CAS 2017/A/5463 Sevilla FC v. FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Mr Efraim Barak, lawyer, Tel Aviv, Israel
Arbitrators:	Mr Daniel Lorenz, lawyer, Porto, Portugal
	Prof. Ruggero Stincardini, lawyer, Perugia, Italy
Ad hoc Secretary:	Mr Yago Vázquez Moraga, lawyer, Barcelona, Spain

in the arbitration between

Sevilla Fútbol Club SAD, Seville, Spain

Represented by Mr Juan de Dios Crespo Pérez and Mr Alfonso León Lleó, lawyers at Ruiz-Huerta & Crespo, Valencia, Spain

Appellant

and

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Mr Oliver Jaberg, Director of the FIFA Integrity & Institutional Legal Subdivision, Mr Jaime Cambreleng Contreras, Head of the FIFA Disciplinary Department and Mr Paul-Antoine Dumond, Legal Counsel of the FIFA Disciplinary Department, all based in Zurich, Switzerland

Respondent

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I. THE PARTIES

1. Sevilla Fútbol Club SAD (hereinafter the "Club", "Sevilla" or the "Appellant") is a Spanish professional football club, based in Seville, and member of the Real Federación Española de Fútbol (hereinafter the "RFEF"), which is also a member association of the *Fédération Internationale de Football Association*.

2. The *Fédération Internationale de Football Association* (hereinafter "FIFA" or the "Respondent") is an organisation governed by Swiss law, with its headquarters in Zurich, Switzerland, and is world football's governing body.

II. BACKGROUND

A. Factual background

3. On 23 July 2012, the Director General of Sevilla and Mr Nelio Freire Lucas, in his capacity as a legal representative of the company DOYEN SPORTS INVESTMENTS LIMITED (hereinafter "DOYEN") signed a document via email, worded as follows:

"*Below, I outline the grounds of the share agreement regarding the player Geoffrey Kondogbia:*

1. *On behalf of SFC, you will send FC LENS an offer for the immediate transfer of the player, subject to the medical examination and the signing of a contract with the player, for the amount of EUR 3,000,000, including the solidarity mechanism and training compensation rights, which shall be paid within ten calendar days of receipt of the ITC [International Transfer Certificate].*

2. *SFC will offer the player a contract for five seasons, from 2012/2013 to 2016/2017, for the amounts of EUR 350,000, 350,000, 400,000, 450,000 and 450,000 net for each season respectively, covering all payments, plus a signing bonus of EUR 300,000 gross to be paid in four instalments, subject to the medical examination and the agreement with FC LENS.*

3. *SFC will offer the player's agent a commission of EUR 325,000 to be paid in two instalments, 50% of which will be paid within 30 days of receipt of the ITC and 50% on 30 July 2013.*

4. *The full transfer fee (i.e. 100%) for the player will be paid by DOYEN.*

   From the outset, SFC and DOYEN will share the economic rights of the player (50% each), under the following terms:

   SFC will pay the full remuneration of the player and the agent's commission.

Where all of the player's rights covered by the transfer fee are lower than EUR 6,000,000, the player may only be transferred during the first three seasons if SFC and DOYEN agree.
SFC and DOYEN shall transfer the player, at any moment, if they receive a firm offer for or exceeding the amount of EUR 6,000,000 for all of the player's rights, to be paid in cash or in bank instalments.

SFC will not be compelled to pay any amount for the 50% owned by DOYEN to DOYEN unless three years have passed without the player having been transferred or if SFC decides to buy DOYEN's 50% share.

Provided that the player is not transferred during the three years after signing with SFC and the ownership rights between SFC and DOYEN remain at 50%, SFC shall purchase 50% of the player's rights for the amount of EUR 1,500,000, 50% of which shall be paid within 30 days and 50% within 11 months, and pay the same amount for the other 50%, which it acquired at the beginning of the contract, plus 30% of that amount as interest, within the same deadlines.

From any transfer fee received for the player, net after solidarity mechanism deductions, the following shall be deducted: the player's original transfer fee and 10% annual interest on the amount of EUR 3,000,000 plus net income paid to the player until the date concerned and the agent's commission, and the remaining amount shall be equally distributed between SFC and DOYEN on the dates agreed with the purchasing club. In the event that the offer amounts to or exceeds EUR 10,000,000, the amount corresponding to the gross, rather than net, income of the player until the date concerned shall be deducted.

At that point, SFC may decline the purchasing offer and purchase DOYEN's 50% of the player's rights at the same price offered by the third club for the 50% and within the same deadlines, and shall therefore pay the amount of EUR 1,500,000 for the other 50%, plus 10% annual interest for the period between the date of purchase of the 50% by DOYEN and the date of purchase of the same 50% by SFC in two instalments, half of which shall be paid within 30 days and the other half within 11 months of the purchase."

4. On 23 July 2012, the French club RC Lens and Sevilla signed an international transfer agreement, wherein RC Lens transferred to Sevilla the player Geoffrey Kondogbia (hereinafter the "Player"), for the total amount of EUR 3,000,000.

5. On 26 July 2012, the Club and the Player signed a professional-player employment contract (hereinafter the "Employment Contract"), for five seasons, ending on 30 June 2017. In an annexe to the Employment Contract, the parties established a buy-out clause valuing the Player at EUR 20,000,000, in line with the provisions in Royal Decree 1006/1985 of 26 June, *which governs labour relationships particular to professional athletes* (hereinafter the "RD 1006").

6. On 31 May 2013, Sevilla signed a contract with DOYEN, entitled "*Contract of Sale or Transfer of Economic Rights and Financing Terms*" (hereinafter the "Contract"), agreeing, *inter alia*, on the following:

   "…

   State:

   A. that Sevilla signed an employment contract with the professional football player Mr GEOFFREY KONDOGBIA on 26 July 2012 for five seasons, ending on 30 June 2017;

   B. that the Player was transferred from the French football club FC Lens to Sevilla for the transfer fee of three million euros (EUR 3,000,000), under the transfer agreement of 23 July 2012, signed between the two clubs, that established a payment schedule based on Sevilla obtaining the ITC for the player, and stipulated that the amount agreed had to be paid on 7 August 2012;

   C. that the parties reached an agreement on 23 July 2012, pursuant to which firstly, Doyen and Sevilla could have equal ownership of the player's economic rights, whereby Doyen would purchase 50% of the player's rights for a specific price by a specific date,[1] and secondly, a funding scenario was established whereby Sevilla would receive ONE MILLION FIVE HUNDRED THOUSAND EUROS (EUR 1,500,000); this agreement is qualified, expanded on and finalised under the present contract, which updates and replaces the full content of the agreement;

   D. that the total amount of the above-mentioned transfer fee – three million euros (EUR 3,000,000) – was paid in full by Doyen to Sevilla via a bank transfer on 30 July 2012, and Sevilla subsequently paid the player's transfer fee to FC Lens, thereby acquiring 100% of the player's federative rights and 100% of his economic rights and owing DOYEN the amount of three million euros (EUR 3,000,000);

   E. that Sevilla is solely responsible for the payment of the salaries defined in the contract with the player and of the player's agent's commission for acting as an intermediary in the signing of the player by Sevilla, as well as for the transfer fee to FC Lens for the amount mentioned in paragraph B above.

   F. that under the present contract, Doyen and Sevilla have agreed: (I) that Sevilla will sell to Doyen 50% of the player's economic rights for the amount of ONE MILLION FIVE

[1] The footer on page 1 of the Contract stipulated the following:

"The parties agreed that Doyen would be entitled to purchase 50% of the Player's economic rights for the fixed price of ONE MILLION FIVE HUNDRED THOUSAND EUROS (EUR 1,500,000), which would oblige Sevilla to sell that percentage, at Doyen's first request any time after the signing of the contract between the parties. This request takes effect with the signing of this contract of sale, whereby Doyen purchases 50% of the player's rights and Sevilla is not compelled to repay the financing it received from Doyen, for the period between the initial agreement of 23 July 2012 and the relevant date, the amount of ONE MILLION FIVE HUNDRED THOUSAND EUROS (EUR 1,500,000) for the price of the 50% of the Player's rights that Sevilla sold to Doyen."

HUNDRED THOUSAND EUROS (EUR 1,500,000), which Sevilla acknowledges that it owes DOYEN for the transfer mentioned in paragraph C, and, in addition, another 1,500,000 is still owed as a result of this sale; and (II) on the special financing conditions that DOYEN will grant Sevilla, for the outstanding payment of ONE MILLION FIVE HUNDRED THOUSAND EUROS (EUR 1,500,000) so as to return to DOYEN that amount under the conditions provided for in the present contract.

…

1. DEFINITIONS AND INTERPRETATIONS

…

Compensation: *ONE MILLION FIVE HUNDRED THOUSAND EUROS (EUR 1,500,000) plus VAT, if applicable*

Minimum return: *the base amount of EUR 1,650,000 (ONE MILLION SIX HUNDRED AND FIFTY THOUSAND EUROS) to which the following fixed and cumulative amounts will be added:*

a) EUR 150,000 (ONE HUNDRED AND FIFTY THOUSAND EUROS), if on 1 July 2013 Sevilla remains the owner of 50% of the player's economic rights; and

b) EUR 150,000 (ONE HUNDRED AND FIFTY THOUSAND EUROS), if on 1 July 2014 Sevilla remains the owner of 50% of the player's economic rights;

…

Employment Contract: *the employment contract signed on 26 July 2012 between Sevilla and the Player for five seasons, namely until 30 June 2017, contains, among other agreements, a unilateral buy-out clause for the player, valuing him at TWENTY MILLION euros (EUR 20,000,000), a copy of which has been attached to the present contract as* ***document 1****: as provided for in this contract, the parties expressly state that the fixed salary payments (whether as part of an income or as a bonus, excluding individual or team bonuses for reaching objectives, merit or sporting results) were established between Sevilla FC and the Player, net after taxes and Spanish social contributions, and with the prior knowledge of DOYEN. Sevilla shall do its utmost to ensure that the Player has optimal income tax treatment, both parties bearing in mind that, ultimately, the tax applicable to the player shall be that which is relevant for the purposes of fulfilling and implementing the present Contract.*

…

1. MEDICAL STATEMENTS AND GUARANTEES. CERTIFICATION OF THE MARKET VALUE OF THE PLAYER

Sevilla certifies to Doyen that the Player was declared fit and with no impending health risks in the medical exams carried out by Sevilla club doctors, in that the medical tests

carried out did not give any indication of the player having any health concerns (neither quantitative nor qualitative). Furthermore, in conformity with the personal data protection regulations in force, Sevilla is obliged to disclose to Doyen any information regarding any significant changes in the health and physical condition of the Player.

Moreover, Sevilla and Doyen herewith state that, to the best of their knowledge, although the transfer fee for the Player excluding expenses was three million euros (EUR 3,000,000), based on the sporting and personal circumstances of the Player and the football and player transfer market, the value of the Player could, in the upcoming seasons, reach the minimum value of six million euros (EUR 6,000,000), provided that the expectations that the parties have are fulfilled regarding the future of the player given his age and sporting ability.

THE PRESENT AGREEMENT IS ESSENTIAL AND DECISIVE FOR THE PRESENT CONTRACT. WITHOUT IT, THIS CONTRACT WOULD NOT HAVE BEEN APPROVED BY DOYEN

2. OBJECT

In force as of the date of signature of the present contract:

(i) Sevilla is selling and transferring to Doyen, guaranteeing full ownership and free of any encumbrances, 50% of the player's economic rights in full for the amount of ONE MILLION FIVE HUNDRED THOUSAND EUROS (EUR 1,500,000), attaching to this contract as an annexe an invoice certifying the sale. As a result of this Sale, DOYEN becomes the owner of 50% of the player's economic rights and Sevilla maintains ownership of the remaining 50%, and, moreover, Sevilla is required to repay Doyen exclusively the amount of ONE MILLION FIVE HUNDRED THOUSAND EUROS (EUR 1,500,000) under the financing conditions provided for in this contract.

(ii) The parties expressly agree that Sevilla shall be granted special financing conditions to repay Doyen in instalments the amount due of ONE MILLION FIVE HUNDRED THOUSAND EUROS (EUR 1,500,000), establishing a minimum return (with a base amount plus any increases) to Doyen according to and expressly linked to the period during which Sevilla remains the owner of 50% of the player's economic rights, until 30 June 2015.

