

Decision
of the
FIFA Disciplinary Committee

(composed of: Mr Anin Yeboah [GHA], Chairman;
Mr Alejandro Piera [PAR], deputy Chairman;
Mr Kia Tong Lim [SIN], member)

via telephone conference and email

on 15 February 2019,

to discuss the case of the:

Club FC Porto, Portugal

(Decision 180929 TMS POR ZH)

regarding:

Entering into a contract which enables a third-party influence on the club and failure to provide correct data in the Transfer Matching System (TMS) in relation to the transfer of the player Yacine Brahimi
(TMS instruction no. 96093)

(for possible violation of article 18bis of the Regulations on the Status and Transfer of Players [ed. 2012] and article 4 par. 2 of Annexe 3 of the Regulations on the Status and Transfer of Players)

I. Inferred from the file

A. Background information

1. On 23 July 2014, the club FC Porto (hereinafter "*the Club*") entered a transfer instruction (TMS instr. 96093) in the Transfer Matching System (hereinafter "*TMS*") in order to permanently engage the player Yacine Brahimi (hereinafter "*the Player*") from the Spanish club Granada CF (hereinafter "*Granada*") for a fixed transfer fee of EUR 6,500,000.
2. On the same date, the Club signed an Economic Rights Participation Agreement (hereinafter "*ERPA*") with the company Doyen Sports Investments Limited (hereinafter "*Doyen*") with regard to the Player whereby it was established that Doyen wishes to assist the Club by purchasing 80% of the Player's economic rights for a price of EUR 5,000,000. The Club would remain owner of 100% of the Player's federative rights. In recognition of its interest in the Player's economic rights, Doyen would be entitled to 80% of the proceeds relating to any transfer, loan and compensation for the termination of the employment contract or insurance claim relating to the Player. Doyen would also be entitled to receive payment if a transfer offer is rejected, the Player becomes a free agent or re-signs with the Club, as well as any and all values stemming from the assignment or exploitation of the image rights of the Player by any third party arising from the termination of the Employment contract.
3. The ERPA concluded between FC Porto and Doyen, contained several clauses that could represent a breach of article 18bis par. 1 of the Regulations on the Status and Transfer of Players (2012 edition) (hereinafter "*RSTP*" or "*the Regulations*"):
 - Clause 6.1 ("*Communication of transfer approaches*");
 - Clauses 7.1 a), 7.1 b), 7.2 a), 7.2 b), 7.2 c), 7.2 d) and 7.3 ("*Transfer*");
 - Clauses 9.1, 9.2, 9.3 a) & b) and 9.4 ("*Free agency and Player re-signing*");
 - Clauses 10.1, 10.2, 10.4, 10.6 and 10.7 ("*Offer of Transfer*");
 - Clauses 11.1, 11.3 and 11.4 ("*Loan of the player*");
 - Clauses 12.1 and 12.5 ("*Assignment*");
 - Clauses 15.1 and 15.2 ("*Call option*");
 - Clause 16 ("*Intermediate put option*");
 - Clause 17 ("*Final put option*").

4. Additionally, in the relevant transfer instruction in TMS (TMS ref. 96093) entered by FC Porto to engage the Player from Granada CF, the Club indicated that it had not entered into an agreement which enables any other party to that agreement or any third party to acquire the ability to influence its independence and policies in transfer-related matters.
5. In view of the foregoing, the FIFA Transfer Matching System GmbH (hereinafter "FIFA TMS") initiated an investigation.

B. Procedure before FIFA TMS GmbH and the FIFA Disciplinary Committee

6. On 6 June 2018, FIFA TMS sent a correspondence to the Club with regard to a possible breach of article 18bis of the RSTP in relation to the transfer of the Player Yacine Brahimi and requested the following information:
 - A statement of the Club's position on the matter;
 - Any and all agreement signed between the Club and Doyen Sports Investments Limited in relation to the Player;
 - Any and all payments agreed between the Club and Doyen Sports Investments Limited in relation to the Player;
 - Any and all payments made by the Club to Doyen Sports Investments Limited in relation to the Player;
 - Any and all payments made by Doyen Sports Investments Limited to the Club in relation to the Player.
7. On 20 June 2018, the Club provided FIFA TMS with a position which can be summarized as follows:
 - *Porto has never been limited or restricted in its ability to conclude a player's transfer agreement or a player's employment contract.*
 - *The player's employment contract was exclusively negotiated between the player and Porto.*
 - *There is no reference to the player's contract in the ERPA. Doyen never had any influence on the provisions set under such contract.*
 - *Porto has always kept its total discretion as to the decision to transfer the player.*
 - *The decision to transfer the player must always be subject to the player's acceptance, who is constantly informed in light of the several proposals presented to Porto for his transfer.*

