Decision of the

Dispute Resolution Chamber

passed in Zurich, Switzerland, on 4 October 2013,

in the following composition:

on the claim presented by the player,

Player H, from country M

as *Claimant*

against the club,

Club V, from country S

as *Respondent*

regarding an employment-related dispute arisen between the parties

I. Facts of the case

1. On 1 July 2009, player H from country M (hereinafter: *the Claimant* or *the player*) and the club V from country S (hereinafter: *the Respondent* or *the club*), concluded a "Football Player's Civil Convention" (hereinafter: *the contract*) valid as from the date of signature until 30 June 2012.

2. According to the contract, the player was entitled to receive EUR 60,000 for each season, to be paid in 12 monthly instalments of EUR 5,000 each within the 15th day of the following month. Moreover, art. 9.6 stated that: *"The club must pay the player for each point the corresponding amount, according to the Internal Regulations".*

3. Furthemore, art. 16.1 of the contract stipulated that in case the parties could not settle an arisen dispute in an amicable way *"the parties are entitled to address to bodies with jurisdictional powers of FRF/AJF, in accordance with the FRF's / AJF's Statute and Regulations, or to sent it for settlement by the common law courts".*

4. In addition, art. 17.1 and 17.2 of the contract stated the following: *"The football regulations applicable to the present agreement are the FIFA's, UEFA's, FRF's or LPF's, as appropriate, statutes, regulations and decisions"* as well as *"The club and the player must comply with the FIFA's, UEFA's, FRF's/AJF's/LPF's statutes, regulations and decisions, in this order, these being an integral part of the present convention and which the parties, by their signature, accept as binding".*

5. Finally, art. 19.1 established that *"In case of dispute on the law applicable, the law prevails of country S".*

6. On 26 October 2010, the player lodged a claim in front of FIFA against the club, claiming the amount of EUR 129,625, made up of EUR 15,000 as outstanding remuneration corresponding to the salaries of July, August and September 2010, EUR 9,625 as outstanding remuneration for bonuses and EUR 105,000 as compensation for breach of contract.

7. According to the player, although he was fulfilling his obligations towards the club, the latter did not pay him his monthly salaries for the months of July, August and September 2010, nor did it pay EUR 500 for each point gained by the club. The player declared that his situation at the club changed in July 2010, when he did not agree to reduce his salary. As a consequence, the club sent him to the second team.

8. The player stated that, being a professional, he accepted said decision and started training with the second team. However, the club failed to pay the *"financial rights for 3 months"* and, in violation of the contract, did not provide him with adequate equipment, nutrition, medical assistance and recovery training. In this respect, the player referred to various articles of the contract. Equally, the player indicated that he was not selected to partake in any official match for the club.

9. On account of the aforesaid, the player requested FIFA to take into consideration the termination of the contract with just cause and to award him the compensation requested.

10. On 4 November 2010, the player amended his claim, as follows:

    - EUR 20,000 corresponding to the salaries for July, August, September and October 2010;
    - EUR 9,625 as bonuses;
    - "a financial compensation for termination of the civil convention for just cause".

11. In his amended claim, the player stated that in order to avoid disciplinary action from the club, he would continue to respect the training program of the club's second team, until a decision would be taken by FIFA.

12. Moreover, the player attached several bank documents which indicated that the last payments received from the club were the amounts of 20,955 currency of country S (hereinafter: *COCS*) on 3 June 2010 for the salary of May and COCS 16,039 on 3 November 2010 for the salary of August. In this context, the player emphasized that the club paid him the salary of June 2010 in cash, but had not yet paid the salary of July.

13. On 15 January 2011, the club replied to the claim by stating that in July 2010 the player *"asked and received from our club an accord for tests to another team".* Hence, it argues that, during the period of 2 – 12 July 2010 the player was not at the club and therefore he is not entitled to remuneration for July 2010.

14. Allegedly, when the player returned, the club received a report from its main coach stating that *"the player H does not fulfil the sportive criterions needed in order to play to the team from the First League – club V"*, following which it sent him to the second team and diminished the player's salary by 25% as from 1 August 2010. As to the bonus payments, the club referred to art. 15 par. 1 of the club's Internal Regulations which indicate that *"the match bonuses and penalties will be based on efficiency and effectiveness of each*

player in the game. The appreciation will be made by the main coach together with the General Manager of the club".

15. In his replica dated 31 January 2011, the player indicated that he had no knowledge of the report of the coach and the decision to reduce his salary by 25%. The player added that the club did not submit evidence that it had communicated the report and the relevant decision to him. The player also rejected the club's allegations in relation to the "accord", emphasising that he did not sign said document. In addition, the player submitted an excerpt of the club's website dated 30 June 2010 by means of which it was communicated that the player was transferable.

