ceiling on excessive amounts is already supplied by the reduction power just described, and the floor in the following paragraph protects only lower-earning players.[56]

[55] RSTP 2027, Article 17 paragraphs 1 and 2; on the abandonment of a reciprocity requirement, see J.F. Vandellòs Alamilla, "Artículo 17.1 RETJ FIFA ed. 2027. Los límites a la libertad de pacto en las cláusulas compensatorias", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 251, at 260, observing that "el artículo 17.1.a) RETJ abandona definitivamente la batalla por la reciprocidad".

[56] RSTP 2027, Article 17 paragraph 1(b); see J.F. Vandellòs Alamilla, cited above, 260–266, distinguishing an amount that is merely "excesivamente elevada", which the Football Tribunal may moderate down to the minimum necessary to bring it within admissible limits, from one that is "manifiestamente injusta", which is declared void rather than reduced, while acknowledging that "la frontera entre una cláusula excesivamente elevada, y otra manifiestamente injusta parece muy difusa".

For players earning a fixed yearly remuneration of up to USD 150,000, a floor applies: any agreed compensation must, as a minimum, grant the player a payment equal to the residual value of the contract, unless exceptional circumstances justify a lower amount.[57] The provision thus combines contractual freedom for higher-earning players with a protective floor for its lowest-earning participants, a distinction that recurs throughout the 2027 reform.

6.2. CALCULATING COMPENSATION IN THE ABSENCE OF AGREEMENT

Where no compensation has been agreed, the party that suffers the breach is entitled to full compensation for the damage caused, calculated having regard to the individual circumstances of the case.[58]

For a player, that damage takes into account, in particular, the residual value of the contract that was breached and any other damage caused; for a club, the value of the player's services, a lost transfer fee or lost transfer value, replacement costs and any other damage caused.[59]

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57 RSTP 2027, Article 17 paragraph 1(c).

58 RSTP 2027, Article 17 paragraph 2; the reform removes the former requirement of "due consideration of the law of the country concerned" and recasts full compensation as a regime the RSTP now defines in its entirety rather than one anchored in national law, an "indemnización íntegra" that is, on this analysis, "una categoría autónoma cuyos criterios y límites se determinan íntegramente por el propio Reglamento", conceptually distinct from, even where it overlaps in substance with, the positive-interest principle of the Swiss law of obligations. See D. Mavromati, "Interacción del nuevo RETJ de la FIFA con el derecho suizo y los ordenamientos nacionales", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 63, at 64–65.

59 RSTP 2027, Article 17 paragraphs 3 and 4; on the differentiated heads of damage these paragraphs establish for players and clubs respectively, see D. Mavromati, cited above, Section IV ("Indemnización íntegra con criterios diferenciados para jugadores y clubes"), 65–67, observing that the express recognition of a lost transfer fee or lost transfer value, and of the value of a player's services, "reviste especial importancia": these are, in her words, "conceptos propios del sistema de traspasos del fútbol, y no... categorías ordinarias de perjuicio derivadas del derecho laboral suizo" ("concepts of their own, proper to football's transfer system, rather than ordinary categories of damage drawn from Swiss labour law"), and that, while Swiss law recognises no automatic legal category for an employee's "market value" or a lost transfer opportunity, these criteria "fueron reconocidos y aplicados de forma progresiva por la jurisprudencia del TAS y el Tribunal de Fútbol de la FIFA...con anterioridad a su codificación expresa en el nuevo RETJ" ("were recognised and progressively applied by CAS and Football Tribunal case law...before their express codification in the new RSTP").

As a matter of principle, both a player and a club are now entitled, at minimum, to an amount equal to the residual value of the contract, and only extraordinary circumstances can justify an award below that floor.[60]

By anchoring the calculation to a defined minimum while preserving case-specific criteria above it, the new Article 17 responds directly to the Court's finding in *Diarra* that the previous criteria, while formally described as objective, were in practice applied with insufficient consistency to be predictable or verifiable.[61]

Each of these elements has, in fact, a lineage in the Court of Arbitration for Sport's own pre-2027 case law: the entitlement to full, "positive interest" compensation for the injured party traces to *Matuzalem*; the residual value as a guaranteed floor, rather than merely one relevant factor, traces to *Webster*, whose function the reform inverts from a ceiling into a minimum; and the club's heads of damage, the value of a player's services, lost transfer value, and replacement costs, closely track the criteria CAS applied in *Matuzalem, De Sanctis* and comparable awards. On this reading, Article 17 does not depart from a quarter-century of arbitral practice so much as codify it.[62]

The discussion so far, like most of the case law it draws on, looks at compensation from the club's side: a club claiming against a player or a player's new club. Matuzalem, Webster, De Sanctis and Ghoddos all concerned the consequences of a player's premature termination of the employment contract, rather than a club's breach of contract.

The floor in Article 17 paragraph 5 applies just as much to the reverse case, where the club is the one in breach. Article 17 paragraph 7, on mitigation of

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60 RSTP 2027, Article 17 paragraph 5; on the resulting minimum-compensation floor as symmetric between player and club, a feature without equivalent in the Swiss law of obligations, whose own asymmetric protection under Articles 337c and 337d CO benefits the employee alone, see D. Mavromati, cited above, 67–68.

61 *Diarra*, C-650/22, cited above, paragraphs 104 to 107, criticising in particular the criterion of the "law in force in the country concerned" and the "other objective criteria" of former Article 17(1) RSTP as insufficiently precise and, in practice, unpredictable.

62 J. Ibarrola, "El cálculo de la indemnización por ruptura del contrato de trabajo sin justa causa en el fútbol, sobre la base del nuevo artículo 17 RETJ", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 279, at 294, tracing each subsection of the new Article 17 to a specific line of CAS jurisprudence, from CAS 2008/A/1519–1520, Matuzalem, and the De Sanctis and Suárez awards (the positive-interest principle underlying paragraph 2), to CAS 2007/A/1298–1300, Webster (the residual value floor of paragraphs 3 and 5), and concluding that "el nuevo artículo 17 RETJ de 2027… no hace tabla rasa del pasado: sistematiza y codifica los criterios que la jurisprudencia del TAS había fijado con paciencia".

damage, is central to how much a player actually recovers in that situation, yet it has received little attention so far.[63]

The starting point has always favoured the employee. Under Swiss law, which the pre-2027 text pointed to through its reference to "the law of the country concerned", an employee dismissed without just cause keeps the residual salary and can be awarded up to six more months' pay. An employer whose employee leaves without cause gets far less: a quarter-month's pay plus whatever extra damage it can prove. Article 17 paragraphs 5 and 6 of the RSTP 2027 remove that imbalance, giving both the residual-value floor and the six-month penalty to clubs too. Mavromati argues this formal equality does not weaken the player's position: because mitigation is now subject to the same floor, Article 17 paragraph 7 leaves the player better protected than Swiss law alone ever did.[64]

This provision puts in writing a duty CAS had already applied by analogy with Swiss law. When a player leaves for just cause and signs with a new club before the old contract would have ended, the pay from the new contract is deducted from what the old club owes. CAS applied this to a club's own breach even before 2027; in *Normann*, decided in March 2025, only the part of the new contract matching the time left on the old one was deducted.[65]

The *Vutov* case shows what the 2027 floor changes. Decided in January 2025 under the old rules, it found the club in breach and awarded the player his unpaid salary plus the residual value of the contract, after deducting his new salary. But the old rules capped total compensation at the residual value, so the three-month penalty for the club's conduct could only be added up to that cap, not on top of it.

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63 RSTP 2027, Article 17 paragraph 7 ("The party suffering damage from a breach of contract has the duty to mitigate their damage, subject to paragraph 5 above.").

64 D. Mavromati, cited above, 67–69, noting that the asymmetry between Articles 337c and 337d of the Swiss Code of Obligations, which protect the employee far more generously than the employer, is deliberate, and that the new Article 17's extension of the residual-value floor and the six-month penalty to clubs as well as players does not, in her assessment, come at the player's expense: "El nuevo artículo 17(7) del RETJ sigue exigiendo la mitigación…pero la supedita expresamente al mínimo del valor residual establecido en el artículo 17(5)…Ello genera un régimen más protector para el jugador que el del artículo 337c(2) CO" ("the new Article 17(7) RSTP continues to require mitigation…but expressly subjects it to the residual-value minimum set out in Article 17(5)…This produces a regime more protective of the player than Article 337c(2) CO").

65 CAS 2022/A/8960, referred to in the literature as the Benavente award, applying Article 337c paragraph 2 of the Swiss Code of Obligations; CAS 2024/A/10279, 2024/A/10280 and 2024/A/10281, Mathias Antonsen Normann v Clubs, award of 31 March 2025, paragraphs 181–187. Both are discussed in J. Ibarrola, cited above, 292–293.

The new Article 17 turns the residual value into a floor instead of a ceiling: mitigation can never bring compensation below it, and the penalty, now up to six months, is added without any cap. Ibarrola reads *Vutov* this way: under the new rule, the player should get the residual value net of his new salary, plus the full penalty. For the player, both changes point the same way: he is better off than under the old regime.[66]

This does not mean the new formula is wholly free of legal risk. The club's compensation under Article 17 paragrap 4 takes into account "*a lost transfer fee or lost transfer value*", a category of damage with at least a family resemblance to the "*costs and expenses linked to the transfer of the player*" criterion the Court found objectionable in Diarra, on the ground that transfer-related costs are negotiated between clubs, in an agreement to which the player is not a party, and that taking them into account risks passing on to the player charges that are, properly speaking, extraneous to the employment relationship he or she has terminated.[67]

While the transfer system awaits FIFA's announced commentary on the 2027 reform, which has in the past proved valuable to sports judges and practitioners alike, the two heads of loss appear to be distinct.

A lost transfer fee appears to relate to a specific, or at least reasonably identifiable, opportunity: a fee that another club had offered, or would probably have offered, for the player.

Lost transfer value, by contrast, appears to refer to something more abstract: the player's estimated value on the transfer market, without requiring evidence that any concrete offer existed. This difference in specificity may bear on how each concept is applied and proved in individual cases. It will, of course, be for the Dispute Resolution Chamber of the FIFA

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66 CAS 2023/A/9636, Mezőkövesd Zsóry FC v Antonio Vutov and FIFA, award of 15 January 2025, paragraph 302, discussed in J. Ibarrola, cited above, 292–294, including, at 294, the reading of paragraph 6 as imposing no ceiling on the abusive-conduct penalty and the resulting hypothesis for Vutov's facts. The award was subsequently set aside by the Swiss Federal Tribunal for lack of CAS jurisdiction, judgment 4 A_92/2025 of 4 July 2025, on grounds unrelated to the reasoning discussed here.

67 *Diarra*, C-650/22, cited above, paragraph 107 (holding that remuneration and other benefits due under a subsequently concluded employment contract "concern an employment relationship subsequent to the one which has been terminated, and those elements must therefore be held to be unrelated to the latter employment relationship and its costs", and that taking into account costs and expenditure linked to a player's transfer "seems to be particularly excessive, since it is likely to enable what are potentially considerable charges which were prima facie negotiated exclusively by other persons in their own interest, like the clubs parties to the transfer or the third parties who were involved in that context, to be passed on to the player").

Football Tribunal and the Court of Arbitration for Sport to interpret and apply these concepts in their jurisprudence.[68]

It is also worth mentioning the opinion of Cardenal Carro, who reads the underlying difficulty differently. In his view, measuring these heads of damage against the logic of the individual employment contract is the wrong exercise: the RSTP 2027 treats the transfer as a reality distinct from that contract, a premise he traces to the same regulation's freedom to set agreed compensation without reference to salary, its residual-value floor pegged to the value of the contract rather than to proven loss, and Article 21bis's own recognition that a transfer fee belongs to a different economic reality than the player's wages. On that view, the question is not whether a lost transfer fee or lost transfer value survives scrutiny as employment-related damage, but whether the transfer system itself, considered as an

[68] The heads of damage the 2027 text now names have their own lineage in CAS practice, though not always a reassuring one for the terms chosen. In Matuzalem, the tribunal traced the value of a player's services to the price the club would have accepted to release him – a transfer fee actually offered, a third party's bid failing that, or even the signing-on fee paid to acquire him – while treating lost profit (lucrum cessans) as a separate head requiring its own proven causal link (CAS 2008/A/1519 & 1520, FC Shakhtar Donetsk v Matuzalem Francelino da Silva, Real Zaragoza SAD and FIFA, award of 19 May 2009, paras. 56–76 and 131). In Webster, by contrast, the tribunal rejected a club's claim to the player's market value, lost profit and replacement cost as such, on the ground that these would be punitive and would unjustly enrich the club, confining the award to the residual value of the contract (CAS 2007/A/1298, 1299 & 1300, Webster and Wigan Athletic FC v Heart of Midlothian, award of 30 January 2008, paras. 138–147). The same body's later awards in De Sanctis and Suárez accepted replacement cost as a distinct head, net of savings, but only where proven and never cumulated with the residual value, to avoid double compensation (CAS 2010/A/2145, 2146 & 2147, Udinese Calcio S.p.A. v Morgan De Sanctis and Sevilla FC SAD, award of 28 February 2011, para. 74; CAS 2018/A/5607 & 5608, RSC Anderlecht v Matías Ezequiel Suárez and Club Atlético Belgrano de Córdoba, award of 22 January 2019). Ghoddos illustrates the evidentiary risk on the value side specifically: the club's claim, pegged to the player's market value, failed in its entirety because the club had not deducted the wages and transfer fee it would itself have had to pay had the transfer gone ahead (CAS 2019/A/6463 & 6464, Saman Ghoddos v SD Huesca, Östersunds FK, Amiens SC and FIFA, award of 10 November 2023, paras. 144–145). Whether the Football Tribunal and CAS will read "lost transfer value" as confined to Matuzalem's transfer-price analogy, or as reopening the market-value claims Webster rejected, is a question these awards do not answer in advance. For a systematic survey of Dispute Resolution Chamber practice on these heads of damage before 2027, see F. de Weger, The Jurisprudence of the FIFA Dispute Resolution Chamber, 2nd ed., T.M.C. Asser Press, The Hague, 2016.

institution of its own, is legitimate and proportionate, a question that lies beyond what this section can settle.[69]

Nevertheless, several factors distinguish the 2027 provision from its predecessor and should be weighed against that concern: the criterion no longer operates as an unstructured item within an open-ended list but sits alongside an express floor, the residual value of the contract, and a general instruction that compensation reflect the individual circumstances of the case.

The rules on joint liability and the transfer certificate, which the Court treated as among the most serious defects of the former system, have themselves been substantially redesigned. In Diarra the judges treated the criticised rules as an "*indivisible whole*", which may itself bear on how any single element within a materially improved set of rules would be assessed if challenged again.[70]

Whether "a lost transfer fee or lost transfer value" would itself survive a fresh proportionality review is not a question this article can resolve in the abstract. It is, however, a genuine open question, one a careful reading of Diarra does not allow to dismiss, and one that the Football Tribunal, the Court of Arbitration for Sport and any reviewing court will have to answer.[71]

6.3. PENALTY PAYMENTS AND THE DEFINITION OF ABUSIVE CONDUCT

A new and distinct remedy is introduced for abusive conduct: where a party's conduct is aimed at forcing the counterparty to terminate the contract

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69 M. Cardenal Carro, "El caso 'Diarra' y el nuevo RETJ: ¿El reinicio de la era de los traspasos?", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, 348-351, arguing that the new heads of damage make explicit what earlier drafting obscured, that a transfer fee is "ajeno" to the contract of employment it is measured against ("[el nuevo RETJ] al hablar de los fees ya no se esconde la palabra transfer, e incluso se incluyen…el 'lost transfer value' y los 'replacement costs'"), and concluding that the RSTP 2027 "asume que el traspaso es una realidad distinta de la del contrato de trabajo" ("[the new RSTP] takes the transfer to be a reality distinct from that of the employment contract"), so that the proportionality of the transfer system should be tested on its own terms rather than against the individual employment relationship it no longer purports to track.

70 *Diarra*, C-650/22, cited above, paragraph 134 ("[the rules] present as an indivisible whole and must therefore be construed as such"). Compare, on the risk of relying on that finding for comfort, judgment of 16 July 2026, RRC Sports, C-209/23, ECLI:EU:C:2026:597, paragraphs 152 to 158, in which the Court examined and invalidated a single rule drawn from a broader set; see R. Houben, cited above, Section 6.

71 R. Houben, cited above, Section 6.

or to accept a change in its terms, a penalty payment of up to six monthly salaries may be awarded in addition to compensation.[72] The regulations give this concept concrete content. A contract may be terminated with just cause where a club abuses the registration or deregistration of a player as a means of pressure, separates a player in an abusive manner from training with the team, withholds a player's passport, or unduly evicts a player from their accommodation.[73]

These examples reflect practices that may be used to pressure players into accepting a transfer or a reduction in their contractual terms. By identifying them expressly, the regulations provide the Football Tribunal with more specific grounds for assessing abusive conduct than the previous, more general reference to "just cause".[74]

6.4. JOINT AND SEVERAL LIABILITY AND THE PRESUMPTION OF INDUCEMENT

The provision most directly at issue in Diarra was the automatic joint and several liability of a player's new club, coupled with a general presumption that any club signing a player who had left without just cause had induced the breach. It was precisely this combination, indifferent to the new club's actual conduct and incapable of case-by-case adaptation, that the Court found wanting.[75]

The 2027 text replaces automaticity with a fact-sensitive standard: a new club is jointly and severally liable to pay compensation only where, "*having regard to the individual facts and circumstances of each case*", it can be established on the balance of probabilities that the new club induced the player to breach the contract.[76] To make that standard workable in

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72 RSTP 2027, Article 17 paragraph 6.

73 RSTP 2027, Article 14 paragraphs 2 and 3; for a detailed treatment of each of the four scenarios, see A. Patón Urich and A. Reck, "El nuevo artículo 14 del Reglamento sobre el Estatuto y la Transferencia de Jugadores (edición 2027)", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 187, at 191–201, noting that the list remains exemplificative rather than exhaustive, and that the burden of proving abusive conduct "*sigue gravitando sobre quien alega los hechos*".

74 Ibid., 191–201.

75 *Diarra*, C-650/22, cited above, paragraphs 110 to 112; see *supra*, Section 3 and accompanying text.

76 RSTP 2027, Article 17 paragraph 9. The provision replaces two features of the historic Article 17, paragraphs 2 and 4, on which FIFA had relied since the mid-2000s: the automatic joint and several liability of the new club, imposed regardless of its actual conduct, good or bad faith, fault or intent, and a general, iuris tantum presumption

practice, a rebuttable presumption applies where the player signs a new contract within forty-five days of the breach; the new club can displace it by demonstrating, to the comfortable satisfaction of the Football Tribunal, that it did not induce the breach.[77]

The same combination of an individualised standard and a time-limited presumption governs the sporting sanction against a club found to have induced a breach during the protected period, which has been redefined on the basis of the player's age at signature.[78]

This is close to the structure the Court itself gestured towards in Diarra, when it observed that the automatic presumption in the former rule applied "without being dependent on any condition that would allow the relevant circumstances of the case to be taken into account, even to a limited extent, such as the condition requiring [...] that the former club be asked to provide sufficient evidence to support a finding that the new club induced the player to breach his or her contract."[79] The 2027 rule does not abandon the presumption; it bounds it in time, ties it to an articulated evidentiary

that any club signing a player who had terminated his contract without just cause had induced the breach, a presumption the new club alone bore the burden of rebutting. See J. López Batet, "Las consecuencias de la inducción al incumplimiento contractual en la nueva versión del Reglamento sobre el Estatuto y la Transferencia de Jugadores", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 151, at 152–154 and 164, observing that the new Article 17 "elimina la responsabilidad pecuniaria automática y la presunción general iuris tantum de inducción a la infracción contractual establecidas en los antiguos artículos 17.2 y 17.4 del RETJ" ("eliminates the automatic pecuniary liability and the general iuris tantum presumption of inducement to breach of contract established under the former Articles 17.2 and 17.4 of the RSTP").

77 RSTP 2027, Article 17, paragraph 11; on the resulting dual standard of proof within a single article, "balance de probabilidades" for paragraphs 9 and 10 as against the higher, intermediate "comfortable satisfaction" standard for rebutting the paragraph 11 presumption, see J. López Batet, cited above, 165–166, flagging the combination as analytically significant and, as yet, untested by the Football Tribunal.

78 RSTP 2027, Article 17 paragraph 10 (final, unlettered paragraph); cf. *Diarra*, C-650/22, cited above, paragraph 112, cited *supra*. On the redefinition of the protected period itself by reference to the player's age at signature, four seasons for a contract concluded before age twenty-three, three between twenty-three and twenty-eight, two between twenty-eight and thirty-two, and one from age thirty-two, replacing the previous binary threshold set at age twenty-eight, see G.Lozano and S. Pini, "El período protegido", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 127, at 130–131 and 136, drawing on FIFA's Global Transfer Report 2025 to conclude that the new scale is "más realista y proporcionada con relación al comportamiento contractual del mercado actual".

79 *Diarra*, C-650/22, cited above, paragraph 111.

threshold, and makes it rebuttable, which is a materially different proposition from the blanket rule the Court examined.

6.5. FROM AUTOMATIC BANS TO A GRADUATED SANCTIONING SYSTEM

The former RSTP provided, in its text, for an automatic two-registration-period ban on any club found to be in breach of contract during the protected period, regardless of whether the breach was a first offence or a repeated pattern of conduct.[80] In practice, however, the DRC's own jurisprudence departed from this automaticity: sporting sanctions against clubs were regularly applied only once a club had been found, at least four times in the two years preceding the decision, to have terminated a contract without just cause or to have committed a breach serious enough to give the counterparty just cause to terminate.[81] The DRC nonetheless retained discretion to impose sanctions immediately, without reaching that threshold, where the circumstances of the case justified it,[82] and CAS confirmed that a repeated offence should be treated as a decisive aggravating factor once

[80] RSTP 2025, Article 17, paragraph 4: "*A sporting sanction shall be imposed (i) on any club found to be in breach of contract during the protected period or (ii) on a player's new club if, having regard to the individual facts and circumstances of each case, it can be established that the new club induced the player to breach the contract during the protected period. The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exceptions stipulated in article 6 paragraph 3 of these regulations in order to register players at an earlier stage*".
On the automatic and non-graduated character of this sanction under the former RSTP, see V. Butruce, "El régimen de desincentivo a la ruptura sin causa justificada del contrato de trabajo mediante la imposición de sanciones deportivas: Del régimen pre-*Diarra* al nuevo RETJ de 2027", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 173, at 176–178, noting that CAS jurisprudence consistently held that the sanction did not admit graduation by proportionality (CAS 2017/A/5011, Eskişehirspor Kulübü v. Sebastian Andrés Pinto Perurena & FIFA, award of 10 July 2017; CAS 2014/A/3765, Club X. v. D. & FIFA, award of 5 June 2015).

[81] FIFA, *Commentary on the FIFA Regulation on the Status and Transfer of Players* (2023 edition), Article 17, p. 211, citing DRC decision of 12 February 2020, *de Jesus*; DRC decision of 27 February 2020, *Fortunato*; DRC decision of 15 February 2018, no. 02182231-E; DRC decision of 19 May 2022, *Tavares Fernandes*; DRC decision of 23 June 2022, *Steuble*; DRC decision of 4 August 2022, *Velic*; DRC decision of 4 August 2022, *Outtara*.

[82] Ibid., citing DRC decision of 25 April 2014, Player A (anonymised); DRC decision of 25 October 2012, *Afolabi*.

sanctions were imposed.[83] Read against this practice, the new rule does not so much soften the sanction as write into the text a graduated enforcement the DRC had already developed on its own.

The 2027 regulations replace that single, undifferentiated sanction with a graduated scale tied to recidivism within a two-year period: a warning and a fine for a first breach, a limitation to five new registrations and a fine for a second, a full one-window ban for a third, and a two-window ban for a fourth, with the possibility of additional sanctions at the Football Tribunal's discretion beyond that point, and with the more severe sanctions available immediately where aggravating circumstances are present.[84]

Sporting sanctions against players who breach a contract during the protected period follow a comparable logic: a four-month restriction on playing in official matches, extended to six months in aggravating circumstances, suspended between seasons except for players who are established members of a national team competing in a major international tournament during that period.[85]

A graduated, recidivism-based scale of this kind is a more direct answer to *Superleague*'s and *Diarra*'s shared insistence that sanctions be "determined within a framework of criteria that are transparent, objective, non-discriminatory and proportionate"[86] than a single fixed penalty could ever be, since it makes the severity of the consequence turn, in part, on a club's own regulatory history rather than on the bare fact of a breach.

A club's exposure for inducing another club's player to breach his contract follows a different track from the graduated scale above and deserves its own comment. The sanction itself is unchanged: a club found, on the balance of probabilities, to have induced a breach still faces a two-window ban, as before. What has changed is how that finding is reached. The former rule presumed inducement whenever a club signed a player who had terminated without cause, leaving the new club to disprove it. The new rule requires the injured club to establish inducement, unless the player signs with the

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83 Ibid., citing CAS 2014/A/3765 *Club X.v.D & FIFA*; CAS 2014/A/3740 *PFC CSKA Sofia v. Nilson Antonio de Veiga Barros & FIFA*; CAS 2015/A/4220 *Club Samsuspor v. Aminu Umar & FIFA*; CAS 2017/A/5056 *Ittihad FC v. James Troisi & FIFA*; see also CAS 2017/A/5011 *Eskişehirspor Kulübü v. Sebastian Andrés Pinto Perurena & FIFA*.

84 RSTP 2027, Article 17 paragraph 10; on the graduated scale as a deliberate move away from the pre-*Diarra* automatic sanction, see V. Butruce, cited above, 184–185, concluding that it "parece representar un avance en la dirección señalada por el TJUE", with its practical effectiveness left to future Football Tribunal and CAS case law.

85 RSTP 2027, Article 17 paragraph 12.

86 *European Superleague Company*, C-333/21, para. 147; *Diarra*, para. 111.

new club within forty-five days of the breach, in which case inducement is presumed but the new club may rebut it, to the Football Tribunal's comfortable satisfaction, by showing that it did not induce the breach. Outside that forty-five-day window, a club recruiting a player who has terminated his contract now starts from a position the former rule denied it: no presumption of wrongdoing to answer.[87]

Combined with the graduated scale for a club's own breach of contract discussed above, the practical effect is that a club's sporting exposure for an isolated breach, whether as the party terminating the contract or as the club recruiting the player, is on balance lighter under the RSTP 2027 than it was under the automatic sanctions of the former regime.[88]

7. EXTENDED CONTRACTS FOR YOUNG PLAYERS

The general rule that a professional contract with a player under eighteen may not exceed three years is retained, but the 2027 regulations introduce a conditional exception: where a club has had a player under eighteen registered with it for twenty months, or two consecutive competition periods, whichever is shorter, prior to the conclusion of the professional contract, that contract may run for up to five years, subject to national law and to any applicable collective bargaining agreement.[89]

The exception is itself bounded: no club may conclude more than five such five-year contracts with under-eighteen players in a single season, and the fixed remuneration due under such a contract must rise by a minimum of ten per cent in its fourth year, increased by a further twenty per cent if the player made ten or more first-team appearances in the third year. A further increase of twenty per cent applies in the fifth year, conditional on ten or more first-team appearances in the fourth.[90]

87 RSTP 2027, Article 17 paragraphs 9 to 11; on the shift from an automatic presumption to a balance-of-probabilities standard, qualified by the forty-five-day presumption of Article 17 paragraph 11, see V. Butruce, cited above, 182–183.

88 RSTP 2027, Article 17 paragraph 10.

89 RSTP 2027, Article 18 paragraph 2(a).

90 RSTP 2027, Article 18 paragraph 2(b), first indent; on the provision's interaction with domestic training frameworks, see L.F. Santoro, "El nuevo marco reglamentario de la FIFA para los contratos de jugadores menores de 18 años", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 241, at 243–244 and 247, examining the interaction with Brazil's Lei Pelé and Lei Geral do Esporte and concluding that the extended term is likely to produce a "círculo virtuoso" for training clubs in South America and Africa.

