FIFA Dispute Resolution Chamber (FIFA DRC) / FIFA RSTP / European Law

The *Diarra* Ruling and the Future of the FIFA DRC

Interview with **Frans DE WEGER**
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FL: What is your general view on the *Diarra* ruling?

Frans DE WEGER: There is no doubt that the European Court of Justice (CJEU) was critical in relation to specific elements of the regulatory framework of FIFA concerning contractual stability and the procedure related to the issuance and delivery of an International Transfer Certificate (ITC). In fact, by means of the ruling of 4 October 2024, the European Court concluded that certain provisions of the FIFA Regulations on the Status and Transfer of Players (FIFA RSTP) - Articles 9 and 8.2.7 of Annex 3 and paragraphs 1, 2 and 4 of Article 17 - were not in conformity with European Law, especially Articles 45 (free movement of workers) and 101 TFEU (competition law). The *Diarra* ruling essentially attacked Article 17, which is the lifeblood of the RSTP, and Annex 3 to the RSTP and, not to forget, also indirectly affected Annex 2 to the RSTP (the provisions in relation to coaches).

Practically speaking, the European Court of Justice has determined in *Diarra* that players were hindered by the above provisions from transferring mid-contract from one club to another due to potential risks and far-reaching consequences - both financial and sporting - for players and their prospective new clubs when it was established that a contract was unilaterally terminated without just cause. While the European Court acknowledges that certain rules may be justified - *i.e.* to promote contractual stability and safeguard the integrity of football competitions - it was clear that the above set of rules did not comply with European Law.

For me, to avoid misunderstanding and having read a lot of different perspectives on the case, the Diarra ruling is absolutely no free pass to unilaterally terminate employment contracts. A premature termination should still be issued only in circumstances in which it can no longer, reasonably and in good faith, be expected from the party (player or club) issuing the termination to continue the respective contractual relationship. In this context, as is in line with the well-established jurisprudence of the FIFA DRC, a termination of a contract should always be an action of last resort, having regard to the individual facts and circumstances of each case. This should not be any different after *"Diarra"*. So, if there are more lenient measures that can be taken by a party to ensure the other party's fulfilment of contractual duties, these measures must be taken before terminating a contract. Therefore, as will be consistently held by the FIFA DRC in its future cases, a premature termination of an employment contract should always be - and so also after *Diarra* - an *ultima ratio* measure.

In this regard, and having in mind that the principle of contractual stability remained unaffected by the *Diarra* ruling, I also find it genuinely fair, and this is for me the starting point, that under a fixed-term employment contract both parties (player and club) have a similar and mutual interest and expectation that the term will be respected, subject to termination by mutual consent or the existence of just cause. This is in line with the doctrine of *pacta sunt servanda*, which in essence means that agreements must be respected by parties in good faith. This is a fundamental principle of contractual stability and contract law. When a player and a club sign an employment contract, as a point of departure, both parties are entitled to assume

that they comply with their contractual obligations towards each other. Why would you otherwise sign a contract? If a different approach were adopted, this would, in my view, mean disregarding such an essential principle, which is really key to me. To avoid any misunderstanding and without making any difference between player and club interests, respect to honor obligations under contracts should also be key to both players and clubs.

Finally, I also wish to note that the European Court of Justice referred the case back to the Court of Appeal of Mons. In other words, and to have the overall picture, the last word is now to the Belgian court which will deliver the final judgment - noting that it could be followed by an appeal before the highest supreme court (*Cour de cassation*). So, the final determination on the incompatibility with European Law is now left to the Belgian court. Still, very important legal key markers have been set by the European Court of Justice in the *Diarra* judgment.

FL: Are there similarities with *Bosman*; will *Diarra* be '*the new Bosman*'?

FDW: Yes, there are similarities, but 'no' I personally don't think *Diarra* will be the new *Bosman*.

I am fully aware and also understand that comparisons with the well-known *Bosman* case of 1995, where the European Court of Justice held that players should be able to transfer freely to a new club after the end of their contracts without any obligation to pay a transfer fee, emerged very quickly. As we know, the *Diarra* judgement likewise received considerable media attention, with dubbing it the *"new Bosman"*, since it was also found in the Diarra ruling that certain provisions of FIFA's transfer rules were not compatible with European Law.