16. As to the salary reduction, the player referred to various articles of the contract stressing that the club cannot unilaterally change the remuneration, that any such decision should be ratified by the Disciplinary Committee of the Professional Football League of country S (SPFL) and that his right to be heard was violated as he was never notified about the reduction.

17. Furthermore, the player deemed that the club recognized that it had outstanding payment towards him; in the 2010/2011 season the club had merely paid EUR 11,250, consisting of three payments of EUR 3,750. Said amount covered July and August 2010 and a part of September 2010 and, therefore, the amount of EUR 18,750 is still outstanding *i.e.* part of September 2010 as well as October, November and December 2010.

18. On 10 February 2011, the player informed FIFA that he received a fax for a hearing at the club *"in order to act for a trial at the Professional Football League committees in country S."*

19. On 11 February 2011, the club argued that FIFA is not competent to adjudicate on the present dispute indicating that the Football Federation of country S (SFF) has a national independent arbitration tribunal which fulfils the relevant conditions of art. 22 lit. b) of the Regulations on the Status and Transfer of Players.

20. Moreover, the club emphasized that according to art. 19.1 and 16.1 of the contract, the applicable law is law of country S and that there is a valid arbitration clause. In this respect, the club stressed that the player was participating with the club's second team, which competes in the National Championship "League 3", organized by the SFF and not by the SPFL. Equally, the club enclosed a decision taken by the DRC on 16 July 2009 which stated that the NDRC of the SFF was recognised by FIFA for a certain period of time.
21. Finally, the club declared that in case the DRC would consider itself competent, it requested that the applicable law shall be the law of country S

in compliance with article 2 of FIFA's Procedural Rules and required *"a separate prayer for relief and we require from DRC of FIFA to pronounce a separate finding in this respect."*

22. On 14 February 2011, the Board of Directors of the club sanctioned the player with a 25% penalty *"of his financial rights for the 2010/2011 season"*, due to his non-appearance at the club as from 17 January 2011. Such decision was ratified by the Disciplinary Commission of the SPFL on 9 March 2011.

23. On 10 March 2011, the player informed FIFA that the Disciplinary Commission of the LPF had sanctioned him with "a 25% penalty".

24. On 7 April 2011, the club reverted to FIFA indicating that it had paid the amount of EUR 28,860 to the player on 10 March 2011 and that it had thus fulfilled all its financial obligations. At the same time, the club indicated that the player was missing from the club since 17 January 2011 and therefore the player was sanctioned *"through the decision no 156/2011"*. Furthermore, the club indicated it would request the relevant competent national body *"to find contract termination, without asking for compensation".*

25. By means of a letter dated 15 February 2012, the "General Secretariat of the SPFL jurisdictional committees" informed the player on his address in country R that the club, on 9 February 2012, had lodged a claim against him in front of the "SPFL Dispute Resolution Commission". The player was informed that the meeting *"to settle this case is on 28 February 2012"* and that *"the presence of the parties is not obligatory, anyway the parties may come to the meeting to sustain their claim/defense. The proceedings are accomplished with written submission. (…) please note that all the documents and written conclusions lodged on the case file must be submitted along with their certified translations into country S. Player H is kindly asked to provide a fax number to which can be expedited further documents related to this case."*

26. On 28 February 2012, the "Commission for Solving Disputes" of the LPF rendered a decision establishing that the player had terminated the contract without just cause.

27. Following all the above, the club was invited by FIFA to produce all the documentary evidence to prove that the relevant arbitration bodies in country S comply with the requirements of art. 22 lit. b) of the Regulations on the Status and Transfer of Players. Equally, the club was requested to provide its position as to the substance of the matter and to provide an English translation of the payment receipt submitted on 7 April 2011. Nonetheless, no reply was received from the club.

28. Upon request of FIFA, the player indicated that he did not sign any contract with a new club, that he was now 2 years and 8 months without a contract and that the club *"had ruined his career".*

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter: *the DRC* or *the Chamber*) analysed whether it was competent to deal with the matter at stake. In this respect, it took note that the present matter was submitted to FIFA on 26 October 2010. Consequently, the 2008 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: the *Procedural Rules*) is applicable to the matter at hand (cf. art. 21 of the 2008 and 2012 edition of the Procedural Rules).

2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2012) the Dispute Resolution Chamber shall adjudicate on employment-related disputes between a club and a player that have an international dimension.

3. As a consequence, the Dispute Resolution Chamber would, in principle, be competent to decide on the present litigation which involves a player H and a club V regarding an employment-related dispute.

