



## Belgian court asks ECJ to rule on legality of FIFA player transfer rules

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- Case concerns Sporting Charleroi failure to sign Lassana Diarra
- ‘Specific nature of sport’ again raised by FIFA, judgment shows
- Federation’s blanket CAS arbitration clause illegal, court finds

The Cour d’appel de Mons has requested guidance from the European Court of Justice (ECJ) on whether the rules of international football federation FIFA concerning transfer of players breach competition rules and freedom of movement, a 19 September ruling seen by PaRR shows.

Two months after the hearing before the ECJ concerning UEFA’s stance on the *European Super League* dispute, the Mons judges are asking the EU top court to rule on whether FIFA’s and the Belgian federation’s rules for transfer of players precluded French professional player Lassana Diarra from signing with Belgian club Sporting Charleroi and generating revenue during the 2014-2015 season.

Diarra, active between 2004 and 2019, signed a four-year contract with Russian club Lokomotiv Moscow in 2013. But in 2014, Lokomotiv terminated the contract with the player and filed an action before FIFA’s Dispute Resolution Chamber asking the body to oblige Diarra to pay the club compensation for lack of “just cause” in the termination of the contract, the document noted.

Article 17 of FIFA’s Regulations on the Status and Transfer of Players on “contracts terminated without just cause” stipulates that “the party in breach shall pay compensation” and that “If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment”.

Additionally, Article 9 of these FIFA regulations establishes that players registered at one football association may only be registered at a new association once the latter has received an International Transfer Certificate (ITC) from the former association.

Meanwhile, Article 8.2.7 of Annex 3 of the same regulations says that the former association shall not deliver an ITC for a professional player if a contractual dispute on certain grounds has arisen between the former club and the player.

Diarra explained to the Mons appeal court that in 2014 he tried to find a club that would sign him, but that this was difficult due to the risk for the new club of liability for the payment of the

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### Companies

Royal Charleroi Sporting Club R.C.S.C.  
FIFA (Federation Internationale De Football Association)  
Royal Belgian Football Association

### Agencies

European Court Of Justice  
Cour D'appel De Mons

There are no files associated with this Intelligence

compensation to Lokomotiv, the ruling said. Despite the interest showed by several clubs, the player only received a proposal from Sporting Charleroi, the court observed.

In February 2015, the Charleroi club sent Diarra an appointment letter establishing as conditions for the signing that, first, the player should be registered and qualified before the Charleroi club to participate in any official competition and, second, that the club should not be held liable for any compensation to be paid to Lokomotiv, according to the item.

Both Diarra and the Charleroi club asked FIFA and the Belgian football association Union Royale Belge des Sociétés de Football – Association (URBSFA) for confirmation that Diarra could be registered with the Belgian club, and that the provisions on the club's liability for the payment of the compensation would not apply, the document noted.

However, both FIFA and URBSFA declined to do this. At this point, Diarra's dispute with Lokomotiv was still pending before FIFA's Dispute Resolution Chamber, the judgment said.

In May 2015, the FIFA Chamber partially accepted Lokomotiv's action and ordered Diarra to pay EUR 10.5m in compensation to the Russian club, but it also decided that the provision imposing liability for the compensation on the new club would not be applicable to the player in the future, according to the ruling. After this decision, Diarra was hired by Olympique de Marseille in July 2015.

Diarra nevertheless appealed the FIFA decision to the Switzerland-based Court of Arbitration for Sport (CAS), which confirmed the FIFA decision in May 2016, the document added.

In December 2015, Diarra started an action before Charleroi's division of the Hainaut commercial court against FIFA and the URBSFA, seeking EUR 6m in compensation for the harm caused by their positions hindering his signing with Sporting Charleroi, the court observed.

The player maintained that several paragraphs of Article 17 of FIFA's regulations for transfer of players, as well as those related to the issuance of an ITC, breach Article 101 TFEU, which prohibits anticompetitive agreements and the principle of freedom of movement for workers within the Union enshrined in Article 45 TFEU, as established by the ECJ in its 1995 *Bosman* judgment, the item said.

Those rules, according to Diarra, caused him harm by preventing him from carrying out his profession as a football player and generating revenue during the 2014-2015 season, according to the document.