However, it really remains to be seen whether or not *Diarra* is indeed the next *Bosman*. Having in mind that *Bosman*, handed down 30 years ago, was - and still is - rightfully regarded as the landmark judgment in international sports law, having reshaped both the international and national football landscape from that point onward, I am not so sure if *Diarra* will have that same impact. At the same time, I do realize that the *Diarra* case will also have its mark, particularly on the jurisprudence of the FIFA DRC, let alone because shortly after the *Diarra* ruling, FIFA adopted the Interim Regulatory Framework (IRF) as the new legal framework *via* a decision of the Bureau of the FIFA Council on 22 December 2024.

When highlighting a few important differences between *"Bosman"* and *"Diarra"*, we should not forget that, after the *Bosman* ruling, which was only six years later, FIFA's entire transfer regulation was overhauled, resulting in a completely new set of rules in 2001, which laid the foundation for subsequent editions of the RSTP, including the edition with the provisions that were under attack in *"Diarra"*. The *Diarra* ruling, however, did not only not call into question the RSTP in its entirety as it centered, as set out above, to certain (key) provisions that were not compliant with European Law, but FIFA also reacted very quickly after the Diarra ruling, being aware of the need for stability and clarity. As a matter of fact, it was already three months after the ruling, *i.e.* on 22 December 2024, that the FIFA Council adopted the IRF.

FL: What do you think of the Interim Regulatory Framework in general?

FDW: Well, I was happy to see that FIFA reacted very swiftly after the *Diarra* ruling was issued. Again, it was only three months after the *Diarra* ruling that the FIFA Council adopted the new legal framework. At the same time, it is a temporary framework as not only follows from the title itself, but this also derives from the very detailed document issued by FIFA, called the "*Explanatory Notes*". From the latter document, it can be derived that the IRF will apply until the broader discussions on a new, long-term, robust and globally uniform regulatory framework for professional football, through an open, objective, transparent and non-discriminatory process are concluded. Although is to be expected that certain provisions included in the IRF will also be reflected in a new version of the RSTP, it makes sense to me that FIFA wanted to avoid creating a vacuum during which period it was not clear to players and clubs on how to proceed after *"Diarra"* as FIFA saw the need of urgency for stakeholders to have clarity about the applicable regulatory framework in upcoming registration periods, in relation to both contractual stability as well as the execution of international player transfers. I was happy to note that FIFA stepped in quickly to avoid a situation of unclarity for all parties.

FL: The notion of *"just cause"* is amended. What does this mean in practice?

FDW: Indeed, FIFA provided more clarity on the concept of *"just cause"* as the European Court of Justice noted that this concept was not precisely defined in the regulations itself. In response to this critical finding, the IRF now provides for a general definition of the concept of *"just cause"* by means of the new Article 14, paragraph 1, RSTP, which provision reads as follows:

> *"[a] contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause. In general, just cause shall exist in any circumstance in which a party can no longer reasonably and in good faith be expected to continue a contractual relationship."*

Although it is now added, by means of the above provision, that just cause shall exist in any circumstance in which a party can no longer reasonably and in good faith be expected to continue a contractual relationship, I would like to note that this codification reflects established FIFA DRC jurisprudence and will *de facto* not represent a real change in practice.

In fact, as also follows from the Explanatory Notes document, this amendment will provide for more clarity and predictability and will lay more emphasis on the fact-specific approach of the FIFA DRC when determining whether or not there is a just cause in a particular case.

FL: What about the International Transfer Certificates (ITCs)?

FDW: A more direct amendment is related to the 'ITC articles' (Articles 9 and 8.2.7 of Annex 3 RSTP that were under attack and) that were also revised. The European Court of Justice was critical as these former provisions prevented players from pursuing their economic activity in any member State other than their member State of origin. It now follows from the IRF that, when the association of a player's new club requests an ITC, the association of the former club must now issue the ITC within a period of 72 hours.

Here, I would like to emphasize that it was already practice for many years that ITCs were issued very shortly after requests were made, also if the former association did not cooperate on this. In other words, in practice, a contractual dispute between a player and a former club has never been a reason for an ITC not to be issued, which was however not reflected in the previous 'ITC-provisions'. So, I understand this had to be amended but, now with these new changes, also on this point, the new provision is in line with the requirements and keeps pace with the *"Diarra"* ruling.