Consequently, Sevilla and Doyen shall respectively have, inter alia*, the following rights or claims:*

- *50% of any amount obtained by Sevilla for the termination of federative rights provided that payment for the buy-out clause of the Player's Employment Contract or for the Player's transfer to third parties has been made;*

- *50% of any amount established as compensation for breach of the Employment Contract by the Player, or any amount that, in compliance with Royal Decree 1006/1985 of 26 June, which governs labour relationships particular to professional athletes, is due to Sevilla in the event of the termination of the Employment Contract;*

- *50% of any amounts resulting from the transfer or exploitation of image rights obtained or accrued by Sevilla for the transfer or termination of the Player's Federative Rights, provided that those amounts are related to events that occurred following the termination of the contract for any of the circumstances described in this contract, in that they represent additional compensation paid to Sevilla for termination of the player's contract.*

*In order to register Doyen's ownership of 50% of the Economic Rights, the Club shall communicate these circumstances to the RFEF and the LFP, requesting the registration of this ownership as of 23 July 2012 in the sheet or section on the player's federative rights in the club's register for charges and costs (*Libro de Registro de Cargas y Gravámenes*), where 50% of the Player's transfer fee, among other rights recognised in the present contract, is due to DOYEN as follows: a) any amount deposited related to the Player to the LFP/RFEF, shall be held by the LFP/RFEF for DOYEN; or b) the LFP/RFEF shall not authorise any transfer of the Player from the Club to a third club as long as 50% of the transfer fee between the clubs declared by the Club has not been deposited by Sevilla to the LFP/RFEF for Doyen, unless both parties, by mutual consent, communicate their authorisation of the transfer in writing to the LFP/RFEF.*

3. MINIMUM RETURN

To repay the amount of ONE MILLION FIVE HUNDRED THOUSAND EUROS (EUR 1,500,000) for the special financing conditions granted by Doyen to Sevilla, the parties agree that Sevilla shall pay DOYEN the Minimum Return of a base amount plus any additional payment expressly linked to the period during which Sevilla holds ownership of 50% of the player's economic rights, until 30 June 2015.

In view of its structure, the Minimum Return, according to the parties, constitutes a loan with special privileges for Doyen, in that the 50% of the Economic Rights owned by Sevilla remains subject to the ***prohibition on the transferral*** *of these rights and/or any claims arising from these rights in Sevilla's favour, unless Sevilla has the prior written consent of Doyen and the Minimum Return to Doyen has been paid in full. In addition, in order to reinforce this structure, the parties have agreed the following: (i) the 50% of the Economic Rights owned by Sevilla and/or the claims arising from those rights, cannot be issued or transferred to any other third party without the prior written consent of Doyen; consequently, in the event that Sevilla declares or is declared to be in any special circumstances that affect its assets (e.g. in the event of a declaration of bankruptcy), the 50% of the Economic Rights owned by Sevilla and/or the claims arising from those rights shall be excluded from the club's assets, and the rights will remain linked to payment of the Minimum Return due to Doyen; (ii) notwithstanding the efficiency of the above, the parties shall provide any documents required, complying with the requirements and formalities established in the applicable legislation, in order to facilitate access to and*

registration of the provisions of this clause in the relevant public or association registers to ensure their effectiveness vis-à-vis third parties.

THE PRESENT AGREEMENT IS ESSENTIAL AND DECISIVE FOR THE PRESENT CONTRACT. WITHOUT IT, THIS CONTRACT WOULD NOT HAVE BEEN APPROVED BY DOYEN. SEVILLA, AWARE OF THE SIGNIFICANCE OF THE AGREEMENT, INSISTS ON ITS APPROVAL ON THE BASIS THAT IT WAS AT THE ROOT AND CORE OF THE INTENTION OF BOTH PARTIES TO ENTER INTO THESE LEGAL RELATIONS

…

In so far as Sevilla is solely responsible for the payment of the salary agreed with the Player and the agent's commission, and in so far as it is a first-division club that will give the Player exposure, Sevilla will not be obliged to pay Doyen any amount stipulated herein immediately or during the first three seasons of the Player's employment contract with the club, namely until 30 June 2015, the payment having been deferred until then, and notwithstanding and irrespective of the amounts not related to the Minimum Return which could be accrued by Doyen and that the Club would be compelled to pay, where necessary, in accordance with the terms and conditions of the present contract (e.g. the amounts that Sevilla would have to pay to Doyen from the Player's transfer fee received by the club from third parties).

4. COMMITMENTS UNDERTAKEN BY SEVILLA TOWARDS DOYEN. PERMANENT TRANSFER OF THE PLAYER. TERMINATION OF THE EMPLOYMENT CONTRACT BY PAYMENT OF THE BUY-OUT CLAUSE FOR THE PLAYER

4.1. ***PERMANENT TRANSFER OF THE PLAYER:*** *the parties agreed on the following scenarios based on dates during which they may occur:*

a. ***OBLIGATION:*** *Sevilla and Doyen shall transfer the player, namely Sevilla shall transfer 100% of his federative rights and 50% of his economic rights and DOYEN 50% of his economic rights, at any time while the Employment Contract is in force, provided that Sevilla receives a firm* ***offer*** *in writing from a football club for the permanent transfer of the Player for the amount* ***of or exceeding SIX MILLION EUROS (EUR 6,000,000)*** *and that the amounts offered to Sevilla are paid by the third Club in cash or in bank instalments.*

THE PRESENT AGREEMENT IS ESSENTIAL AND DECISIVE FOR THE PRESENT CONTRACT. WITHOUT IT, THIS CONTRACT WOULD NOT HAVE BEEN APPROVED BY DOYEN. SEVILLA, AWARE OF THE SIGNIFICANCE OF THE AGREEMENT, INSISTS ON ITS APPROVAL ON THE BASIS THAT IT WAS AT THE ROOT AND CORE OF THE INTENTION OF BOTH PARTIES TO ENTER INTO THESE LEGAL RELATIONS

b. ***AGREEMENT:*** *during the first three seasons of his Employment Contract with Sevilla, namely from 26 July 2012 to 30 June 2015, the Player may be transferred to a third club if the transfer fee proposed in a firm* ***offer****, in writing, by a football club for the permanent transfer of the Player is lower than SIX MILLION EUROS (EUR 6,000,000), provided that there is an express written agreement between Sevilla and Doyen.*

4.2. OTHER TERMS

a. *On 1 July 2015, in view of protecting the effectiveness of the funding granted by DOYEN, as long as DOYEN maintains its share of the Player's Economic Rights,* ***Sevilla shall, in any circumstances, unless it has already previously paid all or part of it, in accordance with the present contract, repay Doyen the Minimum Return referred to in clause 3.***

On that date, and unless there have been previous payments, the Minimum Return to be paid to Doyen would stand at EUR 1,950,000 (one million nine hundred and fifty thousand euros). This return shall be paid by Sevilla in two instalments of NINE HUNDRED AND SEVENTY-FIVE THOUSAND EUROS (EUR 975,000) each, the first within 30 days of 1 July 2015 and the second within 11 months of 1 July 2015.

b. *Furthermore, after 1 July 2015, with DOYEN's approval, Sevilla grants* ***Doyen*** *a* ***Put Option, whereby DOYEN reserves the right to sell to Sevilla, Sevilla being obliged to buy, the 50% of the Player's Economic Rights owned by Doyen following the signature of the present contract for the amount of ONE MILLION FIVE HUNDRED THOUSAND EUROS (EUR 1,500,000)*** *– plus any applicable VAT (hereinafter the "****Put Option****"). Sevilla would therefore be obliged to comply with the Put Option if DOYEN were to decide freely and at its own discretion to make use of it. …*

In other words, in the event that DOYEN exercises the Put Option, the maximum amount that Sevilla shall pay Doyen, as of 30 June 2015, as a Minimum Return arising from the special financing conditions granted by DOYEN, as well as from the carrying out of the Put Option whereby Sevilla would buy Doyen's 50% of the Player's economic rights, is ***THREE MILLION FOUR HUNDRED AND FIFTY THOUSAND EUROS (EUR 3,450,000)****, plus any applicable VAT,* ***unless, prior to that date, the Player is sold to a third party****.*

4.3. ***DISTRIBUTION OF RIGHTS (SFC/DOYEN) IN THE EVENT OF A TRANSFER***

If Sevilla transfers the Player permanently, regardless of the date on which the transfer is carried out, but provided that both parties own the economic rights of the Player, the following amounts and shares ***shall be deducted*** *from the transfer fee (to subsequently be distributed between the parties as detailed below), and according to the price of the transfer fee:*

- *A)* ***Where the transfer fee is lower than TEN MILLION EUROS (EUR 10,000,000)****, the following shall be deducted: a) the total amount as applicable under FIFA's solidarity mechanism, barring the amount due*

to Sevilla; b) the fixed amount of ONE MILLION FIVE HUNDRED THOUSAND EUROS (EUR 1,500,000); c) the Minimum Return applicable on the date of the transfer; d) the net income paid by Sevilla to the Player from the beginning of the employment contract until the date of the transfer; and e) the agent's commission for the amount of EUR 325,000 for the acquisition of the player from FC Lens, as well as any commission that could arise due to a transfer of the player with the limitations provided for in clause 10.1 of the present agreement; and the remaining amount of the transfer fee shall be distributed equally between Sevilla and Doyen. Each of the parties shall also be reimbursed for the sums that have been deducted in accordance with paragraphs a) to e) and that each of them has paid until that date and/or the sums due to each party.

- B) *Where the transfer fee amounts to or is higher than ten million euros (EUR 10,000,000), the following shall be deducted: a) the total amount as applicable under FIFA's solidarity mechanism, barring the amount due to Sevilla; b) the fixed amount of one million five hundred thousand euros (EUR 1,500,000); c) the Minimum Return applicable on the date of the transfer; d) the gross income paid by Sevilla to the Player from the beginning of the employment contract until the date of the transfer; and e) the agent's commission for the amount of EUR 325,000 for the acquisition of the player from FC Lens as well as any commission that could arise due to a transfer of the player with the limitations provided for in clause 10.1 of the present agreement; and the remaining amount of the transfer fee shall be distributed equally between Sevilla and Doyen. Each of the parties shall also be due and reimbursed the sums that have been deducted in accordance with paragraphs a) to e) and that each of them has paid until that date and/or the sums due to each party.*

…

4.4. ***CANCELLATION OF THE OBLIGATION TO SELL DUE TO AN OFFER FROM A THIRD PARTY (higher than six million euros):*** *in the event that Sevilla receives an offer in writing from a football club for the permanent transfer of the player, at any moment while the Player's Employment Contract is in force, for the amount of or higher than six million euros (EUR 6,000,000), to be paid in cash or in bank instalments, that DOYEN wishes to accept, and Sevilla does not wish to sell the Federative Rights of the Player and its share of economic rights, although it is obliged to do so in accordance with paragraph 4.1. a) above, Sevilla may unilaterally and exclusively choose to cancel the obligation to sell under paragraph 4.1. a) within seven days of the date of the offer from the third club, in which case it would be obliged to purchase from Doyen its remaining 50% of the Player's economic rights, thereby acquiring 100% of those rights as follows:*

a) *Firstly, Sevilla shall repay Doyen the Minimum Return applicable on the date of the cancellation of the obligation to sell under paragraph 4.1. a) …*

b) *Secondly, Sevilla shall purchase from DOYEN its 50%, thereby acquiring 100% of the rights. …*

THE PRESENT AGREEMENT IS ESSENTIAL AND DECISIVE FOR THE PRESENT CONTRACT. WITHOUT IT, THIS CONTRACT WOULD NOT HAVE BEEN APPROVED BY DOYEN. SEVILLA, BEING AWARE OF THE SIGNIFICANCE OF THE AGREEMENT, INSISTS ON ITS APPROVAL ON THE BASIS THAT IT WAS AT THE ROOT AND CORE OF THE INTENTION OF BOTH PARTIES TO ENTER INTO THESE LEGAL RELATIONS