- *The ERPA is merely a financing agreement which implies the reimbursement of the credit granted by Doyen to Porto. Doyen has a legitimate expectation to receive its credits and interest.*
 - *Porto has never been obliged to request Doyen's authorization for the player's transfer.*
 - *There are no provisions in the ERPA which allow Doyen to express its judgement regarding a potential transfer proposal.*
 - *Porto has always provided all required information to FIFA, confirming its intention to comply with the regulations and transparency.*
8. On 25 October 2018, FIFA TMS informed the Club that the matter would be forwarded to the FIFA Disciplinary Committee.
 9. On 21 December 2018, the Secretariat to the FIFA Disciplinary Committee (hereinafter "*the Secretariat*") opened disciplinary proceedings against the Club for allegedly entering into a contract which enabled a third-party to acquire the ability to influence the club's independence in employment and transfer-related matters in relation to the transfer of the player Yacine Brahimi (article 18bis of the RSTP), as well as failing to provide correct information in TMS in relation to said transfer (article 4.2 of Annexe 3 of the RSTP).
 10. On 18 January 2019, the Club requested an extension of its deadline to file a position until 11 February 2019, which was granted by letter of the same date.

C. Position provided by the Club

11. On 12 February 2019, the Club provided its position, which is summarized below. The summary of the Club's position does not purport to include every contention put forth by it. However, the FIFA Disciplinary Committee has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of the Club's position:
 - *Article 18bis came into force on 1 January 2008, when FIFA introduced a new provision "governing third-party influence on clubs" through Circular letter no. 1130 (Exhibit 6). The rationale of the new provision was further explained by FIFA in the FIFA Activity Report 2008 prepared for the 58th FIFA Congress (Exhibit 7, page 76):*
 - *It appears that the purpose of Article 18bis is to prevent third parties having "a say in transfer agreements", protecting the freedom of the clubs and players with respect to the player's future transfer. The fact that a third party is assigned with a percentage of the player's economic rights does not per se implies that such party may have a control over the transfer (otherwise, there would be no need to adopt Article 18ter). The only criterion is whether a*

third party is able to influence in the transfer.

- *The example made by FIFA in the FIFA Activity Report 2008 confirms the above: Article 18bis deals with the protection of clubs from the influence of any third party and has the intention to prevent the situation where a club is partially or fully excluded from the transfer of its player, or is dependent on the third-party decision or approval.*
- *With regard to the investment of private companies in football, Article 18bis seems to have been put in place to draw a very clear line between companies simply investing in football and companies investing in football with the purpose of gaining the ability to directly influence the club's independence or its policies in employment and transfer-related matters or even to influence the performance of its teams.*
- *Article 18bis prohibits the possible external influence from those companies investing in football on the clubs' abilities to determine their own transfer-related policies. In other words, the intention is that no one other than the relevant club may be entitled to determine the conditions and policies concerning the transfer of its players.*
- *The ERPA does not provide the DSI with an ability to have a say in the transfer, but rather expressly excludes it (article 6.2 of the ERPA). Due to the amount of time that has passed since the ERPA was concluded, it is apparent that no such influence has even been made in this case:*
 - *The ERPA was concluded in July 2014.*
 - *Since then, the Player has had an employment relationship with FC Porto, being one of the Club's most valuable players.*
 - *During the term of the ERPA, the Player's market value has increased from EUR 6,500,000 to approx. EUR 26,000,000, but he has not been transferred to another club. Therefore, the ERPA was not relevant to the transfer of the Player.*
 - *FC Porto is currently the sole owner of all Player's economic rights, which means that DSI cannot benefit financially from the Player's transfer.*
- *It is not in the spirit of the provision for FIFA to be advancing a case, years later, after it is evident that DSI did not, and was not able to, influence the Player's transfer, even though it would have been profitable for DSI had such a transfer occurred.*
- *FC Porto will explain below how the ERPA was entered into between the Club and DSI in full respect of Article 18bis and its purposes.*