FL: What will be the role of national laws after the Diarra ruling?

FDW: As we know, the European Court was critical as to the failure to take real account of national law in FIFA proceedings. The reference to the *"law in force in the country concerned"* was even called *"a dead letter"* by the Court. Anyway, the reference to national law already existed in the former Article 17, paragraph 1, but more attention will now be given to the national law.

This already in itself underscores the importance of including proper choice-of-law clauses in contracts making reference to a particular national law, something both players and clubs must now become more aware of if they wish the FIFA DRC to take national law into consideration. Still, if a party wishes the FIFA DRC to take the law of the country concerned into account as a factor within the overall calculation as per the *"positive interest"* principle - a practice that did not happen that often in FIFA DRC proceedings prior to the *Diarra* judgement - it shall have the burden of demonstrating the relevance of a that national law, its exact content and also to what precise effect it should be considered by the FIFA DRC.

This makes full sense to me as the FIFA DRC needs to strike the right balance between, on the one hand, a uniform case-law and application of FIFA regulations in order to set uniform standards for the football industry, which provides transparent and predictable criteria, *inter alia*, for the calculation of compensation for breach of contract, and, on the other hand, giving due consideration for the law of the country concerned when calculating compensation under Article 17, paragraph 1, RSTP. Indeed, the balance between uniformity *via* a globally uniformed application of FIFA regulations (which is a significant advantage when addressing decisions-making bodies, such as the FIFA DRC, in international sports, let alone for legal certainty) and, at the same time, consideration for

the law of the country concerned, is a big challenge. However, the FIFA DRC is not in a position to have exact and reliable knowledge of the legislation of up to 211 FIFA member associations. Therefore, the burden to demonstrate (1) the relevance of a particular national law, (2) its exact content and (3) to what precise effect the national law should be considered must be on the party invoking such national law. So, there is a burden on the party wishing the national law to be applied.

Having in mind that the *Diarra* ruling lays emphasis on national laws, I do not want to leave unmentioned either and it should not be forgotten that not all national laws are beneficial for players. What is more, the FIFA RSTP provides for several provisions that are really in the benefit of players. During the years, many provisions have been included in the RSTP that protect players' interest, such as the expedited proceedings under Article 12bis, the addition of a (second) paragraph to Article 14 to firmly anchor the just cause in the RSTP, Article 14bis dealing with abusive conduct, to name a few, and not to forget provisions that are included to specifically protect interests of minors, which is also a serious point of attention for FIFA, such as the prohibition to conclude contracts for longer than three years. Thus, against this background, it should not be overlooked that not under all national laws will players automatically benefit from the same level of protection as regulated in the FIFA RSTP.

Moreover, but that is another issue, the application of various national laws will obviously also have its effect on the uniformity of the DRC jurisprudence. As a matter of fact, to contribute to the ongoing process of modernization of the dispute resolution system, one of the pillars under my presidency was and still is to have consistency in our jurisprudence as much as possible in order to protect legal certainty, equality and uniformity. It is key to avoid arbitrary decisions, and it is of utmost importance that legal practitioners can rely on the approach of the DRC. I am fully aware that the outcome of a case can never be 100% guaranteed and that the specific circumstances of each and every case are decisive, all the more after *Diarra*, but practitioners dealing with disputes before the FIFA DRC should be able to give their clients (players and clubs) certain expectations as to potential outcomes based on their knowledge of the FIFA DRC jurisprudence. After all, that is why they come to the legal practitioners and why consistency, in my view, is so important for the system. I think this is even more relevant when taking into account the background of the FIFA DRC, which was created in 2001, and even more than other courts and arbitration bodies, is exclusively for the football industry. Consistency creates trust in FIFA's dispute system and provides for legal certainty, equality and uniformity. If the FIFA DRC jurisprudence would be inconsistent, because of different outcomes as to the application of various national laws, this will also have its negative effects on the football industry and will, at the end, even affect trust in the system. For me, this is a very important point of attention and should not be taken lightly.