…

4.5. PAYMENT OF THE BUY-OUT CLAUSE*: in the event that the federative rights are terminated due to the full payment of the buy-out clause stipulated in the Player's Employment Contract, Sevilla shall pay DOYEN 50% of that payment after deduction of the following: a) the total amount as applicable under FIFA's solidarity mechanism, barring the amount due to Sevilla and provided that from the payment of the buy-out clause, the mechanism is applied; b) the fixed amount of one million five hundred thousand euros (EUR 1,500,000); c) the Minimum Return applicable on the date of the payment of the buy-out clause; d) the gross income paid by Sevilla to the Player until the date of the payment of the buy-out clause; and e) the agent's commission for the amount of EUR 325,000 for the acquisition of the player from FC Lens. Each of the parties shall be due and reimbursed the sums that have been previously deducted in accordance with paragraphs a) to e) and that each of them has paid until that date and/or the sums due to each party. The first example in clause 4.3 shall also serve to determine the deduction and the allocation of shares, as well as the priority and allocation of the amount of the buy-out clause.*

Sevilla acknowledges that the buy-out clause in the Player's Employment Contract amounts to EUR 20,000,000 and that it may not reduce this amount. Notwithstanding that amount, the parties expressly state that Sevilla is free to agree with the Player on the contractual terms applicable to the employment relationship between them, at any moment, including, where applicable, the renewal and upward adjustment of the compensation clause in the event of a unilateral buy-out by the Player without just cause, etc. …, without the obligation to communicate with or receive authorisation from Doyen, and without it implying an amendment of Sevilla's share of the economic rights, which, in that case, will remain unchanged. Notwithstanding the above, where renewal or adjustment implies an increase of the amount stipulated in the compensation clause, to double or more than double the current amount, or where that amendment implies a salary increase of the Player by double or more than double the salary stipulated in the Employment Contract in the annexe to the present contract, Doyen may:

(i) *Hold the economic rights of the Player under the same terms for the time frame provided for in the amended or renewed Employment Contract; or*

(ii) *Exercise its Put Option, obliging Sevilla to pay the agreed amount: … Moreover, Sevilla shall repay Doyen the amount of the Minimum Return due on that date as follows: …*
Doyen's right to decide regarding options (i) and (ii) above shall be communicated to Sevilla within seven calendar days of the date on which the Club informs Doyen in writing of the renewal or amendment of the Player's Employment Contract under the terms provided for in the previous paragraph …

THE PRESENT AGREEMENT IS ESSENTIAL AND DECISIVE FOR THE PRESENT CONTRACT. WITHOUT IT, THIS CONTRACT WOULD NOT HAVE BEEN APPROVED BY DOYEN. SEVILLA, BEING AWARE OF THE SIGNIFICANCE OF THE AGREEMENT, INSISTS ON ITS APPROVAL ON THE BASIS THAT IT WAS AT THE ROOT AND CORE OF THE INTENTION OF BOTH PARTIES TO ENTER INTO THESE LEGAL RELATIONS

…

6. GUARANTEE

The parties have agreed that, as a payment guarantee for the amounts that Sevilla undertakes to repay and pay Doyen under this Contract, Sevilla shall, when signing the present contract, sign a ***Credit Assignment Agreement as a guarantee and a pledge based on the credit claim represented by the money set aside on the special account earmarked for the season-ticket campaigns for the 2015/16 and 2016/17 seasons****, for a minimum amount of* ***four million four hundred and eighty five thousand euros (EUR 4,485,000)****, broken down as follows:*

…

THE PRESENT GUARANTEE IS ESSENTIAL AND DECISIVE FOR THE PRESENT CONTRACT. WITHOUT IT, THIS CONTRACT WOULD NOT HAVE BEEN APPROVED BY DOYEN. SEVILLA, BEING AWARE OF THE SIGNIFICANCE OF THE AGREEMENT, INSISTS ON ITS APPROVAL ON THE BASIS THAT IT WAS AT THE ROOT AND CORE OF THE INTENTION OF BOTH PARTIES TO ENTER INTO THESE LEGAL RELATIONS

7. AUTHORISATION OF SALE

In view of facilitating the permanent transfer of the Player, Sevilla grants Doyen a non-exclusive and international licence so that, through the FIFA-certified agents appointed by Doyen, Doyen can promote the sale and transfer of the Player. The agents' commission shall be decided on by the parties prior to the appointment of the agents and shall be stipulated in writing when the mandate is conferred.

In light of the above, Doyen may establish contact with any third party in order to convey Sevilla's wishes regarding the permanent transfer of the Player, and to receive proposals on behalf of Sevilla to that end, but may not accept any proposal or negotiate on behalf of Sevilla any terms of the transfer contract, and must at all times follow any instructions it receives from Sevilla and act loyally and in good faith.

Subject to the terms of the present contract, Sevilla reserves the right to freely accept or decline the proposals that it receives through Doyen, and has the exclusive right to begin or conclude negotiations with any third club proposed by Doyen and, where applicable, sign the transfer contract that it deems appropriate, or begin or conclude negotiations with any third club that has not been proposed by Doyen.

Consequently, Sevilla and Doyen shall keep each other informed about any negotiations, immediately providing the other party with all the information available (including a copy of the transfer proposal document).

8. TEMPORARY LOAN OR TRANSFER OF THE PLAYER. BREACH OF EMPLOYMENT CONTRACT BY THE PLAYER OR CLUB. PLAYER'S DEATH OR INCAPACITY TO WORK. EXCHANGING OF THE PLAYER.

…

8.2 BREACH OF CONTRACT BY THE PLAYER: *in the event that the Player breaches the Employment Contract resulting in its termination by Sevilla, provided that Doyen still holds its share of the Player's economic rights when the breach occurs, Doyen shall be entitled to receive from Sevilla 50% of any amounts received by Sevilla as compensation for the breach of the Employment Contract by the Player, or those amounts that, in accordance with Royal Decree 1006/1985 of 26 June, which governs labour relationships particular to professional athletes, are due to Sevilla in the event of a termination of the Employment Contract, and under no circumstances may the amount due to Doyen, which Sevilla is obliged to pay in this situation, be lower than three million four hundred and fifty thousand euros (EUR 3,450,000). …*

8.3 BREACH OF CONTRACT BY THE CLUB: *in the event that Sevilla breaches the Employment Contract resulting in its termination, and according to what has been agreed freely, willingly and unreservedly by the parties, Sevilla shall pay Doyen the amount of four million four hundred and eighty-five thousand euros (EUR 4,485,000) as follows …*

THE PRESENT COMPENSATION IS ALSO ESSENTIAL AND DECISIVE FOR THE PRESENT CONTRACT. WITHOUT IT, THIS CONTRACT WOULD NOT HAVE BEEN APPROVED BY DOYEN. SEVILLA, BEING AWARE OF THE SIGNIFICANCE OF THE AGREEMENT, INSISTS ON ITS APPROVAL ON THE BASIS THAT IT WAS AT THE ROOT AND CORE OF THE INTENTION OF BOTH PARTIES TO ENTER INTO THESE LEGAL RELATIONS. THE PRESENT COMPENSATION MAY NOT BE ALTERED BECAUSE IT IS AN EXPRESS WISH OF THE PARTIES AND THE CLUB IS AWARE OF THE EFFECTS THEREOF

8.4 COMPULSORY INSURANCE: *Sevilla shall purchase at its own expense and within 30 days of the signing of the present contract, and as long as Doyen maintains its share of the Player's economic rights, an insurance policy to cover the player's death or permanent incapacity to work, wherein Doyen will be named as the sole beneficiary, for an amount no lower than three million four hundred and fifty thousand euros (EUR 3,450,000). If so required by Doyen, the Club [Sevilla] shall provide Doyen with a copy of the relevant insurance policy.*

…

10. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Sevilla herewith warrants, undertakes, agrees and confirms to Doyen that:

10.1 … Furthermore, any payment made to an intermediary, agent or representative as commission for future sales of the player may not exceed the total amount of 5% of the value of the transaction.

Finally, Sevilla shall notify the relevant public or association registers of the present transaction to ensure its validity and Doyen's priority over third parties: if Sevilla does not do so, then it expressly authorises Doyen to do so.

…

10.5 The Employment Contract is effective, valid and binding on Sevilla and the Player (depending on the situation) under its terms. Sevilla shall abstain from varying, modifying or terminating any of the terms of the transfer agreement with FC Lens, as well as from seeking to negotiate the above terms without the prior written consent of Doyen. Sevilla shall notify Doyen of any variations or modifications to or cause for the termination of the Employment Contract.

…

10.9 The present contract constitutes the valid, legal and binding obligations of Sevilla and DOYEN, and compliance with its terms does not imply a breach of any contract that Sevilla or Doyen have signed or by which they are bound, nor does it imply a breach of any ruling or rule applicable to those contracts. …

Doyen herewith acknowledges:

10.14 that the Club is an independent entity that is authorised to make decisions regarding disciplinary measures or any other decisions regarding the Employment Contract or the transfer of the Player, and that it will not have any sporting influence on the Club, its staffing, contractual or transfer policies, nor on the performances of its teams;

…

11. CONSEQUENCES OF THE BREACH

Pursuant to the provisions of article 1124 of the Spanish Civil Code, in the event of a breach of this contract, the party not in breach of the contract may request the performance of the contract or the termination of the contract, claiming compensation for damages and interest in both cases.

…"

7. On 27 August 2013, the Player notified the Club of the unilateral and early termination of the Employment Contract, as provided for in article 16.1 of RD 1006, and that he would therefore proceed to carry out the payment of the buy-out clause.

8. On 29 August 2013, the Player appeared before the Spanish Professional Football League (hereinafter "*La Liga*") with a representative from the French club AS Monaco, where he deposited a cheque for Sevilla for the amount of EUR 20,000,000 as compensation, as provided for in the buy-out clause of his Employment Contract. Consequently, the Player requested that *La Liga* and the RFEF issue an ITC to AS Monaco.

B. Proceedings before the FIFA TMS Global Transfers & Compliance Department (FIFA TMS)

9. On 6 January 2015, the FIFA TMS Integrity and Compliance Department (hereinafter "FIFA TMS") submitted a request for information to Sevilla regarding the Player, stipulating the following:

"…

We note that on 30 August 2013, the club AS Monaco FC, France, entered a transfer instruction for your player Geoffrey Kondogbia (hereinafter the "player"). We have information that your club and/or a third party related to your club received payment related to this transfer. However, we note that your club did not enter any transfer instructions in TMS to release the player.

In the event that this is the case, it would be a breach of articles 1.2, 2.4, 3.1, 3.1.1, 4.2, 4.6 and 9.1.2 of the FIFA Regulations on the Status and Transfer of Players (hereinafter the "Regulations").

Furthermore, if your club did sign an agreement which would allow the parties pertaining to it or third parties to intervene in its independence or in transfer policies, this would mean that your club has breached the obligations stipulated in article 18bis of the Regulations.

Consequently, and in accordance with the provisions of article 7.4 of Annexe 3 of the Regulations, we would be grateful if you could send us the following information:

1. your stance on the matters mentioned above;

2. *all the agreements reached concerning the transfer concerned, including those reached between your club and the company Doyen Sports;*

3. *details of all the payments received regarding the transfer concerned;*

4. *confirmation of any agent representing your club and/or the player in the transfer concerned.*

…"

10. On 19 January 2015, Sevilla expressed its stance on the content of the request for information submitted by FIFA TMS, stating the following:

(i) that the Club had not entered the information in the TMS system because a transfer had not taken place, but rather a unilateral termination of the contract by the Player;

(ii) that Sevilla had not signed any contract that allowed the parties pertaining to it or third parties to intervene in its independence or in employment policies;

(iii) that no Sevilla agents were involved in the termination of the Player's contract; and

(iv) that on 31 May 2013, the Club had signed a commercial contract (a copy of which it provided) with the DOYEN company regarding the financing of Sevilla and DOYEN's share of the financial return in the event of an international transfer of the Player.

11. On 13 March 2015, FIFA TMS notified Sevilla that the case had been submitted to the FIFA Disciplinary Committee.

C. Proceedings before the FIFA Disciplinary Committee

12. On 22 July 2015, the FIFA Disciplinary Committee notified the Club through the RFEF that disciplinary proceedings had been initiated against Sevilla for the possible violation of article 18bis of the Regulations on the Status and Transfer of Players (hereinafter "RSTP"). In that correspondence, there was also reference to a possible violation of article 4 paragraph 2 of Annexe 3 to the RSTP.