- *FC Porto submits that the ERPA does not provide the DSI with an ability to influence in FC Porto's transfer-related matters its independence, policies or the performance of FC Porto's teams.*
- *It is FC Porto's position that for a club to infringe this article, the contract in question should allow a third party to control its transfer policy: the situation when the club is not allowed to transfer its player (or refuse possible transfer) without the consent or permission of a third party.*
- *Neither of the listed articles in the letter from the FIFA Disciplinary Committee of 21 December 2018 provides the DSI with such ability.*
- *The ERPA was only a financial instrument to allow FC Porto to reduce the initial cost of acquiring the Player's services, with an obligation to pay the loan back later, or when the Player is transferred to a new club (i.e. from the compensation paid by a new club). It was never an intention of the parties to let DSI decide whether to transfer the Player or not, or somehow influence the decision of FC Porto.*
- *The purely financial nature of the ERPA is evidenced by the fact that the agreement does not contain provisions obliging FC Porto to seek the DSI's authorisation or approval for the Player's transfer, or even to take into consideration the DSI's opinion or advice in any transfer-related matter.*
- *The ERPA imposes various financial consequences on FC Porto depending on the determined conditions precedent, but the only party who could decide when and where to transfer the Player was FC Porto (obviously, subject to the Player's consent to be transferred, who was constantly informed and consulted in light of the several proposals presented to FC Porto for his transfer).*
- *In accordance with Article 6.1 of the ERPA, FC Porto was obliged to inform the DSI about financial terms of transfer offers from other clubs, and about whether such offer was accepted or refused. However, as it appears from further analysis of the ERPA, such obligation was imposed solely to allow the DSI be aware of the occurrence of the conditions precedent that may trigger payment obligation and have an impact on the amount to be paid.*
- *The wording of Article 6.1 of the ERPA confirms that DSI could be notified post factum, when any decision regarding a transfer has already been taken, which excludes even the hypothetical possibility of DSI influencing such decision: "whether the Club accepts or rejects the offer", "whether the Player has accepted the offer", "after closing a Transfer of the Player".*

- *In addition, Article 6.2 of the ERPA excluded any influence of DSI as it “strictly prohibited [the DSI] from contacting or interfering in any way whatsoever, either directly or indirectly, with any of the parties (other than the Club) which is directly or indirectly involved in the negotiations of the potential Transfer”. The wording of Article 10.2 of the ERPA may give a false impression that the DSI had a possibility to “accept” a transfer offer from a club. However, when read in conjunction with the subsequent articles 10.3 and 10.4 of the ERPA, this provision does not give any right to the DSI to decide on the transfer, but rather confirms the independence of FC Porto:*

“10.2. Both the Club and Doyen declare that they consider the amount of [€20,000,000] a reasonable Transfer Offer and the market value of the Player. In case of a Transfer Offer equal or superior to this amount, IF ACCEPTED by Doyen, the Club is obliged to accept the offer or compensate Doyen accordingly as stated in clause 10.4.

10.3. If the Club decides to ACCEPT the Transfer Offer, then clause 7 shall apply.

10.4. Considering the Transfer Offer is equal or above [€20,000,000], if the Club decides NOT TO ACCEPT the Transfer Offer but if Doyen accepts, at Doyen’s sole discretion, Doyen can request and the Club is obliged to make payment to Doyen of the equivalent to the Doyen’s Interest in the proposed transfer fee made by the transferee club in the Transfer Offer, payable according to the payment calendar dates referred in the Transfer Offer.” (emphasis added)

- *The “acceptance” by the DSI refers exclusively to the repayment of the loan: the DSI may accept the condition precedent and claim from FC Porto the payment of the loan immediately, or to keep the share of the Player’s economic rights and wait until another offer is made or until the Player is eventually transferred to a new club. These provisions did not grant DSI an ability to influence the transfer, but rather excluded it, as the decision to claim the loan payment depends on whether FC Porto (and the Player) accept an offer or reject it, not vice versa.*
- *In fact, Article 10 of the ERPA is intended to prevent third-party influence. Irrespective of the Club’s decision, the DSI will receive its money, either as a result of the transfer to the new club or from FC Porto. There is, therefore, no necessity for the third party to encourage or discourage the acceptance of the offer, leaving the club free to make its choice without interference.*