The provision addresses a concern that has accompanied the transfer system since the years immediately following *Bosman*: that a system offering too little protection to a club's investment in training discourages precisely the kind of long-term development work on which the pipeline of professional talent depends.[91]

By tying the availability of a longer contract to a documented period of prior training investment, and by pairing it with escalating remuneration and a cap on the number of such contracts a club may conclude each season, the rule attempts to protect that investment without reintroducing the restrictions on player mobility that the Court censured in *Bosman*.

The 2027 text leaves unaddressed, among others, one adjacent question: the unilateral contract-extension clause, by which a club reserves the right to extend a player's contract on terms fixed in advance, which the RSTP neither expressly authorises nor prohibits. In the absence of regulatory guidance, the criteria for distinguishing a valid option from an abusive one remain those developed by the FIFA Football Tribunal as well as by the Court of Arbitration for Sport itself, case by case.[92]

8. PLAYER PARTICIPATION IN TRANSFER FEES: A REDISTRIBUTIVE INNOVATION

Article 21bis introduces, for the first time in the history of the RSTP, a general right for players to participate directly in the transfer fee paid for them.

Clubs and players remain free to agree on such participation in any transfer, but for permanent international transfers of players earning less than EUR 150,000 in fixed yearly remuneration with the releasing club, participation becomes mandatory: the releasing club must pay directly to

91 On the concern, dating back to the aftermath of *Bosman*, that removing transfer compensation altogether would discourage clubs from investing in the training of young players, see B. García, "The 2001 Informal Agreement on the International Transfer System", cited above.

92 On unilateral contract-extension clauses, which the RSTP neither expressly authorises nor prohibits, and on the criteria CAS has developed to distinguish a valid option from an abusive one, see J. de Dios Crespo Pérez, "Duración de los contratos", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 219, at 229–239, discussing, among other awards, CAS 2013/A/3260, Grêmio v. Maxi López (the so-called "*Portmann* criteria"), and CAS 2005/A/983–984, Peñarol v. Bueno Suárez, in which a comparable clause was held incompatible with the ordinary five-year contractual-duration framework. See also F. de Weger and T. Kroese, "The Unilateral Extension Option Through the Eyes of FIFA DRC and CAS", The International Sports Law Journal, 2011/1–2, 24.

the player an amount equal to five per cent of the total fixed transfer fee it actually receives.[93]

A partial waiver is possible, but only above a floor calculated by reference to the higher of the player's final-year remuneration with the releasing club or 2.5 per cent of the transfer fee, so that the mandatory minimum cannot be waived away in negotiations conducted from a position of unequal bargaining power. Where the fee is paid in instalments, the player's share follows the same schedule.[94] The entitlement does not arise where a national law or a domestic collective bargaining agreement already prohibits it or already provides an equivalent mechanism.[95]

The text leaves open a question that arises whenever a transfer is triggered by a buy-out clause rather than by an ordinary negotiated fee: whether the player's participation right arises at all where the clause is paid by the player himself rather than by the new club. On one reading, the provision applies without difficulty where the new club pays the release sum, since that payment then functions as the "transfer fee" the article contemplates; but where the player pays the clause out of his own resources, there is no "compensation… paid by the new club" for him to share in, and his own entitlement becomes correspondingly doubtful.[96]

The provision has been described in practitioner commentary as without precedent in professional team sport regulation.[97] Its interest for present purposes lies in its relationship to the reasoning in Diarra. The Court's most pointed criticism of the former Article 17(1) concerned the criterion of costs

93 RSTP 2027, Article 21bis paragraph 2(a). On the EUR 150,000 threshold, and on Definition No. 44 RSTP 2027 ("fixed annual remuneration"), under which a signing bonus is apportioned pro rata across the years of the contract for the purpose of testing whether a player falls below it, see H. González Mullin, "Dos aspectos de la histórica reforma del RETJ: La remuneración fija anual y la participación del jugador en el precio de la transferencia", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 205, at 207–208.

94 RSTP 2027, Article 21bis paragraph 2(b) and (c).

95 RSTP 2027, Article 21bis paragraph 3.

96 H. González Mullin, cited above, 210–212, raising an open question the text of Article 21bis does not resolve: on his analysis, the provision applies to a transfer triggered by a buy-out clause where the new club pays the release sum, since that payment then functions as the "transfer fee" the article contemplates; but the player's own entitlement becomes doubtful where the clause is paid by the player himself, since there is then no "compensation… paid by the new club" for the player to share in.

97 See, e.g., "FIFA's 2027 RSTP Reform: A New Method and New Rules", Football Legal, 2026, describing the provision as without precedent in professional team sport regulation.

and expenses linked to a player's transfer, which risked passing on to a player charges negotiated exclusively between clubs to which he was not a party.[98]

Article 21bis does not answer that criticism directly, since it concerns transfer fees rather than compensation for breach; but it moves the system in a coherent direction, converting the player, for a defined category of transfers, from a person whose market value is negotiated entirely by others into a party who shares directly in the proceeds of that negotiation. Whether or not that connection was consciously drawn in the drafting of the 2027 regulations, it fits the broader logic of a reform that repeatedly narrows the space between the player, as the person whose services are being traded, and the financial consequences of that trade.

9. THE INTERNATIONAL TRANSFER CERTIFICATE: FROM OBSTACLE TO FACILITATOR

Under the former regulations, an international transfer certificate could be withheld, as a general and automatic rule, wherever the former club and the player were engaged in a contractual dispute over the termination of the contract, a mechanism the Court found in Diarra to infringe the principle of proportionality manifestly, since it made no allowance for the circumstances of the individual case or for provisional registration.[99]

Practitioner commentary on the new certificate procedure has been more sceptical of its novelty than the reform's own framing suggests, noting that the three-day deadline introduced by FIFA's interim regulatory framework of 23 December 2024, which entered into force in January 2025, remains impractical in cases requiring notice to the former club or consultation with disciplinary bodies, and adopting a more cautious assessment of *Diarra*'s role in the reform: *Diarra* "fungió más como acelerador de una consagración normativa que FIFA ya practicaba a instancia de parte, que como una verdadera modificación sustancial" (it "acted more as an accelerator of a normative consecration that FIFA already practised at a party's request than as a genuine substantive modification").[100]

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98 *Diarra*, C-650/22, cited above, paragraph 107; see *supra*, Section 6.2 and accompanying text for the passage quoted in full.

99 *Diarra*, C-650/22, cited above, paragraphs 108 and 109; see *supra*, Section 3 and accompanying text.

100 H. Pintos, "El nuevo proceso del Certificado de Transferencia Internacional", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 75, at 83, describing the three-day deadline introduced by the January 2025 provisional framework as still impractical in cases requiring notice

The 2027 regulations decouple the administrative act of registration from the merits of any underlying financial dispute. The former association must now deliver the certificate within five calendar days of a request; it may indicate, at that point, that the former club wishes to reserve financial claims against the player or the new club, but that indication has no effect on the player's ability to be registered.[101]

If the former association fails to respond within the five-day period, the new association may proceed to register the player directly. In exceptional circumstances, and in order to prevent irreparable harm to the player, FIFA may authorise registration within one working day of the request.[102]

The certificate, in other words, now functions as what its name suggests, a transfer document, rather than as a means of leverage in a compensation dispute. The former association cannot reject an international transfer certificate (ITC) request outright: its only means of undoing a transfer instruction is the separate cancellation procedure, available where the instruction contains incorrect information, for instance a mistake as to the parties.[103] Any dispute over compensation continues to be pursued through the ordinary channels before the Football Tribunal, unaffected by, and no longer capable of blocking, the player's registration.

10. ENFORCEMENT AND DISPUTE RESOLUTION

The Football Tribunal adjudicates disputes under the RSTP through three chambers, including the Dispute Resolution Chamber, which is competent for disputes arising under Article 17.[104] Its composition reflects the concertation underlying the 2027 reform: player and club representatives are equally

to the former club or consultation with disciplinary bodies, and offering the sober assessment that Diarra "fungió más como acelerador de una consagración normativa que FIFA ya practicaba a instancia de parte, que como una verdadera modificación sustancial".

101 RSTP 2027, Annexe 3, Article 11 paragraph 3; on the "reserva de reclamaciones económicas" as a genuine procedural novelty of the 2027 text, see H. Pintos, cited above, 89–90.

102 RSTP 2027, Annexe 3, Article 11 paragraph 6.

103 RSTP 2027, Annexe 3, Articles 11 and 15; Article 11 sets out the ITC delivery procedure and gives the former association no power to refuse delivery, while Article 15 confines cancellation of a transfer instruction to cases where it contains incorrect information.

104 Procedural Rules Governing the Football Tribunal, January 2027 edition, Article 1 paragraph 2.

represented, while the chairperson and deputy chairpersons are appointed at FIFA's proposal but require the consensus of both sides.[105]

Members must disclose potential conflicts of interest and may be challenged where there are legitimate doubts as to their impartiality.[106]

These safeguards are relevant to the question whether the Football Tribunal can itself provide the effective judicial protection required by EU law. An internal sporting body can perform that function only if it satisfies the requirements applicable to a "court or tribunal", including independence, and has the powers and procedural guarantees necessary to ensure effective judicial protection. Where those conditions are not met, as the Court of Justice clarified in the recent FIGC and CONI case, access to an external court capable of drawing the full legal consequences from an infringement must remain available, including, where appropriate, annulment and interim relief, rather than merely an award of damages.[107]

Neither the model of equal representation nor the institutional infrastructure that makes it work is a product of the 2027 reform alone; both have deep roots in the dispute-resolution system's own history. The principle of equal representation on the Dispute Resolution Chamber traces back to the 2001 Gentlemen's Agreement that FIFA, UEFA and the European Commission reached informally in the years immediately following *Bosman*.

That agreement envisaged, among its founding principles, the creation of an effective, quick and objective arbitration body with members chosen in equal numbers by players and clubs and with an independent chairman. The label the parties used at the time has not, however, proved an accurate description of what the Chamber became. The Swiss Federal Tribunal has since held that FIFA's judicial bodies, including the Dispute Resolution Chamber, are not arbitral tribunals in the technical sense: their decisions

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105 Ibid., Article 4 paragraph 3(a), providing that the chairperson and deputy chairpersons of the Dispute Resolution Chamber are appointed "at the proposal of FIFA and agreed upon by consensus" between the player and club sides of the Chamber, which is itself composed of at least fifteen player representatives and at least fifteen club representatives (Article 4 paragraph 3(b)–(c)).

106 Ibid., Article 5.

107 Judgment of 16 July 2026, ZD and MI v Federazione Italiana Giuoco Calcio (FIGC) and Others, Joined Cases C-424/24 and C-425/24, ECLI:EU:C:2026:602, building on the Court's judgment of 1 August 2025, Royal Football Club *Seraing*, C-600/23, ECLI:EU:C:2025:617. See S. Bastianon and M. Colucci, "Accountable Autonomy", cited above, Section 3.2, and, for a detailed commentary, S. Bastianon and M. Colucci, "La sentenza FIGC e CONI (C-424/24 e C-425/24): Giustizia Sportiva e Nozione di 'Giurisdizione' nel Diritto dell'Unione Europea", RDES, SLPC, September 2026; and A. Cattaneo, "Beyond *Meca-Medina*", cited above, Section 4.2, on *Seraing*'s own contribution to the same line of authority.

rest on FIFA's own regulatory authority over its members rather than on an independent act of adjudication.[108] Only the Court of Arbitration for Sport, seized on appeal, renders a decision of that character, itself the product of a comparable, if earlier, struggle for independence from its own parent body, the International Olympic Committee.[109] The distinction, however, does not by itself resolve the effective-judicial-protection question raised above. CAS's own independence from the football authorities is not, on its own, what supplies the safeguard EU law requires: as the Court held in *Seraing*, CAS awards fall outside the Article 267 TFEU mechanism, and, since CAS is seated in Lausanne, so does the Swiss Federal Tribunal's own review of them. What supplies that safeguard is the possibility of indirect review before a court of a Member State whenever it is asked to examine or rely on the award, a layer of protection that sits above CAS rather than within it.[110]

The Dispute Resolution Chamber now operates alongside a graduated allocation of judicial resources: disputes below USD 200,000 are, as a rule, decided by a single judge, while claims at or above that threshold, or those the FIFA general secretariat assesses as legally complex, are referred to a panel of at least three members chaired by the chairperson or a deputy chairperson, a structure that has allowed the Chamber to grow, over two decades, from two decisions taken at its first official meeting in November 2002 to close to four thousand disputes decided in a single year twenty years later.[111]

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[108] Judgment 4 A_492/2016 of 7 February 2017, Swiss Federal Tribunal, First Civil Law Court, holding that FIFA's internal decision-making bodies are not arbitral tribunals and that their decisions do not constitute arbitral awards for the purposes of Article 190 of the Swiss Private International Law Act.

[109] Swiss Federal Tribunal, 15 March 1993, Gundel v. Fédération Équestre Internationale, ATF 119 II 271, accepting CAS as a valid arbitral tribunal while questioning its independence from the International Olympic Committee. The Paris Agreement of 22 June 1994, establishing the International Council of Arbitration for Sport (ICAS), separated CAS structurally and financially from the IOC; the Federal Tribunal confirmed the resulting independence in Lazutina and Danilova, ATF 129 III 445 (2003), and, specifically as against FIFA, in ATF 144 III 120 (judgment 4 A_260/2017 of 20 February 2018).

[110] See S. Bastianon and M. Colucci, "Sports Arbitration and Effective Judicial Protection under EU Law: The RFC *Seraing* Case", RDES, Vol. XXI, 2025, 1, Section 4.1, on the requirement, set out by the Court in *Seraing*, that a CAS award remain open to indirect review by a court of a Member State whenever that court is asked to examine or rely on it, given that neither CAS nor the Swiss Federal Tribunal falls within the Article 267 TFEU mechanism.

[111] See M. Colucci, "How the Football World Has Evolved: The FIFA Football Tribunal as Seen by a Veteran Member", Rivista di Diritto ed Economia dello Sport (RDES), Vol. XVIII, 2022, 111, at 115–116 and 121.

Enforcement of decisions has also been strengthened at domestic level. Where a national association operates a recognised National Dispute Resolution Chamber (NDRC), and a decision of that chamber is not enforced by the association within sixty days, FIFA's own Disciplinary Committee becomes automatically competent to enforce it.[112]

That direct, club-facing competence is narrower than it may first appear. The new Article 21 of the FIFA Disciplinary Code also obliges the association itself, on pain of a fine and further sanctions for persistent non-compliance, to enforce any competent national body's decision, whether or not the body is a recognised NDRC; it is only for recognised NDRCs that the Disciplinary Committee's own competence to enforce directly against the club or the individual concerned is added, once the sixty-day period has passed.[113]

The mechanism extends, in effect, the guarantee of an enforceable outcome from the international to the domestic level, provided the domestic body meets FIFA's recognition standards, which require a composition and a degree of independence broadly comparable to the Dispute Resolution Chamber's own. The competence the Disciplinary Committee acquires at that point is, on a careful reading of the new Article 21, a narrow one: it does not sit as a body of review, does not re-examine the merits of the underlying dispute and cannot revisit the obligations the national chamber has already declared, since that dispute has, by definition, already been finally resolved by a tribunal FIFA itself has recognised as fit to exercise jurisdiction. Its role is confined to guaranteeing that a decision whose legitimacy has already been secured is actually complied with, a function its most detailed academic

[112] FIFA, The Transfer System 2027–11 Key Points (explanatory note), point 10 ("Enforcement"), on file with the author. On the sixty-day period's legal nature, see C. Schneider Salvadores, "El reconocimiento de las cámaras nacionales de resolución de disputas por la FIFA y la ejecución de sus decisiones en virtud del nuevo artículo 21 del Código Disciplinario de la FIFA", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 93, at 107 and 110, characterising it as "un plazo atributivo de competencia" rather than a limitation period, whose expiry effects "una distribución funcional" of enforcement competence between the member association and the FIFA Disciplinary Committee, and expressly not "una sustitución automática" of the latter for the former.

[113] G. Abreu, "Razones para una reforma del RETJ. La reforma del Reglamento sobre el Estatuto y la Transferencia de Jugadores", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 31, at 42–43, describing the new Article 21 paragraphs 6 and 7 of the FIFA Disciplinary Code as resolving a "historic gap" in the enforcement of national bodies' decisions, and noting that the association itself is now obliged to enforce any such decision on pain of a fine, while the Disciplinary Committee's own competence to enforce directly against the club or the individual arises only for decisions of a recognised NDRC.

treatment describes as a derived, execution-only competence rather than an appellate one.[114]

Two further procedural changes, more technical but not for that reason less significant, complete the picture. Article 23 paragraph 5 RSTP now codifies, for the first time, a standard default-interest rate applicable before the Football Tribunal, and the reformulated Article 3 of the Procedural Rules establishes an express primacy of FIFA's own regulations over national law and collective agreements, with Swiss law applying only on a subsidiary basis. Neither change is cosmetic: both remove a degree of interpretive discretion that had previously produced inconsistent outcomes across cases.[115]

11. CONTINUITY: TRAINING COMPENSATION AND THE SOLIDARITY MECHANISM

Not every part of the transfer system was rewritten in 2027.

Training compensation and the solidarity mechanism remain in place in substantially their pre-existing form. The former compensates clubs for their investment in the training and development of young players, while the latter distributes, in principle, five per cent of transfer compensation among the clubs that contributed to a player's training and education between the ages of twelve and twenty-three.[116] Both mechanisms can be traced back to

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114 C. Schneider Salvadores, cited above, 109–113, characterising the power the FIFA Disciplinary Committee acquires under the new Article 21 as a "competencia de ejecución derivada" whose existence depends entirely on a prior, binding decision of a recognised national chamber: the Committee does not review the merits of the underlying dispute, does not modify the obligations the national chamber has declared and does not substitute its own assessment for that chamber's, so that it "no actúa como un tribunal de segunda instancia ni como un órgano de apelación", its function being confined to guaranteeing the practical effectiveness of a decision whose legitimacy the recognition procedure has already secured.

115 FIFA Circular no. 1970, cited above (note 41), respectively on Article 23 paragraph 5 RSTP and Article 3 of the Procedural Rules; see also I. Aguiar Gallardo, "Modificaciones procesales y relacionadas", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 117, at 121–123, noting that Article 23 paragraph 5 RSTP is the first express codification of a standard default-interest rate before the Football Tribunal, and that the reformulated Article 3 of the Procedural Rules establishes, for the first time, an express primacy of FIFA's own regulations over national law and collective agreements, with Swiss law applying only on a subsidiary basis, a change she describes as "no... cosmético".

116 RSTP 2027, Article 20 and Annexe 4 (training compensation); Article 21 and Annexe 5 (solidarity mechanism). On the solidarity contribution, calculated in principle at 5% of the compensation paid for a transfer and distributed among the clubs that

the 2001 agreement described in the previous sections. They were designed to preserve clubs' incentives to invest in training and educating young players after *Bosman* had removed the possibility of requiring a transfer fee following the expiry of a player's contract.[117]

Their continuity under the 2027 reform confirms that FIFA did not intend to reconsider the whole system. *Diarra* offers no basis for a different reading: the question referred to the Court concerned only Article 17, on compensation for termination without just cause, and Article 9, on the international transfer certificate; training compensation and the solidarity mechanism were not raised, and the Court did not examine them. In particular, the redistributive function of these mechanisms, through which part of the resources generated by player transfers is directed towards the clubs responsible for players' training and development, was left substantially unchanged.[118]

The reform instead concentrated on the mechanisms directly affected by the findings in *Diarra*: compensation for breach of contract, joint liability, sporting sanctions and the international transfer certificate. The elements of the system whose proportionality was not called into question in *Diarra* were therefore largely preserved.

12. THE REFORM THROUGH THE LENS OF ACCOUNTABLE AUTONOMY: THE 2026 EU JURISPRUDENCE

The *Meca-Medina* test asks two cumulative questions: whether a restriction is inherent in the pursuit of a legitimate objective connected to the organisation of sport, and whether it is proportionate to that objective.[119] A body of case law decided in the spring and summer of 2026, concerning judicial protection in FIGC and CONI, data protection in NADA Austria, financial distress and no-poach agreements in CD Tondela and the

contributed to a player's training and education between the ages of 12 and 23, see Annexe 5, Article 1.

117 On the operation of the pre-2027 training compensation and solidarity mechanism and its policy rationale, see O. Ongaro, "Maintenance of Contractual Stability between Professional Football Players and Clubs", in M. Colucci (ed.), Contractual Stability, SLPC, 2011, 46.

118 Diarra, C-650/22, cited above, paragraph 45, setting out the question referred by reference to Article 17 paragraphs 1, 2 and 4 and Article 9 paragraph 1 of the RSTP, together with Article 8.2.7 of Annexe 3; neither Article 20 nor Article 21 RSTP is mentioned anywhere in the judgment.

119 See *supra*, note 9; and, on the two cumulative conditions of the test, S. Bastianon and M. Colucci, "Accountable Autonomy", cited above (note 8), Section 2.1.

regulation of intermediary services in ROGON and RRC Sports, has extended a structurally similar three-part inquiry across fields of EU law well beyond competition law.[120] That reading of the case law describes the resulting standard as a principle of "accountable autonomy". It is not a general licence for a sports federation to regulate as it sees fit, but an autonomy earned and retained through compliance with three cumulative conditions: the pursuit of a legitimate, sport-related objective; the adoption of criteria that are objective, transparent and consistently applied; and, in every individual case, compliance with the requirements of reasonableness and proportionality that *Meca-Medina* introduced into EU sports law two decades ago.[121] The three subsections that follow examine each of those conditions in turn, before a fourth applies them directly to the RSTP 2027.

12.1. THE FIRST PILLAR: A LEGITIMATE OBJECTIVE, INDEPENDENTLY VERIFIED

In every one of the cases just listed, the Court accepted that the sports regulator was pursuing an aim genuinely connected to the organisation or integrity of sport: the truthfulness of a club's declared finances towards its competitors in FIGC and CONI, the fight against doping in NADA Austria, the stability of team rosters during a pandemic-interrupted season in CD Tondela, and the integrity of competitions and the protection of clubs and players in the intermediary services market in ROGON and RRC Sports.

In no case, however, did the Court accept the regulator's own characterisation of that aim at face value; it verified the connection between the aim and the measure independently, as it had already done in *Diarra* when it downgraded contractual stability from a free-standing objective to a mere means of pursuing the regularity of competitions.[122]

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120 Ibid., Sections 3 to 6, discussing, respectively, judgment of 16 July 2026, FIGC and CONI, C-424/24 and C-425/24, ECLI:EU:C:2026:602; judgment of 14 July 2026, NADA Austria and Others, C-474/24, ECLI:EU:C:2026:579; judgment of 30 April 2026, CD Tondela and Others, C-133/24, ECLI:EU:C:2026:361; judgment of 9 July 2026, ROGON, C-428/23, ECLI:EU:C:2026:563; and judgment of 16 July 2026, RRC Sports, C-209/23, ECLI:EU:C:2026:597.

121 S. Bastianon and M. Colucci, "Accountable Autonomy", cited above, Section 1, describing the resulting standard as "accountable autonomy", i.e. an autonomy "that is earned and retained only through compliance with three cumulative conditions: (i) the pursuit of a legitimate, sport-related objective; (ii) the adoption of criteria that are objective, transparent and consistently applied; and (iii) the observance, in every individual case, of the reasonableness and proportionality test that *Meca-Medina* first supplied to EU sports law twenty years ago".

122 S. Bastianon and M. Colucci, cited above, Section 7.1, observing that this first pillar "is, in that sense, the most stable across the different fields": in every case examined,

This first pillar is, on that account, the most stable across the different fields the Court has examined: whatever the formal legal basis invoked, competition law, fundamental rights, data protection or the regulation of upstream service markets, the Court insists on testing the objective a regulator invokes independently, rather than simply accepting the regulator's own label for it.

12.2. THE SECOND PILLAR: OBJECTIVE AND TRANSPARENT CRITERIA, FROM SUPERLEAGUE TO ROGON

The second pillar received its clearest articulation two and a half years before the 2026 cases, in the "Christmas" judgments of December 2023 discussed above.[123]

Reviewing FIFA's and UEFA's rules on prior authorisation of independent competitions, the Court held that a federation which also organises the competitions to which it controls access places itself in a structural conflict of interest, so that its exercise of that gatekeeping power must rest on substantive criteria and detailed procedural rules capable of ensuring that the power is exercised in a transparent, objective, precise, non-discriminatory and proportionate manner, and must remain subject to effective judicial review.[124]

Diarra restated the same formula the following October, this time addressed to sporting sanctions rather than to prior authorisation: sanctions for breach of a football contract may be imposed only within a framework of criteria that are themselves transparent, objective, non-discriminatory and proportionate, a requirement that itself entails accounting for the individual circumstances of the case when the amount and duration of a sanction are fixed, and one that leaves every application of those criteria open to effective review.[125]

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the Court "consistently insists on independently testing the objective invoked by the regulator, rather than simply accepting its characterisation, whether in competition law, fundamental rights, data protection or the regulation of upstream service markets".

123 See *supra,* Section 3.

124 S. Bastianon and M. Colucci, cited above, Section 2.2, discussing judgment of 21 December 2023, *European Superleague Company*, C-333/21, ECLI:EU:C:2023:1011, paragraph 147.

125 Diarra, C-650/22, cited above, paragraph 111, referring to paragraph 108 and citing *European Superleague Company*, C-333/21, paragraph 147; see S. Bastianon and M. Colucci, cited above, Section 2.2, describing the passage as "difficult… to imagine a more concise judicial restatement of the very structure this chapter calls accountable autonomy: a legitimate aim, criteria that are objective and verifiable

FIGC and CONI confirmed, in July 2026, that the formula has hardened into a recurring feature of the Court's reasoning wherever a sports body exercises disciplinary or gatekeeping power over its own members, rather than a one-off answer tailored to *European Superleague Company's* own facts.[126]

Whether a regulator actually possesses criteria of that kind, however, varies markedly across the fields the Court has examined. *NADA Austria* supplies the clearest example: the Austrian legislature had pre-defined, in the statute itself, the categories of person exempted from the online publication of anti-doping sanctions, a genuinely rule-based structure the Court treated as a legitimate starting point for the proportionality analysis that followed.[127]

CD Tondela exposes the opposite extreme: a crisis agreement improvised over a few weeks by a league and a group of clubs facing an indefinite suspension of their competitions was never going to display the kind of pre-established, codified criteria that a statute or a disciplinary code can supply, a gap the Court did not treat as fatal in itself but folded instead into the necessity and proportionality inquiry it left to the referring court.[128]

ROGON supplies a third model, and the one of most direct relevance to a reform derived, as this article has shown, from a global negotiation rather than a single pre-existing code: the Court accepted that the conditions of the *Meca-Medina* test may be assessed by reference to groups of provisions pursuing a distinct objective or producing a distinct effect, rather than provision by provision, extending by analogy its own case law on regulations adopted by professional bodies that affect third-party clients outside the profession itself.[129]

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rather than merely labelled as such, and a proportionality test that bites at the level of the individual measure, not merely on the regulatory scheme in the abstract".

126 S. Bastianon and M. Colucci, cited above, Section 3.1, discussing Opinion of Advocate General Spielmann of 18 December 2025 in Joined Cases C-424/24 and C-425/24, paragraph 70, confirmed by judgment of 16 July 2026, FIGC and CONI, C-424/24 and C-425/24, ECLI:EU:C:2026:602.

127 S. Bastianon and M. Colucci, cited above, Section 7.2, discussing judgment of 14 July 2026, NADA Austria and Others, C-474/24, ECLI:EU:C:2026:579.