13. On 20 August 2015, Sevilla submitted arguments regarding the proceedings against it initiated by the FIFA Disciplinary Committee.

14. On 22 December 2015, the FIFA Disciplinary Committee invited Sevilla to submit arguments regarding the content of the relevant clauses of the Contract with DOYEN and, in particular, of "*paragraph 1 of clause 1, the last paragraph of clause 2, paragraph 2 of clause 3, paragraphs 1 to 5 of clause 4, clause 7, paragraphs 2 and 4 of clause 8 and paragraphs 1 and 5 of clause 10*".

15. On 15 January 2016, Sevilla submitted new arguments.

16. On 29 January 2016, the FIFA Disciplinary Committee adopted Decision 150522 TMS ESP ZH (hereinafter, the "Disciplinary Decision"), deciding the following:

    1. *"The club Sevilla FC is found guilty of having violated article 18bis of the FIFA Regulations on the Status and Transfer of Players [2012 edition] by signing an agreement which allows the influence of third parties over the club concerning the player Geoffrey Kondogbia.*

    2. *The club Sevilla FC is found guilty of having violated article 4 paragraph 2 of Annexe 3 to the FIFA Regulations on the Status and Transfer of Players by not disclosing the information on the agent involved in the transfer of the player Geoffrey Kondogbia (TMS instruction number 54645/54245) and on the commission the agent received.*

    3. *The club Sevilla FC is fined the amount of CHF 55,000. This sum must be paid within 30 days of being notified of this decision. …*

    4. *In accordance with article 10 a) and article 13 of the FIFA Disciplinary Code, the club Sevilla FC has been issued with a warning for any further infringements.*

    5. *The Committee has decided to set the costs and expenses at CHF 3,000, which, in accordance with the provisions of article 105 paragraph 1 of the FIFA Disciplinary Code, shall be borne by Sevilla FC. This amount shall be paid in accordance with the payment methods established in point 2 above."*

17. On 15 February 2016, Sevilla requested the legal grounds of the Disciplinary Decision.

18. On 7 December 2016, the FIFA Disciplinary Committee notified Sevilla FC of the legal grounds of the Disciplinary Decision.

D. Proceedings before the FIFA Appeal Committee

19. On 7 December 2016, Sevilla informed the FIFA Appeal Committee of its intention to lodge an appeal against the Disciplinary Decision.

20. On 16 December 2016, Sevilla submitted to the FIFA Appeal Committee the legal grounds of its appeal against the Disciplinary Decision, requesting that the fine imposed be lifted.

21. On 28 February 2017, the FIFA Appeal Committee adopted its Decision 150522 APC ESP ZH wherein it dismissed the appeal lodged by the club against the Disciplinary Decision, upholding the decision of the FIFA Disciplinary Committee.

22. On 3 March 2017, the Club requested from the FIFA Appeal Committee the legal grounds of its decision of 28 February 2017.

23. On 21 November 2017, the FIFA Appeal Committee notified Sevilla of the legal grounds of its decision.

III. PROCEEDINGS BEFORE CAS

24. On 12 December 2017, Sevilla lodged an appeal before CAS against Decision 150522 APC ESP ZH delivered by the FIFA Appeal Committee on 28 February 2017 (hereinafter "the Appealed Decision"), requesting the following:

"***1.*** *that the appeal submitted by Sevilla FC against FIFA be fully accepted;*

2. *that the Decision delivered by the FIFA Appeal Committee on 28 February 2017 be revoked;*

3. *that the costs incurred for the present case to be determined by the CAS Court Office be fully borne by the Respondent;*

4. *that the Respondent be required to pay the amount of CHF 10,000 (ten thousand Swiss francs) to the Appellant for legal fees and any other costs incurred by the present proceedings."*

25. On 8 January 2018, Sevilla submitted its statement of appeal wherein, setting out the grounds of its appeal, it requested the following:

"***1.*** *that the appeal submitted by Sevilla FC against FIFA be fully accepted;*

2. *that the Decision delivered by FIFA on 28 February 2017 be annulled;*

3. *that the costs incurred for the present case to be determined by the CAS Court Office be fully borne by the Respondent;*

4. *that the Respondent be required to pay the amount of CHF 15,000 (fifteen thousand Swiss francs) to the Appellant for legal fees and any other costs, such as the testifying of witnesses, incurred by the present proceedings."*

26. On 9 February 2018, CAS informed the parties that the Panel responsible for deciding on the present case would consist of the following arbitrators:

- Mr Efraim Barak, lawyer in Tel Aviv (Israel), as the President of the Panel;
- Mr Daniel Lorenz, lawyer in Porto (Portugal), as the arbitrator appointed by the Appellant;

  Mr Ruggero Stincardini, lawyer in Perugia (Italy), as the arbitrator appointed by the Respondent;

27. On 11 February 2018, the Respondent submitted its response to the appeal, requesting that the Panel:

"1. reject all the requests submitted by the Appellant;

2. confirm in its entirety the decision of the FIFA Appeal Committee;

3. order that the Appellant bear all the costs incurred for the present case."

28. On 14 March 2018, CAS sent the parties a copy of the procedural order, which was duly signed by both parties.

29. On 2 May 2018, the Appellant submitted a letter attaching (i) a copy of the document signed with DOYEN on 23 July 2012 and (ii) proof of the insurance contract concerning the first team of the Club for the season concerned, which included the Player.

30. Also on 2 May 2018, CAS requested that the Appellant provide reasons which, in its view, would justify the admissibility of the new documents submitted.

31. On 3 May 2018, the Appellant submitted a letter to CAS, providing reasons which, in its view, justified the admissibility of the new documents submitted.

32. On 4 May 2018, the Respondent submitted a letter to CAS, objecting to the acceptance of both documents as, in its view, the exceptional circumstances required were not present.

33. On 7 May 2018, the arbitration hearing took place in Lausanne, at which the following individuals were present:

- Counsel for the Appellant: Mr Alfonso León Lleó, Sevilla lawyer
- Counsel for the Respondent: Mr Jaime Cambreleng Contreras, Legal Counsel and Head of the FIFA Disciplinary Department and Mr Paul-Antoine Dumond, Legal Counsel of the FIFA Disciplinary Committee

34. In accordance with the provisions of article R44.2 of the CAS Code of Sports-related Arbitration (hereinafter the "CAS Code"), during the hearing, the Panel heard the testimonies, via a video conference call, of the following witnesses, in order of appearance:

Mr Jesús Arroyo Sánchez, Head of the Football Department at Sevilla

Mr Nelio Freire Lucas, CEO of Doyen Sports Investments Limited

35. Furthermore, the following persons assisted the Panel at the hearing: Mr José Luís Andrade, CAS Counsel, substituting CAS Counsel Mr Antonio de Quesada, and Mr Yago Vázquez Moraga, ad hoc clerk.

36. At the beginning of the hearing, both parties confirmed that they did not have any objections to the composition of the Panel. Once the hearing started, as a preliminary matter, and after affording the parties the opportunity to submit any arguments they deemed relevant, the Panel declared admissible the new documents that were submitted by the Appellant in its letter of 2 May 2018, in accordance with the provisions of article R56 of the CAS Code, since the exceptional circumstances required were present in the case at hand, as these documents were relevant for

establishing and clarifying the facts of the case, did not alter the facts submitted by the parties in their letters and the claims they put forward and did not leave the Respondent defenceless, who also did not expressly object to the admissibility of the documents during the hearing, but left the decision to the Panel. Consequently, these documents were admitted and added to the case file.

37. During the hearing, both parties submitted the arguments that they deemed relevant and the witnesses put forward were questioned. Subsequently, both parties presented their conclusions on the case and the hearing was then concluded. At the end of the hearing, the parties confirmed that they did not have any objections regarding their right to be heard, nor to the way the Panel had conducted the proceedings.

38. In accordance with what was agreed between the parties, the language of the present proceedings is Spanish.

IV. SUMMARY OF THE PARTIES' SUBMISSIONS

39. The description below of the arguments and positions of the parties on issues regarding the present case is a brief summary. However, the Panel studied, considered and took into account in its entirety all the documents and evidence submitted by the parties, as well as all the arguments presented during the hearing, despite the fact that not all of them are explicitly referred to in this section..

IV.1 APPELLANT

40. The Appellant states that the provisions of the Contract do not fall within the prohibition provided for in article 18bis of the RSTP. In its view, the FIFA Disciplinary Committee and the Appeal Committee misinterpreted the Contract, therefore reaching the wrong conclusion that it would enable DOYEN to acquire the ability to have influence on the club.

41. Furthermore, the Appellant considers that article 18bis of the RSTP is in contravention of European Union (EU) legislation, notably, of the provisions of the treaties on the freedom of movement and competition law, which have to be taken into account pursuant to article 19 of the Swiss Federal Act on Private International Law. The Appellant argues that article 18bis of the RSTP:

- introduces a restriction on the movement of capital from, to or between member states of the EU, regarding the financing of clubs, and is therefore in breach of the law on the free movement of capital (article 63 of the Treaty on the Functioning of the European Union – "TFEU");

- limits, in particular, some European citizens' working opportunities, which is an infringement of the freedom of movement for workers (article 45 of the TFEU) and restricts their freedom to engage in work as provided for in article 15 of the EU Charter of Fundamental Rights;

- restricts the freedom to provide services (article 56 of the TFEU) and the freedom to conduct a business (article 16 of the EU Charter of Fundamental Rights) by

restricting sources of funding to clubs and impeding the freedom to provide cross-border financial services;

- represents an agreement whose purpose is to prevent, restrict or distort competition within the European market, which is prohibited under article 101 of the TFEU, and unjustified abuse of the dominant position that FIFA has within the framework of business activities arising from football in the transfer market, excluding all existing and potential competitors who are not members of FIFA from any investments related to football players.

42. Furthermore, according to the Appellant, article 18bis of the RSTP does not define what should be understood by "influence" in the independence, policies or the performance of a football club. Moreover, in accordance with the Appellant's position, bearing in mind that from the entry into force of this article on 1 January 2008, and until 17 September 2015, there is no evidence of FIFA having imposed any sanctions for breach of article 18bis of the RSTP, this ambiguity should not have negative consequences on clubs.

43. The Appellant claims that FIFA itself acknowledged that the purpose of enacting article 18bis of the RSTP was not to prohibit investment by third parties in football clubs, but rather to prevent a third party from being in a position which would enable it to acquire any type of influence on a club when negotiating an employment contract or a transfer agreement for a football player. In other words, the article does not prohibit the club from receiving financing from a third party in order to sign a player, which, in its opinion, is what happened.

44. Furthermore, the Appellant considers that, in accordance with the *contra proferentem* principle and CAS case law, the ambiguities that may arise in interpreting article 18bis of the RSTP should not have negative consequences on the Club, since it was not the Club who wrote this article, but FIFA. The fact that, in eight years, FIFA did not apply this provision nor clarified its scope of application or how "influence" should be understood, led the Appellant to believe that the Contract had complied with the provisions of the RSTP in their entirety and, notably, article 18bis.

45. It further claims that, in order to determine whether the Contract enabled DOYEN to acquire the ability to have an influence on the club, the Contract needs to be interpreted in its entirety, as a logical unit and not as a mere group of clauses. The Appellant claims that, by using such means of interpretation, it is clear that the intention of the parties was to sign a simple contract of sale of economic rights, establishing the financing conditions, without DOYEN having any influence on the Club.

46. From the outset, the Appellant maintains that, since the Contract was signed on 31 May 2013, it is clear that DOYEN could in no way have influenced negotiations with the Player, nor signing the Player, which took place the year before (26 July 2012). In particular, clause 10.5 of the Contract was never applicable, despite the fact that any changes to the transfer agreement of the Player were supposed to be

subject to DOYEN's consent, since by then, the transfer agreement had already been signed. Consequently, the Appellant claims that this clause was merely a standard clause in the contract that, nonetheless, was of no particular value.

47. The Appellant denies that Sevilla would have been obliged to transfer the Player if it had received an offer exceeding EUR 6,000,000. To substantiate this claim, it recalls that, at the end of the 2012/2013 season, the Club received an offer from Real Madrid for the Player for an amount between EUR 12,000,000 and 15,000,000, which Sevilla declined. In any event, in accordance with the provisions of the Contract, the Club always had the possibility to choose to purchase DOYEN's 50% of economic rights, which shows that DOYEN did not have influence on the club, which is prohibited under article 18bis of the RSTP, but rather that this was an economic opportunity to acquire all the Player's rights for a price which was much lower than the actual price.