FL: What about the specificity of sport?

FDW: The European Court was also very critical - and rightly so, in my opinion - as to the element of the *"specificity of sport"* as this lent in itself, in reality, so found the Court, to discretionary implementation. From the IRF, it follows that this criterion is no longer one of the criteria used to determine compensation under Article 17 RSTP. By the way, I would like to add, as to this specific element, that the specificity of sport was never intended to constitute as a standalone head of damage. In fact, it was only a correcting factor to either increase or decrease the payable compensation in a given set of circumstances. Anyway, such correcting factor is no longer foreseen in the IRF and will therefore not be applied in the future cases.

FL: How do you see the principle of positive interest that applies to future cases?

FDW: Before addressing this question, let me first note that players and clubs, so also after *Diarra*, remain entirely free to contractually agree on the amount of compensation that shall be payable in the event of a breach of contract, subject to the requirements and further review by the FIFA DRC based on existing jurisprudence. Before addressing how the principle of positive interest, which is now laid down in the new Article 17, paragraph 1, would apply to a case, the FIFA DRC will first of all still, as it did before, clarify as to whether the contract contains a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. Only if no such compensation clause is included in the contract at the basis of the matter at stake, the compensation will be assessed in application of the first paragraph of Article 17 RSTP. I think it is important to give this

clarification as the inclusion of compensation clauses will provide parties more (legal) control - although to a certain extent - over their contractual relationship.

FIFA has, as follows from the new Article 17, removed all elements, including the ones that fell under the *"objective criteria"*, that was heavily criticized by the European Court of Justice. FIFA now falls back on a more general provision stating that compensation for unilateral breach *"without just cause"* will be determined according to the *"positive interest principle"*, meaning that the injured party must be put back in the position it would have been in had the contract been properly fulfilled. This principle is, as we know, also the longstanding method which is used in the international sports disputes before the CAS.

As said before, the *Diarra* ruling contains critical considerations in relation to some of the calculation criteria under the previous Article 17, paragraph 1, RSTP, and so in relation to the calculation of compensation. In general, the European Court decided that the compensation cannot be highly unpredictable given the nature of the criteria on which it was calculated under the previous Article 17. In particular, as to the remuneration and other benefits due to the player concerned under the employment contract subsequently concluded with a new club were found problematic. In fact, so was decided by the European Court of Justice, this remuneration and benefits relate to an employment relationship subsequent to the employment relationship which was terminated, so that these elements must be regarded as extraneous to that employment relationship and its costs. By the same token, also as to the fees and expenses paid or incurred by the former club (amortized over the term of the contract), the European Court of Justice was critical and considered that such costs seem to be particularly excessive. As a matter of fact, so was decided by the European Court of Justice, these costs were negotiated exclusively by other persons and in their own interests, such as clubs involved in the transfer or third parties who intervened in this context. In other words, these elements have been removed and do not find any legal basis in the RSTP anymore.

As to any other elements under *"positive interest"*, such as the elements that will be accepted by the FIFA DRC in the future, I will have to be reluctant at this stage. As Chairperson of the FIFA DRC, and having in mind that *"post-Diarra decisions"* have not been published yet (at the moment of this interview), I am forced to act with some reluctance in expressing my view as to these elements (mainly because of pending and future cases in front of the FIFA DRC).

Anyway, when specifically dealing with potential compensation to be paid by the player to the club in the event of a breach of contract and in consideration for the damage suffered by the club in such situation under the *"positive interest"* principle, it is clear to me that the FIFA DRC will now carry the primary responsibility of giving further clarity to the football industry. As Article 17, paragraph 1, of the RSTP is now redrafted in more general terms, its precise interpretation by the FIFA DRC will inevitably take shape through its case-law. It will require careful application, especially as to which heads of damages will be recognized under *"positive interest"*. I do wish to note that, as per Article 13.5 of the Procedural Rules, the *onus* is on the club that claims damage to quantify, substantiate and prove that damage that it allegedly suffered as a consequence of a breach of a contract by the player. The FIFA DRC will analyze each of the amounts claimed as damage by the club when assessing compensation. In any event, much value will be given to the principle of burden of proof and, only over time, practice will show how this principle is applied by the FIFA DRC in its cases.