- *Even non-acceptance by FC Porto of a transfer offer from a new club in an amount higher or equal to EUR 20,000,000 would not have led to severe financial consequences for the Club had DSI claimed the immediate loan repayment, as FC Porto could easily afford the immediate payment of the loan. The financial statements of FC Porto during the period when the ERPA was in force, having at least EUR 250 million income per season, is evidence that the Club would not be under financial pressure should it reject a transfer offer and be obliged to repay the loan to DSI (Exhibits 8, 9, 10, 11 and 12).*
- *Should the offer be made, the actual difference between the loan amount (EUR 6,500,000) due by FC Porto to DSI by default and the increased loan amount (EUR 16,000,000), provided DSI keeps 80% of the Player's economic rights (80% of EUR 20,000,000 = EUR 16,000,000), would have been EUR 9,500,000. Eventually, this amount could have been the cost for FC Porto for a Player who is valued at EUR 20,000,000, which would be a reasonable price.*
- *To our knowledge, there is a significant number of agreements (in particular in South America), which contain provisions similar to Article 10 of the ERPA, being a very common provision in similar investment agreements. Should FIFA decide to sanction FC Porto on the basis of that provision, the principles of fairness and equal treatment dictate that it would have to prosecute all the other cases in the same way, and FC Porto reserves its right to request significant document discovery from the CAS should that situation arise. As we are aware, there has not been a flow of jurisprudence sanctioning clubs with similar agreements, as one might expect had this type of clause been universally considered to be a breach of 18bis of the FIFA Regulations by FIFA.*
- *FC Porto wishes to draw attention to the following facts that prove that DSI had no ability to influence the Player's transfer:*
 - *If the DSI had any possibility to influence in the Player's transfer activity, it would have used it. The market value of the Player during the term of the ERPA has been increased fourfold: from EUR 6,500,000 to approx. EUR 26,000,000. It would have been more profitable for DSI, based on the terms of the ERPA, if the Player of such market value was transferred to another football club. In the absence of such transfer, the DSI may only claim the loan amount with 10% interest. Nevertheless, the Player is still at FC Porto, because it is FC Porto (and the Player) who decides on whether to transfer him.*
 - *On 7 September 2018, the DSI, having 50% of the Player's economic rights, which could be equivalent to EUR 13,000,000 if the Player was transferred for his current market value, decided to request FC Porto to pay the loan back (Exhibit 3). As a result, the DSI claimed only EUR 6,500,000. This fact demonstrates that DSI had no ability to influence the Player's transfer.*

- *FC Porto has reacquired 100% of the Player's economic rights from DSI – this is another evidence that the ERPA was merely a financial instrument for the Club. If it was intended to provide the DSI with an ability to influence transfers, the ERPA would not provide an opportunity to pay back the loan amount. 50. In the light of the above, the ERPA does not infringe Article 18bis of the FIFA Regulations and, as a consequence, the disciplinary proceedings should be terminated.*

II. and considered

A. Jurisdiction of the FIFA Disciplinary Committee

1. Applicability of the FIFA Disciplinary Code

Applicability *ratione personae*

1. Pursuant to article 3 lit. (b) of the FIFA Disciplinary Code (hereinafter "*FDC*"), the members of associations, and in particular the clubs, are subject to the FDC. However, the term "*association*" is not defined in the FDC. Nevertheless, this definition can be found in the "*Definitions*" section of the FIFA Statutes. As the FIFA Statutes are the highest ranked source of law of the Federation, the relevant definition contained in the Statutes also applies within the context of the FDC.
2. In this context, according to point no. 2 of the "*Definitions*" section of the FIFA Statutes, an "*association*" is a football association recognized by FIFA and is a member of FIFA. In the present context, the FIFA Disciplinary Committee (hereinafter "*the Committee*") noted that the Portuguese Football Association (hereinafter "*PFA*") is a football association recognized by FIFA; it is also a member of FIFA. In turn, FC Porto is without any doubt a football club and a member of the PFA. It must accordingly be regarded as a member of an association within the meaning of article 3 lit. (b) of the FDC as a result of which FC Porto is subject to the FIFA Disciplinary Code *ratione personae*.

Applicability *ratione materiae*

3. In accordance with article 2, last sentence, of the FDC, said code applies to any breach of FIFA regulations that does not fall under the jurisdiction of any other body. The Committee observes in this regard, that FC Porto is alleged to have violated a provision of the Regulations on the Status and Transfer of Players (hereinafter "*the Regulations*" or "*RSTP*").
4. In line with article 25 par. 3 of the Regulations, disciplinary proceedings for violation of said regulations shall, unless otherwise stipulated therein, be in accordance with the FDC.