48. The FIFA Disciplinary and Appeal Committees interpreted that, if, as of 1 July 2015, the Club had not transferred the Player to a third party, the Club would have been obliged to incur "*a considerable debt*" and would therefore "*have [had] to transfer the Player solely in order to avoid incurring such debt*". However, the Appellant argues that, in actual fact, in that case, two years and 11 months after receiving a loan of EUR 3,000,000, Sevilla would have owed DOYEN the sum of EUR 3,450,000, which is fifteen per cent (15%) more than the original amount borrowed. According to the Appellant, that is in full compliance with Swiss law, bearing in mind that CAS case law allows up to 17% annual default interest without breaching the Swiss public policy.

49. The Appellant also claims that the Respondent misinterpreted the Contract by considering that Sevilla had entirely or partially waived its right to the solidarity contribution due to it concerning the Player. Regarding clause 2 of the Contract, according to the Appellant, the Club could have transferred the Player even without depositing 50% of the transfer fee, given that, in any event, the transfer would have been authorised by *La Liga* and the RFEF, since they never prevented a transfer requested by a third party.

50. Similarly, the Appellant maintains that the "prohibition on transferral" agreed in clause 3 of the Contract did not in any way affect the Club's independence, and was merely a guarantee on the loan provided to the Club. The Appellant also argues that the fact that the Contract enabled DOYEN to promote the transfer of the Player, could not in any way be considered to be an influence which is prohibited under article 18bis of the RSTP, nor to have affected the transfer policy of the Club, given that DOYEN could not have, under any circumstances, negotiated the conditions of a transfer on behalf of Sevilla.

51. Furthermore, the Appellant argued that the commitment not to reduce the buy-out clause for the Player was irrelevant. It claimed that all the club needed to do was accept an offer for the transfer of the Player for an amount lower than the buy-out clause, and therefore it did not make sense to reduce the clause. Regarding the Club's obligation to disclose to DOYEN any information concerning the Player's

health condition, that obligation only refers to "significant" changes in health, which in no way represented an influence. The Appellant is equally critical of the Respondent's interpretation of the obligation to purchase an insurance policy to cover the Player's death or permanent incapacity to work, given that this is common practice in financial transactions.

52. Finally, regarding the alleged violation of article 4 paragraph 2 of Annexe 3 to the RSTP, the Appellant reiterates that the omission of information by the Club in TMS (which was nonetheless provided by the uploading of the Player's employment contract to the platform), was due to a mere clerical oversight which cannot be sanctioned, given that the Club did act in good faith.

IV.2 THE RESPONDENT

53. The Respondent considers article 18bis of the RSTP to be fully compatible with EU law. In its opinion, the Appellant's assertion that article 18bis of the RSTP runs counter to several freedoms guaranteed under EU law is unfounded. Furthermore, the Respondent notes that, in accordance with article 8 of the Swiss Civil Code and article 2 of European Council Regulation (EC) No 1/2003, on the implementation of the rules on competition, the burden of proof to prove the aforementioned assertion rested with the Appellant and it had failed to do so. In any event, the Respondent recalled that CAS had already held that article 18bis of the RSTP was compatible with EU law (CAS 2016/A/4490).

54. The Respondent contends that article 18bis of the RSTP:

- does not prohibit third-party investment in football clubs, but rather simply limits the ability of individuals not belonging to a club (be they investors or otherwise) to acquire influence on the club in employment and transfer-related matters;

- does not by any means deny football clubs access to any type of funding schemes or restrict European Union citizens' ability to work in an EU member state;

- does not have the purpose or effect of restricting competition within the internal market, as defined by article 101 TFEU, nor can it be considered an abuse of a dominant position, as defined by article 102 TFEU; this notwithstanding, the aims it pursues are legitimate.

55. According to the Respondent, article 18bis of the RSTP is grounded in the specificity of sport and intends to ensure the unpredictability of results, avoid conflicts of interest and maintain competitive balance between clubs. Article 18bis of the RSTP prohibits any person or entity from acquiring the ability to influence in employment and transfer-related matters a club's independence, its policies or the performance of its teams. The Respondent considers that this serves to draw a distinction between legitimate investment in football by third parties and investment made by third parties with the aim of obtaining influence over clubs. To this effect, article 18bis prohibits any third party from having the ability to exert influence in such matters, whether as a contracting party or not.

56. The Respondent believes that the FIFA Disciplinary Committee and Appeal Committee both interpreted the Contract correctly in concluding that it infringed the prohibition laid

down in article 18bis of the RSTP. It contends that both an analysis of the individual clauses and an overall analysis bear out that the Contract put DOYEN in a position to influence Sevilla in employment and transfer-related matters. In that respect, the Respondent pointed out that:

- Regardless of whether DOYEN actually had an influence on the Player's transfer from Lens to Sevilla, the Contract included clauses that enabled DOYEN to affect the Club's independence. Furthermore, the background to the Contract demonstrates that DOYEN had been involved in the Player's transfer from the outset, which is why such provisions were included in the Contract.

- In any case, merely affording a third party the possibility of exerting influence is sufficient to constitute a violation of article 18bis of the RSTP.

- The Club was obligated to keep DOYEN informed of the Player's state of health and physical condition.

- Any future transfer of the Player was contingent upon 50% of the transfer fee being deposited for DOYEN, unless said transfer was jointly authorised by Sevilla and DOYEN. Therefore, Sevilla was not entitled to decide to transfer the Player of its own accord, meaning that it was in a position of dependence vis-à-vis DOYEN.

- The *"prohibition on transferral"* and the need for *"the prior written consent of DOYEN"* set out in clause 3 of the Contract illustrate that DOYEN had authority over the Club.

- As for the alleged offer from Real Madrid (which was never disclosed in the earlier proceedings), the Respondent considers that it had not been proven and is therefore irrelevant. In any event, in the Respondent's view, the mere fact that DOYEN could have a say on whether or not the Club accepted a transfer offer irrefutably demonstrates the influence over Sevilla that the Contract granted the investment fund.

- The prohibition on transferral agreed on in clause 4.1. b) of the Contract places a clear limitation on Sevilla's independence.

- As for the *"Minimum Return"* agreed on, the mere fact of having to pay an investment fund in order to keep a player at a football club contravenes the club's independence.

- Contrary to the Appellant's assertions, in clause 4.3 of the Contract, the Club waived part (50%) of the solidarity contributions that it would have been due, which no truly independent club would do.

- Given that it was obligated to transfer the Player [or pay a significant penalty] if it received an offer [equal to or] above CHF 6,000,000, it is obvious that the Club would feel obligated to transfer the Player solely so as not to have to pay DOYEN a substantial amount. In other words, in the Respondent's view, although the Club was entitled to approve or refuse the Player's transfer, the financial consequences of the transfer not taking place would nevertheless represent a limitation of the Club's independence.

- The undertaking not to reduce the Player's buy-out clause plainly affects the Club's contractual freedom.

57. On a separate note, with regard to the failure to disclose information about the Player's transfer via FIFA TMS, the Respondent deems the Appellant's claims (that this had been a supposed clerical oversight) to have been correctly dismissed by the FIFA Appeal Committee, arguing that the Club's purported good faith is irrelevant.

58. Lastly, although this has not been challenged by the Appellant, the sanctions imposed on the Appellant are both entirely proportionate to the offence committed and consistent with FIFA Disciplinary Committee case law concerning sanctions imposed for violating article 18bis, and so cannot be reassessed in these proceedings.

V. JURISDICTION

59. Article R47 of the CAS Code provides as follows:

60. "*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*"

61. In line with the foregoing, arts 66.1, 64.3 and 67.1 of the FIFA Statutes (April 2015 edition) and arts 74, 126 and 128 of the FIFA Disciplinary Code (2011 edition) recognise the jurisdiction of CAS to rule on appeals made against final decisions passed by FIFA's legal bodies, as is the case at hand. Moreover, the parties have expressly confirmed and accepted CAS jurisdiction over these proceedings by signing the procedural order.

62. It follows that CAS has jurisdiction to decide this dispute.

VI. ADMISSIBILITY

63. According to article R47 of the CAS Code and article 67.1 of the FIFA Statutes, the Appellant had 21 days to lodge its appeal with CAS. Sevilla received the grounds of the Appealed Decision on 21 November 2017 and submitted its appeal on 12 December 2017, i.e. within the legally established 21-day deadline. Moreover, the appeal lodged by the Appellant meets the other requirements set out in article R48 of the CAS Code.

64. In light of the foregoing, the appeal lodged by the Appellant is admissible.

VII. APPLICABLE LAW

65. The Appellant considers that the applicable law for the purposes of this dispute is EU law and, in the alternative, the FIFA regulations (specifically, the RSTP). Moreover, it contends that the Contract should be interpreted in line with Spanish law, since this was what was agreed upon by the contracting parties. By contrast, the Respondent contends that this appeal should be decided in accordance with the FIFA regulations and, complementarily, Swiss law. The Respondent is not opposed to EU law being considered by the Panel, but

asserts that, in any case, article 18bis of the RSTP does not contravene any provisions of EU law.

66. According to article R58 of the CAS Code:

"*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

67. These proceedings relate to an appeal lodged against a decision passed by a body of an international federation domiciled in Switzerland. It logically follows that the statutes, regulations and other provisions and norms laid out by FIFA should be considered the *"applicable law"* for the case at hand. The same conclusion is reached in application of article 66.2 of the FIFA Statutes, according to which "*CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law*". Consequently, this dispute must be resolved on the basis of the FIFA regulations and, supplementarily, where required, in consideration and application of Swiss law.

68. The assertion made by the Appellant and opposed by the Respondent that Spanish law is applicable should be rejected by the Panel, since this national legislation is completely extraneous to these proceedings and the law agreed upon by the contracting parties is irrelevant for the interpretation of the Contract. In line with the principle of privity of contract ("*principe de la relativité des obligations contractuelles*"), this agreement cannot in any way affect a third party that is not involved in the legal relationship in question. For this reason, contrary to the Appellant's claims, Spanish law is not applicable to the case at hand.

69. In addition to all of the foregoing, with respect to the possible consideration of EU law, the Panel observes that the Appellant regards the *acquis communautaire* as applicable to the case at hand, deeming the European regulations invoked to be "*mandatory provisions of foreign law*" ("*dispositions impératives du droit étranger*"), as provided for in article 19 of the Swiss Federal Act on Private International Law ("*Loi fédérale sur le droit international privé*", hereinafter the "LDIP"). For its part, although not opposed to this consideration, the Respondent notes that article 18bis of the RSTP does not violate any provisions of EU law.

70. Evidently, if the law applicable to the case at hand – the *lex causae* – were the legislation of an EU member state, EU law would necessarily be applicable given that it is bound up with this national legislation. Indeed, its application would take precedence in line with the principle of the primacy of EU law. However, given that Switzerland does not form part of the EU, it follows that the law applicable to the case at hand (*ad casum*) is not that of an EU member state and it is not necessary for the Panel to give any consideration whatsoever to EU law.

71. This notwithstanding, the Appellant contends that EU law is indeed applicable under the provisions of article 19 of the LDIP, according to which:

"*Art. 19. Prise en considération de dispositions impératives du droit étranger*

1 Lorsque des intérêts légitimes et manifestement prépondérants au regard de la conception suisse du droit l'exigent, une disposition impérative d'un droit autre que celui désigné par la présente loi peut être prise en considération, si la situation visée présente un lien étroit avec ce droit.

2 Pour juger si une telle disposition doit être prise en considération, on tiendra compte du but qu'elle vise et des conséquences qu'aurait son application pour arriver à une décision adéquate au regard de la conception suisse du droit."

This can be rendered in English as follows:

"*Art. 19. Consideration of mandatory provisions of foreign law*

1 When it is so required by legitimate interests that take clear precedence over Swiss legal concepts, a mandatory provision of a legal system other than the one designated in this act may be taken into consideration, where there is a clear connection between the matter at hand and that other legal system.

2 To determine whether such a provision should be taken into consideration, its purpose and the consequences that its application would have should be taken into account in order to reach a decision that is appropriate in light of Swiss legal concepts."