FL: How do you see the new jointly liability rule under Article 17.2?

FDW: The automatic joint liability of the new club under the previous Article 17, paragraph 2, RSTP has been removed. New clubs will therefore no longer be automatically subject to financial sanctions. However, joint liability may still apply - which possibility was also acknowledged in the ruling of the European Court of Justice as it did not oppose to this principle *per se* - if it can be demonstrated that the new club induced the player to breach the contract. This is also laid down as such in the new Article 17, paragraph 2. Put differently, if the new club actively encouraged a breach, the new club can still be held liable for the payment of compensation.

It is very important to be aware that all decisions of the FIFA DRC on joint and several liability will now be rendered with full regard to the individual facts and circumstances of a case, which, I think, was also part of the message of the European Court of Justice in terms of having a more fact-specific approach. The automatic application of joint liability and several liability (which same message also applied to the presumption of inducement in relation to sporting sanctions, which I will address later) did not sufficiently take into account the facts of each and every case. The burden of proof in relation to the joint and several liability on the claiming club is now reversed. So, also on this point, the burden of proof will thus be key.

Therefore, I think it is good to take note of the new paragraph 6 which has been added to Article 13 of FIFA's Procedural Rules, from which it follows that parties have the duty to collaborate to establish the facts and shall respond in good faith to any evidentiary request from a chamber, the FIFA general secretariat or a party. To give full adherence to a more fact-specific approach, which is required as I said before, there is this possibility to make such evidentiary request. This should really not be taken lightly and can be highly relevant in light of the burden of proof in relation to the jointly liability. Please note that, if such request is made by a party, it must be demonstrated, similar as in CAS proceedings, that the evidence requested is likely to exist and is relevant (this to avoid fishing expeditions). In other words, the evidentiary requests have to be specific. At the same time, and I would also like to note this, a party's reaction or absence of it may lead to the situation that the FIFA DRC will draw adverse inferences to an evidentiary request. Again, I really wish to draw the practitioners' attention to this new legal tool which might be of much assistance in succeeding in claims.

I will give an example to further explain: if a player breaches his contract and joins a new club and the former club takes the position that the medical examination took place one day after the breach in order to strengthen its position that the new club induced the player to breach his contract, the former club can request for documentation showing when the medical examination took place. If the document seems likely to exist and is relevant to establish, which must be assessed depending on the particular circumstances of the case, adverse inferences can then be drawn from the new club's reaction. On the contrary, and again only as an example for a better understanding of this provision, when a former club requests all the *WhatsApp* correspondence of a sports director of the past 20 weeks, despite its relevance, under these circumstances, such request will most likely not be considered specific enough.

To further tip the hand a little in relation to 'inducement' under the IRF, and without delving into too much detail, the indicators to establish an inducement under the previous FIFA DRC and CAS jurisprudence might still be helpful here, such as contacts between the player and the new club before the breach occurred, press reports and publicly available information, but also the lack of diligence might play a role in assessing the existence of 'inducement'. Please also do not forget that FIFA will also always be able to rely on TMS to obtain more information.

There is one more negative effect for which I also ask further attention, and which I prefer to mention. It seems to me that the European Court was not entirely aware of, and in any event did not discuss, the flipside of the coin in relation to the former Article 17, paragraph 2, and the previous automatic application of the jointly liability. In my view, there was a somewhat one-sided portrayal of the former Article 17, paragraph 2, RSTP. The European Court was very clear that the former provision, especially in combination with Article 17, paragraphs 1 and 4 RSTP, has a deterrent effect on new clubs. This is not denied, at all. However, at the same time, I would like to bring in mind that the former Article 17, paragraph 2, RSTP also had a beneficial effect for players. In fact, back then, it was also introduced to relieve financial pressure on players by making the new club jointly liable for any compensation owed by the player as the original debtor, next to also helping claiming clubs to ensure and extend recoverability of damages. I fully acknowledge that automatic liability is a sweeping measure and that a relevant factor for applying the *"jointly and severally liability rule"* could be whether the new club played any role in the unlawful breach, but it seems to me that the European Court did not pay sufficient attention to the more positive effects for players of the former provision which is now off the table. Therefore, and now with the IRF in hand, if any compensation has to be paid by a player to a club for the breach of a contract, the player is, in principle and as a starting point, the only party responsible for making the payment for the breach of contract. Put differently, there will be, in principle, no new club as co-debtor anymore. In other words, the loss of the automatic application of the jointly and severally liability under the previous Article 17, paragraph 2, of the RSTP will thus also come along with more financial pressure on the player when dealing with compensation to be paid to clubs.