4. However, the Chamber acknowledged that the Respondent contested the competence of FIFA's deciding bodies on the basis of art. 16.1 of the contract alleging that any dispute that is not solved in an amicable manner has to be brought exclusively to the *"SFF's sports jurisdiction tribunals"*. Thus, in the Respondent's view, art. 16.1 clearly excluded the competence of the Dispute Resolution Chamber to adjudicate on the present matter.

5. What is more, the Chamber duly noted that the Respondent had lodged a complaint against the Claimant in front of the SPFL DRC and that said body already rendered a decision declaring the Claimant free of contract as from 28 February 2012. Furthermore, the Chamber took note that the Respondent insisted that the SPFL DRC was competent to take such a decision since it is an arbitration tribunal established in accordance with the requirements contained in art. 22 lit. b) of the Regulations on the Status and Transfer of Players.

6. Taking into account all the above, the Chamber emphasised that in accordance with art. 22 lit. b) of the 2012 edition of the Regulations on the Status and Transfer of Players it is competent to deal with a matter such as the one at hand, unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level within the framework of the association and/or a collective bargaining agreement. With regard to the standards to be imposed on an independent arbitration tribunal guaranteeing fair proceedings, the Chamber referred to the FIFA Circular no. 1010 dated 20 December 2005. Equally, the members of the Chamber referred to the principles contained in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations, which came into force on 1 January 2008.

7. In relation to the above, the Chamber also deemed it vital to outline that one of the basic conditions that needs to be met in order to establish that another organ than the DRC can settle an employment-related dispute between a club and a player of an international dimension, is that the jurisdiction of the relevant arbitration tribunal derives from a clear reference in the employment contract.

8. Therefore, while analysing whether it was competent to hear the present matter, the Dispute Resolution Chamber considered that it should, first and foremost, analyse whether the employment contract at the basis of the present dispute actually contained a clear jurisdiction clause.

9. Having said this, the members of the Chamber turned their attention to art. 16.1 of the employment contract, on the basis of which the Respondent contested FIFA's jurisdiction. Said article stipulates that if an amicable agreement is not possible, *"the parties are entitled to address to bodies with jurisdictional powers of FRF/AJF, in accordance with the FRF's/AJF's Statute and Regulations, or to sent it for settlement by the common law courts".*

10. In this respect, and regardless of the fact that the relevant employment contract contains a reference to dispute resolution at national level, the Chamber pointed out that such wording was unclear in the sense that it merely refers to *"bodies with jurisdictional powers of FRF/AJF"* and not to a specific deciding body in the sense of art. 22 lit. b) of the aforementioned Regulations, or to any similar arbitration body and, therefore, cannot be applicable.

11. In addition, the Chamber emphasised that this lack of clarity is also reflected in the fact that, from its drafting, it appears that such clause gives the parties the "right" to bring any potential dispute to the jurisdictional bodies of the SFF

and/or SPFL or the common law courts, nevertheless, it does not grant an exclusive jurisdiction to any deciding body as the Respondent alleges. In view of the foregoing, the Chamber held that art. 16 of the employment contract cannot be considered as a clear and exclusive jurisdiction clause in favour of the SPFL DRC or the SFF DRC.

12. In continuation, and for the sake of completeness, the DRC turned its attention to the principles of fair proceedings and equal representation of players and clubs and underlined that these principles are fundamental elements to be fulfilled, in order for a national dispute resolution chamber to be recognised as such.

13. On account of the above, the Chamber noted that the Respondent failed to provide the DRC with any documentary evidence which could prove that the SFPL DRC meets the requirements established in art. 22 lit. b) of the Regulations on the Status and Transfer of Players, despite having been asked to do so by letter dated 12 July 2013.

14. What is more, the Chamber duly noted that the Claimant, by lodging his claim in front of FIFA on 26 October 2010 and by not withdrawing it later on, signalised that he did not recognise the jurisdiction of any arbitration body in country S.

15. On account of all the above and referring to the principle of the burden of proof contained in art. 12 par. 3 of the Procedural Rules, the Chamber established that the Respondent's objection towards the competence of FIFA to deal with the present matter has to be rejected, and that the Dispute Resolution Chamber is competent, on the basis of art. 22 lit. b) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance.

16. Subsequently, the Chamber acknowledged that the Respondent asserts that on the basis of art. 19.1 of the employment contract, the applicable law in the present dispute should be law of country S. In this respect, the Chamber wished to point out that art. 17.1 of the contract stipulates that, amongst others, the FIFA statutes and regulations are applicable to the contract. Furthermore, art. 17.2 stipulates that the parties must comply "*with the FIFA's, UEFA's, FRF's/AJF's/LPF's statutes, regulations and decisions, in this order, (…)*". The Chamber therefore decided that the FIFA Regulations are the applicable set of rules when adjudicating on the present matter.