128 S. Bastianon and M. Colucci, cited above, Section 7.2, discussing judgment of 30 April 2026, CD Tondela and Others, C-133/24, ECLI:EU:C:2026:361, and noting that the Court "did not treat that absence as fatal, folding the question instead into the necessity and proportionality inquiry it left to the referring court".

129 Judgment of 9 July 2026, ROGON GmbH & Co. KG and Others v Deutscher Fußball-Bund e.V., C-428/23, ECLI:EU:C:2026:563, paragraph 61, citing judgment of 18 July 2013, Consiglio Nazionale dei Geologi, C-136/12, ECLI:EU:C:2013:489, paragraphs 53 and 54, and judgment of 23 November 2017, CHEZ Elektro Bulgaria and FrontEx International, C-427/16 and C-428/16, ECLI:EU:C:2017:890, paragraphs 53 to 55; see S. Bastianon and M. Colucci, cited above, Section 6.2.

It further held that this framework is not confined to a federation's own members: it extends to regulations that produce their most significant restrictive effects on undertakings, in this case players' agents, that are not affiliated to the federation, have not accepted its jurisdiction and took no part in the rule-making process by which the regulations were adopted.[130]

12.3. THE THIRD PILLAR: INDIVIDUALISED PROPORTIONALITY, THE LESSON OF RRC SPORTS

The third pillar is where the accountable-autonomy case law reaches its most demanding expression: in every one of the judgments examined, the Court refused to treat proportionality as satisfied merely because a regulatory scheme was, in the abstract, well designed.[131]

NADA Austria required an individual balancing exercise wherever the legislature's own statutory categories did not themselves guarantee a proportionate outcome, reinforced by duration – and age-based ceilings that operate regardless of how the abstract scheme is drafted. *FIGC and CONI* went further, requiring that the very possibility of individualised review be guaranteed by an independent court capable of annulling, not merely compensating, an unlawful sanction, extending the proportionality requirement from the design of a sanction to the architecture of its enforcement.[132]

RRC Sports carried the same logic to its most granular point yet. Examining thirteen contested provisions of FIFA's Football Agent Regulations one by one, the Court found that only two discrete sets of rules, those governing an agent's residual remuneration where a player is transferred again before the end of the contract, and those on player approaches that favoured incumbent agents over new entrants, revealed a sufficient degree of harm to qualify as restrictions by object.

The remainder of a wide-ranging regulatory instrument, including the cap on remuneration, the prohibition on third-party payments and the platform's information obligations, remained susceptible, in principle,

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130 Judgment of 9 July 2026, ROGON GmbH & Co. KG and Others v Deutscher Fußball-Bund e.V., C-428/23, ECLI:EU:C:2026:563, paragraphs 22 and 47; see A. Cattaneo, "Beyond *Meca-Medina*", cited above, Section 4.3; and S. Bastianon and M. Colucci, "Accountable Autonomy", cited above, Section 6.4, describing the proportionality benchmark applicable to non-affiliated market operators as left "structurally under-determined" by both ROGON and RRC Sports, since "[n]either judgment provides the referring courts with specific tools for managing that recalibration".

131 S. Bastianon and M. Colucci, cited above, Section 7.3.

132 Ibid.

to the ordinary *Meca-Medina* justification, subject to verification by the referring court.[133]

The judgment adds a dimension the proportionality review had not previously needed to confront in a sporting context: examined under Article 102 TFEU, FIFA's regulatory power over a market on which it does not itself operate as an undertaking, the market for agents' services, was found capable of amounting to a dominant position, opening the possibility of both an exclusionary abuse, were FIFA to use that power to limit competition on the agents' market in favour of its own affiliated leagues and clubs, and an exploitative abuse, were it to impose on agents conditions lacking any objective economic, technical or legal justification, with the concrete assessment of both forms of abuse left to the referring court.[134]

12.4. APPLYING ACCOUNTABLE AUTONOMY TO THE RSTP 2027

Measured against that structure, the RSTP 2027 appears to perform comparatively well on the first pillar and, on the evidence examined in this article, considerably better than its predecessor on the second and third.

The legitimate objective, the regularity of inter-club competitions and a workable degree of contractual stability in support of it, is unchanged and was already accepted in *Diarra*.[135]

What has changed is the second pillar: criteria for compensation, joint liability and sanctions that are considerably more precise and useful, because they are the result of the institutional capacity and consultative process that the case law identifies as a precondition for a regulator's being able to supply workable ex ante criteria at all.[136]

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133 Judgment of 16 July 2026, FT and RRC Sports GmbH v Fédération Internationale de Football Association (FIFA), C-209/23, ECLI:EU:C:2026:597, paragraphs 96 to 99 and 170; see A. Cattaneo, "Beyond *Meca-Medina*", cited above, Section 4.3, on the Court's confirmation "that the contextual assessment required to decide whether a restriction is by object or effect demands an analysis of individual rules, rather than the regulatory system as a whole". On the substance of the two provisions found to constitute restrictions by object, Article 14 paragraph 12(a) and Article 16 paragraph 1(b) and (c) of the FIFA Football Agent Regulations, see S. Bastianon and M. Colucci, "Accountable Autonomy", cited above, Section 6.3.

134 S. Bastianon and M. Colucci, cited above, Section 6.3, discussing judgment of 16 July 2026, FT and RRC Sports GmbH v Fédération Internationale de Football Association (FIFA), C-209/23, ECLI:EU:C:2026:597.

135 See *supra*, note 21; and, on the case law's requirement that the legitimate objective be independently verified rather than merely asserted by the regulator, S. Bastianon and M. Colucci, "Accountable Autonomy", cited above (note 8), Section 7.1.

136 Ibid., Section 7.2, noting that this second pillar "presupposes a regulator with the institutional capacity, and the time, to legislate for itself in advance".

On the third pillar, individualised proportionality, the presumption of inducement bounded to forty-five days and rebuttable on the facts, the graduated sanctioning scale tied to recidivism, and the decoupling of the transfer certificate from the merits of a compensation dispute, all move the system from rules that applied automatically, regardless of circumstance, to rules that require, or at least permit, a thorough assessment of the individual case.[137]

None of these amounts to a guarantee that every application of the new Article 17 will withstand scrutiny.

It is also worth recalling, in the same spirit of institutional accountability that runs through this line of case law, the parallel development of judicial protection over sports arbitration itself, notably in the Court's ruling in Royal Football Club *Seraing* and, subsequently, in *FIGC and CONI*. These judgments confirm that private regulatory power in football remains subject to review by bodies independent of the football authorities themselves, a requirement examined above, in Section 10, in relation to the more limited institutional character of the Dispute Resolution Chamber itself.[138]

What the 2027 reform demonstrates, at a structural level, is that a sports governing body can respond to a finding of disproportionality not merely by amending the rule concerned, but also by building stakeholder participation into the rule-making process.

The significance of *ROGON* and *RRC Sports* goes beyond the application of the *Meca-Medina* test to rules affecting actors outside the federation. Before that test can apply, it is necessary to determine whether the rule restricts competition by object or by effect. As *RRC Sports* confirms, this assessment requires consideration of the content and objectives of the rule and of its economic and legal context. The distinction is decisive because, where a restriction is classified as "by object", the *Meca-Medina* justification is unavailable.[139]

This provides a further perspective from which to consider the consultative method examined above. The participation of the parties affected by the rules cannot determine their classification under Article

[137] Ibid., Section 7.3.

[138] Judgment of 1 August 2025, Royal Football Club *Seraing*, C-600/23, ECLI:EU:C:2025:617; see S. Bastianon and M. Colucci, "Sports Arbitration and Effective Judicial Protection under EU Law: The RFC *Seraing* Case", cited above; and A. Cattaneo, "Beyond *Meca-Medina*", cited above, Section 4.2.

[139] Judgment of 9 July 2026, *ROGON and Others*, C-428/23, ECLI:EU:C:2026:563, paragraphs 36–37; judgment of 16 July 2026, *RRC Sports*, C-209/23, ECLI:EU:C:2026:597, in particular paragraphs 176–178. See also judgment of 30 April 2026, *CD Tondela and Others*, C-133/24, ECLI:EU:C:2026:361, paragraph 92.

101(1) TFEU. It may nevertheless form part of the broader regulatory context in which their content and objectives are understood and assessed.

Consultation cannot, therefore, prevent a finding of restriction by object. Nor can consensus render an otherwise anti-competitive rule compatible with Article 101 TFEU. Nevertheless, it may help to show whether, and how, the interests affected by the regulatory framework were identified and taken into account when the rules were designed.

13. CONCLUDING REMARKS

This article has traced the transfer system's transformation from the negotiated compromise of 2001 through the judicial review of the 2023–2024 case law to the negotiated instrument now in force. Two conclusions follow from that account.

The first is substantive. The RSTP 2027 adopts the *Diarra* principles on contractual stability, joint liability, sporting sanctions and the transfer certificate.

It redesigns each of them so that a case-specific, evidence-based assessment replaces what had previously been an automatic rule.

Whether every individual provision will meet the proportionality standard is a question for future case law to answer.

A similar note of caution can be found in the literature. Houben has described the 2027 reform as "certainly constitut[ing] an improvement", although he identifies the calculation of a club's damages following a player's early termination as an issue for further consideration.[140]

Some others treat the redesigned Article 17 as resting on a premise – that a transfer is a reality distinct from the employment contract underlying it – agreed upon by the players' representatives and FIFA. On this account, the reform's legitimacy should be tested against the transfer system's redistributive function among clubs of unequal economic capacity rather than against the individual employment relationship in isolation, and it is

[140] See R. Houben, cited above, Section 8, describing the 2027 reform, "considered as a whole", as "certainly constitut[ing] an improvement" on the pre-*Diarra* rules, while observing that "the calculation of damages as at early termination of contract by a player may still prove the legal elephant in the room". Houben further identifies the involvement of stakeholders in the development of the new rules and the collective bargaining platform established for future labour-related matters as "the most important takeaway" from the reform.

the players' assent, secured through negotiation rather than imposed unilaterally, that supplies that legitimacy for the first time.[141] A related, more sceptical note ties the reform's ultimate value to how first the FIFA Football Tribunal and then the Court of Arbitration for Sport will interpret it: whether the new tools, the bounded presumption of inducement, the graduated sanctioning scale, the decoupled transfer certificate, function as genuine guarantees of player mobility, or whether an arbitral body applying them case by case turns the new text into a renewed means of preserving the very restrictions the *Bosman* ruling was meant to remove.[142]

The second conclusion is methodological, and it is the one this article has emphasised throughout. The credibility of sporting rules depends not only on their content but also, to some extent, on the process through which they are developed. The RSTP 2027 emerged from a process of consultation and negotiation involving representatives of players, clubs, leagues and FIFA, building, at European level, on the work conducted within the EU Sectoral Social Dialogue Committee for Professional Football and subsequently formalised through the establishment of a Global Social Dialogue Platform and a memorandum of understanding between FIFA and FIFPro,[143] the latter having itself described that Platform as a basis for future collective

[141] M. Cardenal Carro, "El caso 'Diarra' y el nuevo RETJ: ¿El reinicio de la era de los traspasos?", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 327, at 350–351, arguing that the RSTP 2027 "asume que el traspaso es una realidad distinta del contrato de trabajo… con la anuencia de los futbolistas", and that its legitimacy should accordingly be tested not against the individual employment relationship but against the transfer system's own redistributive function among clubs of unequal economic capacity, a function now endorsed, for the first time, through the players' own representatives rather than imposed unilaterally.

[142] S.F. Ross and S. González García, "La 'promesa' de la sentencia *Bosman* depende de la interpretación que haga el TAS de la nueva versión del RETJ", in G. Abreu, M. Cardenal Carro and G. Lozano (eds.), El Reglamento de Transferencias FIFA 2027, cited above, 313, at 324–325, concluding that *Bosman*'s promise "*solo podrá realizarse si el nuevo RETJ se interpreta de modo que impida convertir la estabilidad contractual en un derecho del club a capturar el incremento del valor económico del jugador",* and warning that the decisive question is *"si esas herramientas se aplican como verdaderas garantías de movilidad o si… el nuevo texto se convierte en una vía renovada para preservar las restricciones que Bosman prometió* superar".

[143] See EU Sectoral Social Dialogue Committee for Professional Football, *Resolution of European social partners on the key principles of the football transfer system and its reform*, 26 November 2025, adopted under the auspices of the European Commission by FIFPro Europe, European Football Clubs, European Leagues and UEFA; available at https://editorial.uefa.com/resources/02a0-1f554c9ba86d-1bf322cc0ad7-1000/eu_ssdc_for_professional_football.pdf.

negotiations with FIFA.[144] Of course, the involvement of the different stakeholders does not in itself establish the legality or proportionality of the resulting rules, which remain subject to the requirements of EU law. It does, however, provide a process through which the different interests affected by the transfer system can be expressed and taken into account before the rules are adopted.

The legitimacy this article attributes to a negotiated instrument depends on the negotiation itself: fair and transparent bargaining, in which each stakeholder can shape the outcome and not only endorse it afterwards.

The significance of the RSTP 2027 therefore lies not only in the individual provisions of the reform, but also in the method through which they were developed. Whether that method will produce rules that command greater acceptance and prove more stable in practice cannot be assumed in advance. It nevertheless represents a different approach to the exercise of FIFA's regulatory autonomy, based on structured participation rather than unilateral rule-making. In that more limited sense, the process itself forms part of the accountable autonomy examined in this article.

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[144] FIFPro, "What the FIFPro and FIFA agreement means for players", 10 June 2026, available at: https://www.fifpro.org/en/articles/2026/06/what-the-fifpro-and-fifa-agreement-means-for-players.

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A FOOTBALL ODYSSEY: THE *FOOTBALL AGENTS* JUDGMENTS IN CASE C-428/23 *ROGON V. DFB* AND CASE C-209/23 *RRC SPORTS V. FIFA*

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ABSTRACT

This article examines the judgments of the EU Court of Justice in Rogon and RRC Sports – the "Football Agents" cases – relating to the regulation of football agents by FIFA and national football associations, in particular the FIFA Football Agents Regulations (FFAR). It describes the evolution of the FFAR and summarises its main objectives and provisions. It sets out the relevant legal tests to be applied under EU competition law to sports regulations such as the FFAR. It explains why these tests were applied by the EU Court of Justice to the regulation of football agents who are not direct members of FIFA (or national football associations) in the Rogon case. It then examines the findings of the EU Court of Justice in the RRC Sports case with respect to the lawfulness under EU competition and free movement laws of specific provisions of the FFAR, in particular those relating to the conflict of interest rules, the service fee cap and the ethical requirements. It highlights the reasonableness test to be applied to claims of abuse of dominance against sports federations. It also analyses the judgment of the EU Court of Justice with respect to the compliance of the FFAR rules with EU data protection law. It concludes that the judgment is a strong endorsement of the FFAR that will have a major impact on pending cases in Europe and around the world.

KEYWORDS

EU Court of Justice, Football Agents, FFAR, EU competition law, EU free movement law, EU privacy law.

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Summary: 1. Background. 2. FFAR: Key Provisions. 2.1. Conflicts of Interest. 2.2. Remuneration. 2.3. Player Welfare. 3. Background to the Cases. 4. Legal Analysis. 5. Regulation and Licensing of Football Agents. 6. Competition Analysis of FFAR Provisions. 6.1. Competition Analysis of the Conflict of Interest Rules in the FFAR. 6.2. Competition Analysis of the Remuneration Provisions in the FFAR. 6.3. Competition Analysis of the Ethical Requirements in the FFAR. 7. Disclosure and Publication. 7.1. Disclosure and Publication: Competition Analysis. 7.2. Disclosure and Publication: Data Protection Analysis. 8. FFAR and Claims of Abuse of Dominance. 9. FFAR and Free Movement. 10. Return to National Courts.

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A FOOTBALL ODYSSEY: THE *FOOTBALL AGENTS* JUDGMENTS

> "*Sing to me of the man, Muse, the man of twists and turns, driven time and again off course…*" ***The Odyssey*** (Homer, translation of the opening lines by Robert Fagles)

After a legal journey lasting almost ten years, judges at the EU Court of Justice delivered judgments that will affect the governance of football agents – and indeed sports governance – for years to come. Whereas other sports cases have concerned specific rules, the *Rogon* and *RRC Sports* judgments (collectively, "*Football Agents*") ranged from existential questions about whether FIFA and national associations can regulate agents at all to specific questions covering almost the entire rulebook of the FIFA Football Agents Regulations ("FFAR"). The rulings establish important principles on the scope of the regulatory authority of sports federations under EU law. The EU Court of Justice also assessed the rules governing agents in relation to conflicts of interest, player welfare and – most controversially – service fees under EU competition, free movement and data protection law. So extensive is the judgment on the FFAR that it runs to 385 paragraphs. A veritable epic but, in the end, the verdict is clear.

1. BACKGROUND

The origins of the *Football Agents* cases lie, strangely, in the decision by FIFA in 2015 *not* to regulate agents. FIFA had previously operated a licensing system for football agents which had been in place since the 1990s (the "FIFA Players' Agents Regulations"). This system had been challenged in an antitrust complaint before the European Commission and subsequently before the EU General Court. In the 2005 judgment in *Piau*, the EU General Court – albeit with some reservations – recognised that FIFA could regulate football agents, given the absence of EU or national legislation. The EU General Court observed that "*certain practices on the part of players' agents could, in the past, have harmed players and clubs, financially and professionally*". Accordingly, the EU General Court accepted that FIFA could regulate agents to achieve "*the dual objectives of raising professional and ethical standards for the occupation of players' agent in order to protect players, who have a short career*".[2] FIFA was, at this point, in a strong legal position to regulate agents.

[2] Case T-193/02, *Laurent Piau v. European Commission*, EU:T:2005:22 ("Piau"), paragraph 102.

Then, in 2015, FIFA abandoned the licensing system in favour of a deregulatory model. The FIFA Regulations on Working with Intermediaries ("RWI") allowed any natural or legal person to act as an "intermediary", provided they were registered with national associations and adhered to certain minimum criteria. FIFA's rationale for this deregulatory approach was that agents were involved in only a small proportion of all international transfers. However, critics pointed out that FIFA lacked the will or resources to regulate agents, deciding to walk away rather than address the regulatory gap.[3] Whatever the reasons, FIFA lost control.

Even agents conceded that deregulation had turned football agency into a "wild west".[4] Anyone could become a registered intermediary – and anyone did. Systemic problems soon became apparent. With regulation devolved to national associations, a fragmented regulatory system emerged, with each country applying different rules. The lack of uniform regulation encouraged conflicts of interest, with agents able to act not just for a player and the engaging club but even for the releasing club at the same time.[5] Owing to information asymmetry and the gatekeeper role of agents, transfers could be engineered in the interests of agents rather than of the players they represented. Data showed a huge increase in expenditure on agents,[6] giving rise to concerns that fees were no longer commensurate with the services being provided to clubs and players. Most seriously, agents were being associated with illegal activities such as corruption, money laundering, fraud and human trafficking involving minors. An EU report on agents led by Professor Parrish concluded: "*Whilst the old licensing system was flawed, many respondents argued that it was underpinned with sound principles and a return to it, or a similar system, is necessary in order to ensure that players and clubs are engaging a professional agent*."[7]

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3 De Marco, "The End of the Licensed Football Agent?", *Blackstone Chambers Sports Law Bulletin*, 21 October 2014.

4 *The Guardian*, "Football agents fear 'wild west' as Fifa reforms seek to cap fees", 31 March 2015.

5 The 2016 transfer of French player Paul Pogba is perhaps the best-known example, with the player's agent acting for the player, the engaging club (Manchester United) and the releasing club (Juventus FC). See: *Financial Times*, "Mino Raiola: meet the super-agent behind Pogba and Ibrahimovic", 28 October 2016.

6 See for example: FIFA Global Transfer Market Report 2017 showing that club expenditure on intermediary commissions had increased from USD 218.4 m in 2013 to 369 m in 2016. The FIFA Intermediaries in International Transfers Report (2017) estimated total expenditure to club intermediaries between 2013 and 2017 to be USD 1.59 billion.

7 Prof. Parrish, Dr Cattaneo, Prof. Lindholm, Prof. Mittag, Prof. Perez-Gonzalez, Assistant Prof. Smokvina, "Promoting and Supporting Good Governance in the European Football Agents Industry", Final Report, 2019 ("Parrish Report").

Under new leadership, FIFA conceded that deregulation had been a mistake. FIFA embarked upon a programme of reform aimed at reconnecting the regulation of agents with the proper functioning of the football transfer system. In March 2017, the FIFA Football Stakeholders Committee discussed the establishment of a task force to review and improve the international transfer system.[8] The task force subsequently identified the regulation of agents as a priority, and in September 2018 the Committee endorsed proposals for a new regulatory framework, including the reintroduction of a licensing system for agents.[9]

From 2017 to 2022, FIFA conducted a wide-ranging consultation process on the regulation of agents involving clubs, players, leagues, confederations and agents. Some agent organisations, however, were highly critical of the consultation process and refused to take part. Notwithstanding this, FIFA received hundreds of comments and proposals on draft regulations.[10] The Council of Europe[11] and the European Parliament[12] also called upon FIFA to put in place a sound framework for the exercise of the profession of agent in order to protect the integrity of the football transfer system. The result of this extensive consultation was the adoption by FIFA of the FFAR in December 2022.

2. FFAR: KEY PROVISIONS

The core objectives of the FFAR, set out in Article 1, are linked to the objectives of FIFA's regulation of the football transfer system, notably the protection of contractual stability, competitive balance and the regularity of football competitions.[13] The FFAR aims, amongst other objectives, to set and

8 FIFA Press Release "First Meeting of FIFA Football Stakeholders Committee", March, 23 2017

9 FIFA Press Release "FIFA Holds Talks with Agents on Possible Revision of Football Intermediaries System", April, 20 2018; FIFA Press Release "Football Stakeholders Endorse Landmark Reforms of the Transfer System", September, 25 2018.

10 FIFA Circular 1827 states: "*The FFAR were adopted following a comprehensive, genuine, and inclusive consultation process where over 300 proposals regarding the FFAR were considered and analysed over the last four years.*"

11 Council of Europe Committee Report, "Football Governance: Business and Values" (2021).

12 European Parliament resolution of 23 November 2021 on EU sports policy: assessment and possible ways forward (2021/2058(INI)), OJ C 224, 8.6.2022, pp. 2–10.

13 Article 1(1) FFAR states: "*FIFA has a statutory obligation to regulate all matters relating to the football transfer system. The core objectives of the football transfer system are to: a) protect the contractual stability between professional players and*

raise minimum professional and ethical standards for agents, limit conflicts of interest and protect football players. Article 2, which defines the scope of the FFAR, provides that it regulates "Football Agent Services"[14] connected to a transfer (defined as a "Transaction"[15]) with an international dimension.

The FFAR reintroduces a licensing system, with Article 4 requiring natural persons to pass an examination administered by FIFA in order to become a "Football Agent".[16] The licence is issued for an indefinite period (subject to continuing professional development) and permits the agent to conduct "Football Agent Services" on a worldwide basis.[17] Indeed, only football agents may provide such services.[18] Agents are required to adhere to FIFA's Statutes, regulations, directives and decisions as well as those of the competent bodies of national federations and confederations.[19]

In addition, the FFAR introduces new governance features for agents. FIFA created a representative group for agents, the Football Agent Working Group. The FFAR establishes the Agents Chamber as part of the FIFA Football Tribunal, which agents may use on a voluntary basis to settle disputes. Details of registered football agents are to be provided to FIFA and published on its website so that players and clubs can verify that a person is in fact a registered football agent.

The FFAR rules governing the representation of players and clubs fall, broadly speaking, into the following categories: (i) conflict of interest rules; (ii) remuneration; and (iii) player welfare. While each has distinct objectives, they are also interlinked in terms of the overall application of the FFAR. Each is considered in turn below.

clubs; b) encourage the training of young players; c) promote a spirit of solidarity between elite and grassroots football; d) protect minors; e) maintain competitive balance; and f) ensure the regularity of sporting competitions."

14 Football Agent Services are defined as: "*football-related services performed for or on behalf of a Client, including any negotiation, communication relating or preparatory to the same, or other related activity, with the purpose, objective and/or intention of concluding a Transaction*."

15 A Transaction is defined as: "*(i) the employment, registration or deregistration of a player with a club or a Single-Entity League; (ii) the employment of a coach with a club, Single-Entity League or a member association; (iii) the transfer of the registration of a player from one club to another; (iv) the creation, termination or variation of an Individual's terms of employment*."

16 Article 23 FFAR provides an exception for agents who were licensed under the previous FIFA Players' Agents Regulations.

17 Articles 8 and 9 FFAR.

18 Article 11 FFAR.

19 Article 16(1) FFAR.

2.1. CONFLICTS OF INTEREST

The FFAR introduces new measures to prohibit or limit conflicts of interest. As a general rule, a football agent is prohibited from representing more than one party.[20]

This means that a football agent may not act for all parties, as the conflict is irreconcilable. Likewise, a football agent may not act for both a releasing club and a player, as the club's interest is to maximise the transfer fee (and, if necessary, to block the transfer), whereas the player's interest is to have a lower transfer fee in order to maximise the potential salary at the engaging club. For similar reasons, an agent may not act for both the releasing club and the engaging club.[21]

The only exception to this general rule is that a football agent may act for both the player and the engaging club in the same transfer, provided that both clients give their explicit written consent. Although there is a potential conflict even in such a relationship (as the club may wish to lower the player's salary while the player will wish to increase it), FIFA considered this limited exception acceptable following its consultations, because the engaging club and the player share an interest in the successful conclusion of the transfer and in keeping any transfer fee payable to the releasing club as low as possible.

To safeguard the integrity of the conflict of interest rules, connected football agents may not act in the same transfer.[22]

2.2. REMUNERATION

The FFAR regulates the service fees of football agents.

The service fee is to be based on the player's remuneration where the agent represents the player (and the engaging club, where relevant), or on the transfer compensation where the agent represents the releasing club.[23] The remuneration may not be calculated on the basis of future transfer compensation received by the club from a subsequent transfer of the player.[24]

The guiding principle is 'client pays', namely that an agent should be paid by the person or club that the agent represents; payment of the fee by

20 Article 12(8) FFAR.
21 Article 12(9) FFAR.
22 Article 12(10) FFAR.
23 Article 15(1) FFAR.
24 Article 15 FFAR.

any third party is prohibited.[25] The exception to this principle relates to the limited conflict of interest permitted where an agent acts for both the player and the engaging club. However, to safeguard the football agent's fiduciary duty to the player, the engaging club may pay no more than 50% of the total service fee due.[26] There are also exceptions for low-value representations but, again, the fiduciary duty to the player must remain unaffected.[27]

The service fee must be paid incrementally over the course of the player's contract. Only the remuneration actually received by a player is subject to the payment of a service fee, calculated on a pro rata basis. This means that, if the player leaves a club mid-contract, the service fee is no longer due to the agent concerned.[28]

Perhaps the most controversial element of the FFAR is the introduction of the "Service Fee Cap" in Article 15 FFAR, which limits the amount of remuneration that football agents can receive. The FFAR sets out the following table:

Client	**SERVICE FEE CAP**	
	Remuneration less than or equal to USD 200,000 (or equivalent)	**Remuneration above USD 200,000 (or equivalent)**
Individual	5% of the Individual's Remuneration	3% of the Individual's Remuneration
Engaging Entity	5% of the Individual's Remuneration	3% of the Individual's Remuneration
Engaging Entity and Individual (permitted dual representation)	10% of the Individual's Remuneration	6% of the Individual's Remuneration
Releasing Entity (Transfer compensation)	10% of the transfer compensation	

That said, the service fee cap relates only to the transfer and does not apply to 'other services' provided by the football agent to players or clubs.

25 Article 14(2) FFAR.
26 Article 14(10) FFAR.
27 Article 14(3) FFAR. The exception applies where the player earns less than USD 200,000 per annum.
28 Article 14(7) FFAR.