FL: And what about the sporting sanctions under Article 17, paragraph 4?

FDW: To start with, I think the principle of sporting sanctions in general remained unaffected by the European Court of Justice. In fact, and as follows from the *Diarra* ruling, the legitimacy of ensuring compliance with rules through sporting sanctions - provided they are transparent, objective, non-discriminatory and proportionate criteria can, in my view, still stand, also being aware that FIFA may still legitimately seek to preserve, to a certain extent, as also follows from the *Diarra* ruling, the stability of the composition of clubs' pool of players during a given season, for example by prohibiting the unilateral termination of employment contracts mid-season or within the same year, as is also reflected under Article 16 RSTP.

A more or less similar approach as the jointly liability concept, as set out before, is now also provided for in relation to sporting sanctions under the new version of Article 17, paragraph 4. Sporting penalties may still be imposed as long as it is demonstrated that the new club induced the player to breach the contract (as opposed to the presumption rule that existed under the former Article 17, paragraph 2). It is clear from the new provision that any club found to be in breach of contract can only be faced with sporting sanctions if there was a breach during the protected period. Also here, and again similar as with the jointly liability, full regard will be given by the FIFA DRC to the specific circumstances of the case and it is again the claiming club that must demonstrate that there was inducement by the new club.

Also here, I would like to note that the new paragraph 6 of Article 13 of the Procedural Rules can be of serious help in making a case as the parties have the duty to collaborate to establish the facts of the case and should respond in good faith to any evidentiary request from a chamber, the FIFA general secretariat or a party. Therefore, I recall that this new legal instrument can be of assistance to the parties in succeeding in claims before the FIFA DRC.

FL: So, will the *Diarra* ruling eventually affect the future of the FIFA DRC?

FDW: There is little doubt to me that the *Diarra* ruling will shape the future jurisprudence of the FIFA DRC, not least because of the IRF, which has amended the provisions challenged before the European Court of Justice. In fact, as discussed in more detail previously, the critical findings of the European Court of Justice have been amended by means of the new legal framework of the IRF: automatic financial and sporting sanctions on a new club when a player breaches contract have been removed; also, ITCs will be issued (better to say, will continue to be issued) irrespective of pending contractual disputes; and, financial compensation for breach of contract is now calculated in accordance with the guiding principle of *"positive interest"*. By means of these amendments, the problematic elements, as identified by the European Court of Justice in the *Diarra* ruling, have now all been removed.

FL: Have you already noticed any change in the way parties frame their arguments in DRC proceedings to adapt to the new *Diarra* context?

FDW: Well, to be honest, it seems to me that not all parties are fully aware of the impact of *Diarra*, more specifically the new provisions in the IRF that now apply to the cases before the FIFA DRC. It is my observation that parties sometimes seem to take the changes under the IRF a bit too lightly, all the more so and having in mind that there is now a higher burden on the parties, for example in relation to *"inducement"* which is highly relevant in light of the jointly liability approach and the imposition of sporting sanctions, the applicability of the national laws, but also regarding the calculation of the amount of compensation. As said, the onus is on clubs that claim damages to quantify, substantiate and prove these damages that it allegedly suffered due to the breach of a contract by the player. I will give you an example.

Let's focus on parties claiming replacement costs, regardless of whether or not the FIFA DRC will accept this head of damage. In any event, it would make full sense to me that for compensation to be due in such instances, to start with, there must be a *logical nexus* between the breach and the replacement costs claimed. A club claiming replacement costs as head of damage needs to prove an actual loss flowing naturally from the unjustified termination of contract. This, in turn, entails that the replacement player's profile must be similar to that of the replaced player, that the club decided to hire the player because of the termination of the other player, and that the costs arising therefrom are reasonable and foreseeable. Whether the replacement costs claimed are reasonable and foreseeable depends on the circumstances of each case, for instance and without limitation, on the time of the unjustified termination (*e.g.* during the last days of a registration period), the difficulty in finding a replacement player (*e.g.* a goalkeeper), the replaced player's importance on the team, analysed on an objective basis (*e.g.* goals scored) and the salaries paid to each of the replaced and the replacement player. In other words, it is of cardinal importance to be precise and concrete when claiming such costs. Therefore, very generic submissions that such costs should be granted will not succeed.