72. Regarding the above article, the Panel firstly observed that it is not included in Chapter 12 of the LDIP, which covers international arbitration in Switzerland. However, even if article 19 of the LDIP is not automatically applicable within the scope of international arbitration, the Panel noted that, in accordance with the case law of the Swiss Federal Court (hereinafter the "SFC"), it can be applied analogously to arbitration under certain circumstances and conditions. Thus, in certain instances, an arbitral tribunal sitting in Switzerland may apply and consider foreign law (in the matter at hand, EU law), even on its own initiative, provided that the necessary conditions are met. On this note, the Panel remarked on the fact that CAS has previously exercised this power afforded to arbitral tribunals in line with Swiss doctrine and case law, applying foreign law to an arbitration procedure as follows (TAS 2016/A/4490, paragraph 75):

"Un tribunal arbitral siégeant en Suisse, comme c'est le cas en l'espèce d'après l'article R28 du Code, doit prendre en compte les dispositions impératives du droit étranger lorsque trois conditions sont cumulativement remplies :

i. Ces dispositions relèvent d'une catégorie de normes qui doivent recevoir application quelque soit le droit applicable au fond du litige ;

ii. Il existe une relation étroite entre l'objet du litige et le territoire [où] les dispositions impératives du droit étranger sont en vigueur :

iii. Au vu de la théorie et la pratique du droit Suisse, les dispositions impératives doivent viser à la protection des intérêts légitimes et des valeurs fondamentales et leur application [doit] mener à une décision appropriée."

This can be rendered in English as follows:

"An arbitral tribunal sitting in Switzerland, as is the present case according to article R28 of the Code, must take the mandatory provisions of foreign law into account when three cumulative conditions are met:

i. These provisions belong to a category of norms that must be applied irrespective of the law applicable to the substance of the dispute.

ii. There is a close connection between the matter in dispute and the territory where these mandatory provisions of foreign law are in force.

iii. In the light of the theory and practice of Swiss law, these mandatory provisions must aim to protect legitimate interests and fundamental values, and their application must lead to an appropriate decision."

73. Indeed, in line with Swiss doctrine (DE VITO BIERI S AND NÜNLIST P, *The application of EU law by arbitral tribunals seated in Switzerland*, in ASA Bulletin volume 35 (2017), issue 1, p. 58), "*an arbitral tribunal with [its] seat in Switzerland may apply mandatory foreign law* ex officio*, but is under no obligation to do so and, thus, has wide discretion in deciding when mandatory EU law shall be applied to a specific case, for which the* lex causae *of a non-EU member state was chosen by the parties. However, if doing so, the arbitral tribunal must make sure that the parties' right to be heard is duly granted by allowing the parties to give their view on the application of the mandatory EU law rule, if they could not expect the arbitral tribunal to rely on that specific rule of law*."

74. Nevertheless, leaving aside the legal framework set out in article 19 of the LDIP, in this case, both parties agree that EU law is applicable to the proceedings. While the Panel deems that it is not exactly a situation in which "*mandatory provisions of foreign law*" have to be applied as provided for in article 19 of the LDIP, there is a procedural need for the consideration of a set of foreign laws that, although it may not be regarded as "*applicable law"* for the purposes of the arbitration (*lex causae*), must necessarily be taken into account because both parties have invoked, interpreted and considered it during these proceedings. In the present case, therefore, the Panel must consider the provisions of EU law, as invoked by the parties, not because these qualify as "*mandatory provisions of foreign law*", but rather simply because they have been invoked by both parties during the proceedings and both parties have used them as a yardstick to establish the scope of validity of article 18bis of the RSTP. This is heightened by the fact that, in the Panel's view, arbitral tribunals should do everything possible to ensure that their awards are enforceable. Thus, given that this award will have to be enforced in Spain, an EU member state, scrutinising article 18bis of the RSTP through the lens of EU law cannot by any means hinder the award's enforceability – on the contrary, it can only serve to avoid potential enforcement issues.

75. Furthermore, in accordance with SFC case law, EU law should always be considered by the arbitral tribunal when it has been invoked by one or more of the parties to the arbitration and, in addition, the matter in question falls within said law's scope of application. On this note, "*In accordance with the case law, the arbitrator tasked with deciding on the validity of a contractual agreement affecting the European Union market must examine the matter*

in the light of article 85 (presently article 81) of the EC Treaty, even if the parties have contractually agreed to the application of Swiss law to their contractual relationship; this examination will be mandatory in any case if any of the parties declares the contract null before the arbitrator" (in the original French: "*Selon la jurisprudence, l'arbitre chargé de se prononcer sur la validité d'une entente contractuelle affectant le marché de l'Union européenne examinera cette question à la lumière de l'art. 85 (actuellement 81) CE, même si les parties ont conventionnellement admis l'application du droit suisse à leurs relations contractuelles; cet examen s'imposera en tout cas si la nullité du contrat est invoquée devant lui par l'une des parties.*"). *Judgement 4P 278/2005*.

76. To that end, the Panel must determine whether the matter in question falls within the general scope of application of EU law, in line with the jurisdictional principles set forth in said legislation, because if it does not, there will be no aspect of EU law for the Panel to consider. To this end, it is worth remembering that in the settled case law of the Court of Justice of the European Union (CJEU), sport is generally only considered within the scope of application of EU law inasmuch as it constitutes an economic activity. In that sense, while rules and regulations of a strictly sporting nature are excluded from the scope of application of EU law, rules that pertain to the sporting field but also affect sport's economic aspects fall within the scope of application of this law and are therefore governed by EU law (cf. Judgment of the Court of 15 December 1995, Case C-415/93, Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman). Consequently, said rules "*must satisfy the requirements of those provisions, which, in particular, seek to ensure freedom of movement for workers, freedom of establishment, freedom to provide services, or competition*" (Judgment of the Court (Third Chamber) of 18 July 2006, Case C519/04 P, David Meca-Medina and Igor Majcen v Commission of the European Communities). The foregoing is without prejudice to the EU's particular sphere of competence with respect to the specificity and European dimension of sport, as laid out in article 165 of the TFEU.

77. As the Panel sees it, article 18bis of the RSTP is a rule of a sporting nature that regulates and substantially affects the economic activity of European football clubs and their funding, putting it within the scope of application of EU law. Therefore, although it qualifies as foreign law, given that the Appellant is a European football club and EU law was invoked by both parties in their submissions, the *acquis* must be taken into account by the Panel for the case at hand and the Panel must review the legality of article 18bis of the RSTP in the terms put forward by the parties.

78. Consequently, on the basis of the foregoing, the Panel determines that the laws applicable to these arbitration proceedings are the FIFA regulations and, additionally, Swiss law, and that EU law is also applicable insofar as it has been invoked by the parties, for the limited purposes of analysing the legal validity of article 18bis of the RSTP in relation thereto.

VII. THE MERITS OF THE CASE

VIII.1. Preliminary issue: the validity of article 18 with respect to European Union law

79. The Appellant claims that article 18bis of the RSTP violates EU law on five counts, a fact that, in its opinion, makes this provision inapplicable. However, the Panel concurs with the

Respondent that the Appellant's claims are lacking in consistency and merit, insofar as, despite bearing the burden of proof (per article 8 of the Swiss Civil Code), the Appellant has only provided a blanket reproach of article 18bis of the RSTP. In this respect, the Appellant has failed to substantiate or detail the rationale as to how exactly this article violates the EU regulations that it invokes, or to remotely justify its contention that there is a limitation of rights and freedoms.

80. Indeed, having analysed all of the ways in which the Appellant alleges that article 18bis of the RSTP violates EU law, the Panel has reached the opposite conclusion. It thus deems that this article is fully consistent with EU law because the prohibition that it lays down impinges on the rights and freedoms in question to a proportionate, reasonable degree and is ultimately fully justified since it pursues legitimate aims, which include preserving the independence and autonomy of football clubs in relation to their transfer and employment policies. In this respect, the provision seeks to prevent the interests of third parties from influencing the operations or sporting policy of football clubs, and ultimately to avoid conflicts of interest that could affect the integrity of the game. This is without prejudice to the Appellant's right to its own opinion regarding the appropriateness of article 18bis of the RSTP, on which it is not within the Panel's remit to comment.

81. In other words, in the Panel's view, regardless of the appropriateness of the provision in issue and the possibility that FIFA could have regulated this matter differently, the prohibition laid down in article 18bis of the RSTP does not constitute a disproportionate or unjustified restriction of the rights and freedoms invoked by the Appellant. This is all the more the case considering the specificity of sport, as laid out in article 165 of the TFEU, which is undoubtedly a key factor in establishing the scope of validity of the rule in question. Thus, contrary to the Appellant's contentions, the Panel considers that article 18bis of the RSTP:

i. does not represent a restriction of the free movement of capital in EU territory in relation to the financing of football clubs, since, as expressly acknowledged by the Appellant, this rule does not prohibit third-party investment in football clubs or their financing by said third parties, but rather simply prohibits a specific type of investment (that which would potentially allow the third party in question to effectively control or influence in employment and transfer-related matters the club's independence, its policies or the performance of its teams);

ii. in no way restricts the free movement of workers within the European single market (or if it does, it does not do so disproportionately or unjustifiably), as the freedom to transfer and hire players cannot be considered to be restricted, and therefore it also does not limit players' rights to work or to provide their services to European football clubs;

iii. also does not violate the freedom to provide services (in this case, financial or investment services for football clubs) within the European market, because such services can be freely provided so long as they do not lead to the investor or funder gaining unlawful influence on the football club in question;

iv. does not restrict competition within the single market – which would be incompatible with article 101 of the TFEU – given that the alleged restriction does not affect competition among football clubs (since all clubs can access funding mechanisms that do not violate the prohibition laid down in article 18bis of the RSTP), and, in any case, even if such a restriction did exist, it would be justified by the fact that it pursues a legitimate aim (cf. the Meca-Medina ruling, Case C519/04 P);

v. does not, for the same reason, constitute an abuse of a dominant position, which would contravene article 102 of the TFEU, since the rule does not affect trade between member states, apply dissimilar conditions to equivalent transactions or, in sum, give rise to any of the practices prohibited under European competition law.

82. In short, the Panel considers that article 18bis does not violate, limit, restrict or unlawfully affect any of the fundamental freedoms of the EU invoked by the Appellant, and nor is it any way responsible for infringing any of the prohibitions set out by European competition law, and that in any case, this rule seeks to achieve a legitimate aim that is in line with the specificity of sport.

83. In any event, the Panel notes that CAS has already declared article 18bis of the RSTP to be compatible with EU law, after assessing the issue in depth, in the arbitral award CAS 2016/A/4490, which was subsequently reviewed and upheld by the SFC. Therefore, the Panel considers that this matter has already been resolved within the scope of CAS case law, rendering the debate obsolete. For this reason, for the sake of brevity and procedural economy, the Panel must incorporate by reference all of the findings made in that award concerning the legality and validity of article 18bis of the RSTP in regard to EU law.

84. Furthermore, although the Appellant did not question the validity of article 18bis of the RSTP under Swiss law, it is worth noting that the SFC ruled on the compatibility of article 18bis of the RSTP with Swiss law in its decision on the appeal brought against the aforementioned arbitral award CAS 2016/A/4490, declaring that the limitations or restrictions imposed by this provision do not infringe upon the fundamental freedoms invoked by the Appellant in these proceedings. Specifically, in its decision of 20 February 2018 (Judgement 4A 260/2017, 144 III 120), the SFC stated that*:*

"la violation de l'art. 27 al. 2 CC n'est pas automatiquement contraire à l'ordre public matériel ainsi défini; encore faut-il que l'on ait affaire à un cas grave et net de violation d'un droit fondamental. Or, une restriction contractuelle de la liberté économique n'est considérée comme excessive au regard de l'art. 27 al. 2 CC que si elle livre celui qui s'est obligé à l'arbitraire de son cocontractant, supprime sa liberté économique ou la limite dans une mesure telle que les bases de son existence économique sont mises en danger (arrêt 4A_312/2017 du 27 novembre 2017 consid. 3.1 et les précédents cités).