These include legal advice, financial planning, scouting, consultancy, the management of image rights and the negotiation of commercial contracts. However, services provided in the 24 months before or after the transfer are presumed to form part of the football agent's services unless proven otherwise.[29]

2.3. PLAYER WELFARE

A key objective of the FFAR is to protect the interests of players who, as the EU General Court had previously recognised in *Piau*, have short careers.

Article 5 FFAR sets out ethical requirements that football agents must satisfy at all times, both when submitting their application and after receiving a licence. A football agent must never have been convicted of a serious criminal charge.[30] Likewise, persons who have been suspended by a regulatory body or sports governing body for two years or more for ethical or professional misconduct may not act as agents. The FFAR also prohibits agents from holding positions at clubs, leagues or federations – or indeed from holding any interest in a club, academy or league.[31]

In order to be valid, representation agreements must be in writing (with specified details to be included[32]) and may not exceed two years in duration.[33] Where the representation is exclusive, the FFAR provides that other football agents may approach the player only in the final two months of the representation agreement.[34] However, players always have the right

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29 Article 15(3) and (4) FFAR.

30 Article 5(ii) FFAR: [...] "*never have been convicted of a criminal charge, including any related settlements, regarding matters related to organised crime, drug trafficking, corruption, bribery, money laundering, tax evasion, fraud, match manipulation, misappropriation of funds, conversion, breach of fiduciary duty, forgery, legal malpractice, sexual abuse, violent crimes, harassment, exploitation or child or vulnerable young adult trafficking*."

31 Article 5 FFAR: [...] "(iv.) *not be an official or employee of FIFA, a confederation, a member association, a league, a club, a body that represents the interests of clubs or leagues or any organisation connected directly or indirectly with such organisations and entities; the only exception is where an applicant has been appointed or elected to a body of FIFA, a confederation or a member association, representing the interests of Football Agents; (v.) not hold, either personally or through their Agency, any Interest in a club, academy, league or Single-Entity League*."

32 Article 12(7) FFAR states: "*A Representation Agreement is valid only if it contains the following minimum requirements: a) The names of the parties b) The duration (if applicable) c) The amount of the service fee due to the Football Agent d) The nature of the Football Agent Services to be provided e) The parties' signatures*."

33 Article 12(3) FFAR.

34 Article 16(1) FFAR.

to represent themselves.[35] The FFAR also has specific rules relating to minors.[36]

The FFAR sets out disclosure requirements under which football agents must submit to FIFA's platform the representation agreement, any agreements relating to other services, information on the service fee and on fees for other services, and any cooperation agreement with other football agents to share revenues. In addition, the football agent must disclose any information that may affect compliance with the ethical requirements (and other eligibility requirements). Any settlement agreement with a client should also be uploaded.[37]

As a complement to the disclosure requirements, FIFA publishes information relating to football agents and their services. In accordance with Article 19 FFAR, FIFA makes available information on all agents, including their names and details, as well as on the clients they represent, specifying whether the representation is exclusive or non-exclusive, the end date of the representation agreement, the services provided to the respective clients, any sanctions imposed on agents and their clients, and details of all transactions involving agents, including the amounts of service fees paid to them.[38]

Many of these rules came under scrutiny before the EU Court of Justice in *RRC Sports*.

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35 In accordance with Article 12(13) FFAR, players always have the right to represent themselves in negotiations for a transfer with the FFAR deeming as null and void any provision in the representation agreement that limits the player's ability to autonomously negotiate and conclude an employment contract without the involvement of a football agent.

36 The FFAR introduces special rules for the protection of minors, requiring agents to have completed a designated course to represent minors. A football agent may approach a minor only in the six months before the minor reaches the age at which they may sign their first professional contract with the written consent of the minor's guardians. The FFAR prohibits the remuneration of agents for representation of a minor unless it relates to the minor player's first or subsequent professional contract. While the subject of other cases, these rules were not challenged in the *RRC Sports* case. See: Article 13 FFAR and Article 14(9) FFAR.

37 Article 16(1)(j)–(k) FFAR.

38 Article 19 FFAR states: "*FIFA shall make available: a) the names and details of all Football Agents; b) the Clients that Football Agents represent, the exclusivity or non-exclusivity of their representation and the expiry date of the Representation Agreement; c) the Football Agent Services provided to each Client; d) any sanctions imposed on Football Agents and Clients; and e) details of all Transactions involving Football Agents, including the service fee amounts paid to Football Agents.*"

3. BACKGROUND TO THE CASES

FIFA's decision to return as regulator was greeted with hostility by some agents. Cases were launched in jurisdictions across Europe and, indeed, around the world.[39] Some cases challenged specific provisions of the FFAR, such as the conflict of interest rules or the remuneration provisions; others challenged almost the entire rulebook. The adoption of the FFAR turned out to be just the start of its legal journey.

In a case before the Court of Arbitration for Sport (CAS), the panel decided that the FFAR remuneration provisions were not anti-competitive.[40] By contrast, an English arbitral panel came to the opposite view in a case brought by major football agencies against the Football Association's national regulations.[41] Both arbitral panels, however, agreed that the conflict of interest provisions were valid.

The *RRC Sports* case, brought by an agency before the German courts, was just one of many in which almost the entire rulebook was challenged. The case was referred to the EU Court of Justice at the request of FIFA on 31 March 2023.[42] By coincidence, the German Bundesgerichtshof (Federal Supreme Court) referred questions at around the same time in the *Rogon* case[43] relating to the right of national federations to regulate non-members such as agents. Although not joined, these two *Football Agents* cases shared the same procedural pathway, being heard on the same day and assigned to the same Advocate General, who delivered his Opinions on the same day.[44] The judgments were delivered just one week apart, with suspense building from the *Rogon* judgment on 9 July 2026 to the *RRC Sports* judgment on 16 July 2026. Coinciding with the film release of *The Odyssey,*[45] the rulings promised an epic finale.

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39 Cases have been filed in Argentina, Belgium, Brazil, Germany, the Netherlands and Spain. A complaint was filed with the European Commission (Case AT.40837 FFAR) but was closed in September 2025. A number of other complaints have been filed with competition authorities.

40 CAS 2023/O/9370, *Professional Football Agents Association (PROFAA) v. FIFA* ("PROFAA").

41 Arbitral award, *CAA Base Limited, Key Stone Management Ltd (t/a Wasserman), Stellar Football Limited, Areté Management Limited v. The Football Association*, 30 November 2023 ("CAA Base").

42 Case C-209/23, *RRC Sports v. FIFA*, EU:C:2026:597 ("RRC Sports").

43 Case C-428/23, *Rogon v. Deutscher Fußball-Bund* (DFB), EU:C:2026:563 ("Rogon").

44 The hearing was held on 12 February 2025 and Advocate General Emiliou's Opinions were delivered on 15 May 2025.

45 *The Odyssey*, Directed by Christopher Nolan, Universal Pictures, 2026.

4. LEGAL ANALYSIS

Before addressing the substance, it is necessary to recall the principles underlying the EU Court of Justice's judgments in the respective *Football Agents* cases.

As a preliminary point, sport is subject to EU law in so far as it constitutes an economic activity. While certain purely sporting rules are not of an economic nature,[46] the same cannot be said of regulations on agents, which relate to the supply of services to clubs and players.[47] EU competition law applies to the conduct of enterprises (or "undertakings" in the English text).[48] There are two key provisions underpinning EU competition law in the Treaty on the Functioning of the European Union ("TFEU"): Article 101 TFEU prohibits in particular agreements between undertakings or decisions by associations of undertakings that have as their object or effect the prevention, restriction or distortion of competition; Article 102 TFEU prohibits the abuse by an undertaking of a dominant market position. In both cases, there must be an effect on trade between EU Member States.

Consolidating long-standing case law, the EU Court of Justice outlined in *Rogon* how EU competition law applies to sports organisations or sports federations:

> "*Article 101(1) TFEU is applicable to any entity where it carries out an economic activity and which, for that purpose, must be classified as an 'undertaking', including any entity that is created in the form of an association which, according to its statutes, has as its associative purpose the organisation and control of a given sport, provided that it carries out an economic activity in relation to that sport. Moreover, that provision is also applicable to any entity which, although not necessarily constituting an undertaking, may be classified as an 'association of undertakings' because it brings together operators active on that market.*"[49]

Consequently, FIFA and national associations (such as the DFB) are considered to have the status of an "association of undertakings", in this case in the upstream agency markets relating to the recruitment of players

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46 According to long-standing case law of the EU Court of Justice, this is the case in particular with respect to rules on the exclusion of foreign players from the composition of teams participating in national team competitions or the determination of ranking criteria used to select the athletes participating individually in competitions.

47 *Rogon*, paragraph 25.

48 The French version uses the term "*entreprise*". The term "*enterprise*" was actually used in the original English translation of the Treaty of Rome establishing the European Economic Community (1958) submitted to the United Nations (UNTS vol. 298), but the term "undertaking" was later used in official English versions.

49 *Rogon*, paragraph 28. See also: *RRC Sports*, paragraphs 83–89.

or coaches.[50] It follows that the regulations on agents constitute a decision by an association of undertakings falling within the scope of Article 101 TFEU.[51] For completeness, restrictions must have an effect on trade between EU Member States, but this condition is easily met, even where regulations are limited to a single Member State, as the EU Court of Justice confirmed in *Rogon*.[52] The main question is usually whether there is a restriction of competition by object or by effect arising from the sports regulation, and, if so, whether the restriction is justified.

Restrictions 'by object' are those which, by their very nature, are regarded as being harmful to the proper functioning of normal competition; there is no need to examine their effects. For this reason, the concept of a restriction by object must be interpreted strictly.[53] Classic examples of such restrictions are price-fixing and market-sharing cartels. However, other types of conduct may also be considered to have an anti-competitive object, even if they are not as harmful to competition as hardcore restrictions. To determine whether there is a restriction by object, it is necessary to examine, first, the content of the agreement, decision or practice in question; second, the economic and legal context of which it forms a part; and, third, its objectives.[54] In its recent ruling in *CD Tondela* (concerning COVID-19 measures adopted by the Portuguese league),[55] the EU Court of Justice stressed the importance of taking account of the context in which a decision is adopted, with Advocate General Emiliou memorably stating that "*context always matters*".[56] In *Football Agents*, the EU Court of Justice also highlighted the importance of context in the analysis.

As regards a restriction of competition by effect, this requires an analysis of the effect upon the relevant product and geographic markets (having regard to a realistic counterfactual). The EU Court of Justice noted in its rulings that the following relevant markets could be affected: (i) the market for agents' services in the international transfer of professional players and coaches; and (ii) the labour market for players and coaches.[57] The EU Court

50 *Rogon*, paragraph 32; *RRC Sports*, paragraph 86.
51 FIFA and other sports federations may also be considered to be undertakings in their own right for the purpose of Article 102 TFEU. See further Section 8 below.
52 *Rogon*, paragraphs 45–46.
53 Case C-333/21, *European Superleague Company*, EU:C:2023:1011 ("Superleague"), paragraph 161.
54 *Superleague*, paragraph 165.
55 Case C-133/24, *CD Tondela, Liga Portuguesa et al.*, EU:C:2026:361 ("CD Tondela"), paragraph 43, citing in particular *Superleague*, paragraph 165.
56 *CD Tondela*, Opinion of Advocate General Emiliou, EU:2025:364, paragraph 66.
57 *RRC Sports*, paragraphs 171–173.

of Justice left the effects analysis to the national courts, proceeding on the assumption that there is an effect.

Not all measures that restrict freedom of action are necessarily prohibited. In *Wouters*,[58] concerning professional regulations, and subsequently in *Meca Medina*,[59] concerning anti-doping regulations, the EU Court of Justice held that a restriction is permitted where it is inherent in, and proportionate to, the pursuit of a legitimate objective. In *Superleague*, the EU Court of Justice held that this exception for legitimate objectives in the public interest applied only to restrictions by effect, not to those by object.[60] Whereas previously the categorisation of the restriction did not matter, it is now necessary first to establish its nature.[61]

In the *Football Agents* cases, the EU Court of Justice seems to have consolidated the tests, stating:

> "[...] *not every agreement between undertakings, every decision by an association of undertakings or every concerted practice which restricts the freedom of action of the undertakings party to that agreement or subject to compliance with that decision or participating in that practice necessarily falls within the prohibition laid down in Article 101(1) TFEU. Indeed, the examination of the economic and legal context of which some of those agreements, decisions and practices form a part may lead to a finding, first, that they are justified by the pursuit of one or more legitimate objectives in the public interest which are not per se anti-competitive in nature; second, that the specific means used to pursue those objectives are genuinely necessary for that purpose; and, third, that, even if those means prove to have an inherent effect of, at the very least potentially, restricting or distorting competition, that inherent effect does not go beyond what is necessary, in particular by eliminating all competition.*"[62]

Irrespective of whether there is a restriction of competition by object or by effect (including where there is no public interest objective), the EU Court of Justice confirmed in *Superleague* that Article 101(3) TFEU

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58 Case C-309/99, *J.C.J. Wouters, J.W. Savelbergh and Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten*, EU:C:2002:98 ("Wouters").

59 Case C-519/04 P, *Meca-Medina and Majcen v. Commission*, EU:C:2006:492 ("Meca Medina").

60 *Superleague*, paragraphs 183 and 195.

61 Professor Weatherill neatly sums up the change in the legal test post-Superleague: "*The point is that if a practice escapes the reach of Article 101(1) according to this formula, there is no need to assess whether it is a restriction of competition by object or by effect. It is not a restriction of competition within the meaning of Article 101(1) at all. This is now changed.*" See: Weatherill, "The impact of the rulings of 21 December 2023 on the structure of EU sports law", *International Sports Law Journal* (2023), pp. 409–415, at p. 411.

62 *Rogon*, paragraph 36; *RRC Sports*, paragraph 183.

potentially provides an exemption[63] where the restriction is indispensable to promoting economic progress while allowing consumers a fair share of the resulting benefits without eliminating competition.[64] Accordingly, this route to exemption is available for regulations found to restrict competition by object. In *Superleague*, the EU Court of Justice accepted that objectives in the public interest could be 'translated' into economic benefits[65] – a point followed in *RRC Sports*.[66] This exemption also applies, however, to regulations (by effect) that do not pursue a public interest objective but are instead implemented by a sports federation to achieve economic efficiencies (such as the collective sale of media rights relating to a sports competition).[67]

There is now a large degree of overlap between the public interest test and the economic benefit test[68], with both requiring an assessment of the necessity (or, in the case of Article 101(3) TFEU, the indispensability) of the restriction, in that there should be no less restrictive genuine alternative, as well as of its proportionality (in particular, no elimination of competition).[69]

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63 *Superleague*, paragraph 189.

64 An exemption pursuant to Article 101(3) TFEU is subject to four cumulative conditions as set out by the EU Court of Justice in *Superleague* at paragraph 190: "*First, it must be demonstrated with a sufficient degree of probability that the agreement, decision by an association of undertakings or concerted practice in question makes it possible to achieve efficiency gains, by contributing either to improving the production or distribution of the products or services concerned, or to promoting technical or economic progress. Second, it must be demonstrated, to the same degree of probability, that an equitable part of the profit resulting from those efficiency gains is reserved for the users. Third, the agreement, decision or practice in question must not impose on the participating undertakings restrictions which are not indispensable for achieving such efficiency gains. Fourth, that agreement, decision or practice must not give the participating undertakings the opportunity to eliminate all effective competition for a substantial part of the products or services concerned.*"

65 *Superleague*, paragraph 196.

66 *RRC Sports*, paragraphs 223 and 224.

67 As confirmed in *Superleague*, paragraphs 231 *et seq.*

68 See further: Keane, "Balancing autonomy and legality: the proportionality challenge in EU law post Topfit, Superleague and Royal Antwerp" in Colucci and Bastianon (eds), *Twenty Years after Meca Medina* (SLPC, 2026). That chapter was submitted for publication before the delivery of the *Football Agents* cases.

69 *Rogon*, paragraph 38. The EU Court of Justice stated: "*Furthermore, in view of the requirement that the conduct at issue must, strictly speaking, be necessary and proportionate, it should be noted that the examination of that requirement involves [...] first of all, determining whether the specific means used in a given case to pursue a legitimate objective in the public interest are appropriate for ensuring the attainment of that objective, next, assessing whether recourse to those means is necessary in order to attain that objective, which implies that there are no other*

In summary, where a regulation falls within the scope of EU competition law as a decision by an association of undertakings that affects trade between Member States, the legal test can be set out as involving the following steps:

- **Step 1:** Does the regulation restrict competition by object or effect?
- **Step 2:** If by effect, is the regulation necessary and proportionate to the achievement of a legitimate objective in the public interest?
- **Step 3:** If by object, or by effect where no public interest objective is pursued, is it justified under Article 101(3) TFEU as an economic benefit to consumers that is indispensable and does not eliminate competition?

It is against these principles that the EU Court of Justice assessed first the governance of agents by sports federations and then the detailed provisions of the FFAR in the respective *Football Agents* cases.

5. REGULATION AND LICENSING OF FOOTBALL AGENTS

The central question in the *Rogon* case was whether a sports federation could adopt regulations that are not only addressed to its members but also govern the use of services provided by non-member undertakings, such as football agents.[70] The EU Court of Justice answered in the affirmative.

The EU Court of Justice recognised the application of EU competition law to the regulation of agents.[71] However, the regulation of non-members – such as agents – does not in itself constitute a 'by object' restriction of competition. The EU Court of Justice stated: "*the mere fact that regulations adopted by a sports federation are addressed to its members, whilst also*

measures that would be as effective for that purpose whilst being less restrictive of competition, and, finally, verifying that the restrictive effects of the measures adopted are not disproportionate to such an objective, in particular by eliminating all competition on the relevant market." A similar finding was made in *RRC Sports*, at paragraph 227, which refers to "*alternative measures which might genuinely be envisaged.*"

70 *Rogon*, paragraph 20. The first question referred was framed around the application of the *Wouters/Meca Medina* test: "*Do the principles developed by the Court of Justice of the European Union in the judgments in Wouters of 19 February 2002 (C-309/99) and Meca Medina of 18 July 2006 (C-519/04) [...] apply to the regulations of a sports association, which are addressed to members of the association and regulate the use of services of undertakings outside the association on a market upstream of the association's activities?*"

71 *Rogon*, paragraphs 26–34.

regulating the use of the services of third-party undertakings not belonging to that federation, cannot, in itself, [...] be regarded, by its very nature, in the economic and legal context at issue in the main proceedings, as being particularly harmful to the proper functioning of normal competition."[72]

The EU Court of Justice recognised, in particular, the governance role of sports federations, stating that a sports federation "*is required to adopt regulations capable of having implications for the eco-system which they regulate and control*".[73] In this ecosystem, the EU Court of Justice noted that "*clubs, national federations, players and agents, must interact and, to a certain extent, cooperate in order to ensure the viability of the sector and its attractiveness to supporters and spectators*".[74]

The fact that a sports regulation governs the activities of non-members of a sports federation does not prevent such a regulation from being justified by legitimate objectives in the public interest.[75] Nor does it mean that such regulation cannot be necessary[76] or, for that matter, proportionate.[77] Indeed, the EU Court of Justice noted that, in previous cases relating to the legitimate objectives pursued by professional regulations, those regulations had affected non-members, such as final consumers in the case of minimum fees put in place to ensure quality of service.[78]

With respect to agents, the EU Court of Justice observed that "*the reciprocal competitive position of [football] clubs on the various markets in which they are present, such as sports ticketing, sponsorship or merchandising markets, depends primarily on their performances when participating in sporting competitions*". The EU Court of Justice recognised that this sporting performance "*is closely linked to the composition of the teams over which the agents exercise a certain influence*". Thus, football agents are not merely "*inputs*" providing services to clubs in an upstream market but exert influence over the key competitive component of clubs: the team.[79]

In short, the EU Court of Justice confirmed that sports federations can regulate the activities of non-members. The judgment does not require an

72 *Rogon*, paragraph 51.
73 *Rogon*, paragraph 58.
74 *Rogon*, paragraph 59.
75 *Rogon*, paragraph 53.
76 *Rogon*, paragraphs 54 and 60.
77 *Rogon*, paragraph 55.
78 Citing Case C-136/12, *Consiglio Nazionale dei Geologi*, EU:C:2013:489, paragraphs 53 and 54, and Joined Cases C-427/16 and C-428/16, *CHEZ Elektro Bulgaria and FrontEx International*, EU:C:2017:890, paragraphs 53–55.
79 *Rogon*, paragraph 44.

assessment of direct and significant influence to determine whether the activity concerned by the sports regulation relates to a sports federation's mission.[80] Nor is there any suggestion that the regulations must be adopted following consultation with, let alone the approval of, non-members. Instead, the EU Court of Justice leaves the analysis to the established legitimate objective, necessity and proportionality test.

This finding was followed in *RRC Sports*, in which FIFA was recognised as having the right to govern football agents. The EU Court of Justice stated:

> "*Since the organisation and conduct of such competitions may give rise to the pursuit of ancillary economic activities, which may themselves influence those competitions, it cannot be regarded as necessarily unlawful for an association such as FIFA to adopt rules intended to regulate relations between, on the one hand, its members and their affiliates and, on the other, undertakings liable to have an economic interest in the organisation of those competitions*."[81]

Consequently, the mere requirement that agents submit to FIFA's regulations and to the jurisdiction of the CAS was not considered to restrict competition by object.[82] Moreover, any restriction may be considered justified by the objective of ensuring a higher level of protection for the agents' clients and, indeed, for the agents themselves, in particular by providing, on a global scale, a uniform legal framework with a single decision-making mechanism.[83]

6. COMPETITION ANALYSIS OF FFAR PROVISIONS

In response to the second question referred in *Rogon*, the EU Court of Justice held that the competition analysis may relate to specific rules which have different objectives. However, the EU Court of Justice agreed with the Advocate General that it may be *"artificial"* to split up a set of rules. Instead, a holistic approach may be more appropriate in some cases. The EU Court of Justice concluded that the public interest "*does not necessarily have to be assessed with regard to each of the provisions of the regulations at issue, but with regard to a set of provisions pursuing a distinct objective or producing a distinct effect*".[84] This finding had a significant impact on

[80] *Rogon*, paragraph 69. The Advocate General had suggested that there be a significant link to the activity concerned but was not followed on this point, arguably because it forms part of the necessity test in any event.
[81] *RRC Sports*, paragraph 81.
[82] *RRC Sports*, paragraph 143.
[83] *RRC Sports*, paragraph 209.
[84] *Rogon*, paragraph 78, citing the Opinion of Advocate General Emiliou, paragraph 79.

the approach of the EU Court of Justice in the subsequent *RRC Sports* judgment, in which it took a more holistic approach to the review of the FFAR. This article accordingly addresses the competition analysis by subject matter: (i) conflicts of interest; (ii) remuneration; and (iii) ethical requirements.

6.1. COMPETITION ANALYSIS OF THE CONFLICT OF INTEREST RULES IN THE FFAR

The EU Court of Justice dismissed the proposition that the conflict of interest rules in Article 12(8)–(10) FFAR restricted competition by object. The mere requirement that agents act for their client and may, exceptionally, act in dual representation for both the player (or coach) and the engaging club is not harmful to competition. On the contrary, the EU Court of Justice recalled that "*the EU antitrust rules are not directly intended to ensure that economic operators are free to pursue their commercial activities*" but rather to ensure that businesses do not distort competition on a given market to the detriment of consumers and EU citizens.[85] In going back to first principles, the EU Court of Justice is essentially saying that EU competition law does not create a regulatory race to the bottom.

Even if such rules are found to restrict competition by effect,[86] the EU Court of Justice held that they were justified by the legitimate objective of protecting agents' clients against possible behaviour of agents contrary to the ethical requirements applicable to this activity.[87] While leaving it to the national court to assess whether informed consent would be as effective, the EU Court of Justice considered the conflict of interest rules to be proportionate, given the different approach taken to less serious forms of conflict:

> *"Article 12(8) to (10) of the FFAR merely requires informed consent in situations where potential conflicts of interest are less serious, in particular between players or coaches, on the one hand, and engaging entities, on the other, and prohibits dual representation only in cases where the existence of a conflict of interest is manifest, such as in the case of dual representation of a player or coach and the releasing entity, the releasing entity and the engaging entity, or where the agent intends to represent all the parties to the same transaction."*[88]

85 *RRC Sports*, paragraph 117, citing Article 3 of the Treaty on European Union (TEU).
86 The English panel in the *CAA Base* case considered there to be no effect upon competition. See: *CAA Base*, paragraph 354.
87 *RRC Sports*, paragraph 192.
88 *RRC Sports*, paragraph 194.

In the free movement analysis, the EU Court of Justice also found the rules on connected football agents[89] to be justified, holding such rules to be necessary to limit the possibility of an agent simultaneously representing a player as well as the releasing and engaging clubs within the same transfer. Thus, the EU Court of Justice endorsed the conflict of interest rules in the FFAR, a finding that, incidentally, is consistent with other agent cases, including the decisions of the English panel in *CAA Base*[90] and the CAS panel in *PROFAA*.[91]

6.2. COMPETITION ANALYSIS OF THE REMUNERATION PROVISIONS IN THE FFAR

Central to the legal arguments between the parties was the nature of the service fee cap, which the football agents characterised as a buyers' cartel. Following the *Superleague* judgment, the EU Court of Justice invited the parties to submit additional written observations on the point, given that, if the service fee cap did restrict competition by object, it would now be justifiable only if it satisfied the conditions for an exemption under Article 101(3) TFEU (and no longer as a legitimate objective in the public interest pursuant to the *Meca Medina* test).

In his Opinion, Advocate General Emiliou considered that the service fee cap could not be equated with a buyers' cartel that restricts competition by object, given its dynamic nature:

> "*Moreover – and this is, for me, of the utmost importance – the rules at issue do not set any specific binding maximum level of fees. In fact, there is no given ceiling which the agents' fees cannot exceed. The rules at issue only require that the fees be linked to the transfer cost or to the salary of the player assisted by the agent, through a percentage cap thereon. Yet, in so far as no maximum in respect of those two parameters exists, and football clubs can and do compete to sign up new players by offering higher transfer fees to the releasing clubs and salaries to the players in question, the agents' fees can also, as a consequence, increase with no upper limit acting as a constraint. That is why, in these proceedings,*

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89 A 'Connected Football Agent' is defined in the FFAR as: "*a Football Agent is connected to another Football Agent as a result of their: (i) being employed or contractually retained by the same Agency through which Football Agent Services are conducted; (ii) both being directors, shareholders in, or co-owners of the same Agency through which Football Agent Services are conducted; (iii) being married to one another, domestic partners, siblings of one another, or parent and child or stepchild; or (iv) them having made any contractual or other arrangements, whether formal or informal, to cooperate, on more than one occasion, in the provision of any services or to share the revenue or profits of any part of their Football Agent Services.*"

90 *CAA Base*, paragraph 355.