So far, I have also not seen many evidentiary requests in view of the new paragraph 6 which, as set out above, has been added to Article 13 of FIFA's Procedural Rules, from which it follows that parties have the duty to collaborate to establish the facts and shall respond in good faith to any evidentiary

request from a chamber, the FIFA general secretariat or a party. Again, I think this new legal tool can be of much assistance in successfully making a case.

I think it will take some more time before parties are fully aware of the new framework and, I think, practitioners are actually also waiting for the new FIFA DRC decisions, specifically dealing with issues such as compensation to be paid by players to clubs when there is a breach of contract and to learn how the FIFA DRC will deal with the new provisions under the IRF, in particular how the FIFA DRC will calculate the compensation after *Diarra*. It speaks for itself that, with these new decisions, practitioners will have handholds to use in their cases.

FL: How do you see the future after *Diarra*?

FDW: It remains difficult to predict in detail how developments will unfold in the aftermath of *Diarra*. One may reasonably expect, however, that parties will be more inclined to contractually agree in advance the amount of compensation that shall be payable in the event of a breach, as I said before, since such arrangements remain permissible. In this way, they retain a measure of control, to a certain extent, over the consequences of premature contract termination. Likewise, greater attention is likely to be given to the inclusion of choice-of-law clauses in employment contracts, allowing parties, also to a certain extent, additional control over the applicable legal framework. That said, as no decisions of the FIFA DRC have been issued yet after *"Diarra"* (at the time of this interview), it remains to be seen how the DRC will apply the provisions under the new legal framework of the IRF in its future proceedings.

In any event, it is clear to me, specifically looking at the IRF and its future implications, that the factual circumstances of each and every case will become even more decisive in light of the *Diarra* ruling, not only regarding the existence of just cause, but above all in determining the amount of compensation due and in assessing whether *"inducement"* under paragraphs 2 and 4 of Article 17 RSTP has occurred. In view of future expectations, it should not be forgotten that the decisions of the FIFA DRC remain subject to appeal before the CAS. In other words, even if a consistent line develops within the FIFA DRC relatively quickly, it will still be necessary to observe and take good note of how the CAS will respond in its appeal cases, an additional stage that will require time. For now, however, it is clear to me: the FIFA DRC will carry the primary responsibility of providing further clarity to the football industry.

Building on this responsibility, it is of utmost importance that the FIFA DRC provides the relevant parties with clarity through a consistent line after *Diarra*. As said, one of the key values to protect is precisely this consistency: ensuring a clear and predictable line in the future decisions that guarantees legal certainty, equality and uniformity. I am fully aware that each case turns on its own specific circumstances, even more decisive after *"Diarra"*, as set out before, and that outcomes can never be predicted with absolute certainty. But again, parties and practitioners alike must be able to fully rely, as much as possible, on consistent approaches by judges in relation to basic fundamental legal principles and doctrines, enabling sports lawyers to provide informed advice and to set realistic expectations for their clients.

As a final note, it should be recalled that the FIFA DRC is not an official arbitral tribunal under national or international arbitration law, but rather an intra-association body established within FIFA's regulatory framework. The FIFA DRC was specifically created and designed to respond to the specific needs of the football industry, providing swift resolution of cases (decisions are generally rendered within several months), low costs (even no costs if a player is party in the proceedings) and high expertise among the members of the FIFA DRC (experienced judges with high level knowledge of football law). Moreover, and to give further note of the relevance of the FIFA DRC, its decisions have effects across all 211 FIFA member associations. In this light, inconsistent case-law would generate serious uncertainty for the industry as a whole. This is why, now under the IRF, a uniform and predictable line of jurisprudence is key to me, let alone to preserve trust in FIFA's dispute resolution system.