In January 2017, the Hainaut commercial court found itself competent to hear the case and ordered FIFA and URBSFA to pay the player a provisional EUR 60,000 sum. It also stayed the proceedings to allow the parties to determine the amount of the damages suffered by Diarra in Belgium due to FIFA's and URBSFA's faulty behaviour, the court noted.

FIFA and URRBSFA challenged this ruling before the Cour d'appel de Mons contesting, first, that the Hainaut commercial court had jurisdiction to hear the case, with FIFA also maintaining that the competent forum to hear the dispute was the Switzerland-based CAS. On the substance, the appellants asked the Mons court to overturn the lower court's conclusions that they breached the law, the item showed.

Diarra introduced a cross-appeal, asking the Mons appeal court to find the contested provisions of the FIFA regulations illegal and, in the alternative, asked the court to send a request for guidance to the ECJ, according to the ruling.

#### Jurisdiction

According to FIFA, Diarra holds a licence delivered by the French Football Federation and he is therefore bound by this federation's arbitration clause, which states that the CAS is the appropriate forum to hear disputes, the item noted.

However, the Cour d'appel de Mons supported the lower court stance using an August 2018 ruling from the Brussels appeal court, in which Brussels judges found that FIFA's, UEFA's and football federation's rules obliging the clubs to exclusively resort to the CAS for any kind of dispute were illegal under Belgian law.

Additionally, Mons judges stated that Diarra filed his action for harm he claims to have suffered in Charleroi, so the Charleroi division of the Hainaut commercial court was the competent forum to hear the case.

The ruling also rejected FIFA's and URBSFA's allegations that Diarra obtained the appointment letter from Sporting de Charleroi with fraudulent actions with the intention of creating an artificial dispute in the Belgian city, considering that the appellants did not establish the existence of such fraud.

The court further confirmed that the Hainaut commercial tribunal had international jurisdiction to rule on the case under the Lugano II Convention. However, the ruling also clarified that Diarra can only claim before Belgian courts the damage that he has suffered in Belgian territory.

#### ECJ referral

The first instance court had decided that giving the federation of the former player's club (the Russian federation in this case) the power of refusing an ITC when there is a dispute following the redundancy of the player *de facto* obliges any new club interested in signing Diarra to pay the compensation requested by Lokomotiv, the item said.

FIFA meanwhile maintains that its rules are compatible with EU law, which must be read considering the "specific nature of sport", recognised by the TFEU and the EU institutions, including the support to the contractual stability, the stability of teams and the integrity, regularity and good development of sports competition, the judgment noted.

This "specific nature of sport" pursues legitimate objectives justifying certain restrictions of competition or freedom of

movement, the football association argued, according to the document.

FIFA put forward similar arguments in a July ECJ hearing concerning the legality of UEFA's actions, following the announcement of alternative football competition European Super League.

However, the Mons judges said that, at this stage, there are "serious, precise and consistent presumptions" that the provisions of FIFA's Regulations on the Status and Transfer of Players hindered Diarra's chances of being signed by a new club after the termination of his contract with Lokomotiv.

This is specifically evidenced by the conditions stipulated by Sporting Charleroi, which agreed to sign the player only if the club was not considered liable for the compensation and if an ICT was issued, the court noted.

Furthermore, this is reinforced by the fact that Diarra could swiftly join a new club – Olympique de Marseille – shortly after the CAS decision establishing that the new club's liability for compensation would not apply, the item added.

In these circumstances, the Cour d'appel de Mons decided to send the ECJ a request for guidance to clarify whether FIFA rules on transfer of players are compatible with EU law, considering the balance between the objectives pursued by sports associations and the rights guaranteed by EU rules. The court therefore stayed the proceedings concerning Diarra's request for compensation.

The ECJ is currently dealing with several requests for guidance on the compatibility of sports associations' rules with competition law. An opinion of the Advocate General is expected in December for both the *International Skating Union* and the *European Super League* cases, while a Belgian court has filed further questions to the ECJ concerning UEFA's Homegrown Players Rule.

Lassana Diarra is represented by Jean-Louis Dupont of Dupont-Hissel and Roca Junyent; Martin Hissel of Dupont-Hissel and Elegis; Patrick Henry of Elegis; Jean-Emmanuel Barthélemy of DBB Defenso and by Alexandre Zen-Ruffinen of InLaw.

FIFA did not reply to a request for comment.

The case is 2017/RG/167 before the *Cour d'appel de Mons* (Original text in French).

by Carmen Perales in Brussels

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