Les conditions posées par cette jurisprudence ne sont pas réalisées en l'espèce. En interdisant les TPO, la FIFA limite certes la liberté économique des clubs, mais sans la supprimer. Ceux-ci restent, en effet, libres de rechercher des investissements, pour peu qu'ils ne les obtiennent pas en cédant les droits économiques des joueurs à des tiers

investisseurs. Le recourant lui-même concède que la liberté supprimée n'a trait qu'à "certains types d'investissements". Au reste, si la violation de l'art. 27 al. 2 CC était à ce point attentatoire à la liberté économique des clubs, il faudrait alors se demander comment des clubs professionnels établis dans des pays ayant d'ores et déjà proscrit l'institution des TPO, comme la France et l'Angleterre, trouvent encore les fonds nécessaires à leur fonctionnement, ce qu'ils parviennent pourtant à faire notoirement."

This can be rendered in English as follows:

"*the violation of art. 27(2) CC is not automatically contrary to substantive public policy; there still must be a grave and clear-cut violation of a fundamental right. A contractual restriction of economic liberty is not considered to be excessive or undue under art. 27(2) CC unless it places the obliged party at the mercy of its contractual counterparty's whims, suppresses its economic freedom, or limits it to such an extent that the basis of its very existence is endangered (cf. Judgement 4A_312/2017 of 27 November 2017 paragraph 3.1 and the precedents cited therein).*

The conditions established by this case law are not fulfilled in the present case. By prohibiting TPOs, FIFA is restricting the economic freedom of clubs, but is not suppressing it. Clubs remain free to pursue investment, as long as they do not secure it by assigning the economic rights of players to third-party investors. The Appellant itself acknowledges that the suppressed freedom only concerns 'certain types of investment'. Moreover, if this violation of art. 27(2) CC was so detrimental to the economic freedom of clubs, one must ask how professional clubs established in countries that have already prohibited TPOs – such as France and England – still find the funds necessary to operate, which they nevertheless manage to do to great effect."

85. As a result, the Appellant's claim that article 18bis of the RSTP should be considered contrary to EU law is dismissed, with the Panel deeming this provision to be applicable and entirely valid with respect to, consistent with and compatible with the *acquis*.

VIII.2. Regarding the violation of article 18bis of the RSTP

a. <u>The conduct prohibited by article 18bis of the RSTP</u>

86. As a preliminary point, the Appellant alleges that article 18bis of the RSTP is not clear and that this lack of clarity should work in the Club's favour. The Appellant thus believes that a literal reading of article 18bis of the RSTP does not make its scope of application clear because, in the Appellant's opinion, the article does not specifically establish the meaning of *"influence"* in employment and transfer-related matters on a club's independence, its policies or the performance of its teams. In this regard, the Appellant claims that, since FIFA's disciplinary bodies had not yet imposed any sanctions in application of this article at the time of the events in question, nor had any implementing measures been issued to flesh out the rule's scope of application, the Club was entitled – in accordance with the general principle of good faith – to believe that the Contract respected all the provisions of the RSTP and in particular article 18bis.

87. The Panel cannot accept this reasoning. Following the approval of article 18bis (announced in FIFA circular no. 1130) and its entry into force on 1 January 2008, observance of it

became mandatory for all football clubs that were subject to the system laid out in FIFA's RSTP, as is the Appellant's case. Therefore, for the obvious sake of legal certainty, the mandatory application of article 18bis of the RSTP and its enforceability could not be contingent upon the understanding or knowledge of this provision by its target audience (such as the Appellant, in this case); from the point that the article had come into force on 1 January 2008, it had become wholly binding. The fact that the FIFA disciplinary bodies apparently went many years without investigating or sanctioning conduct that might have violated the prohibition laid down in article 18bis of the RSTP, and the consequences that this could have when determining and/or imposing potential sanctions, is another matter entirely; this circumstance should certainly be taken into account when determining any potential sanction. Nevertheless, it does not in any way detract from the mandatory application and enforceability of article 18bis of the RSTP, which was in force at the time of the events in question.

88. As for the intended scope of application of article 18bis of the RSTP, said article establishes the following:

> "***18bis Third-party influence on clubs***
> ***1.***
> *No club shall enter into a contract which enables any other party to that contract or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams*
> ***2.***
> *The FIFA Disciplinary Committee may impose disciplinary measures on clubs that do not observe the obligations set out in this article."*

89. There is certainly substantial room for improvement in the phrasing of paragraph 1 of the article in Spanish. This is probably owing to an overly literal translation of the official English version (*"No club shall enter into a contract which enables the counter club/counter clubs, and vice versa, or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams*"), which is authoritative in the case of any discrepancies of interpretation, as per article 28 of the RSTP.

90. According to our reading of the precept, the offence described and prohibited in article 18bis of the RSTP involves contractually granting a third party (whether or not the latter is a party to the contract in question, through which this power is granted) the capacity to *"have effects on"* or *"predominate over"*[2] (i.e. the *"ability to influence"*) the independence, policies or performance of a club through employment and transfer-related matters. Therefore, in the Panel's opinion, a contract falls foul of this prohibition if it grants a third party the real ability to have an effect on, determine or impact the behaviour or conduct of a club in relation to such matters (employment and/or transfers), in such a way as to restrict the club's independence or autonomy, thereby conditioning its sporting policies or its ability to manage such matters and/or the performance of its teams.

[2] English translation of the first two definitions of the verb "*influir*" (to influence) in the dictionary of the Royal Academy of the Spanish Language (RAE).

91. Therefore, with all due caution, the Panel agrees with the Respondent that a club is guilty of the prohibited conduct not only if a third party has materially influenced its independence or policies in these areas (i.e. when the third party has had an effect), but also when the contract in question effectively enables or entitles said third party to influence the club in such matters and/or capacities, regardless of whether or not this influence actually materialises.

92. Notwithstanding the above, given the limiting or restrictive effects that article 18bis of the RSTP has on certain fundamental faculties and rights of clubs (inter alia, their freedom to conduct a business and freedom of contract), this prohibition must be interpreted restrictively. The prohibition must only be considered to have been flouted in such situations in which a third party has been granted a real ability to exert effective influence (to take up the term used in the decision of the FIFA Disciplinary Committee, an *"effective ability"*[3] to influence the club), rather than a hypothetical or theoretical one, as would be the case for conventional contractual provisions lacking in specific and effective binding content. Consequently, the Panel considers that this precept must be applied in a reasonable manner, on a case-by-case basis and never deductively, with the benefit of any doubt being given to clubs *(in dubio pro reo).*

b. *Violation of article 18bis of the RSTP*

93. At first and second instance, FIFA's bodies found that the Contract granted DOYEN the ability to exercise significant influence over the Club, to the extent that in certain situations, the Club would not be free to make decisions on these particular matters independently. As a result, the Appealed Decision concluded that, *"after thoroughly analysing the content of the clauses…, it is indisputable that the Contract rendered DOYEN capable of influencing Sevilla FC in employment-related matters and on transfers in relation to the Player".* Thus, the FIFA Appeal Committee judged that the Contract gave rise to the conduct prohibited by article 18bis of the RSTP.

94. Examining the Contract in question, it is notable that the legal relationship established between the Appellant and DOYEN was a complex legal transaction that was carried out in two contractual phases or periods. In the first, by virtue of the *"share agreement" (*as it was designated by the parties) dated 23 July 2012:

i. The parties agreed that the Appellant, through DOYEN'S legal representative (i.e. the witness, Mr Lucas), would submit an offer for the Player to FC Lens, as per the terms agreed on (i.e. for the amount of EUR 3,000,000).

ii. The parties agreed on the financial and employment terms that the Appellant would offer the Player, as well as the amount of commission to be paid to his agent.

iii. The full transfer fee (EUR 3,000,000) would be paid by DOYEN, but both parties would acquire 50% of the Player's economic rights.

[3] See paragraph 72 of the Disciplinary Committee decision.

iv. For an initial period of three seasons:

- The Player would only be able to be transferred for a price below EUR 6,000,000 if both parties (the Club and DOYEN) agreed to this sale.

- The Club would have no obligation to pay DOYEN any amount for the latter's 50% of the Player's economic rights, unless the Player were transferred or the Club exercised the purchase option on these rights that had been agreed on.

v. At any time (i.e. before or after the aforementioned three-season period), the parties would be obliged to transfer the player if they received a firm offer for or exceeding the amount of EUR 6,000,000.

vi. If this period of three seasons were to elapse without the Player having been transferred or the Club having purchased DOYEN's 50% of the Player's economic rights, the Appellant would be obliged to acquire said 50% for the amount of EUR 1,500,000, plus 30% of that amount (i.e. EUR 450,000) in interest.

vii. A formula was established for the distribution of the profit obtained in the event of the Player being transferred.

viii. The Appellant was granted the right to decline any offer for the Player, provided that it purchased DOYEN's 50% of the Player's economic rights at the price corresponding to the offer received, as well as paying DOYEN an additional EUR 1,500,000 for the other 50% of the rights and 10% annual interest.

95. Subsequently, that same day, pursuant to said *"share agreement"*, the Appellant acquired 100% of the Player's economic and federative rights from FC Lens at a price of EUR 3,000,000, which was paid by DOYEN.

96. Ten months later, the parties updated their *"share agreement"* by signing the Contract, entitled *"Contract of Sale or Transfer of Economic Rights and Financing Terms"*, under which, in summary, they agreed the following:

- The sale of 50% of the Player's economic rights[4] by the Club to DOYEN for half the transfer fee previously paid by DOYEN (i.e. EUR 1,500,000).

- The *"financing terms"* for the 50% of the rights financed by DOYEN (i.e. the amount of EUR 1,500,000), which included a "Minimum Return" that the Club was obligated to pay in any case, the final figure for which depended on how long the Club retained ownership of this 50% of the Player's economic rights. Specifically, if the Club were to retain said ownership for the initial three-season

[4] This contradicted the provisions of the original "*share agreement*", which stated that DOYEN would acquire 50% of the Player's rights for itself from the outset. For this very reason, the Contract stipulated that the acquisition of this 50% would be backdated to 23 July 2012.

period agreed (i.e. until 30 June 2015), the Minimum Return would be EUR 1,950,000.

- A series of *"commitments undertaken by Sevilla towards DOYEN"*, which were binding throughout the duration of the employment relationship between the Player and the Club.

97. In relation to the potential influence that the Contract may have afforded DOYEN, the Panel notes that both the Disciplinary Committee and the Appeal Committee carried out a thorough, comprehensive analysis of the agreement, concluding that it gave *"DOYEN an effective ability to influence the club"* (paragraph 72 of the Disciplinary Decision) and that it therefore violated article 18bis of the RSTP. As is elaborated on below, after reviewing the grounds of both decisions, the Panel has reached the same conclusion and considers that *"the Contract signed by the Club and Doyen granted the latter the ability to significantly influence Sevilla FC, which was not free to make decisions independently in a variety of scenarios"*, since *"DOYEN had the power to influence Sevilla FC in employment and transfer-related matters in connection with the player"* (paragraph 40 of the Appealed Decision).

98. In the Panel's opinion, some of the clauses deemed to grant DOYEN the ability to influence the Club in the Appealed Decision did not materially afford this power and were therefore entirely valid[5] in the Panel's judgement. Nevertheless, an overall, systematic interpretation of the Contract in the light of Swiss law (article 18 of the Swiss Code of Obligations), as well as the wording of some of the clauses, lead to the necessary conclusion that the Contract did indeed grant DOYEN a genuine and effective ability to influence (i.e. to affect, have effects on or predominate over), in employment and transfer-related matters, the Club's independence, its policies or the performance of its teams , within the meaning of article 18bis of the RSTP.

99. In the Panel's opinion, DOYEN's influence on the Club's independence in employment and transfer-related matters existed and was manifest from the moment that the "*share agreement*" was signed on 23 July 2012, in which the parties agreed on terms on a host of highly significant employment and transfer-related matters *ab initio*, before the Club had signed the Player, such as:

- the amount that the Club was going to offer FC Lens for the Player and the fact that it would do so through DOYEN;

- the economic and employment conditions that the Club was going to offer the Player, including his salary and the duration of his contract;

- the commission that the Club had to pay the Player's agent;

[5] For example, the obligation to purchase life and incapacity to work insurance for the Player (clause 8.4), the obligation to disclose to DOYEN any information regarding any significant changes in the health and physical condition of the Player (clause 1), or the authorisation granted to DOYEN (clause 7) to promote the sale of the Player through intermediaries, which was purely prospective in nature (DOYEN could not accept any offers on the Club's behalf).