17. Successively, and entering into the substance, the Chamber analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, the Chamber

referred, on the one hand, to art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2010 and 2012) and, on the other hand, to the fact that the present claim was lodged on 26 October 2010. The Dispute Resolution Chamber concluded that the 2010 edition of the Regulations on the Status and Transfer of Players (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

18. The competence of the Chamber and the applicable regulations having been established, the Chamber continued by acknowledging that, on 1 July 2009, the Claimant and the Respondent had concluded a "Football Player's Civil Convention" valid until 30 June 2012 i.e. for 3 years. As to the financial terms of said employment contract, the Chamber took note that it had been agreed upon between the parties that the Respondent would remunerate the Claimant with a monthly salary of EUR 5,000 during the entire duration of the contract. Furthermore, the Chamber duly noted that according to article 9.6 of the contract the Respondent would remunerate the Claimant *"for each point the corresponding amount, according to Internal Regulations".*

19. In this respect, the Chamber further noted that the Claimant argued that in July 2010, after allegedly refusing a reduction on his salary, he was excluded from the main team and was sent to train with the second team of the Respondent. The player further claims that the Respondent only made a partial payment of his salary of September 2010 and failed to pay his salaries of October, November and December 2010 as well as the bonuses contained in art. 9.6 of the contract. Moreover, the Claimant argues that the club breached the contract and, thus, is seeking from the latter compensation for breach of contract in accordance with art. 17 of the Regulations on the Status and Transfer of Players.

20. In continuation, the Chamber observed that on 26 October 2010 the Claimant lodged a claim against the Respondent in front of FIFA, which was amended on 4 November 2010 and 31 January 2011, requesting the payment of EUR 18,750 net corresponding to outstanding salaries of September, October, November and December 2010, EUR 9,625 net as for bonuses and EUR 105,000 net as compensation for breach of contract.

21. Subsequently, the members of the Chamber noted that, on the other hand, the Respondent argues that in July 2010 the player asked permission from the club to be absent from the period between 2 and 12 July 2010 so the player could go *"for tests to another team"* and, therefore, the Respondent considers that the player should not be remunerated during this period. In addition, the Respondent claims that the decision to send the player to the club's second team was taken after the main coach of the Respondent issued a report in which he deemed that the player did not fulfil the criteria to play for the

Respondent's first team. The Respondent further claims that based on the aforementioned report the player's salary was reduced with 25%. In respect of the bonuses, the Respondent based its non-payment on art. 15 of the club's Internal Regulations which states in its relevant part that *"the match bonuses and penalties for the players will be based on efficiency and effectiveness of each player in the game…".*

22. What is more, the Respondent argues that the player terminated the contract without just cause by leaving the club on 17 January 2011 and therefore, it had initiated proceedings against the Claimant in front of the RFPL DRC.

23. Having established the aforementioned, the Chamber deemed that the underlying issue in this dispute, considering the claim of the Claimant and the allegations of the Respondent, was to determine whether the employment contract had been unilaterally terminated with or without just cause by the player, and which party was responsible for the early termination of the contractual relationship in question. The DRC also underlined that, subsequently, if it were found that the employment contract had been breached by one of the parties without just cause, it would be necessary to determine the consequences for the party that caused the breach of the relevant employment contract.

24. Bearing in mind the previous considerations, the Chamber noted that the Claimant claims that the Respondent failed to pay part of his salary for September 2010 and his salaries for October, November and December 2010 in the total amount of EUR 18,750 as well as bonuses for each point won by the club in the total amount of EUR 9,625.

25. In this respect, the Chamber wished to point out that the reduction of the Claimant's salary due to the *"not fulfilment of the optimal sportive requests"* cannot be upheld. The Chamber considered that the Respondent did not provide any valid reasons which could have led to take such a decision. The Chamber emphasised the fact that the argument of poor or unsatisfactory performance cannot, by any means, be considered as a valid reason to reduce a player's salary. In addition, the player argues that this decision was never notified to him and it only came to his knowledge during the present proceedings. Moreover, the club did not provide any evidence that could prove that the player was duly notified of such decision. Hence, the Chamber considered that by reducing his salary only based on unsatisfactory performance, the club acted in an abusive manner towards the player and therefore, decided to reject the Respondent's argument in this regard.