91 *PROFAA*, section 3.7.

certain parties referred to the cap set out in the FFAR as a dynamic maximum price."[92]

The EU Court of Justice observed that horizontal price collusion is, by its very nature, detrimental to the proper functioning of the normal game of competition, in particular with respect to the free determination of price, quantity or quality. However, the EU Court of Justice recalled that not all forms of price regulation are necessarily harmful to competition, notably where it relates to a maximum price. Citing the Advocate General, the EU Court of Justice continued:

> "*Since such a rule [as the service fee cap] does not establish a fixed remuneration cap, but provides for a relative limit, being proportional, depending on the case, either to the remuneration which the player or coach will receive when the agent represents that individual or the engaging entity, or to the compensation paid by the engaging entity to the releasing entity where the agent represents the latter, it does not appear that rule is likely to prevent agents from offsetting the efforts they make in order, in particular, to improve the quality of their service by securing higher remuneration, or that it is capable of dissuading them from offering their services on the market concerned*."[93]

Moreover, the EU Court of Justice found the service fee cap to be justified by a legitimate objective in the public interest in so far as it gives rise to restrictive effects upon competition. Interestingly, the EU Court of Justice noted the economic analysis provided by FIFA relating to market failures in the market for agents' services, particularly the information asymmetry between agents and players, the 'gatekeeper' problem and 'hold-up' problem.[94] However, the EU Court of Justice considered these to be justifications of a purely economic nature that could not be regarded as legitimate objectives in the public interest (but which would presumably fall to be assessed under Article 101(3) TFEU as economic benefits arising from the correction of market failures).[95]

Instead, the EU Court of Justice recognised that the service fee cap pursued the legitimate objectives of protecting clients against conduct by agents contrary to the ethical requirements and of protecting players lacking experience of, or information about, the functioning of the football transfer system.[96] The service fee cap was considered to be necessary to

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92 *RRC Sports*, Opinion of Advocate General Emiliou, paragraph 63.
93 *RRC Sports*, paragraph 122.
94 *RRC Sports*, paragraph 182.
95 *RRC Sports*, paragraph 196. Indeed, the EU Court of Justice observes at paragraph 224 that "*the correction of a market failure is, in principle, capable of generating such economic efficiency gains...*"
96 *RRC Sports*, paragraph 197.

achieve these legitimate objectives. Indeed, the EU Court of Justice stated: "*Such rules are capable of preventing situations in which agents would be motivated to act in an interest separate from that of their clients and, therefore, reducing the risk that they are faced with a conflict of interest*."[97]

The service fee cap was deemed to be proportionate as it "*is determined in proportion either to the remuneration received by the player or coach where the agent represents an individual or the engaging entity or to the compensation paid by the engaging entity to the releasing entity, where the agent represents the latter and that, in so doing, the operators concerned retain the right to compete both on prices and on any other relevant parameter, such as the quality of the services provided or innovation*".[98]

In addition, the EU Court of Justice observed that there is no limitation on the revenues that an agent may generate from other services (not related to the transfer) provided to players. The EU Court of Justice accepted that the rebuttable presumption – that fees relating to other services provided to players in the 24 months before or after a transfer are connected to the agent's service fee – was necessary to prevent circumvention of the service fee cap.[99]

Similar findings were made with respect to the 'client pays' rule and the 50% limit in cases of dual representation.[100] In rejecting the 'by object' classification, the EU Court of Justice considered that the rule prevented collusive conduct by agents.[101] The fact that players and coaches were deprived of the advantage of not having to pay the service fees themselves was not disproportionate to the legitimate objective of preventing unethical conduct or conflicts of interest. In particular, it ensured that agents acted in the interest of the player, not of the person paying the service fee.[102]

The prohibition on fees derived from future transfers[103] was considered by the EU Court of Justice to relate merely to the calculation of service fees. It does not prevent agents from competing on price.[104]

The same conclusion was reached with respect to the requirement that the service fee be based either on a player's remuneration or on the transfer fee, as appropriate, since this requirement did not prevent competition

97 *RRC Sports*, paragraph 199.
98 *RRC Sports*, paragraph 204.
99 *RRC Sports*, paragraph 201.
100 Article 14(2) and (3) FFAR.
101 *RRC Sports*, paragraph 130.
102 *RRC Sports*, paragraph 205.
103 Article 15(1) FFAR read in conjunction with Article 18(1) of the FIFA Regulations on the Status and Transfer of Players (RSTP).
104 *RRC Sports*, paragraphs 126–127.

on price. Indeed, the EU Court of Justice stated that the rule was pro-competitive because it encourages agents to endeavour to guarantee their clients the effective payment of their remuneration.[105]

While accepting that the payment of agents pro rata throughout the duration of the player's contract was necessary to ensure that the agent was paid for services actually provided to the player, the EU Court of Justice raised a concern about the termination of payments to agents where a player transfers. According to the EU Court of Justice, the prohibition on payment where the agent had no role in the termination by a former client player of his contract with a club (where the player is represented by a new agent) would be "arbitrary" and a restriction of competition by object that does not appear to be outweighed by economic benefits.[106] That said, the EU Court of Justice accepted that it would be appropriate to stop pro rata payments where the same agent remains instructed by the departing player concerned.

In summary, the EU Court of Justice endorsed the following FFAR rules relating to agents' service fees:

- service fee to be based on the player's salary or the transfer fee
- service fee cap (and anti-circumvention measures)
- 'client pays' rules
- no interest in future transfers
- pro rata rule, except where the agent had no role in the early termination by a player

6.3. COMPETITION ANALYSIS OF THE ETHICAL REQUIREMENTS IN THE FFAR

The claim that the ethical requirements set out in Article 5 FFAR were, by their very nature, harmful to competition was rejected. The EU Court of Justice even doubted that the ethical requirements would have a significant effect upon the market for agents' services, noting that these requirements were unlikely to deter most applicants.[107] In any event, the ethical requirements were justified.

The EU Court of Justice accepted that there was a legitimate rationale for the no-approach rule (Article 16(1)(b) and (c) FFAR, which prohibits agents from approaching players during an exclusive representation period until

[105] *RRC Sports*, paragraph 131.
[106] *RRC Sports*, paragraphs 136–138.
[107] *RRC Sports*, paragraphs 146–149.

two months before the end of the representation agreement). Such rules are likely to strengthen the stability of contracts, in particular the effectiveness of the duration of exclusive representation contracts already concluded.[108] Provided that the no-approach period is not manifestly excessive, such rules are not, by their very nature, harmful to competition.

However, the EU Court of Justice took issue with a potential interpretation of the rule that would give incumbent agents an advantage by enabling them simply to extend a representation contract before the window opened to competition. Such an approach would restrict competition by object and may not be justified.[109] The EU Court of Justice made no firm finding, and the interpretation of that rule will have to be settled by the national court – subject to any clarification by FIFA as to its application.

7. DISCLOSURE AND PUBLICATION

A number of disclosure and publication requirements (relating to the agency[110] as well as the service fee and fees for other services[111]) were challenged under EU competition law and, separately, under EU data protection law.

7.1. DISCLOSURE AND PUBLICATION: COMPETITION ANALYSIS

From a competition perspective, the contested disclosure requirements do not restrict competition by object. The requirements were put in place to ensure adherence to the FFAR. The EU Court of Justice held that "*Since FIFA*

[108] In the free movement analysis, the EU Court of Justice acknowledged that the window may benefit players, who now have a clear time frame in which to consider various options. See: *RRC Sports*, paragraph 307.

[109] *RRC Sports*, paragraph 158.

[110] Article 16(2)(k)(ii) FFAR: "*within 14 days of the first Transaction involving the Agency: the number of Football Agents that use the same Agency to conduct their business affairs and the name of all its employees*".

[111] Article 16(2)(j)(ii)–(v) FFAR: *"(ii) within 14 days of execution: any agreement with a Client other than a Representation Agreement, including but not limited to agreements relating to Other Services and the information requested on the Platform; (iii.) within 14 days of payment of a service fee: the information requested on the Platform; (iv.) within 14 days of payment of a fee related to any agreement entered into with a Client other than a Representation Agreement: the information requested on the Platform; (v.) within 14 days of occurrence: any contractual or other arrangement between Football Agents to cooperate in the provision of any services or to share the revenue or profits of any part of their Football Agent Services*."

is not active in any of the markets in question, such a mechanism for collecting information does not, in itself – subject to the possible dissemination or use of that information – have any impact on the operation of competition."[112]

As for the publication requirements, the EU Court of Justice considered that the information was not necessarily confidential, in particular as it may relate to historical information, and that, "*given that such information relates to transactions that have already taken place, it cannot, in principle, reveal the strategy which those persons intend to implement with regard to what constitutes one or more parameters in the light of which competition on those markets is established, with the result that it also cannot, in principle, be regarded as strategic*".[113] Indeed, the information may encourage competition since, "*on a market characterised by a spread of market participants, the disclosure and publication of such information may, conversely, help to stimulate competition*".[114]

In any event, the contested disclosure and publication requirements are justified by the legitimate objectives pursued by the FFAR, as they may be regarded as part of the means necessary to achieve those objectives. Simply put, the disclosure requirements enable FIFA "*first … to verify compliance with those regulations and, second, to enable the addressees of those regulations to comply with them*".[115] From the EU Court of Justice's perspective, there do not appear to be any less restrictive measures available that would be as effective. Nor can it be assumed that the disclosure would result in disproportionate restrictions of competition.[116]

The exception to these findings from a competition law perspective relates to the requirement upon FIFA at Article 19(e) FFAR[117] to make available details of "*all transactions involving player agents*". According to the EU Court of Justice, such broad wording leaves too much room for the possibility that the disclosure of the information covered by it is not necessary to achieve the objective of ensuring the proper application of the FFAR. In particular, it may enable competing agents to learn the amount of compensation paid to agents. However, the EU Court of Justice did not dismiss the legitimacy of this disclosure rule entirely, noting that "*some price transparency is necessary in order to enable agents wishing to approach new clients to offer competitive prices…*" Instead, the EU Court of Justice considered that "*access to anonymised data, such as the spread of the prices charged by all*

112 *RRC Sports*, paragraph 160.
113 *RRC Sports*, paragraph 165.
114 *RRC Sports*, paragraph 167.
115 *RRC Sports*, paragraph 214.
116 *RRC Sports*, paragraph 215.
117 Now Article 19(1)(e) FFAR.

agents in relation to average prices, might prove sufficient for the purposes of achieving that objective".[118]

7.2. DISCLOSURE AND PUBLICATION: DATA PROTECTION ANALYSIS

From a data protection perspective, the processing of personal data is lawful pursuant to Article 6(1)(f) GDPR[119] if it satisfies three cumulative conditions: (i) the controller or a third party must have a legitimate interest; (ii) the processing must be necessary to pursue that legitimate interest; and (iii) the interests or fundamental rights and freedoms of the data subjects whose data is to be protected must not override the legitimate interest of the controller or a third party.[120]

As for a legitimate interest, the EU Court of Justice held that there was a 'relevant and appropriate relationship',[121] given that "*the natural persons whose data agents may provide to FIFA, on the basis of Article 16(2)(j)(ii) to (v) and (k)(ii) of the FFAR, are all involved in competitions organised by FIFA or by confederations or federations affiliated to it, and the data that may be so provided relate to the professional activities of those natural persons carried out in connection with those sporting competitions...*"[122]

The processing of the data listed in Article 16(2)(j)(ii) to (v) and (k)(ii) – albeit numerous – is limited to what is necessary to ensure compliance with the FFAR. In particular, the requirement in Article 16(2)(j)(ii) FFAR to report any agreement with a client that is not a representation agreement – notably

[118] *RRC Sports*, paragraph 217.

[119] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC OJ L 119, 4.5.2016, p. 1 ("General Data Protection Regulation" or "GDPR").

[120] *RRC Sports*, paragraphs 317–319.

[121] Recital 47 GDPR states: "*The legitimate interests of a controller, including those of a controller to which the personal data may be disclosed, or of a third party, may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller. Such legitimate interest could exist for example where there is a relevant and appropriate relationship between the data subject and the controller in situations such as where the data subject is a client or in the service of the controller. At any rate the existence of a legitimate interest would need careful assessment including whether a data subject can reasonably expect at the time and in the context of the collection of the personal data that processing for that purpose may take place.* [...]"

[122] *RRC Sports*, paragraph 331.

contracts for other services – makes it possible to ensure that the service fee cap and other FFAR requirements[123] are not circumvented.[124]

In terms of balancing the interests, the EU Court of Justice acknowledged that compliance with the FFAR is of "*considerable importance to FIFA*".[125] Subject to verification by the national court, the judgment concluded that "*the processing of personal data provided for in Article 16(2)(j)(ii) to (v) and (k)(ii) of the FFAR is based on a fair balance between, on the one hand, the interests and fundamental rights and freedoms of the data subjects and, on the other, the legitimate interests pursued by the controller*".[126] Thus, it is likely that the provisions comply with Article 6(1) GDPR.

Turning to the publication of data pursuant to Article 19 FFAR (e.g. information on agents, their clients, nature and duration of representation, transactions, service fees), the EU Court of Justice considered that the dissemination of the data fell within the scope of the GDPR. As with disclosure, the EU Court of Justice recognised compliance with the FFAR as a legitimate objective.[127]

In terms of necessity, the EU Court of Justice observed that the provisions of Article 19 FFAR do not specify which category of persons may have access to the different categories of information. However, the EU Court of Justice took a pragmatic approach, finding that "*lack of precision cannot, in itself, render that article contrary to [Article 6(1)(f) GDPR], if and in so far as the referring court finds that such a lack of precision does not mean that all those categories of persons will have indiscriminate access to all of that information*".[128] Nor does the lack of precision prevent the EU Court of Justice from making observations as to the categories of persons in respect of whom each personal data processing operation provided for in Article 19 FFAR could be justified.[129]

In fact, the EU Court of Justice considered the disclosure of the following information under Article 19(a)–(c) FFAR to be necessary and proportionate[130] to the achievement of the objectives of the FFAR, for the following reasons:

- disclosure of the names and details of agents to other agents (Article 19(a) FFAR[131]), to enable agents to fulfil their obligations under the

123 Notably those at Article 12(8) and (9) FFAR.
124 *RRC Sports*, paragraph 334.
125 *RRC Sports*, paragraph 341.
126 *RRC Sports*, paragraph 342.
127 *RRC Sports*, paragraph 354.
128 *RRC Sports*, paragraph 356.
129 *RRC Sports*, paragraph 357.
130 *RRC Sports*, paragraph 371.
131 Now Article 19(1)(a) FFAR.

FFAR, since this data is in any case necessary to contact an agent representing a player or coach regarding a potential recruitment.[132]

- disclosure and publication of this information to clubs, single-entity leagues, players and coaches, since there is no other means for persons wishing to be represented by an agent to verify, in accordance with Article 18(1)(c) FFAR, whether the service provider with whom they intend to enter into an agency agreement has in fact been licensed by FIFA.[133]
- disclosure of the identity of the clients represented by each football agent as well as the exclusivity or non-exclusivity of the representation and the term of the agency agreement, which is required to enable compliance with the no-approach rule pursuant to Article 16 FFAR[134] as well as to ensure compliance with Article 18bis RSTP (relating to third-party influence).[135]

However, the EU Court of Justice considered that the publication of all transactions would not be in line with the GDPR and, in particular, with the principle of data minimisation.[136]

With respect to the publication of sanctions specifically under Article 19(d) FFAR[137], the EU Court of Justice doubted that Article 10 GDPR (relating to criminal convictions and offences) was applicable as the sanctions concerned were not imposed pursuant to criminal proceedings.[138] Publication therefore also had to be justified pursuant to Article 6(1) GDPR. In this respect, the EU Court of Justice followed its recent ruling in *NADA* (relating to publication of anti-doping sanctions),[139] noting that publication can have an important dissuasive effect:

> "*as regards the processing provided for in Article 19(d) of the FFAR, consisting of the disclosure and publication of any sanctions imposed on agents or clients, it should be noted that such processing may be necessary, in that it may constitute a more effective and dissuasive sanction than a fine, in so far as the consequences of disclosing such sanctions are difficult to predict, thus rendering unreliable any cost-benefit assessment of non-compliance with the rule in question. Furthermore, such processing may prove necessary to enable persons who may have been*

[132] *RRC Sports*, paragraph 358.
[133] *RRC Sports*, paragraph 359.
[134] *RRC Sports*, paragraph 362.
[135] *RRC Sports*, paragraph 361.
[136] *RRC Sports*, paragraph 370.
[137] Now Article 19(1)(d) FFAR.
[138] *RRC Sports*, paragraphs 348–352.
[139] Case C-474/24, *Nationale Anti-Doping Agentur Austria GmbH*, EU:C:2026:579 ("NADA").

harmed by the breach of the FFAR that led to the sanction to become aware of the matter."[140]

Publication of the sanctions was found to be an integral part of the sanction itself, and therefore suitable for restoring confidence in the relevant markets and facilitating the exercise of claims for damages by potentially aggrieved persons.[141] That said, the publication of all information relating to sanctions may not be proportionate, with the EU Court of Justice requiring an assessment of the gravity and relevance of the sanction before publication. Similarly, the publication of sanctions after their completion may not be proportionate.[142] Other than this narrow concern, the publication of sanctions pursuant to Article 19 FFAR is compatible with data protection rights.

8. FFAR AND CLAIMS OF ABUSE OF DOMINANCE

Much like Odysseus landing in Ithaca only to be confronted with new challenges, sports federations often face claims not just under Article 101 TFEU but also under Article 102 TFEU and the free movement rules. The allegations of abuse are usually almost identical – presumably thrown in by claimants in the hope that any rule escaping prohibition under Article 101 TFEU will instead be caught as an abuse of dominance or restriction of free movement. In practice, the exercise usually involves similar considerations with the same arguments being made and considered in triplicate. This article therefore focuses on the distinguishing features of the EU Court of Justice's analysis.

As the EU Court of Justice recalled in *RRC Sports*, Articles 101 and 102 TFEU must be applied coherently, having regard to the specific features of each provision.[143] There is, however, an important difference: for Article 102 TFEU to apply to sports federations, dominance must be established. There has been a lazy tendency to assume that sports federations are dominant in all cases merely by virtue of their regulatory functions. However, in *RRC Sports* the EU Court of Justice provided some detail on the factors to be considered in establishing dominance.

First, the EU Court of Justice accepted that FIFA is not itself an economic operator active in the relevant markets primarily affected by the FFAR, namely

[140] *RRC Sports*, paragraph 371.
[141] *RRC Sports*, paragraph 378.
[142] *RRC Sports*, paragraph 382.
[143] *RRC Sports*, paragraph 235, citing *Superleague*, paragraph 119.

the market for agents' services as well as the labour market for players and coaches.[144] The situation therefore differs from that in *Superleague*. However, in his Opinion, Advocate General Emiliou stated that "*an undertaking can, de jure or de facto, exercise a regulatory role, determining the conditions in which undertakings may access a given market and shaping the conditions in which those undertakings can then compete*..."[145] The EU Court of Justice agreed with this analysis, finding that FIFA may affect access to the relevant market for agents' services.[146] Later in the judgment, the EU Court of Justice explained that this position of dominance "*stems from the regulatory, supervisory, and sanctioning powers it exercises in those markets*".[147] This finding also presupposes that, for dominance to be established, there must be a genuine impact upon access to the relevant markets concerned, not just an ancillary link.

Holding a position of dominance is not prohibited by Article 102 TFEU; there must be an abuse.[148] The test for abuse of a dominant position is based on determining whether the conduct in question deviates from competition on the merits and whether it is capable of actually or potentially restricting competition by driving equally capable competitors out of the relevant market(s) or by preventing their development in those markets.[149]

The mere regulation of agents by FIFA is not an abuse. The EU Court of Justice considered that, if FIFA were to use its regulatory powers "*to limit, steer or regulate the growth of competition on the market for agents' services in accordance with the economic or competitive interests of ... clubs that are members of the national associations affiliated to it, such conduct could be classified as abuse of a dominant position and, more specifically, exclusionary abuse, even if the effects of that conduct were to manifest themselves on related or neighbouring markets to those on which FIFA carries on its own economic activities*".[150] The same applies if FIFA does so in its own economic interests. This must be established on the basis of a detailed, comprehensive and overall analysis of the conduct in question,

144 *RRC Sports*, paragraph 242.
145 *RRC Sports*, Opinion of Advocate General Emiliou, paragraph 137.
146 *RRC Sports*, paragraph 243.
147 *RRC Sports*, paragraphs 244 and 261. While not directly addressed, the EU Court of Justice seems to take a functional approach, noting FIFA's regulatory and review powers and the power to impose sanctions on the relevant markets for football agents' services.
148 *RRC Sports*, paragraph 251.
149 *RRC Sports*, paragraph 257, citing the legal test set out in *Superleague*, paragraph 129, and Case C-48/22 P, *Google and Alphabet v. Commission*, EU:C:2024:726 ("Google Shopping"), paragraph 165.
150 *RRC Sports*, paragraph 265.

which presupposes an examination of the nature, content and actual or potential effects of the rules adopted by FIFA.[151]

To establish an abuse, as the EU Court of Justice states: "*it is necessary to demonstrate that the undertaking in a dominant position imposed, in its interest, on its customers or on other trading partners, conditions for the pursuit of their activity which have no objective economic, technical or legal justification*."[152] The existence of an abuse of a dominant position could thus be established if "*a reasonably efficient sports federation, in a comparable situation, would have been led to adopt rules different from those at issue, which, while suitable for attaining the objectives pursued, would have been significantly less harmful to the agents' own interests*".[153]

This is a high standard for a claimant to meet. It requires proving that no sports association would reasonably have put in place the contested regulations. It recognises that it is not the role of courts to 'step into the shoes' of sports federations. A sports federation may choose between a number of different regulatory options. The fact that it chooses one approach rather than another does not mean that there is an abuse: the choice must be one which no reasonable sports federation would have taken. This reasonableness standard has been central to the approach of the EU Court of Justice since the *Wouters* and *Meca Medina* cases.

Even if an abuse is established, FIFA is entitled to put forward justifications. These may include public interest objectives, economic efficiencies or other objective justifications.

9. FFAR AND FREE MOVEMENT

A feature of the application of EU law to sports regulation is that the free movement rules may apply in parallel with EU competition law. In *RRC Sports*, the EU Court of Justice noted that the provision on freedom to provide services "*is primarily addressed to the Member States*" but that it may "*nevertheless apply where a group or organization exercises certain powers over individuals and may subject them to conditions equivalent to those which a Member State might impose on them*".[154] As Advocate

151 *RRC Sports*, paragraph 266.
152 *RRC Sports*, paragraph 272.
153 *RRC Sports*, paragraph 273.
154 *RRC Sports*, paragraph 285, citing Case 36/74, *Walrave and Koch*, EU:C:1974:140, paragraph 17; Joined Cases C-51/96 and C-191/97, *Deliège*, EU:C:2000:199, paragraph 47, and Case C-22/18, *TopFit and Biffi*, EU:C:2019:497, paragraph 39.

General Szpunar observed in the *Diarra* case, this parallel application gives rise to some tension in terms of retaining a coherent approach with EU competition law.[155]

For the free movement rules to apply, it must first be established that there is an obstacle to free movement. In his Opinion, Advocate General Emiliou observed that the FFAR arguably removed obstacles by providing for a uniform system across the European Union:

> *"First, it is true that, to some extent, the rules at issue have the effect of harmonising, at EU level, the requirements for exercising the activity of an agent. In a way, this body of rules favours the free movement of services, since agents established in one Member State can, almost automatically, provide their services as agents in any other Member State. Indeed, although some Member States do have legislation which diverges from the FFAR (and which thus obliges the relevant national football associations to adopt rules which partly complement or supersede the FFAR), I understand that the key rules of the FFAR are applicable throughout the European Union."*[156]

However, the Advocate General considered that some provisions may make it more difficult to provide cross-border services. The EU Court of Justice followed this line of thinking.

The EU Court of Justice recalled that an obstacle does not necessarily arise simply because "*less strict or more commercially favourable rules could have applied if those rules had not been adopted*".[157] On this basis, the EU Court of Justice stated that the FFAR remuneration rules "*cannot be regarded as imposing a restriction on that freedom to provide services solely because they regulate the remuneration of agents and coaches or the methods for calculating or paying that remuneration*".[158] The effects of

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155 Advocate General Szpunar stated at paragraph 34 of his Opinion in Case C-650/22, *FIFA v. BZ*, Opinion of AG Szpunar, EU:C:2024:375; Judgment EU:C:2024:824 ("Diarra"): "*In addition, in some instances, the Court has found the same set of facts to be subject to both the fundamental freedoms and the rules on competition. In other words, the approach was no longer a binary choice (either competition rules or fundamental freedoms), but a parallel (or cumulative) one. Given the initial rationale of the Treaties described above, the question may arise as to which reasons have led the Court to this approach. Obviously, while such a parallel application of provisions may lead to the desirable situation that no rules adopted by an entity such as FIFA escape the remit of Union law, it does not come without difficulties: what happens when, say, a contested provision is found to be compatible with Article 101 TFEU, but incompatible with Article 45 TFEU, or vice versa? The intuitive answer is clear: both sets of rules (competition and fundamental freedoms) must be appraised independently on their merits.*"

156 *RRC Sports*, Opinion of Advocate General Emiliou, paragraph 148.

157 *RRC Sports*, paragraph 289.

158 *RRC Sports*, paragraph 290.

other provisions, such as the disclosure and publication provisions, were too uncertain to give rise to a restriction on freedom of movement.[159]

The EU Court of Justice doubted that the requirement to adhere to FIFA regulations or to submit to the CAS was likely to deter agents from providing their services in other Member States.[160] However, it left this matter for the national court to determine. Notwithstanding this, the judgment recognised that it is legitimate to have "*a uniform legal framework, together with a mechanism of supervision by a single decision-making body*".[161] The EU Court of Justice also stated that such requirements relating to the licensing of agents may be justified by the need "*to guarantee the integrity of the transfer system and of sporting competitions more broadly, and to improve the professional standards applicable to that activity*".[162]

It is only with respect to certain FFAR provisions that the EU Court of Justice found that there may be obstacles to agents in the manner in which they provide their services, notably the ethical requirements for licensing, the no-approach rule and the restrictions on multiple representation.[163] In this respect, the EU Court of Justice essentially applied, *mutatis mutandis*, the same reasoning as in the EU competition law analysis to the relevant FFAR provisions.[164]

10. RETURN TO NATIONAL COURTS

After the English arbitral decision relating to the Football Association's national rules, the FFAR was declared by some commentators "*to be almost certainly dead*".[165] Blown off course, the FFAR persevered and continued its legal journey. The judgment of the EU Court of Justice is an emphatic victory for FIFA. The *Football Agents* cases questioned the legitimacy of almost all the provisions in the FFAR. The right to regulate agents, to require licences, to require adherence to FIFA's regulations, to apply a service fee cap, to prohibit conflicts of interest, to require disclosure, to publish information – all upheld.

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159 *RRC Sports*, paragraph 291.
160 RRC Sports, paragraph 295.
161 *RRC Sports*, paragraph 303.
162 *RRC Sports*, paragraph 304.
163 *RRC Sports*, paragraph 288.
164 *RRC Sports*, paragraphs 299–302.
165 De Marco, "The end of the FIFA Agents Cap and the beginning of a less restrained standard of competition review in sport?" LawinSport.com, first published 14 December 2023 (accessed 24 July 2026).

Strangely, much has been made in commentary following the delivery of the *Football Agents* judgments of the fact that it will now fall to the referring national court to resolve the case. However, this is a basic feature of the EU preliminary ruling procedure:[166] it is not an appeal but rather a judicial dialogue between national courts and the EU Court of Justice on the interpretation of EU law.[167] Likewise, the European Commission and Member States all intervene in cases to assist the EU Court of Justice. It will be for the national court to resolve the case having regard to the facts, but it must do so in accordance with the judgment of the EU Court of Justice, which is binding upon it.

So, the case will return for final resolution to the German court in Mainz that referred it. The judgment will also be binding upon other courts in the EU hearing similar cases that have stayed their proceedings pending the judgment. It is likely to be highly influential in other jurisdictions, being by far the most important judicial authority on the compatibility of the FFAR with competition law principles, many of which are based on concepts similar to those in the EU. Notwithstanding the judgment, FIFA has announced its intention to proceed with a further consultation with agents to refine the FFAR.[168] Perhaps the *Football Agents* judgments will bring that most precious of judicial outcomes at the end of this epic legal journey: reconciliation.

> "*So Athena commanded. Odysseus obeyed her, glad at heart. And Athena handed down her pacts of peace between both sides for all the years to come...*"
> ***The Odyssey*** (Homer, translation of the final lines by Robert Fagles)

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[166] Article 267 TFEU.