- a series of limitations in relation to the Appellant's ability to transfer the Player, such as: (i) having to have DOYEN's consent to transfer the Player for a fee lower than EUR 6,000,000 during the first three seasons, and (ii) the Club being obligated to transfer the Player if it at any time received a firm offer for or exceeding the amount of EUR 6,000,000 for the entirety of the player's rights.

  It is true that the agreement included the possibility of the Club rejecting an offer to purchase the Player, so long as it acquired DOYEN's 50% of the Player's economic rights at the same price offered by the third club for that 50% and returned the EUR 1,500,000 that DOYEN had provided to finance the Club's acquisition of its 50% of the Player's economic rights, plus 10% annual interest. Nevertheless, for reasons that will be outlined below, this possibility was not enough to offset the major limitations imposed on the Appellant.

100. In light of all of the aforementioned provisions agreed by the parties, it is evident that the Appellant could not make any entirely independent decisions on such matters and that, on the contrary, DOYEN had genuine influence in these respects. Accordingly, in the Panel's opinion, the Appellant violated article 18bis of the RSTP from the very outset by signing the *"share agreement",* which granted DOYEN the real ability to influence the Club in employment and transfer-related matters in connection with the Player.

101. Moreover, the Panel has reached the conclusion that the Contract cemented this ability to exert effective influence, consolidating it and increasing the ways in which DOYEN had the power to interfere with the Club's independence. In the Panel's view, this real ability to exert effective influence is borne out by the following obligations that were imposed on the Club, which, it is worth remembering, were all "*essential and decisive for the present contract*" and "*without [them], this contract would not have been approved by DOYEN*", as is repeatedly stated in the Contract, alongside the parties' assertion that these clauses were "*at the root and core of the intention of both parties to enter into these legal relations*":

(a) <u>Concerning the ability granted to DOYEN to influence the Appellant's independence in transfer-related matters and specifically in relation to the possible transfer of the Player, this ability is evidenced by the following clauses and obligations:</u>

- The existence of a *"prohibition on transferral"* preventing the Club from transferring the 50% of the Player's economic rights that it owned *"unless Sevilla has the prior written consent of Doyen"*, as set out in clause 3 of the Contract, which also compelled the parties to register this clause in the relevant public or association registers to ensure its effectiveness against third parties.

- With respect to this limitation of the Club's ability to transfer the Player, the last paragraph of clause 2 of the Contract established that Sevilla was required to register DOYEN's ownership of 50% of the Player's economic rights in the Club's register for charges and costs for federative rights, meaning that Sevilla could only transfer the Player once it had deposited 50% of the agreed-upon transfer fee, *"unless both parties, by mutual consent, communicate their authorisation for the transfer in writing to the LFP/RFEF".*

- The fact that the Appellant was obligated to transfer the Player if, at any time during its employment relationship with him, it received a firm offer in writing from another football club for the permanent transfer of the Player for the amount of or exceeding EUR 6,000,000.

  During the hearing, the witnesses proposed by the Appellant stated that, contrary to the provisions of the Contract, Sevilla was entitled to transfer the Player without the authorisation and prior consent of DOYEN. Per the witnesses' testimony, this was evidenced by the fact that the Club had apparently received an offer of between EUR 13,000,000 and EUR 15,000,000 for the Player from Real Madrid, which the Appellant had unilaterally declined.

  In relation to this claim, notwithstanding the fact that it was not proven in the proceedings that the Club had actually received said offer from Real Madrid, the witness Mr Arroyo acknowledged that this offer had never been submitted in writing – rather, only a verbal approach had been made. As a result, since, per the Contract, the obligation to transfer the Player was only binding in the event of a relevant *"firm"* offer (i.e. for more than [or equal to] EUR 6,000,000) received *"in writing"*, it is clear that in this particular scenario, the Club was not contractually bound by this obligation, rendering this instance irrelevant to analyse the clause's significance.

  Similarly, the Panel is moved to clarify that DOYEN's ability to influence the Club was not negated by the fact that Sevilla had the right (under clause 4.4) to *"unilaterally and exclusively choose to cancel"* its *"obligation to sell"* the Player if it received an offer [for the amount of or] exceeding EUR 6,000,000, provided that it: (i) reimbursed DOYEN the Minimum Return applicable at the time of the cancellation and (ii) purchased DOYEN's 50% of the Player's economic rights at the same price[6] offered by the third club.

  In the Panel's opinion, this in no way alters the nature of the contractual arrangement between the parties, which they designated as an "*obligation to sell*" on the Appellant's part and which clearly affected the latter's independence in relation to its transfer policy. Moreover, even though there existed a possibility of "*cancelling*" or circumventing this obligation, this was contingent upon paying a substantial amount of money to DOYEN, which undoubtedly rendered the decision as to whether or not to transfer the Player dependent, or to a large extent conditional, upon the Club's economic solvency at the time of receipt of such an offer. Consequently, irrespective of the profitability of the transaction in question (selling the Player or purchasing the remaining 50% of his rights), the Club's ability to decide on the matter was limited or influenced by DOYEN.

[6] Albeit with the sums agreed upon in said clause (such as 50% of the income paid by the Club to the Player and 50% of the agent's commission) being deducted.

Taking up the example referred to in the Contract, if Sevilla received an offer of EUR 15,000,000 for the Player, it could (i) either fulfil its obligation to sell the Player, or (ii) keep the Player in its squad, subject to paying DOYEN a total of EUR 1,800,000 by way of the agreed-upon Minimum Return, plus EUR 7,087,500 to acquire the remaining 50% of the Player's economic rights. In the Panel's opinion, this meant that if, upon receipt of the offer for the Player, Sevilla did not have EUR 8,887,500 at its disposal to "*cancel*" its "*obligation to sell*", it would necessarily have to transfer the Player under the terms of the Contract. Accordingly, the Club's power to decide on the matter was always limited, whether because it had to fulfil the obligation to sell, as stipulated in the Contract, or because it was unable to circumvent said obligation due to lacking the funds required to cancel it. In light of all of the above, the Panel deems that there was a clear impingement on the Appellant's independence.

(b) Concerning the ability granted to DOYEN to influence the Appellant in employment-related matters, specifically those involving the Player, this ability is evidenced by the following clauses and obligations:

- Firstly, according to clause 4.5 of the Contract, the Club was prohibited from reducing the Player's buy-out clause, even though clause 4.5 also established that Sevilla was *"free to agree with the Player on the contractual terms applicable to the employment contract between them, at any moment*". In the Panel's opinion, such freedom never existed because the Appellant was not able to negotiate the value of the Player's buy-out clause, which is a key aspect of a professional footballer's employment contract and takes on particular importance for Spanish clubs.

  The Appellant is misguided in its claim that this obligation was irrelevant since the Club could transfer the Player for less than the price of his buy-out clause without needing to amend the value of said clause. Even if this is held to be true, the value of a player's buy-out clause is a key factor in any negotiation with a footballer and is always of relevance. One example would be the situation in which, in order to stay with his current club and decline an offer from another club that is willing to meet his buy-out clause, a player demands not only an improved salary, but also a reduction in his buy-out clause so as to facilitate his potential departure in the future. In such a scenario, the Appellant would not have been able to use the buy-out clause as a bargaining chip, which obviously affected its independence and its ability to decide on employment matters related to its team and squad.

- Similarly, in the Panel's opinion, the fact that DOYEN was entitled to force Sevilla to purchase DOYEN's 50% of the Player's economic rights in the event that the Club significantly improved the Player's employment conditions (i.e. by doubling or more than doubling the buy-out clause or income originally agreed upon) represented another example of the ability to exert undue influence on the Appellant in employment-related matters.

102. Consequently, although the employment relationship between the Player and the Club was not terminated by DOYEN or the Appellant, given that the Player bought out the Contract by paying the stipulated buy-out clause, the Panel holds that DOYEN nevertheless had a real and flagrant ability to effectively influence the Club's independence and policies in employment and transfer-related matters, which thereby – in the Panel's view – infringed the prohibition laid down in article 18bis of the RSTP.

103. Hence, in the Panel's opinion, none of the aforementioned powers granted to DOYEN or obligations imposed on the Appellant in the Contract were necessary to guarantee the profitability of DOYEN's investment or that the Club would return the money loaned to it; rather, these sought to give DOYEN the ability to effectively influence the Club, which is prohibited by article 18bis of the RSTP. In this regard, if DOYEN had been concerned with guaranteeing the reimbursement of the funding it had provided or a minimum return on its investment, it did not need to impose such obligations on the Club – it would have been sufficient simply to demand standard guarantees such as the one set out in clause 6 of the Contract, hypothecating the balance of the Club's special account earmarked for the season-ticket campaigns for the 2015/16 and 2016/17 seasons, with a value of EUR 4,485,000. In the Panel's judgement, all of the other provisions went far beyond what can be considered normal conditions or guarantees for a loan, a financial mechanism or an investment. This holds true regardless of how profitable the deal with DOYEN could have been, or indeed was, from a purely economic point of view for both parties to the Contract, including the Appellant.

104. For the reasons set out above, the Panel therefore deems that the FIFA Disciplinary Committee and Appeal Committee were correct in their interpretation of the Contract and that this interpretation should be upheld, stating that the Appellant's conduct infringed article 18bis of the RSTP.

VIII.3 Regarding the violation of article 4 paragraph 2 of Annexe 3 to the RSTP

105. Lastly, it is incumbent on the Panel to decide whether the Appellant's omission of information when entering or registering the international transfer of the Player from FC Lens to Sevilla in the TMS system, specifically its failure to detail the "*Player agent's name and type*", represents a violation of article 4 paragraph 2 of Annexe 3 to the RSTP. In the Panel's opinion, even if the Appellant did not intend to conceal this information from FIFA and omitted it as a mere oversight, this does not detract from the fact that "*Clubs are responsible for entering and confirming transfer instructions in TMS and, where applicable, for ensuring that the required information matches*" (article 3.1 paragraph 1 of Annexe 3 to the RSTP). Indeed, the Panel notes that the "*Player agent's name and type*" is included in the list of compulsory data set out in article 4 of Annexe 3 to the RSTP, which all clubs must provide when creating instructions.

106. Therefore, by omitting this information, the Appellant was in breach of its obligations in relation to TMS, which is sanctionable under both Annexe 3 to the RSTP and the FIFA Disciplinary Code. In this respect, the Panel considers that the explanations given by the Appellant to justify the omission of this information from TMS should be taken into

account in order to weigh up and determine the sanction to be imposed, thereby ensuring that said sanction is proportionate to the offence committed by the Appellant and the subjective aspects thereof. Nevertheless, the Panel holds that these circumstances by no means absolve the Appellant of all responsibility, contrary to what the latter argued in its appeal.

107. Moreover, since the request made was solely to overturn the sanction, not to review the fine imposed (i.e. to reconsider and reduce the amount), and given that the Panel deems the economic sanction imposed to be proportionate and appropriate in light of the concurrent offences committed, the Panel may not and cannot give the matter any further consideration and is therefore compelled to uphold the fine that was originally imposed.

IX. COSTS

108. In line with articles R65.1 and R65.2 of the Code of Sports-related Arbitration, appeals against decisions issued by international federations in disciplinary matters – as is the case at hand – shall be free and the arbitration costs shall be borne by CAS, with the exception of the CAS Court Office fee already paid by the Appellant, which shall be retained by CAS.

109. Similarly, in accordance with article R65.3 of the Code of Sports-related Arbitration, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. When deciding whether or not to do so, the Panel must take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties. On this note, taking into account these circumstances, as well as the fact that the Respondent has been represented by its internal legal counsel, the Panel deems it fair and reasonable for each party to bear its own legal costs and other expenses it has incurred in connection with these proceedings.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Sevilla Fútbol Club SAD against Decision 150522 APC ESP ZH issued by the FIFA Appeal Committee on 28 February 2017 is dismissed and said decision is upheld in its entirety.

2. This award is pronounced without costs, which shall be borne entirely by CAS, except for the CAS Court Office fee of CHF 1,000 already paid by the Appellant, which shall be retained by CAS.

3. Each party shall bear its own legal fees and other expenses incurred in connection with the proceedings.

4. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 15 November 2018

COURT OF ARBITRATION FOR SPORT

Efraim Barak

President of the Panel