5. The RSTP being without any doubt a FIFA regulation within the meaning of article 2, last sentence of the FDC, there are indeed violations of FIFA regulations in the present case. Consequently, the FIFA Disciplinary Code applies to the present matter *ratione materiae*.

2. Jurisdiction of the FIFA Disciplinary Committee

6. In accordance with article 53 par. 2 of the FIFA Statutes, the Committee may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.
7. In continuation, article 9.2 par. 1 of Annexe 3 of the Regulations stipulates that the FIFA Disciplinary Committee is responsible for pronouncing sanctions in accordance with the FDC.
8. Article 18bis par. 2 of the Regulations stipulates that the Committee may impose disciplinary measures on clubs that do not observe the obligations set out in this article.
9. Referring to article 76 of the FDC, the Committee recalls that it is authorized to sanction any breach of FIFA regulations which does not come under the jurisdiction of another body.
10. With the above in mind, the Committee notes that FC Porto has not challenged the jurisdiction of the Committee or the applicability of the FDC at any point during the proceedings.
11. As a result of the foregoing considerations, the Committee deems that it is competent to evaluate the matter at hand and to pronounce sanctions in case of corresponding violations.
12. Having established its competence, the Committee proceeds to analyze each violation separately and the evidence at its disposal, in particular the documents uploaded into the TMS, the documents gathered during the investigation conducted by the FIFA TMS as well as the correspondence and documents provided by the Club within the context of the present disciplinary proceedings.

B. Analysis of the relevant articles of the RSTP apparently infringed by the Club

1. General considerations and background information

13. Before entering into the merits of the present proceedings, the Committee wishes to recall some important aspects that it considers relevant in the present context.
14. Firstly and in its capacity as the governing body of world association football, FIFA's objective cf. article 2 lit. g) of the FIFA Statutes is *"to promote integrity, ethics and fair play with a view to preventing all methods or practices, such as corruption, doping or match manipulation, which might jeopardise the integrity of matches, competitions, Players, Officials and Members or give rise to abuse of Association Football."*
15. In order to ensure that this objective is accomplished, FIFA has been concerned with and has endeavored to eradicate those activities and practices that pose an imminent threat to association football's integrity, are liable for tarnishing its reputation and damaging to the preservation of football's essential values.
16. In recent decades, the game of football has grown quickly, increasingly becoming a business with high transfer compensations negotiated between clubs and higher salaries paid to players.
17. Said growth has attracted more investments in the game of football, in particular via sponsors, TV rights and marketing. It has also caught the attention of companies and entrepreneurs all over the world, to which the game of football started to become an attractive business.
18. Because of this evolution, some clubs started to open their doors to investments from stakeholders outside the world of football. These investments were aimed at the clubs and their development but, also to a considerable extent to the transfers of players. With this type of investment, clubs gained access to money they did not previously dispose of in order to acquire the federative and economic rights of new players in order to sustain their competitiveness. However, by getting involving in these type of operations, the clubs assumed a considerable (financial) risk towards the investors.
19. In this respect, the Committee notes that together with the increase of the investments from new stakeholders, the responsibility of FIFA bodies has also increased, specifically in view of one of the primary objectives of FIFA; safeguarding football's integrity. In the Committee's view, and while it is important to allow the clubs to find new means of investment, it is equally important to prevent football from losing its credibility in the public's perception.