26. In continuation, the DRC noted that the Claimant claims having been excluded from the main squad, as from July 2010. In this respect, the Chamber also

noted that the Claimant argues that such decision came after he refused to accept the reduction of his salary. In addition, the members of the Chamber noted that the Respondent does not dispute the aforementioned allegations of the Claimant and claims having taken this measure, in view of the player's unsatisfactory performance.

27. At this point, the Chamber analysed the question of whether the player was entitled to receive EUR 9,625 as bonuses. Firstly, the Chamber emphasizes that according to art. 9.6 of the contract *"the Club must pay the player for each point the corresponding amount, according to the internal regulations"*. Secondly, art. 15 of the club's internal regulations establish that for each point won by the club in official games, each player is entitled to EUR 1,000 net. Moreover, art. 15.3 of the said regulations establish the amounts that each player will receive depending on their participation in each relevant match.

28. The Chamber took note of the Respondent's position that according to art. 15.1 of the club's Internal Regulations the match bonuses are decided by the main coach together with the general manager of the club based on the efficiency and effectiveness of the player in each game. In this regard, the Chamber considered that the club's argument has to be dismissed. According to the contract, the club must pay the player bonuses in accordance with the club's Internal Regulations, and therefore, the club cannot rely on the same regulations to avoid an obligation to which it consented. Moreover, the club did not contest the evidence brought by the player regarding its participation in several matches. Hence, the Chamber decided that the player is entitled to receive EUR 9,625 for bonuses.

29. In view of the foregoing and taking into consideration all the relevant facts of the case, the Chamber decided that the Claimant was entitled to outstanding salaries and bonuses in the amount of EUR 28,375 at the time the contract was terminated, i.e. 17 January 2011.

30. Finally, the Chamber took note of the Respondent's correspondence dated 7 April 2011 in which the club indicated having paid the total amount due to the Claimant and enclosed a "proof of payment" for the total amount of EUR 28,860. In this regard, the Chamber observed that the amount paid to the Claimant by the Respondent in March 2011 was EUR 485 more than the actual debt it had to the player, i.e. EUR 28,860 – EUR 28,375.

31. In view of all the foregoing, based on the fact that the Claimant did not receive his salaries for September to December 2010 and that the salary reduction was clearly unjustified, the Chamber decided that the Claimant had terminated the contract with just cause on 17 January 2011 by leaving the club and that the Respondent is to be held liable for the early termination of the

employment contact with just cause by the Claimant. The Chamber emphasised that, evidently, the payment of the amount of EUR 28,860 in March 2011 does not affect the justification of the termination in January 2011.

32. Having established the aforementioned, the Chamber focused its attention on the consequences of the early termination of the employment contract with just cause by the Claimant. Taking into consideration art. 17 par. 1 of the Regulations, the Chamber decided that the Claimant is entitled to receive from the Respondent an amount of money as compensation for breach of contract.

33. In this context, the Chamber outlined that, in accordance with said provision, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the Claimant under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.

34. In application of the relevant provision, the Chamber held that it first of all had to clarify whether the pertinent employment contract contained any clause, by means of which the parties had beforehand agreed upon a compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.

35. Subsequently, and in order to evaluate the compensation to be paid by the Respondent, the members of the Chamber took into account the remuneration due to the Claimant in accordance with the employment contract as well as the time remaining on the same contract, along with the professional situation of the Claimant after the early termination occurred.

36. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the employment contract until 30 June 2012. The Chamber concluded that the amount of EUR 90,000 serves as the basis for the final determination of the amount of compensation for breach of contract.

37. In continuation, the Chamber took note of the player's correspondence dated 9 September 2013 according to which, since the termination of his employment contract with the Respondent, he has not signed any other employment contracts with any other club.

38. In view of all of the above, the Chamber decided that the Respondent must pay the amount of EUR 89,515 to the Claimant as compensation for breach of contract without just case, which is considered by the Chamber to be a reasonable and justified amount as compensation.

39. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claim lodged by the Claimant is rejected.

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III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, player H, is admissible.

2. The claim of the Claimant is partially accepted.

3. The Respondent has to pay to the Claimant, compensation for breach of contract in the amount of EUR 89,515 within 30 days as from the date of notification of this decision.

4. In the event that the amount due to the Claimant in accordance with the above-mentioned number 3 is not paid by the Respondent within the stated time limit, interest at the rate of 5% *p.a.* will fall due as of the expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

5. Any further claim lodged by the Claimant is rejected.

6. The Claimant is directed to inform the Respondent immediately and directly to the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.

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Note relating to the motivated decision (legal remedy):

According to art. 67 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

The full address and contact numbers of the CAS are the following:

Court of Arbitration for Sport
Avenue de Beaumont 2
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For the Dispute Resolution Chamber:

Jérôme Valcke
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Encl. CAS directives