[167] Indeed, the preliminary ruling procedure before the EU Court of Justice is not, technically speaking, an adversarial process, but rather a procedure by which the parties assist the EU Court of Justice in coming to its judgment. It is for this reason that written observations before the EU Court of Justice are not exchanged in sequence (e.g. with a claim and defence) but rather submitted simultaneously, subject to some minor variations to account for rules on service or for technical amendments to written observations requested by the Registry to conform with the standards of the EU Court of Justice. The parties receive copies of the other parties' written observations at the same time, so no party has advance notice of the arguments of the other party.

[168] FIFA Press Release, "FIFA welcomes Court of Justice of the European Union decision on FIFA Football Agent Regulations", 16 July 2026.

COMMENTS

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CAS 11990 & 11991 & 11992 & 11996 & 11998 & 11999 & 12000 & 12002 FOOTBALL ASSOCIATION OF MALAYSIA ET AL. V. FIFA (ORDER ON PROVISIONAL MEASURES AND OPERATIVE DECISION)

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ABSTRACT

This comment examines the disciplinary and arbitral proceedings arising from the use of falsified documents in connection with the eligibility of seven professional football players to represent the Malaysian national team. It analyses the decisions rendered by the FIFA Disciplinary Committee and the FIFA Appeal Committee under Article 22 of the FIFA Disciplinary Code, with particular attention to the concepts of use of forged or falsified documents, the degree of fault required to establish disciplinary liability, the duty of diligence expected of professional players and the proportionality of the sanctions imposed. The comment then considers the appeals before the Court of Arbitration for Sport (CAS), focusing on the Panel's Order on Provisional Measures and its assessment of irreparable harm, likelihood of success on the merits and balance of interests under Article R37 of the CAS Code. Finally, it examines the operative part of the CAS award, which upheld the findings of liability while replacing the players' twelve-month ban from all football-related activities with a twelve-month suspension from playing matches. The case provides important guidance on document fraud, player eligibility, disciplinary responsibility and the appropriate scope of sporting sanctions in football.

KEYWORDS

FIFA; Court of Arbitration for Sport (CAS); FIFA Disciplinary Code; document fraud; forgery and falsification; player eligibility; disciplinary liability; provisional measures; proportionality of sanctions; Football Association of Malaysia.

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CAS 11990 & 11991 & 11992 & 11996 & 11998 & 11999 & 12000 & 12002 FOOTBALL ASSOCIATION OF MALAYSIA ET AL. V. FIFA (ORDER ON PROVISIONAL MEASURES AND OPERATIVE DECISION)

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Summary: 1. What is this case about? 2. The FIFA Disciplinary Committee decision. 3. The FIFA Appeal Committee decision. 4. The CAS appeal and request for provisional measures. 4.1. Arguments of the players. 4.2. Arguments of FIFA. 4.3. Order on Provisional Measures. 5. Operative part on the merits and conclusions.

1. WHAT IS THIS CASE ABOUT?

This dispute concerns the fraudulently obtained eligibility of seven professional football players who represented the Malaysian national team in 2025. It began when the Football Association of Malaysia (FAM) sought confirmation from FIFA that the players were eligible to represent Malaysia pursuant to Article 8(1)(iii) of the Regulations Governing the Application of the FIFA Statutes (RGAS), relying on documentary evidence purporting to establish that each player's grandparent had been born in Malaysia, and that the players had acquired Malaysian citizenship by naturalisation.

Between March and June 2025, FAM submitted a series of eligibility enquiries to FIFA accompanied by birth certificates allegedly showing that the players' respective grandparents had been born in places that now form part of Malaysia. On the basis of the documentation provided, FIFA initially confirmed that each player appeared eligible to play for the representative team of Malaysia under the RGAS. Several of the players subsequently played for Malaysia in international matches, both friendly and official.

Following a complaint received by FIFA on 11 June 2025, investigations were opened into the authenticity of the documents submitted during the eligibility process. In that context, the FIFA Administration obtained original civil registry records of the players' grandparents from the relevant authorities in Spain, Argentina, Brazil and the Netherlands. According to the investigations, these records demonstrated that the players' grandparents had in fact been born outside Malaysia and that the documents submitted to FIFA had been doctored. Accordingly, disciplinary proceedings were opened against each of the players and FAM for a potential breach of Article 22 of the FIFA Disciplinary Code (FDC).[1]

The purpose of this comment is therefore to discuss the litigation that ensued before both the FIFA judicial bodies and the Court of Arbitration for Sport (CAS). At the time of writing, CAS has notified the parties only of the operative part of the award, in which it partially upheld the players' appeals and dismissed that of FAM; the reasoned award has yet to be notified.

[1] Article 22 of the 2023 edition of the FDC reads as follows:
"1. Anyone who, in football-related activities, forges a document, falsifies an authentic document or uses a forged or falsified document will be sanctioned with a fine and a ban of at least six matches or for a specific period of no less than 12 months.
2. An association or a club may be held liable for an act of forgery or falsification by one of its officials and/or players."

2. THE FIFA DISCIPLINARY COMMITTEE DECISION

The Disciplinary Committee based its decision on the investigation and noted that the certificates obtained by the FIFA Administration differed sharply from those submitted by FAM with its eligibility requests. On that note, the Disciplinary Committee held that Article 22 FDC had been deliberately drafted in broad terms to encompass all forms of forgery, falsification and use of falsified documents. In particular, it emphasised that the protection of sporting integrity would be seriously undermined if parties could avoid liability simply by claiming ignorance regarding the origin of the documentation they relied upon. Accordingly, it dismissed the respondents' argument that the provision provided little guidance on the concept of "use" and on whether liability could properly arise where a party neither created the document nor knew of its alleged falsification.

The Disciplinary Committee was especially critical of what it considered to be a lack of diligence on the part of both FAM and the players. It observed that the FIFA Administration had been able to obtain the original birth records without difficulty and concluded that a reasonable level of scrutiny would likely have exposed the discrepancies. The Disciplinary Committee therefore rejected the respondents' assertion that adequate due diligence had been exercised throughout the process.

The Committee further concluded that the falsified documents were not a mere procedural formality. Instead, they had been decisive in securing eligibility approvals for players who otherwise lacked the ancestral connection required by the RGAS. For this reason, the Committee considered that the misconduct directly affected the integrity of international football competitions.

Particular emphasis was placed on the fact that the players had already played for Malaysia following the eligibility clearances. In the Committee's view, these circumstances demonstrated that the forged documents had produced tangible sporting consequences and made the players direct beneficiaries of the forgery.

Having established the violation, the Disciplinary Committee proceeded to assess the appropriate sanctions under Articles 6, 22 and 25 FDC. Although it accepted that the respondents had clean disciplinary records, it regarded several aggravating factors as particularly significant: the use of forged documents in official FIFA proceedings, the successful circumvention of eligibility requirements, the participation of the players in international competitions and the impact of their participation on sporting results.

As a consequence, and having regard to the relevant jurisprudence, the Disciplinary Committee imposed a CHF 350,000 fine upon FAM, calculated

at CHF 50,000 for each player involved in the eligibility scheme. Each player was additionally fined CHF 2,000 and suspended from all football-related activities for twelve months.

3. THE FIFA APPEAL COMMITTEE DECISION

Both the players and FAM appealed against the Disciplinary Committee's decision. The appellants disagreed with the findings regarding responsibility, the interpretation of Article 22 FDC and the proportionality of the sanctions imposed at first instance. The appeal proceedings involved certain procedural issues, which we omit as they are not relevant for the purposes of this comment.

On a factual level, the players presented themselves as passive participants in a process entirely managed by FAM and the Malaysian authorities. They submitted that they neither forged nor used falsified documents and that they had merely supplied genuine documentation concerning themselves and their family members to their agents or family members, who then passed it on to FAM. According to the players, any manipulation of birth certificates occurred after the documents left their possession and without their knowledge or participation. They argued that they had reasonably relied on FAM and on the Malaysian authorities throughout the naturalisation and eligibility procedures.

From a legal perspective, the players argued that Article 22 FDC required both an objective element (*actus reus*) and a subjective element (*mens rea*). They maintained that neither requirement had been established. In particular, they challenged the interpretation adopted by the Disciplinary Committee that treated them as "ultimate beneficiaries" of the forged documents. According to the players, such a theory had no basis in the text of the FDC and violated fundamental principles of disciplinary law, including legal certainty and personal responsibility. They further argued that, even if some degree of negligence could be established, the sanctions remained manifestly disproportionate.

In parallel, FAM argued that it had acted in good faith, relying on documentation and decisions issued by Malaysian governmental authorities. It maintained that any alteration of documents had been the result of isolated conduct by lower-level staff members rather than institutional misconduct, labelling the act of doctoring the birth certificates an "administrative adjustment". It further submitted that the players had been lawfully naturalised and that the alleged document irregularities had no substantive impact on their eligibility.

Against that background, the Appeal Committee was required to determine three principal issues on the merits: whether the evidence established that the birth certificates were forged; whether the players and FAM could be held liable under Article 22 FDC; and whether the sanctions imposed by the Disciplinary Committee were proportionate.

As to the first issue, the Appeal Committee undertook an extensive review of the evidence relating to each individual player. It compared the documentation submitted during the FIFA eligibility proceedings, the original birth records obtained by FIFA from foreign authorities, the documents produced by the players during the appeal proceedings and the certificates subsequently issued by Malaysian authorities. Following a detailed examination of each file, the Committee concluded that the evidence overwhelmingly demonstrated that none of the grandparents in question had been born in Malaysia.

The Committee attached particular significance to the original civil registry records obtained from Spain, Argentina, Brazil and the Netherlands, which matched the birth certificates produced by the players themselves during the appeal proceedings but contradicted their testimony at the hearing, where six of the seven players insisted that their respective grandparents had been born in Malaysia. Further, the Appeal Committee considered the Malaysian certificates unreliable because they contained limited information, omitted essential personal details and, in some instances, included obvious inconsistencies.

The Appeal Committee therefore endorsed the findings of the Disciplinary Committee and concluded that the birth certificates used in the eligibility proceedings were not authentic.

Having established that the documents were forged, the Appeal Committee turned to the interpretation of Article 22 FDC. It relied principally on CAS 2022/A/9175–9176 (the *Byron Castillo* case), CAS 2023/A/9637 and CAS 2024/A/10586 (*Shohag*). On the basis of that case law, it held that Article 22 encompasses not only the fabrication or forgery of documents but also their use. In the Appeal Committee's view, the combined effect of Article 22 and Article 8 FDC meant that negligence was sufficient to establish liability; it therefore rejected the players' contention that proof of intent was required. Furthermore, although the players relied on CAS 2018/A/5769 (*Makudi*) to argue that forgery-related offences require at least *dolus eventualis*, the Committee considered that decision distinguishable and concluded that, even under that standard, the players' conduct could satisfy the requisite level of fault.

Applying those principles, the Appeal Committee found that the players had, at the very least, acted with gross negligence. They had accepted

the opportunity to represent a country with which they possessed no apparent connection, signed naturalisation documents without reading them, relied entirely on agents and intermediaries, and failed to undertake any meaningful verification of the ancestry claims used to support their eligibility. The Appeal Committee criticised what it considered the players' complete absence of curiosity regarding the source of their alleged Malaysian heritage. In this vein, the Appeal Committee also rejected the portrayal of the players as victims of the process. In its view, they had actively participated in the scheme by handling documents and signing forms without verification.

As regards FAM, the Appeal Committee was particularly critical of FAM's admission that officials had altered documentation during the eligibility process. It regarded such conduct as a direct acknowledgement of document tampering and considered the subsequent attempts to characterise the alterations as mere administrative adjustments wholly unconvincing. The Appeal Committee further criticised FAM's failure to identify those responsible for the falsifications and expressed concern regarding the association's governance and compliance mechanisms.

Finally, the Appeal Committee reviewed the proportionality of the sanctions imposed by the Disciplinary Committee, since both the players and FAM had argued that the penalties were excessive.

The Appeal Committee rejected those submissions. While acknowledging the mitigating effect of the appellants' clean disciplinary history, it considered that this factor had already been reflected in the sanctions imposed at first instance. Indeed, it recorded that the twelve-month suspension represented the minimum period-based sanction available under Article 22 FDC.

More importantly, the Appeal Committee emphasised the seriousness of the misconduct. In its view, the forged documents enabled otherwise ineligible players to participate in international football and obtain a significant sporting advantage. It highlighted that several players had scored goals for Malaysia and that the national team's sporting results had been directly influenced by their participation. The Appeal Committee considered the offences to strike at the heart of football integrity and indicated that, but for the prohibition of *reformatio in pejus* under the FDC, it might have considered imposing even harsher sanctions.

Consequently, the Appeal Committee dismissed all appeals and confirmed the Disciplinary Committee's decision in its entirety. The Committee additionally instructed FIFA to commence further investigations into the conduct of certain officials and football agents connected to the matter.

4. THE CAS APPEAL AND REQUEST FOR PROVISIONAL MEASURES

4.1. ARGUMENTS OF THE PLAYERS

Following the dismissal of their appeals by the FIFA Appeal Committee, the seven players filed appeals with CAS and simultaneously requested provisional measures under Article R37 of the CAS Code. The relief sought consisted of a stay of execution of the twelve-month suspension imposed by FIFA, together with the immediate restoration of their right to train, compete and participate in all football-related activities pending the outcome of the arbitration. Alternatively, the players requested that the suspension be lifted at least in respect of club-related activities, while maintaining any restrictions connected to representation of the Malaysian national team.

The players based their request on the three traditional requirements governing provisional measures before CAS: (i) irreparable harm; (ii) likelihood of success on the merits; and (iii) the balance of interests. According to the players, all three requirements were fully satisfied.

As to irreparable harm, the players argued that the FIFA sanctions produced consequences extending far beyond the ordinary effects of a disciplinary suspension. Unlike sanctions limited to participation in official matches, the sanctions imposed by FIFA prohibited the players from engaging in *any* football-related activity whatsoever. Consequently, they were unable to train with their clubs, participate in tactical sessions, maintain their physical condition, fulfil their contractual obligations, or compete professionally.

The players underlined the finite nature of a professional athlete's career and argued that months spent outside organised football cannot be recovered retrospectively. Even if CAS were ultimately to overturn the FIFA decisions, the lost opportunities, erosion of match fitness, loss of competitive rhythm and potential deterioration of their sporting careers could not be repaired through financial compensation. According to the players, the suspension therefore caused precisely the type of irreparable prejudice traditionally recognised by CAS jurisprudence.

The players also highlighted that they had already been excluded from football-related activities since the day of the Disciplinary Committee's decision, meaning that a substantial portion of the sanction had already been served by the time the request for provisional measures was considered. In their view, there was a real possibility that a significant part of the suspension would have been completed before CAS rendered a final award, thereby depriving the appeal of its practical effectiveness.

Moreover, the players submitted that the suspension affected not only themselves but also third parties. Their employing clubs, teammates,

sponsors and families were all negatively impacted by their inability to perform their professional activities. Several players were under contract with clubs participating in important domestic and continental competitions, and the continued enforcement of the suspension affected both sporting planning and contractual stability.

As to the likelihood of success on the merits, the players argued that their appeals could not be considered manifestly unfounded. They contended that there were serious legal and factual questions concerning the interpretation and application of Article 22 FDC.

First, they maintained that they had never forged any documents and had never personally submitted any allegedly falsified documents to FIFA. According to their version of events, they merely provided authentic family documentation to agents and intermediaries before the documents entered a process controlled by FAM and Malaysian authorities. They argued that they lacked any knowledge concerning alterations allegedly made to those documents and could not reasonably have detected such alterations.

Second, they challenged FIFA's interpretation of the term "use" under Article 22 FDC. In their view, the Appeal Committee had improperly expanded the scope of the provision by introducing concepts such as "indirect user" and "ultimate beneficiary", concepts which do not appear explicitly in the FDC. They submitted that disciplinary provisions must be interpreted restrictively and in accordance with the principles of legal certainty and *nulla poena sine lege*.

Third, the players criticised the reasoning adopted by the FIFA Appeal Committee regarding fault. They noted that the first-instance decision appeared to rely largely on intentional conduct, whereas the Appeal Committee ultimately focused on negligence. Nevertheless, the sanction remained unchanged. According to the players, this inconsistency alone demonstrated the existence of serious issues requiring determination by CAS.

Finally, even if liability were ultimately upheld, the players contended that the sanctions imposed were excessive and disproportionate when compared with previous FIFA and CAS decisions involving eligibility disputes and document-related offences.

As regards the balance of interests, the players submitted that a temporary suspension of the sanctions would produce only limited inconvenience for FIFA. Should the appeals eventually fail, the sanctions could simply be reactivated and enforced. By contrast, if provisional relief were denied and the players' appeals ultimately succeeded, the damage suffered throughout the arbitration could never be effectively reversed. They further emphasised that their request did not undermine FIFA's regulatory authority. Rather, it

merely sought to preserve the *status quo* until CAS rendered a final decision. Since the merits remained disputed, temporary relief was necessary to prevent irreversible consequences occurring before full judicial review had taken place.

4.2. ARGUMENTS OF FIFA

FIFA opposed the application and requested that the provisional measures be rejected in their entirety. Its position was that none of the cumulative requirements under Article R37 of the CAS Code had been satisfied.

FIFA submitted that there was no irreparable harm, arguing that the players had failed to produce evidence demonstrating actual and concrete prejudice. According to FIFA, general references to sporting careers, future opportunities or professional development were speculative and insufficient to establish the existence of irreparable harm. FIFA stressed in this regard that CAS jurisprudence had moved away from the proposition that every sporting suspension automatically generates irreparable harm. In its view, a suspension preventing participation in football competitions constitutes the normal and intended consequence of a disciplinary sanction rather than an exceptional circumstance warranting provisional relief.

It was further noted that the players had not presented evidence showing that they had lost employment, suffered measurable contractual damage, or experienced a decline in physical condition since the beginning of the suspension. FIFA also argued that the players remained capable of maintaining their fitness through individual training.

As to the likelihood of success of the appeals, FIFA stated that the players' prospects of prevailing were extremely limited. It emphasised that none of the players disputed the fundamental finding that their grandparents had been born outside Malaysia. Consequently, the factual basis underpinning the FIFA decisions remained largely uncontested.

From FIFA's perspective, Article 22 FDC does not require proof of intent, fraud, economic gain or personal involvement in the creation of forged documents. FIFA emphasised the wording of Article 8 FDC and the jurisprudence relied upon by the Appeal Committee to argue that negligence alone suffices to establish disciplinary responsibility.

FIFA further maintained that the players had clearly benefited from the use of the falsified documents because those documents enabled them to acquire eligibility to represent Malaysia in official and friendly international matches. Consequently, even if they had not personally altered the documents, they had nevertheless used them for sporting purposes.

Concerning the balance of interests, FIFA attached particular importance to the integrity of football competitions. It argued that Article 22 FDC protects one of the most fundamental interests within organised football, namely the authenticity of official documents and the proper administration of eligibility requirements.

According to FIFA, granting provisional measures would undermine the deterrent effect of disciplinary sanctions involving forged documentation and could create uncertainty regarding future competitions should the players continue participating while the arbitration remained pending. FIFA therefore maintained that the broader interests of the football community outweighed the individual interests of the appellants.

4.3. ORDER ON PROVISIONAL MEASURES

On 26 January 2026, the CAS Panel issued the operative part of its Order on Provisional Measures, which was followed by a fully reasoned order on 25 February 2026. The Panel granted the applications lodged by the players and ordered a stay of the twelve-month suspension imposed on them.

The Panel began its analysis by recalling that Article R37(5) of the CAS Code requires consideration of whether the requested relief is necessary to protect the applicant from irreparable harm. The relevant provision states:

> *"When deciding whether to award preliminary relief, the President of the Division or the Panel, as the case may be, shall consider whether the relief is necessary to protect the applicant from irreparable harm, the likelihood of success on the merits of the claim, and whether the interests of the Applicant outweigh those of the Respondent(s)."*

The Panel further referred to established CAS jurisprudence according to which the applicant bears the burden of demonstrating that immediate enforcement of the challenged decision would expose it to damage that would be impossible, or at least extremely difficult, to remedy subsequently.

In particular, the Panel cited CAS 2010/A/2113 and CAS 2014/A/3642, which emphasise that general allegations of harm are insufficient and that the alleged prejudice must be specifically established by the requesting party.

Having set out the applicable legal framework, the Panel distinguished the present matter from cases involving ordinary sporting suspensions. It observed that the sanction imposed by FIFA was not merely a suspension from official matches. Rather, the players had been banned from all football-related activities.

This distinction was the *crux* of the matter in the Panel's view. It noted that the sanction prevented the players not only from participating in official competitions but also from taking part in unofficial matches, organised training sessions and any professional football activity conducted by their clubs. In practical terms, therefore, the players had been prevented from exercising their profession entirely.

The Panel acknowledged that CAS jurisprudence is not uniform on the question of whether sporting suspensions automatically constitute irreparable harm. On the one hand, it referred to precedents such as CAS 2014/A/3571, CAS 2016/A/4710 and CAS 2023/A/9882, which recognise that suspensions subsequently found to be unjustified may cause irreparable injury because an athlete's sporting career is inherently limited and time lost cannot be recovered.

On the other hand, the Panel expressly considered cases such as CAS 2020/A/6796 and CAS 2021/A/8161 & 8162, where CAS found that exclusion from a limited number of sporting events does not automatically establish irreparable harm. The Panel accepted this reasoning but concluded that the present case involved significantly different circumstances.

In particular, the Panel emphasised that football is fundamentally a collective sport. It observed that professional players do not merely maintain their level through individual physical preparation. Rather, performance depends upon continuous integration within a team environment, tactical development, interaction with coaches and participation in daily sporting activities. In the Panel's view, the inability to train with teammates inevitably results in a deterioration of physical condition, tactical familiarity and competitive readiness.

The Panel also considered the temporal dimension of the sanction. At the time of issuance of the Order on Provisional Measures, the players had already been suspended since 26 September 2025. Consequently, the relevant assessment could not be limited to the period remaining before the merits hearing. Instead, the Panel evaluated the cumulative effect of several months of enforced inactivity and concluded that the practical consequences of the suspension would likely continue even after any eventual lifting of the sanction. A player deprived of organised football for such a period could not be expected immediately to return to competitive performance.

Accordingly, the Panel found that the first requirement under Article R37 of the CAS Code had been satisfied and that the continued enforcement of the suspension would likely cause irreparable harm to the players.

The Panel then turned to the second requirement under Article R37(5) of the CAS Code, namely whether the applicants had demonstrated a sufficient

likelihood of success on the merits. The Panel recalled the established CAS standard that an applicant does not need to prove that it will prevail in the arbitration. Rather, it is sufficient to show that its position is not manifestly unfounded and that its prospects of success cannot be excluded from the outset. Referring specifically to CAS 2014/A/3703, the Panel reiterated that an applicant:

> *"must make at least a plausible case that the facts relied upon by him and the right which he seeks to enforce exists and that the material criteria for a cause of action are fulfilled".*

The Panel emphasised that its task at the provisional stage was not to determine the merits of the appeal. Importantly, it declined FIFA's invitation to engage in a detailed assessment of the correctness of the FIFA Appeal Committee's interpretation of Article 22 FDC. Instead, it limited itself to evaluating whether the players' legal position could be categorically rejected.

In this regard, the Panel noted the players' principal arguments that: (a) they did not forge the documents; (b) they did not directly use the disputed documents in FIFA proceedings; (c) they were unaware of any alleged falsification; and (d) Article 22 FDC may not necessarily extend to players whose involvement was limited to benefiting from documentation submitted by others.

Although the Panel refrained from expressing any view concerning the ultimate merits of those arguments, it expressly stated that the interpretation and application of Article 22 FDC "certainly can be discussed" in the circumstances of the case. This indicates that the Panel considered the legal issues raised by the players to be legitimate questions requiring full examination at the merits stage.

For that reason, the Panel concluded that the players' position could not be characterised as "obviously groundless", nor could their prospects of success be definitively discounted. The second condition of Article R37 was therefore met. The Panel nevertheless stressed that this conclusion was purely *prima facie in* nature and without prejudice to the final award.

The third requirement under Article R37 concerns the balancing of the respective interests of the parties. The Panel recalled established CAS jurisprudence, according to which:

> *"It is then necessary to compare the disadvantages to the Appellant of immediate execution of the decision with the disadvantages for the Respondent of being deprived such execution."*

The Panel also noted that, according to previous CAS decisions such as CAS 2020/A/6796 and CAS 2006/A/1088, this assessment must include

consideration of the interests of third parties who may be affected by either the granting or refusal of the requested relief.

The Panel accepted FIFA's submission that Article 22 FDC is directly connected to the protection of football integrity and the authenticity of official documentation. It therefore acknowledged that FIFA possessed a legitimate interest in ensuring the immediate enforcement of sanctions imposed in cases involving falsified documents. However, the Panel considered that several factors considerably reduced the weight of FIFA's interest at the provisional stage.

First, the arbitral timetable already contemplated a hearing on the merits in February 2026 and a final operative award before the next international match window. The Panel therefore reasoned that the stay would only postpone the execution of the sanction for a relatively short period. Importantly, if FIFA ultimately prevailed, the suspension could simply be reinstated and enforced. Consequently, granting provisional relief would delay, but not eliminate, the disciplinary consequences.

Second, the Panel observed that the alleged misconduct concerned eligibility for international football and not club football. Malaysia's next official international match was scheduled only after the expected issuance of the final CAS award. As a result, there was no realistic risk that the temporary stay would affect the integrity of future international competitions before CAS ruled on the merits.

Third, the Panel expressly considered the interests of the players' clubs. Unlike FIFA, which focused on the broader regulatory interests of the sport, the Panel recognised that the suspension deprived clubs of the services of professional players who had not yet exhausted their legal remedies. In the event that the players eventually succeeded in the arbitration, neither the players nor their clubs would be able to recover the lost sporting opportunities created by months of inactivity.

Finally, the Panel noted that FIFA's disciplinary objectives had already been substantially advanced. The disciplinary decisions themselves, combined with the extensive publicity surrounding the proceedings, had already communicated FIFA's position that document falsification and eligibility manipulation would not be tolerated. In the Panel's view, a temporary stay pending the appeal would not materially weaken that deterrent message.

Balancing all of these considerations, the Panel concluded that the prejudice suffered by the players and their clubs outweighed the inconvenience that FIFA would experience as a result of a temporary suspension of the sanction. The third and final requirement under Article R37 of the CAS Code was therefore satisfied.

5. OPERATIVE PART ON THE MERITS AND CONCLUSIONS

Although the reasoned CAS award had not yet been notified at the time of writing, the operative part has already been notified to the parties and provides important guidance regarding both the interpretation of Article 22 FDC and the proportionality of sanctions applicable to document-fraud cases in football. CAS rejected the appeal filed by FAM and only partially upheld the appeals brought by the players: specifically, the ban from all football-related activities was replaced by a twelve-month ban from playing matches, with credit being granted for the period already served between 25 September 2025 and 26 January 2026.

It follows that FIFA's findings that Article 22 FDC had been infringed remain intact. The only substantive modification concerns the nature of the sporting sanction imposed upon the players.

Accordingly, the first and perhaps most significant consequence of the CAS award is the confirmation of FIFA's fundamental approach to document fraud. Whatever reasoning may ultimately appear in the award, the operative part leaves little doubt that CAS accepted the existence of a violation of Article 22 FDC and upheld the disciplinary findings against both the players and FAM. This outcome reinforces an important regulatory principle: forged or falsified documentation used within football governance processes strikes directly at the integrity of the sport. Eligibility proceedings, transfer procedures, licensing systems and disciplinary processes all depend upon the authenticity of documentary evidence. Without confidence in that evidence, the entire regulatory framework becomes vulnerable to manipulation. Consequently, the case confirms that FIFA judicial bodies are entitled to adopt a particularly strict approach when addressing document-related misconduct.