20. In view of the above, FIFA - and football in general –has been confronted in the past years with infiltration in the football world of alien elements and undue interference in the transfers of players by physical and legal persons outside the football structure. The proliferation of these businesses in the world of football has been detrimental in terms of, among others, the autonomy of the clubs in determining their policies and their independence in the decision making process regarding the recruitment and transfer of players, where other actors than the contracting club were granted the ability to assert their interests.
21. The prevailing interests of third-party investors seem to collide with the principle of contractual stability which, in line with article 1 par. 3 b) of the RSTP, has been recognized as being of *“paramount importance in football, from the perspective of clubs, players, and the public. Contractual relations between players and clubs must be governed by a regulatory system which responds to the specific needs of football and which strikes the right balance between the respective interests of players and clubs and preserves the regularity and proper functioning of sporting competition”* (cf. circular n° 769, 26 August 2001).
22. In this context, the Committee also realizes that the transfers of players in general is an area that is likely to give rise to conflicts of interest, bringing about match manipulation. Such conduct also creates the risk of interference with the club’s freedom and independence in recruiting and transfer-related matters, compromising football’s integrity and reputation as well as its most essential values.
23. Moreover, the specificity of sport, which has been expressly recognized by the European Commission as a legitimate objective, requires that the outcome of a game remains uncertain and that the competitive balance between clubs taking part in the same competitions is preserved. In addition, this specificity also refers to the sport structure, the autonomy and diversity of sport organizations, a pyramid structure of competitions from grassroots to elite level, organized solidarity mechanisms between the different levels and operators, the organization of sport on a national basis and the principle of a single federation per sport (cf. par. 4.1 of the White Paper on Sport (COM(2007) 391 final), 11 July 2007).
24. Additionally, in line with the need to respect and protect the specificity of sport, clubs must remain independent and autonomous in order to freely take any decisions that they deem appropriate in the context of their sporting needs. Any influence on the clubs, either directly or by means of owning a percentage of a player’s economic rights, is considered conflicting with the defense of the specificity of sport.
25. Moreover, and in line with the above, article 20 par. 2 of the FIFA Statutes provides that every member shall ensure that its affiliated Clubs can take all decisions on any matters regarding membership independently of any external body. This obligation applies regardless of an affiliated club’s corporate structure.

26. As a consequence of all the above, FIFA decided to exercise its regulatory power by firstly amending the RSTP in order to include article 18bis (entered into force on 1 January 2008).
27. FIFA then created the Transfer Matching System (compulsory since 2010), indicating in article 1 par. 1 of Annexe 3 of the RSTP that the Transfer Matching System "*(...) is designed to ensure that football authorities have more details available to them on international player transfers. This will increase the transparency of individual transactions, which will in turn improve the credibility and standing of the entire transfer system.*" The Transfer Matching System has been an extremely powerful tool to increase transparency and respect for the regulations in all kind of transfer-related matters.
28. As a clear consequence of the above, it is undeniable that the overriding objective pursued by FIFA through the abovementioned provisions of the FIFA Statutes and the RSTP (and the Intermediaries Regulations), is to increase transparency, contractual stability and to tighten monitoring and control of players' transfer and transactions connected to it.

2. Analysis of article 18bis of the Regulations – Third-Party Influence on clubs

i. Background and rationale of article 18bis of the RSTP

29. The Committee recalls that article 18bis of the RSTP prohibits the possibility that any person or entity acquires the ability to influence in employment and transfer-related matters a club's independence, its policies or the performance of its teams.
30. In this sense, it is undeniable that entering into contracts that enable a third party to influence employment and transfer related matters also jeopardizes the transparency of (international) transfers while putting at stake the integrity of the competitions and the transparency of football itself.
31. Furthermore, article 18bis of the RSTP aims to protect the clubs' independence from third parties or other clubs that may have a different interest other than the clubs' sporting activity. In this context, the Committee notices that this type of conduct (the possibility of influencing the clubs) is also likely to give rise to conflicts of interests bringing about match manipulation and match fixing practices.
32. Such types of conduct also put at risk the club's freedom and independence in recruiting and transfer-related matters, compromising football's integrity and reputation as well as its most essential values.

33. As established under point II.B.1 *ut supra*, a considerable increase of investment in football over the past years has taken place and as a result, FIFA's commitment to maintain football's integrity safe has gained importance.
34. As a result of the foregoing, and by means of article 18bis of the RSTP, the FIFA judicial bodies have the duty to protect the integrity of the game of football and avoid that the influence of third parties to the game extends to direct influence, and in particular in the matters of employment and transfer-related matters.
35. Finally, any possible situation where an entity acquires the ability to influence a club's independence, its policies or the performance of its teams, directly or indirectly, in employment and transfer related matters cannot be tolerated and is absolutely forbidden.

ii. Regulatory content of article 18bis of the RSTP

36. The Committee firstly points out that article 18bis par. 1 of the RSTP establishes a prohibition that is addressed to clubs only (i.e. "*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*"). Consequently, clubs are responsible to ensure that no party acquires the ability to influence them in the aspects as stipulated by said article.
37. In other words, this prohibition consists of avoiding the conclusion of contracts that grants anyone the possibility of influencing a club's independence in employment and transfer-related matters, its policies or the performance of its teams and the clubs' abilities to determine the conditions and policies concerning purely sporting issues such as the composition and performance of their teams, independently.
38. Moreover, such prohibition affects "*any other party to that contract or any third party*". It has to be highlighted that the wording of the provision is very broad and includes any physical or legal person (which is a party to the agreement or not). Therefore, clubs are not allowed to enter into that type of agreements at all, since the scope foreseen in article 18bis par. 1 of the RSTP applies to any person or entity.
39. The Committee therefore concludes that no one – other than the relevant club - is entitled to determine by itself, the conditions and policies concerning purely sporting issues of a club such as the composition and performance of its teams.
40. Finally, any club that does not observe the obligations set out in article 18bis of the RSTP is subject to disciplinary proceedings as established in par. 2 of said provision.