In this respect, the outcome appears to validate the central propositions advanced by both the FIFA Disciplinary Committee and the FIFA Appeal Committee, namely that Article 22 serves not merely to punish forgery itself but also to protect the institutional integrity of football governance.

At the same time, the award suggests that CAS was not entirely persuaded by FIFA's approach to sanctions. The only aspect of the FIFA decisions modified by the Panel concerned the scope of the sporting punishment imposed upon the players. Rather than excluding them from all football-related activities, CAS limited the sanction to participation in matches.

This distinction should not be underestimated. The Panel's Order on Provisional Measures had already hinted at its concerns regarding the practical implications of a complete ban from football activities. Throughout that order, the Panel repeatedly emphasised that preventing professional

footballers from training with their clubs may have consequences extending beyond the formal duration of the sanction itself. Exclusion from training affects not only physical preparation but also tactical development, team integration and long-term employability.

The outcome therefore appears to reflect an attempt to reconcile two legitimate objectives. On the one hand, the seriousness of the misconduct required a significant sporting sanction. On the other hand, CAS seems to have concluded that preventing professional players from training and working entirely exceeded what was required to achieve the disciplinary objectives.

A second noteworthy aspect of the case concerns its contribution to the interpretation of Article 22 FDC itself. Prior to the Malaysia proceedings, there were few awards addressing the notion of use of forged documents in detail. While important guidance existed through cases such as Byron Castillo and various proceedings under the FIFA Code of Ethics, there had been few opportunities for CAS to examine the operation of Article 22 FDC in detail. The dispute raised several novel questions, including: (a) whether a player may be considered a "user" of a forged document despite not physically submitting it; (b) whether disciplinary liability may be based on negligence rather than intentional misconduct; (c) whether beneficiaries of falsified documentation may be sanctioned despite not participating directly in the falsification process; and (d) the extent of the duty of diligence expected of professional players involved in nationality and eligibility procedures.

By upholding FIFA's findings of liability while modifying only the sanction, CAS appears to have implicitly endorsed a broad interpretation of Article 22 FDC. If confirmed in the reasoned award, this would represent an important development for FIFA disciplinary law because it would confirm that responsibility under Article 22 extends beyond the physical author of a forged document and may also capture those who benefit from, rely upon or negligently use falsified documentation.

Perhaps the most tangible legacy of the dispute can already be observed in FIFA's regulatory framework. Following the proceedings, FIFA amended Article 22 in the 2026 edition of the FIFA Disciplinary Code. The revised provision expressly states that individuals responsible for forgery or falsification may be sanctioned *"with a fine and a suspension or a ban on taking part in any football-related activity for a specific period of no less than 12 months"*.[2]

[2] The evolution of the FDC's wording on forgery and falsification is noteworthy. Until the 2017 edition of the FDC (Article 61), the standard sanction was a fine plus a minimum suspension of six matches for players, or a 12-month ban on all football-

The significance of this amendment lies in its differentiation between two distinct categories of sporting sanctions, namely a suspension, which generally relates to participation in matches and applies to persons such as players and officials; and a ban from all football-related activities, which affects the entirety of an individual's involvement in football. The new text eliminates the six-match alternative and thus extends the minimum match suspension to twelve months, in keeping with the view that forgery infringements are serious enough to merit a minimum of twelve months away from football.

The previous wording arguably blurred the distinction between those measures. The revised provision introduces greater clarity and allows disciplinary bodies to tailor sanctions according to the role of the offender and the circumstances of the infringement.

One might reasonably infer that the concerns expressed by the CAS Panel regarding the breadth of a ban from all football-related activities influenced this legislative development. Although FIFA did not abandon its substantive position regarding forgery and falsification, the amendment appears to acknowledge that different forms of sanctions may be appropriate for different categories of offenders.

We look forward to receiving the reasoned award, which will confirm whether the above conclusions are accurate.

related activity for officials or agents. In the 2019 edition, Article 21 eliminated the distinction between players and other persons, providing only for "a fine and a ban of at least six matches or for a specific period of no less than 12 months". This wording remained in place until the 2026 edition of the FDC, which now reads as set out above.

GABRIEL BARBOSA ALMEIDA V. UNIÃO FEDERAL DO BRASIL & AUTORIDADE BRASILEIRA DE CONTROLE DE DOPAGEM (ABCD), CAS 2024/A/10473

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ABSTRACT

This comment examines the Court of Arbitration for Sport (CAS) award in *Gabriel Barbosa Almeida v. União Federal do Brasil & Autoridade Brasileira de Controle de Dopagem (ABCD), CAS 2024/A/10473*, concerning the conduct of Brazilian footballer Gabriel Barbosa Almeida during an out-of-competition sample collection session. The CAS Panel found that, although the player had been uncooperative and disrespectful towards the Doping Control Officers (DCOs), his conduct did not constitute an anti-doping rule violation under either Article 2.3 or Article 2.5 of the World Anti-Doping Code (WADC). The comment analyses the requirements for establishing evasion, refusal or failure to submit to sample collection and tampering or attempted tampering, with particular attention to the athlete-notification requirements and the threshold of intentional conduct necessary to subvert the doping control process. It also considers the possibility of sanctioning obstructive or disrespectful behaviour falling below the threshold of an anti-doping rule violation through sporting organisations' disciplinary rules. Finally, the comment identifies the principal lessons arising from the *Barbosa* award for DCOs, athletes, clubs and anti-doping organisations, emphasising proper notification, education, procedural compliance and mutual respect as essential elements of an effective anti-doping system.

KEYWORDS

Court of Arbitration for Sport (CAS); World Anti-Doping Code (WADC); anti-doping rule violation; doping control; sample collection; tampering; evasion; athlete notification; Doping Control Officers (DCOs); Gabriel Barbosa Almeida.

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GABRIEL BARBOSA ALMEIDA V. UNIÃO FEDERAL DO BRASIL & AUTORIDADE BRASILEIRA DE CONTROLE DE DOPAGEM (ABCD), CAS 2024/A/10473

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Summary: I. Introduction. II. CAS case study: Gabriel Barbosa Almeida v. União Federal do Brasil & Autoridade Brasileira de Controle de Dopagem (ABCD), CAS 2024/A/10473. What happened? Decision at first instance of the Brazilian Anti-Doping Tribunal. Issues on appeal before the CAS. 1. Tampering/attempted tampering under Article 2.5 of the WADC. A. The elements of a tampering/attempted tampering ADRV. B. Gabi's conduct did not amount to a tampering/attempted tampering ADRV. 2. Evasion, refusal and/or failure to submit to sample collection under Article 2.3 of the WADC. A. The elements of an evasion, refusal and/or failure to submit to sample collection ADRV. B. Gabi's conduct did not amount to an evasion, refusal, or failure to submit ADRV. 3. Gabi was not sanctioned. 4. The CAS Panel aspires for a better doping control process in the future. III. The lessons of the Barbosa

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Case. 1. DCOs, clubs and players must be properly educated. 2. Sporting organisations should consider whether to adopt a Code of Conduct rule to sanction "obstructive and disrespectful behaviour below the threshold of an antidoping rule violation" 3. The bar for a tampering/attempted tampering ADRV is extremely high 4. Notification of an athlete by a DCO must be done in person. IV. Conclusion: the rules in place must be enforced.

I. INTRODUCTION

In the recent Court of Arbitration for Sport ("CAS") case involving Brazilian striker Gabriel Barbosa Almeida ("Gabi"),[2] the limits of Article 2.3 (evasion, refusal or failure to submit to sample collection) and Article 2.5 (tampering/attempted tampering) of the World Anti-Doping Code ("WADC") are on full display. The CAS Panel found that Gabi was uncooperative, difficult and purposefully disrespectful to the Doping Control Officers ("DCOs"), and yet not guilty of committing an anti-doping rule violation ("ADRV"). While Gabi's behaviour could have amounted to an ADRV, it did not, because the DCOs neither notified Gabi properly nor warned him more robustly that further delays in the doping control process were not permitted.[3]

This comment closely examines the *Barbosa* award and shows what DCOs must do when conducting a sample collection session to ensure that the elements of an Article 2.3 or Article 2.5 ADRV can be established. Further, the comment explains how offensive conduct that does not amount to an ADRV (like that of Gabi) could still be sanctioned under the disciplinary rules of a sporting organisation as a non-doping offence, but was not in this case, because the Brazilian sports organisation seeking to discipline Gabi had never implemented such rules in its code of conduct. Finally, the comment details how the *Barbosa* award seeks to establish an aspirational behavioural code for all players and teams to follow when undergoing sample collection: polite behaviour should be followed and demanded; directions by the DCOs should be followed and obstructions to cooperation should be stopped and prevented from the outset. Overall, the *Barbosa* award calls for respect for anti-doping authorities as an essential element of a properly functioning anti-doping system.[4]

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2 *Gabriel Barbosa Almeida v. União Federal do Brasil & Autoridade Brasileira de Controle de Dopagem* (*ABCD*), CAS 2024/A/10473.

3 *Id.* at para. 150.

4 *Id.*

II. CAS CASE STUDY: *GABRIEL BARBOSA ALMEIDA V. UNIÃO FEDERAL DO BRASIL & AUTORIDADE BRASILEIRA DE CONTROLE DE DOPAGEM (ABCD)*, CAS 2024/A/10473

WHAT HAPPENED?[5]

On the morning of 8 April 2023, DCOs from the Brazilian Doping Control Authority (ABCD) came to the training ground of the famed football club Flamengo to conduct out-of-competition blood and urine testing on multiple Flamengo players, including Gabi. In what would prove a fatal mistake, the DCOs never notified Gabi in person that he was to be tested. Instead, shortly after arriving at around 9 a.m., the DCOs informed Flamengo's team doctor, Dr Tannure, that Gabi was to report for testing. Gabi was then notified of the test by Dr Tannure. Gabi did not immediately report to provide blood and urine samples after being notified by Dr Tannure. Instead, he went to training, which started at 10 a.m. Gabi then went to lunch at around noon. After lunch, Gabi did report and provide a blood sample (at 1:17 p.m.) and later a urine sample (at 2:14 p.m.), although, according to the DCOs, he "used disrespectful language" and was uncooperative. The doping control process ended for Gabi at 2:18 p.m.

As for the uncooperative, difficult and purposefully disrespectful behaviour, at one point Gabi turned his back on the DCO in the bathroom when preparing to provide a urine sample and said, *"Fuck, do you want to see my dick?"* before throwing the collecting vessel to the side and leaving without providing a sample. At another point he told the DCOs to *"fuck off"*. When he did finally provide a urine sample, he headed off to the bathroom without warning, forcing the DCO to run after him. Finally, Gabi wrote by hand on the doping control form, in Portuguese, "*it is the last one that I do*" and "*why I am always chosen*". More broadly, the DCOs reported that Gabi had intentionally made their lives difficult throughout the five hours it took for his samples to be collected.

DECISION AT FIRST INSTANCE OF THE BRAZILIAN ANTI-DOPING TRIBUNAL

In March 2024, the *Brazilian* Anti-Doping Tribunal found that Gabi had committed an ADRV of attempted tampering and banned him for two years, backdated to the date of sample collection (8 April 2023):

> The members of the [Anti-Doping Tribunal] agree, by majority of votes, to apply the sanction to the ATHLETE GABRIEL BARBOSA ALMEIDA in 24 (twenty-four) months of suspension, based on Art. 122, combined with Art. 163, all of the Brazilian Anti-Doping Code for attempted tampering during an out of competition anti-do-

[5] *Id.* at paras. 6–13 (background facts).

ping control, and such penalty should start from the date of collection of samples, i.e. 8 April 2023.[6]

Gabi filed a timely appeal (on 2 April 2024) with the CAS against the decision of the *Brazilian* Anti-Doping Tribunal.[7] As it turns out, Gabi was correct to challenge the decision, since the CAS Panel found that the *Brazilian* Anti-Doping Tribunal had wrongly interpreted Article 2.5 of the WADC. In fact, the CAS Panel even took the rare step of issuing provisional measures to stay the decision of the *Brazilian* Anti-Doping Tribunal (on 30 April 2024) and then confirmed its decision to keep the stay in place (on 15 January 2025) before setting aside the first instance decision (on 4 July 2025).[8]

ISSUES ON APPEAL BEFORE THE CAS

In light of what took place, the *Barbosa* CAS Panel presented the following issues on appeal:

1. Is Gabi responsible for a tampering/attempted tampering ADRV under Article 2.5 of the WADC?
2. In the alternative, is Gabi responsible for an evasion, refusal and/or failure to submit to sample collection ADRV under Article 2.3 of the WADC?
3. In the event of a positive answer to either of those two questions, what is the sanction to be applied to Gabi?[9]

1. Tampering/attempted tampering under Article 2.5 of the WADC

A. The elements of a tampering/attempted tampering ADRV

As the definitions in the WADC explain, a tampering or attempted tampering ADRV can be committed only through intentional and/or purposeful conduct:

Tampering: Intentional conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods.[10]

Attempt: Purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation.[11]

6 *Id.* at para. 22.
7 *Id.* at para. 25.
8 *Id.* at paras. 39 and 73.
9 *Id.* at para. 110.
10 *Id.* at para. 117; *see* World Anti-Doping Code (2021) at 176.
11 World Anti-Doping Code (2021) at 166.

Further, for a tampering or attempted tampering ADRV to be committed, truly egregious conduct (or an attempt to engage in such egregious conduct) must take place, as the examples given in the WADC illustrate:

- offering or accepting a bribe,
- making the collection of a sample impossible,
- falsifying documents,
- procuring false testimony, or
- committing any other fraudulent act.

This is confirmed by CAS jurisprudence interpreting Article 2.5 of the WADC, where tampering/attempted tampering ADRVs have involved conduct such as (a) sending doppelgangers to have a sample collected in an athlete's place,[12] (b) submitting fabricated medical records,[13] (c) deliberately contaminating a urine sample,[14] (d) attempting to bribe a DCO to prevent collection of a sample,[15] (e) altering the date on a document and thereby misleading an investigation[16] and (f) knowingly filing erroneous whereabouts information to mislead testers.[17] Conversely, a CAS Panel found that telling a lie to an investigator was not, on its own, sufficient to constitute tampering or attempted tampering.[18] Instead, more was required to show an intentional effort to subvert the doping control process.[19]

B. Gabi's conduct did not amount to a tampering/attempted tampering ADRV

Gabi engaged in the following behaviour during the sample collection process:

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12 *Id.* at para. 122; *see Rebeca Braga Gusmão v. FINA*, CAS 2008/A/1572, 1632 & 1659 and *IAAF v. ARAF, Olga Yegorova, Svetlana Cherkasova, Yuliya Fomenko, Gulfiya Khanafeyeva, Tatyana Tomashova, Yelena Soboleva & Darya Pishchalnikova*, CAS 2008/A/1718 & 1724.

13 *Id.* at para. 122; *see International Association of Athletics Federations (IAAF) v. Rita Jeptoo*, CAS 2015/O/4128.

14 *Id.* at para. 122; *see FIFA v. FAF & Walid Abdelli*, CAS 2017/A/5142.

15 *Id.* at para. 122; *see Russian Anti-Doping Agency v. Andrei Valerievich Eremenko*, CAS 2018/A/6047.

16 *Id.* at para. 122; *see Brianna McNeal v. World Athletics & World Athletics v. Brianna McNeal*, CAS 2021/A/7983 & CAS 2021/A/8059.

17 *Id.* at para. 122; *see International Weightlifting Federation (IWF) v. Yunder Beytula*, CAS 2022/ADD/49.

18 *Id.* at para. 122; *see Drug Free Sport New Zealand v. Karl Murray*, CAS 2017/A/4937.

19 *Drug Free Sport New Zealand v. Karl Murray*, CAS 2017/A/4937, at para. 147.

- He failed to report to the doping control station upon notification without justification and received no authorisation to delay the doping control process;
- He remained unsupervised by the DCOs for over five hours from the moment of notification to the completion of the test;
- He was extremely disrespectful towards the DCOs, including turning his back when providing the urine sample, leaving the urine sample unsealed on a table at one point, and writing down rude comments on the doping control form.[20]

While Gabi's conduct was clearly offensive, it did not reach the very high threshold for intentional conduct that subverts the doping control process:

> [T]hese actions do not meet the (fairly high) threshold necessary to assume an attempt to subvert the doping control. In addition, this CAS Panel notes that some of those actions were not positively established. For instance, [one of the DCOs] confirmed at the hearing that he had an unobstructed view of the urine leaving the Athlete's body, when the second attempt to collect the sample was made.[21]

In summary, while Gabi was rude and uncooperative, he did not subvert the doping control process. Thus, in answer to question 1 before the CAS Panel, Gabi was not responsible for a tampering/attempted tampering ADRV under Article 2.5 of the WADC.

2. Evasion, refusal and/or failure to submit to sample collection under Article 2.3 of the WADC

   A. The elements of an evasion, refusal and/or failure to submit to sample collection ADRV

Article 2.3 of the WADC states as follows:

Evading Sample collection; or refusing or failing to submit to Sample collection without compelling justification after notification by a duly authorized Person.

As the WADC comment explains, an athlete can evade or refuse a test only intentionally, for example by deliberately avoiding a DCO to evade notification. An athlete can negligently fail to submit to sample collection, but only after having been notified by a duly authorised person.[22]

   B. Gabi's conduct did not amount to an evasion, refusal, or failure to submit ADRV

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20 *Gabriel Barbosa Almeida v. União Federal do Brasil & Autoridade Brasileira de Controle de Dopagem* (*ABCD*), CAS 2024/A/10473, at para. 125.

21 *Id.* at para. 138.

22 World Anti-Doping Code (2021) at 22.

Here, the CAS Panel found that (1) it was not established that Gabi tried to evade the testers, and (2) Gabi was never notified of the doping control test by a duly authorised person. Rather, the DCOs notified the club's doctor, Dr Tannure, instead of Gabi, in breach of Article 5.4 of the applicable International Standard for Testing and Investigations ("ISTI"), which required notification to be made only to Gabi himself:

> **5.4. Requirements for Notification of *Athletes***
>
> 5.4.1. When initial contact is made, the *Sample* Collection Authority, DCO or Chaperone, as applicable, shall ensure that the *Athlete* and/or a third party (if required in accordance with Article 5.3.7) is informed.[23]
>
> In answer to questions put by ABCD after the test, one of the DCOs even admitted that Gabi had never been notified by a DCO:
>
> *Question to the DCO: Was athlete Gabriel Barbosa Almeida notified by the DCO?*
> *Answer of the DCO: No*[24]

Since there was no intent to evade the testers, the failure to notify Gabi through a duly authorised person made it impossible to prove that an ADRV had been committed. Moreover, the DCOs' "tolerant approach" to the entire sample collection process deprived them of the ability to argue later that there were subsequent delays caused by Gabi:[25]

> [I]n any case, assuming that the "notification" of the Test to the Athlete took place through Dr Tannure, it is uncontroversial that the DCOs, when being informed by Dr Tannure of the Athlete's reasons for not reporting to the doping control station, did not react in any way. More particularly, they did not accompany Dr Tannure to see the Athlete, they did not verify the justification advanced by the Athlete for failing to report to the doping control station, they did not request Dr Tannure to immediately bring the Athlete to the doping control station or did not inform Dr Tannure of the need to continuously supervise the Athlete supervision. Furthermore, the DCOs did not make it clear to either the Athlete or Dr Tannure that a failure to comply with any of the above obligations would be tantamount to an antidoping rule violation.[26]

In sum, it could not be proven that an Article 2.3 ADRV had been committed, because the DCOs deviated from the well-established requirements for athlete notification, as CAS Bulletin 2021/02 explains:[27]

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23 WADA's International Standard for Testing and Investigations (2023) at 43. Article 5.3.7 did not apply in this case since Gabi was not an athlete with an impairment nor a minor.

24 *Gabriel Barbosa Almeida v. União Federal do Brasil & Autoridade Brasileira de Controle de Dopagem* (*ABCD*), CAS 2024/A/10473, at para. 9.

25 *Id.* at para. 145.

26 *Id.* at para. 134.

27 CAS Bulletin 2021/02 at 12.

A. Notification of athletes

Selected athletes must not only be informed about their rights and responsibilities, but the Sample Collection Personnel must also identify themselves and provide documents of the sports organisation that ordered the sample collection. In this respect Article 5 of the ISTI provides – in its pertinent parts – as follows:

> *[...]*
>
> ***5.4.2. When contact is made:***
> ***[...]***
> ***b) Identify themselves to the Athlete using the documentation referred to in Article 5.3.3 [...]***

According to the aforementioned provisions, the Sample Collection Personnel must provide the selected athletes with official documents of the sample collection authorising ADO and their own identity during the notification process.[28]

Thus, in answer to question 2 before the CAS Panel, Gabi was not responsible for an evasion, refusal and/or failure to submit to sample collection ADRV under Article 2.3 of the WADC.

To quote the CAS Panel, "[t]he process was flawed from the start".[29]

3. Gabi was not sanctioned

While Gabi's conduct did not amount to an ADRV, his behaviour could have led to sanctions had ABCD implemented rules in its code of conduct prohibiting it. The WADC in fact expressly permits an anti-doping organisation to adopt disciplinary rules that sanction offensive conduct towards a DCO that does not rise to the level of an ADRV:

> Offensive conduct towards a Doping Control official or other Person involved in Doping Control which does not otherwise constitute Tampering shall be addressed in the disciplinary rules of sports organisations.[30]

However, ABCD did not adopt such rules, which led to this very telling passage in which the CAS Panel practically encourages sporting organisations not to make the same mistake as the Brazilian authorities:

> [S]uch behaviour could have constituted an antidoping rule violation, had the DCOs notified the Athlete properly and/or had the DCOs adopted a more ro-

28 *Id.*

29 *Gabriel Barbosa Almeida v. União Federal do Brasil & Autoridade Brasileira de Controle de Dopagem* (*ABCD*), CAS 2024/A/10473, at para. 135.

30 World Anti-Doping Code (2021) at 177.

> bust approach by putting the Athlete clearly on guard and advising him that they would not tolerate any further delays. The DCOs, however, chose a different path in order not to escalate things. The behaviour of the Athlete, however unacceptable, does not reach the threshold of an anti-doping rule violation. It is for this very reason that the WADC encourages antidoping organizations to adopt a Code of Conduct in order to sanction an athlete's obstructive and disrespectful behaviour below the threshold of an antidoping rule violation. This CAS Panel observes that the Brazilian antidoping authorities have chosen not to implement such Code of Conduct.[31]

4. The CAS Panel aspires for a better doping control process in the future

The *Barbosa* award concludes with a paragraph that seeks to raise the bar and prevent future DCOs, players and clubs from engaging in the type of behaviour that led to the appeal:

> [The CAS Panel] notes that the DCOs and, more in general, the antidoping authorities must demand respect from all entities involved in football (clubs, players, support staff) and that clubs, players and support staff must pay respect to the DCOs. For instance, limiting the activities (such as restrictions to access to the training centres) beyond what is strictly necessary according to the antidoping rules, should neither be allowed nor be tolerated; polite behaviour should be followed and demanded; directions by the DCOs should be followed and obstructions to cooperation should be stopped and prevented from the outset. As previously mentioned, the respect of the activity of the antidoping authorities is of essence to the proper functioning of the system. All entities involved must recognize this as a starting point.[32]

III. THE LESSONS OF THE *BARBOSA* CASE

1. DCOS, CLUBS AND PLAYERS MUST BE PROPERLY EDUCATED

WADA's anti-doping system is complicated, with many mandates that must be followed. The failure to comply with one of them – the requirement that an athlete be notified in person – is what led to the ultimate decision in *Barbosa* not to sanction Gabi for an ADRV. Each organisation must prioritise the education of its members so that the mandates of the anti-doping system are better understood and the rules are followed in every case.

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31 *Gabriel Barbosa Almeida v. União Federal do Brasil & Autoridade Brasileira de Controle de Dopagem* (*ABCD*), CAS 2024/A/10473, at para. 150.

32 *Id.*

2. SPORTING ORGANISATIONS SHOULD CONSIDER WHETHER TO ADOPT A CODE OF CONDUCT RULE TO SANCTION "OBSTRUCTIVE AND DISRESPECTFUL BEHAVIOUR BELOW THE THRESHOLD OF AN ANTIDOPING RULE VIOLATION"

Gabi was not sanctioned for behaviour deemed offensive towards the DCOs because the sporting organisation that governed him (and could have sanctioned him) did not have a rule in place to allow for it. Since the WADC allows for such a rule to be adopted, each sporting organisation should decide whether to have a rule in place that forbids offensive conduct towards a doping control officer or other person involved in doping control which does not otherwise constitute an ADRV.

3. THE BAR FOR A TAMPERING/ATTEMPTED TAMPERING ADRV IS EXTREMELY HIGH

Barbosa reinforced that an Article 2.5 tampering/attempted tampering ADRV cannot exist without intentional conduct that subverts the doping control process. Being rude and disrespectful is not enough.

4. NOTIFICATION OF AN ATHLETE BY A DCO MUST BE DONE IN PERSON

Barbosa confirmed that all players must be notified of the doping control test by a duly authorised person. A DCO cannot notify a club representative (*e.g.* the club's doctor) instead of the player.

IV. CONCLUSION: THE RULES IN PLACE MUST BE ENFORCED

Barbosa stands for the proposition that the rules in place, as defined, must govern. The CAS Panel explored the limits of Article 2.3 and Article 2.5 of the WADC and determined that Gabi's behaviour did not amount to a violation of either. All signatories would be well advised to read the *Barbosa* award closely and heed its lessons.[33]

[33] The lessons of the *Barbosa* decision will be equally applicable to the mandates of the new 2027 World Anti-Doping Code (which takes effect on 1 January 2027) since the wording of Articles 2.3 and 2.5 remains unchanged.

CAS 2025/A/11171 SAMUEL ETO'O FILS & FÉDÉRATION CAMEROUNAISE DE FOOTBALL V. CONFÉDÉRATION AFRICAINE DE FOOTBALL

VETTING AND ELIGIBILITY REVIEWS OF CANDIDATES SEEKING ELECTION TO SPORTS ORGANISATIONS

Felix Majani

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ABSTRACT

This is an analysis of an appeal filed by a candidate seeking to be elected to the CAF Executive Committee against a decision passed by the CAF Executive Committee following a recommendation of the CAF Governance Committee, declaring him ineligible to stand for election on grounds of integrity. The appeal was upheld, with CAS holding that the mere fact that disciplinary or criminal sanctions have been imposed on a person seeking election to a sports organisation does not automatically disqualify that person. The sanctions must be (i) sufficiently established and (ii) sufficiently serious to justify that candidate's ineligibility for election.

KEYWORDS

CAS, disciplinary proceedings, appeal, eligibility, election, sanction, Executive Committee, Governance Committee, CAF Statutes.

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CAS 2025/A/11171 SAMUEL ETO'O FILS & FÉDÉRATION CAMEROUNAISE DE FOOTBALL V. CONFÉDÉRATION AFRICAINE DE FOOTBALL

VETTING AND ELIGIBILITY REVIEWS OF CANDIDATES SEEKING ELECTION TO SPORTS ORGANISATIONS[1]

Felix Majani
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[1] This award was issued in French. The passages quoted in this article are contained in the award.

Summary: 1. Factual background. 1.1. The disciplinary and criminal sanctions allegedly imposed on the 1st Appellant. 1.2. The call for nomination of candidates for election to the CAF Executive Committee. 1.3. The Genius Sports integrity checks. 1.4. The CAF Governance Committee's hearing and resolution. 1.5. The CAF Executive Committee resolution. 2. Summary of the proceedings before CAS. 2.1. The Appellants' submissions. 2.2. The Respondent's submissions. 3. The Panel's adjudication and findings. 3.1. Admissibility of the appeal. 3.1.1. The CAF Governance Committee's "decision". 3.1.2. The CAF Executive Committee's round robin resolution. 3.2. The merits of the appeal: 3.2.1. On the "decision" of the governance committee. 3.2.2. On the CAF Executive Committee's decision. 3.2.2.1. Voting by WhatsApp. 3.2.2.2. On the alleged invalidity of votes that had not been submitted by handwritten signature. 3.2.2.3. On conflicted voters. 3.2.2.4. Whether the CAF Executive Committee resolution achieved a majority. 3.2.3. On Mr Eto'o's eligibility for election to the CAF Executive Committee. 4. CAS ruling. 5. Takeaways and implications.