3. Analysis of article 4.2 of Annexe 3 of the RSTP

41. Annexe 3 of the RSTP analyzes in a very detailed manner the Transfer Matching System, a web-based data information system that was developed to ensure that football authorities have more details available to them on international player transfers in order to increase the transparency of individual transactions, improve the credibility and standing of the entire transfer system.
42. In this sense, it is essential that clubs are aware of their responsibility and the importance of inserting correct information supported by the relevant documents in a responsible manner and at regular intervals.
43. In order to achieve the above, Annexe 3 of the Regulation describes in detail all the specific steps that users of the system must follow, as well as the obligations that must be met in order not to commit any violation and incur possible sanctions.
44. In this regard, article 4 par. 2 of the Regulations, addressed to any club, imposes the obligation on clubs to upload various types of information within the framework of an international transfer:

"Clubs must provide the following compulsory data when creating instructions, as applicable:

- [...]
- *Club agent's name, type and commission*
- [...]
- *Declaration on third-party payments and influence*
- [...]"

C. Analysis of the facts

1. Undisputed facts

45. Firstly, the Committee notes that it is undisputed that FC Porto concluded the Economic Rights Participation Agreement (ERPA) with the company Doyen Sports Investments Limited on 23 July 2014. The Committee points out that the Club uploaded the ERPA into the TMS system.
46. Therefore, it is clear that the Club has not questioned or disputed either the existence, nor the content or validity of the contract at any time.

2. Analysis of the ERPA in connection with article 18bis of the RSTP

a) Analysis of the third party

47. As previously established, the Club concluded an ERPA with the company Doyen Sports Investments Limited on 23 July 2014 according to which the latter acquired 80 % of the Player Yacine Brahimi's economic rights.
48. In this sense, the Committee firstly analyzes whether Doyen can be considered a third party and recalls that article 18bis of the RSTP aims to prohibit the influence from any natural or legal persons on clubs. Any external person to the club shall be considered as a third party for the purpose of the Regulations.
49. As a result of the foregoing, the Committee considers that a company such as Doyen can be considered a third party in accordance with the wording of article 18bis of the RSTP.

b) Third-party influence on the Club

50. Consequently, and having determined the above, the Committee proceeds to analyze the content and relevant clauses of the agreement in light of article 18bis par. 1 of the RSTP:

○ Clause 6.1 of the ERPA:

"The Club shall notify Doyen of all negotiations concerning any potential Transfer of the Player, communicating promptly (at least within 3 (three) business days) every detail about those negotiations, including but not limited to the club's name, the Transfer Fee proposed and offered, whether the Club accepts or rejects the offer, intermediary fees (if any), terms and conditions of payment of the Transfer Fee and information about whether the Player has accepted the offer. Such information shall also include any and all information completed by the Club in the TMS System after closing a Transfer of the Player (the "Transfer Information")."

51. Firstly, the Committee wishes to point out that the wording and nature of clause 6 of the ERPA titled "*Communication of Transfer Approaches*", grants far-reaching control and involvement to Doyen. FC Porto is contractually obliged to provide every detail concerning any negotiations for a transfer (e.g. club's name, transfer fee, acceptance/rejection offer, intermediary fees, terms and conditions of payment, acceptance by player etc.) thereby enabling Doyen to acquire the ability to influence FC Porto in employment and transfer-related matters. The Committee finds that the second paragraph of clause 6 confirms such influence (or "*interference*"): "*Doyen (...) shall be strictly prohibited from contacting or **interfering in any way whatsoever, either directly or indirectly, with any of the parties (other than the Club)** which is directly or indirectly involved in the negotiations of the potential Transfer, except with the written permission of the Club*" (emphasis added). In other words, it expressly agreed that Doyen can interfere directly or indirectly with the Club, i.e. FC Porto, regarding a potential transfer.
52. In the same sense, clause 7.3 obliges FC Porto to provide copies of any and all documents, invoices and agreements relating to the transfer of the Player including transfer information and evidence of the transfer fee paid to the Club. A similar obligation to immediately provide information was found in clause 10.1 of the ERPA.