1. FACTUAL BACKGROUND

1.1. THE DISCIPLINARY AND CRIMINAL SANCTIONS ALLEGEDLY IMPOSED ON THE 1ST APPELLANT

According to several articles and reports, on 20 June 2022, Mr Samuel Eto'o Fils ("the 1st Appellant" or "Mr Eto'o") appeared before a court in Barcelona and reached an agreement with the Spanish prosecution service, which had pursued him for tax fraud estimated at EUR 3,880,000. Mr Eto'o was reportedly fined and given a 22-month suspended prison sentence.

On 4 July 2024, Mr Eto'o was fined USD 200,000 by the Confederation of African Football ("CAF"[2]) Disciplinary Board ("the CAF Disciplinary Board Fine") for breaching the principles of ethics, integrity and sportsmanship enshrined in Article 2(3) of the CAF Statutes by having personally entered into an ambassadorial contract with a sports betting company under cover of the Fédération Camerounaise de Football ("the 2nd Appellant" or "FECAFOOT"[3]). This sanction was later set aside by the CAF Appeal Board on 19 February 2025 on the grounds that the matter fell under the jurisdiction of the yet-to-be-established CAF Ethics Committee.

On 26 September 2024, the FIFA Disciplinary Committee banned Mr Eto'o from attending Cameroon national team matches for six months for breaching Articles 13 and 14 of the FIFA Disciplinary Code ("the FIFA Disciplinary Committee Sanction"). It was alleged that he had verbally abused and intimidated referees during a FIFA U-20 Women's World Cup match while serving as FECAFOOT President. His appeal to the FIFA Appeal

2 The governing body for association football, beach soccer and futsal in Africa.
3 The governing body of football in Cameroon.

Committee was dismissed on 12 November 2024. He then appealed to the Court of Arbitration for Sport ("CAS"), which did not proceed with the matter because the original of the statement of appeal had not been submitted within the prescribed deadline.

1.2. THE CALL FOR NOMINATION OF CANDIDATES FOR ELECTION TO THE CAF EXECUTIVE COMMITTEE

On 10 October 2024, the CAF Secretariat informed its Member Associations that an Extraordinary General Assembly would be held on 12 March 2025 to elect the CAF President, a number of CAF Executive Committee members and CAF's representatives on the FIFA Council, whose terms were due to expire on 12 March 2025.

The notice requested Member Associations wishing to nominate candidates to submit their names to the CAF Secretariat, and stated that all candidates seeking to be elected to the CAF Executive Committee would be subject to eligibility and independence checks by the CAF Governance Committee in accordance with Article 44 of the CAF Statutes.

The 1 st Appellant submitted his candidacy for election to the CAF Executive Committee through FECAFOOT. He was thereafter requested to complete an eligibility questionnaire ("the Questionnaire"), which he did on 21 November 2024, disclosing:

- the CAF Disciplinary Board Fine and the FIFA Disciplinary Committee Sanction, which he said were subject to appeal proceedings; and
- that he had been accused but not convicted in tax proceedings in Spain.

1.3. THE GENIUS SPORTS INTEGRITY CHECKS

CAF engaged Genius Sports Integrity Services ("Genius Sports") to conduct integrity checks on all candidates, including Mr Eto'o. In December 2024, Genius Sports submitted a report on Mr Eto'o and flagged:

- a 2022 Spanish tax fraud conviction resulting in a 22-month suspended sentence. Genius Sports noted that it had not been able to conduct an official criminal record check owing to the lack of documentation, but stated that it was well documented that Mr Eto'o was convicted of tax fraud in Spain in 2022;
- the CAF Disciplinary Board Fine; and
- the FIFA Disciplinary Committee Sanction.

Genius Sports rated its overall assessment of Mr Eto'o as "Red".

1.4. THE CAF GOVERNANCE COMMITTEE'S HEARING AND RESOLUTION

On 24 January 2025, the CAF Governance Committee convened a hearing and invited Mr Eto'o to demonstrate that (a) the 2022 Spanish tax fraud conviction and (b) the FIFA Disciplinary Committee Sanction did not constitute grounds to disqualify his candidacy for the CAF Executive Committee elections.

Mr Eto'o addressed these matters during the hearing but also raised procedural concerns by referring to Article 44 of the CAF Statutes and asserting that candidate vetting should be conducted by a Review Sub-Committee established by the Governance Committee.

On the same day, the CAF Governance Committee issued a "*Consideration of eligibility by the CAF Governance Committee's Review Sub-Committee of candidates for election to the CAF Executive Committee at the 14th Extraordinary General Assembly of CAF, to be held on March 12, 2025*".

That document contained the heading "*Decision Concerning the Candidacy of Mr. Samuel Eto'o Fils*" and declared Mr Eto'o ineligible for the CAF Executive Committee elections on the following grounds:

> *"Analysis by the Governance Committee*
>
> ***Trust in investigatory Bodies**: The Committee reaffirmed its reliance on the Genius Sports Integrity Report, which identified the following red flags:*
> *A conviction for tax fraud in Spain (2022), leading to a 22-month suspended prison sentence.*
> *FIFA's disciplinary sanction for breaches of Articles 13 and 14 of its Disciplinary Code, resulting in a six-month suspension, which remains in effect.*
> *A $200,000 fine imposed by CAF in July 2024 for breaches of its ethics and integrity provisions.*
> ***Relevance of FIFA Sanction**: The FIFA suspension is directly relevant to Mr. Eto'o's eligibility, as it raises questions about his ability to meet the governance and ethical standards expected of a CAF Executive Committee member. The Committee emphasized that this sanction remains in force and cannot be disregarded.*
> ***Concerns About Tax Fraud**: The Committee viewed Mr Eto'o's tax fraud conviction as an integrity issue that reflects negatively on his suitability for a leadership role within CAF. The conviction underscores the importance of financial accountability, a key principle for governance in football administration.*
> *Implications of Overlooking Active Sanctions: Allowing Mr Eto'o to stand for election would:*
> *Undermine CAF's integrity framework by ignoring active sanctions.*
> *Set a precedent that diminishes the importance of ethics and governance in CAF's leadership.*
> ***Right to Be Heard**: Mr. Eto'o was afforded the opportunity to present his views and address the Committee's concerns. These submissions were thoroughly reviewed but found insufficient to counteract the issues raised in the Genius Sports Integrity Report.*

Resolution: *For the reasons stated above, the Governance Committee resolves that:*
The FIFA disciplinary sanction against Mr Eto'o is a decisive factor in assessing his eligibility and remains in force.
The Genius Sports Integrity Report provides credible evidence of integrity concerns, including the tax fraud conviction, which undermines Mr Eto'o's suitability for the role.
Permitting Mr Eto'o to contest the election would contradict CAF's commitment to governance, ethics, and integrity."

1.5. THE CAF EXECUTIVE COMMITTEE RESOLUTION

On 25 January 2025, the CAF Secretariat informed the CAF Executive Committee that "*the CAF Governance Committee, acting in accordance with Article 44 of the CAF Statutes had adopted a resolution on Friday, January 24, 2025, to recommend the names of the following individuals, who are eligible as candidates for the CAF EXCO.*" Mr Eto'o's name did not appear on this list of nine eligible candidates.

Consequently, the CAF Secretariat sent an email to the CAF Executive Committee members containing a link to a WhatsApp group and attached a Round Robin Resolution dated 25 January 2025 (the "Proposed Round Robin Resolution") requesting the members to indicate, by 12:00 (Cairo time) on 26 January 2025, whether they agreed or disagreed with the list of candidates recommended by the CAF Governance Committee.

As at 17:02 on 26 January 2025, 13 of the 23 CAF Executive Committee members had already voted on the Proposed Round Robin Resolution.

On 26 January 2025 at 21:54, the CAF Secretariat notified the agenda for the CAF Extraordinary General Assembly of 12 March 2025 to all CAF Member Associations and Zonal Unions within the 45-day time limit prescribed by Article 17 paragraph 13 of the CAF Statutes. Attached to the agenda, which was dated 24 January 2025 but communicated on 26 January 2025, was a list of the candidates nominated for election to the CAF Executive Committee.

On 27 January 2025, the CAF Executive Committee held a meeting during which it (i) acknowledged the votes that had been cast in relation to the Proposed Round Robin Resolution and (ii) acknowledged its acceptance of the list of eligible candidates as recommended by the CAF Governance Committee.

Later that day, FECAFOOT wrote to CAF requesting a copy of the CAF Executive Committee's resolution with a view to pursuing legal action regarding Mr Eto'o's rejected candidacy.

2. SUMMARY OF THE PROCEEDINGS BEFORE CAS

On 5 February 2025, the Appellants filed their statement of appeal and stated that their appeal was against "*the decisions rendered by the Executive Committee of the Confederation of African Football and, where applicable, its Governance Committee–to exclude the 1st Appellant from the CAF Executive Committee elections...*"

The Appellants requested CAS, *inter alia*, to:

- Declare null and void, or alternatively set aside, the decisions rendered by the CAF Executive Committee and the CAF Governance Committee, including the agenda for the CAF Extraordinary General Assembly, declaring Mr Eto'o ineligible for election to the CAF Executive Committee.
- Declare Mr Eto'o eligible for election to the CAF Executive Committee on 12 March 2025.
- Order CAF to include Mr Eto'o on the list of candidates eligible for election to the CAF Executive Committee and on the agenda of the CAF Extraordinary General Assembly of 12 March 2025.

On 27 February 2025, the Respondent filed its Answer and requested CAS to dismiss the appeal.

2.1. THE APPELLANTS' SUBMISSIONS

The Appellants argued, in summary:

2.1.1. On the CAF Governance Committee's decision:

Pursuant to Article 44 of the CAF Statutes, the CAF Governance Committee only has the power to recommend eligible candidates to the CAF Executive Committee. It therefore lacks the decision-making power or authority to rule on Mr Eto'o's eligibility.

Even if the CAF Governance Committee had such decision-making power, it ought to have established a review sub-committee to vet the eligibility of candidates pursuant to Article 44 of the CAF Statutes.

Mr Eto'o's right to be heard was violated in so far as the CAF Governance Committee's decision was based on the Genius Sports Report, a copy of which Mr Eto'o was unable to obtain from CAF.

2.1.2. On the CAF Executive Committee's decision:

The CAF Executive Committee adopted the Proposed Round Robin Resolution on 27 January 2025. Consequently, the agenda dated 24 January

2025 is invalid since it communicated a list of eligible candidates that had not yet been validly adopted.

The round robin vote was flawed because:

- The voting method had not been validated by CAF.
- Only a minority of the CAF Executive Committee members had cast their votes by handwritten signature by 12:00 (Cairo time) on 26 January 2025.
- Voting by WhatsApp ought not to be considered in light of the CAF Secretariat's letter setting out the voting procedure.
- Two of the CAF Executive Committee members who voted were also candidates for their own re-election and should have recused themselves.

2.1.3. On Mr Eto'o's eligibility

Several Executive Committee members have been subject to criminal or disciplinary sanctions. Mr Eto'o should therefore not be held to a higher standard of integrity.

The Governance Committee cannot introduce additional integrity criteria. It is limited to verifying that candidates are under the age of 70 and are bona fide members of their national association in accordance with Article 18 paragraph 9 of the CAF Statutes.

It is incumbent upon CAF to produce the judgment convicting Mr Eto'o of the alleged tax fraud.

The CAF Disciplinary Board Fine was set aside by the CAF Appeal Board.

The FIFA Disciplinary Committee Sanction was for a limited duration of six months, expiring on 26 March 2025. Declaring Mr Eto'o ineligible for election would be disproportionate, given that the FIFA sanction is not yet final.

2.2. THE RESPONDENT'S SUBMISSIONS

The Respondent argued, in summary:

2.2.1. On the Governance Committee's "decision"

The appeal is inadmissible because the CAF Governance Committee's recommendation did not constitute a decision and could therefore not be the subject of an appeal.

The Review Sub-Committee is part of the CAF Governance Committee, and it was the latter that proposed a resolution to the CAF Executive Committee.

Mr Eto'o addressed the Genius Sports Report during the CAF Governance Committee hearing. Any violation of the right to be heard would in any event be cured by the *de novo* proceedings before CAS.

2.2.2. On the decision of the CAF Executive Committee

By 17:02 on 26 January 2025, 13 of the 23 CAF Executive Committee members (a simple majority) had voted in favour of the Proposed Round Robin Resolution.

Even if the votes of the two members who were candidates for their own re-election were excluded, 11 valid votes would remain – still a majority.

Round robin voting is a long-established CAF practice, now codified in Article 22 paragraph 15 of the CAF Statutes.

2.2.3. On Mr Eto'o's eligibility

Although not expressly stipulated in the CAF Statutes, the integrity criteria have always been applied at all CAF levels without challenge.

Any criminal or disciplinary sanctions imposed on current CAF Executive Committee members are irrelevant since they have already been elected and are not subject to integrity checks.

Even though the alleged tax fraud took place 15 years ago, Mr Eto'o's conviction (even if contested) is recent (2022) and serious.

The FIFA Disciplinary Committee Sanction is final, the appeal against it having been dismissed by CAS.

Although set aside by the CAF Appeal Board, the CAF Disciplinary Board Fine can still be reviewed *de novo* by CAS to establish whether Mr Eto'o meets the integrity requirements to be declared eligible for the CAF elections.

In light of the allegations made against Mr Eto'o, the decision declaring him ineligible was neither arbitrary nor based on speculation. CAS exercises restraint in eligibility matters and should intervene only if it considers that the body conducting the integrity check could not reasonably have reached the conclusion it did.

3. THE PANEL'S ADJUDICATION AND FINDINGS

The matter was heard on 3 March 2025. CAS subsequently made the following findings:

3.1. ADMISSIBILITY OF THE APPEAL

3.1.1. The CAF Governance Committee's "decision"

The Panel found the appeal to be inadmissible in so far as it related to the CAF Governance Committee's recommendation, on the following grounds:

(i) Article 44 of the CAF Statutes provides that "*The Governance Committee shall deal with, and advise the Executive on, all CAF Governance matters, and shall establish a review sub-Committee, which conducts and recommends the outcome of the Eligibility review for a seat by any candidate to CAF Executive Committee (except for the seats of CAF President and FIFA Council Members who are mainly subjected to the rules defined in the FIFA Statutes and in the governance regulations of FIFA) and the independence reviews and shall further establish an Ethics sub-committee in conformity to CAF Ethics code.*"

(ii) *CAS 2021/A/7717, §71 et seq., and CAS 2021/A/7723, §102 et seq.*, have previously held that, in electoral matters, the CAF Governance Committee holds only recommendatory, as opposed to decision-making, powers unless the latter have been delegated to it by the CAF Executive Committee.

(iii) The CAF Governance Committee was therefore required to confine itself to issuing recommendations to the CAF Executive Committee, which in turn had power pursuant to Article 23 paragraphs 1 and 2 of the CAF Statutes to issue formal decisions on candidates eligible for election to the CAF Executive Committee.

(iv) The CAF Governance Committee therefore lacked power to issue a decision on Mr Eto'o's eligibility and its recommendation dated 24 January 2025 declaring Mr Eto'o ineligible for election did not constitute a decision within the meaning of Article R47 of the CAS Code.

3.1.2. The CAF Executive Committee's Round Robin Resolution

This was the only decision subject to appeal pursuant to Article R47 of the CAS Code since it constituted a decision of a federation, association or sports-related body, with the legal remedies available prior to an appeal having already been exhausted.

The Panel found the appeal against the CAF Executive Committee decision, which was notified to the Appellants on 26 and 27 January 2025 and appealed on 5 February 2025, to be admissible, since it was filed within the 21-day time limit prescribed under Article R49 of the CAS Code.

3.2. THE MERITS OF THE APPEAL

The Panel turned to the merits of the appeal and made the following findings:

3.2.1. On the "decision" of the Governance Committee

The Panel referred to the wording in the CAF Governance Committee's "decision" which stated that it had been issued by the "Review Sub-Committee" and noted that (i) the composition of the "Review Sub-Committee" was similar to that of the CAF Governance Committee and (ii) the "Review Sub-Committee" had not yet been established as required under Article 44 of the CAF Statutes.

Consequently, the Panel:

- recommended that CAF establish a Review Sub-Committee in order to separate its powers from those vested in the CAF Governance Committee.
- highlighted the different roles performed by the two bodies, with the Review Sub-Committee tasked with independently reviewing the eligibility of candidates seeking election to the CAF Executive Committee and submitting its recommendations to the CAF Executive Committee, while the CAF Governance Committee is responsible for advising and assisting the CAF Executive Committee on governance matters.
- stated that although the CAF Governance Committee's "decision" ought to have been a recommendation from the Review Sub-Committee, it could nonetheless be submitted to the CAF Executive Committee by the CAF Governance Committee. This is because the Review Sub-Committee emanates from the CAF Governance Committee and operates under the latter's responsibility and delegation.

The Panel added that:

- Members of the CAF Secretariat ought not to have attended the CAF Governance Committee hearing. Such practice could potentially undermine independence.
- Any violation of the Appellants' right to be heard with regard to the Genius Sports Report had been remedied by the *de novo* proceedings before CAS, as they had ample opportunity to review the Report.

3.2.2. On the CAF Executive Committee's decision

3.2.2.1. Voting by WhatsApp

The Panel referred to Article 22 paragraph 15 of the CAF Statutes, which provides that *"(...) In the event that the Executive Committee does not have a meeting, decisions may be passed through other written means of communication. Such decisions shall have immediate legal effect"* and held that:

- Although it does not strictly satisfy the handwritten signature requirement set out in Article 14 of the Swiss Code of Obligations ("SCO"), a WhatsApp exchange can constitute evidence to demonstrate that an agreement has been reached. Swiss courts accept emails, SMS, or other electronic messages as evidence to prove the existence of an agreement, provided that no strict written form is required by law.
- Article 1 of the SCO recognises the principle of freedom of contract pursuant to which parties are free to express their intent in any form, unless the law prescribes a specific form (Article 11 of the SCO). Thus, if no written form is required, an agreement may be concluded orally, in writing, or even through conduct implying consent.
- The voting procedures prescribed by the CAF Secretariat do not invalidate a vote taken via a WhatsApp group in which the members knowingly agreed to express their intent.

3.2.2.2. On the alleged invalidity of votes that had not been submitted by handwritten signature

On this issue, the Panel held that although the CAF Secretariat letter dated 25 January 2025 required the CAF Executive Committee members to indicate their agreement with the resolution by handwritten signature, it could not be inferred that any other method used to express their intent would automatically be null and void because:

- The Proposed Round Robin Resolution was circulated to the CAF Executive Committee members by WhatsApp. There is no indication that any member of the group objected to this *modus operandi*.
- Given that the CAF Executive Committee members tacitly approved this voting method, the fact that some members voted after the deadline set by the CAF Secretariat (12:00 Cairo time on 26 January 2025) was irrelevant.

3.2.2.3. On conflicted voters

The Panel held that the votes of the two CAF Executive Committee members who were themselves candidates for re-election should have been excluded.

3.2.2.4. Whether the CAF Executive Committee Resolution achieved a majority

The Panel held that the Proposed Round Robin Resolution was valid, having secured a majority of votes by 21:17 on 26 January 2025 excluding the two conflicted votes.

With regard to the CAF Secretariat, the Panel stated that the CAF Statutes required it to oversee the proper conduct of this process and to anticipate its various stages sufficiently to avoid presenting the CAF Executive Committee, or even the CAF Extraordinary General Assembly, with a *fait accompli* through the premature dispatch of an agenda containing a list of candidates that had not yet been approved at the time of drafting.

However, these procedural irregularities were insufficient to nullify the CAF Executive Committee decision or the agenda of the CAF Extraordinary General Assembly.

3.2.3. On Mr Eto'o's eligibility for election to the CAF Executive Committee

a) On Mr Eto'o's contention that a number of elected CAF Executive Committee members had allegedly been subject to criminal or disciplinary sanctions, the Panel stated that, as a general rule, a person standing for an executive position in any sports organisation must demonstrate a high level of integrity (*CAS 2011/A/2426, §129 and CAS 2016/A/4579, §86*) and cannot argue that other individuals already in office fail to meet this requirement.

b) The Panel dismissed Mr Eto'o's contention that the Governance Committee ought to have ignored the alleged criminal and disciplinary sanctions and confined itself to the eligibility criteria set out in the CAF Statutes by holding that Mr Eto'o had failed to raise this objection during the Governance Committee proceedings and had not requested that the review be limited to Article 18 of the CAF Statutes.

c) The Panel then asked itself whether the criminal or disciplinary sanctions imposed on Mr Eto'o were sufficiently established and serious to justify his ineligibility. It held as follows:

(i) CAS lacked "sufficient and conclusive evidence" to declare Mr Eto'o ineligible *proprio motu* given that the CAF Disciplinary Board Fine had been set aside by the CAF Appeal Board.

(ii) Mr Eto'o's conduct leading to the FIFA Disciplinary Committee Sanction was grave and justified a careful examination of his eligibility for an executive role at the highest level of African football. However, it would be disproportionate to declare him ineligible for election merely on the basis of the FIFA Disciplinary Committee Sanction because:

- The FIFA Disciplinary Committee Sanction (i) was confined to matches involving Cameroon's national teams, (ii) did not extend to the entire African continent, and (iii) was restricted in duration to six months. Therefore, declaring Mr Eto'o ineligible for election to the CAF Executive Committee would effectively give the FIFA Disciplinary Committee Sanction a geographical scope and duration beyond that intended by the FIFA Disciplinary Committee.
- It is difficult to conceive that a sanction imposed on a person under Article 6 paragraph 2(a) of the FIFA Disciplinary Code is intended to exclude that person *ad vitam aeternam* from any leadership role in football.
- Without downplaying the gravity of the offence, it would be difficult to require a candidate seeking election to the CAF Executive Committee, especially one who has enjoyed a long career as a footballer, coach, trainer, or club executive, never to have been subject to any disciplinary sanction.
- The FIFA Disciplinary Committee Sanction was due to expire on 26 March 2025, just two weeks after the CAF Extraordinary General Assembly elections.

(iii) With regard to the tax fraud case, CAS found that:

(a) CAF had failed to discharge its burden of producing a copy of the Spanish judgment allegedly sentencing Mr Eto'o to a suspended term of imprisonment.

(b) The alleged tax offence took place from 2006 to 2009, when Mr Eto'o was aged 25 to 28. Young inexperienced players can sometimes be victims of those around them with regard to the management of their career and finances. The CAF Governance Committee ought to have taken these circumstances into account before declaring Mr Eto'o ineligible.

In view of all the foregoing, the Panel referred to the following provisions of the CAF Statutes regarding elections:

a) Article 18 paragraph 7: *"After the above-mentioned deadline, all candidature nominations shall be final and shall be submitted to vote unless withdrawn by the candidate concerned..."*

b) Article 18 paragraph 8: *"CAF Secretariat shall communicate the names of the candidates to all National Associations along with the notice convening the meeting and the Agenda of the Assembly."*; and

c) Article 17 paragraph 1: *"The General Assembly shall be the supreme authority of CAF and shall define the general policy and implementation of the relevant decisions."*

The Panel held that:

I. The CAF Statutes intended to grant CAF's supreme body – the General Assembly – the power to determine whether Mr Eto'o deserves its confidence and is eligible to sit on the Executive Committee.

II. The Governance Committee, the Executive Committee and the CAF Secretariat support the General Assembly at the administrative, executive, and operational levels. Their powers should not extend beyond this support, nor should they be authorised to substitute themselves, in whole or in part, for the powers conferred upon the General Assembly.

4. CAS RULING

CAS therefore ruled that:

I. The appeal filed by Mr Eto'o against the CAF Executive Committee decision dated 25 January 2025 is upheld.

II. The CAF Executive Committee decision dated 25 January 2025 is set aside in so far as it excludes Mr Eto'o's name from the list of candidates eligible for election to the CAF Executive Committee.

III. Mr Eto'o's name shall be reinstated on the list of candidates for election to the Executive Committee at the CAF Extraordinary General Assembly of 12 March 2025.

5. TAKEAWAYS AND IMPLICATIONS

This award established a number of precedents in relation to CAF Executive Committee elections and, to a large extent, to elections conducted by sports organisations generally.

1. First and foremost, it reiterated that under the current CAF Statutes (2024 edition):
   - the CAF Governance Committee lacks the power to decide on the eligibility of candidates seeking election to the CAF Executive Committee unless such powers have been delegated to it by the CAF Executive Committee.
   - the CAF Governance Committee should confine itself to issuing recommendations to the CAF Executive Committee, which in turn has power pursuant to Article 23 paragraphs 1 and 2 of the CAF Statutes to issue formal decisions on the eligibility of candidates seeking election to the CAF Executive Committee.
   - the Review Sub-Committee is tasked with independently reviewing the eligibility of candidates seeking election to the CAF Executive Committee and submitting its recommendations to the CAF Executive Committee, while the CAF Governance Committee is responsible for advising and assisting the CAF Executive Committee on governance matters. Nevertheless, the CAF Governance Committee can still submit a recommendation made by the Review Sub-Committee to the CAF Executive Committee because the Review Sub-Committee emanates from the CAF Governance Committee and operates under the latter's responsibility and delegation.
   - a recommendation issued by the CAF Governance Committee does not constitute a decision within the meaning of Article R47 of the CAS Code.
2. Secondly, it reiterated that any current Executive Committee member who has also submitted his or her candidacy for election should recuse himself or herself from the decision-making process on grounds of conflict of interest.
3. Thirdly, the award validated decisions taken by the CAF Executive Committee through a WhatsApp vote by referring to Article 22 paragraph 15 of the CAF Statutes, especially if the members of the WhatsApp group give their express or implied consent to the procedure.
4. Fourthly, the mere fact that disciplinary or criminal sanctions have been imposed on a candidate seeking election to a sports organisation does not automatically disqualify that candidate. The sanctions must (i) be sufficiently established and (ii) be sufficiently serious to justify that candidate's ineligibility for election. To this end:
   a) A sanction (such as a fine) that has subsequently been set aside by an appellate body is insufficient and inconclusive as a basis for declaring a candidate ineligible *proprio motu*.

b) Whereas verbally abusing and intimidating referees constitutes a grave offence, a sanction imposed for such conduct on a candidate seeking elective office in a sports organisation does not, in itself, disqualify that candidate. A body tasked with assessing a candidate's eligibility must look at:

   i. The geographical scope of the sanction. For example, if the sanction is confined to a certain region or continent, it cannot be extended to other regions or continents not covered by it.

   ii. The duration of the sanction. If a candidate has been banned by a judicial body for a period far shorter than the term of office for which he is seeking to be elected, then the body assessing that candidate's suitability to hold an elective office should do so in a manner which will not declare the candidate ineligible beyond the period intended by the judicial body.

   iii. A candidate whose ban is due to expire two weeks after an impending election is likely to be deemed eligible to stand for that election.

c) A disciplinary sanction imposed on a natural person under Article 6 paragraph 2(a) of the FIFA Disciplinary Code is highly unlikely to be viewed as intending to exclude that person *ad vitam aeternam* from any leadership role in football.

d) Allegations such as tax fraud must be corroborated by substantial evidence to enable a body to make a fully informed assessment of the scope and severity of the allegations, and subsequent sanctions, if any.

e) A body tasked with reviewing the eligibility of a candidate who is alleged to have evaded tax during his time as a practising athlete/player should take into account factors such as the age and inexperience of that athlete/player, as young athletes sometimes fall victim to poor advice and financial mismanagement.

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