○ **Clause 7.1, 7.2 and 7.3 of the ERPA:**

"When the Transfer of the Player is materialized the following distribution rules shall apply:

- a) *In the event that the "Doyen's Interest" in the Transfer Fee is less than the Doyen's Minimum Fee, the Club shall pay to Doyen an amount equal to the Doyen's Minimum Fee. Such amount shall be paid to Doyen within seven (7) business days after the Transfer is materialized by the Club;*
- b) *In the event that the "Doyen's Interest" in the Transfer Fee is greater than or equal to the Doyen's Minimum Fee:*
- *Firstly, the Club shall pay to Doyen a 20% (twenty percent) applied on any amount of the Transfer Fee above € 10,000,000 - ten million euros -, after deduction from the amount in excess of such amount, the proportional part of the applicable costs and expenses described in clause 7.2 (the "Surplus Value"). The Surplus Value shall be paid in accordance with the payment calendar dates referred to in the Transfer Offer, and provided that the payments are effectively paid to the Club by the transferee club.*

- *Secondly, the amount resulting from deducting from the Transfer Fee the "Surplus Value" shall be distributed between the parties in accordance with their respective stakes in the Player's Economic Rights at the moment of the transfer; such amount to be paid to each party at the same time proportionally to their respective interests in the Player's Economic Rights at such moment and in accordance with the payment calendar dates referred to in the Transfer Offer, and provided that the payments are effectively paid to the Club by the transferee club.*
- *Provided that no adverse or material effect is produced, prior authorization from Doyen not to be unreasonably withheld, the Club will have the faculty to make the payments due to Doyen directly from the transferee club."*

"The Parties agree that in case that 7.1 a) applies, any costs or expenses arising from the Transfer shall not be discounted from the Transfer Fee.

The Parties agree that in case that 7.1 b) applies, the following cost or expenses will be discounted from the Transfer Fee:

- a) *Any fees payable to any intermediaries up to a maximum of a 5% (five percent) of the Transfer Fee shall be discounted from the Transfer Fee; any fees or amount above such rate shall require the prior authorization from Doyen.*
- b) *Any amount to be paid by way of Solidarity Contribution (as defined in the FIFA Regulations for the Status and Transfer of Players) to third parties shall be discounted from the Transfer Fee; the part of the Solidarity Contribution corresponding to the Club, if any, shall be discounted solely from the part of the Transfer Fee corresponding to the Club;*
- c) *Any amount to be paid by way of Training Compensation (as defined in the FIFA Regulations for the Status and Transfer of Players) to third parties, shall be discounted from the Transfer Fee; the part of the Training Compensation corresponding to the Club, if any, shall be discounted solely from the part of the Transfer Fee corresponding to the Club.*
- d) *After the deduction of the costs mentioned on the above paragraphs a), b) and c) the result for Doyen should not be less than Doyen's Minimum Fee."*

“The Club shall provide, upon reasonable request, the Doyen with copies of any and all documents, invoices and agreements relating to any Transfer of the Player as well as any Transfer Information and evidence of the Transfer Fee paid to the Club for the transfer of the Player.”

53. With regard to clause 7 (including 7.1, 7.2 and 7.3) titled “Transfer”, the Committee noted that the “distribution rules” stipulate that in different types of situations; “Doyen’s Interest” of 80% (acquired for EUR 5,000,000) being less than, greater than or equal to the “Minimum Fee” of EUR 8,500,000, the Club is liable to either pay the deficit compared to the “Minimum Fee” or is required to concede 20% of the surplus if the transfer fee exceeds EUR 10,000,000. The Committee concludes that Doyen has established a clear minimum threshold of EUR 8,500,000 where the Club is always financially liable for the possible difference when transferring the Player. The Committee concludes on this basis that the existence of such EUR 8,500,000 threshold coupled with the Club’s evident liability for any financial deficit influences the Club’s independence, policies and performance of its teams in employment and transfer-related matters. The Club cannot independently accept a transfer offer lower than or reject an offer higher than EUR 8,500,000 in view of the financial sanction it would incur in both scenarios, *i.e.* the Club’s financial liability for any potential “loss” of value Doyen incurs. Such liability makes the Club entirely dependent on the agreement with Doyen and prevents its independent functioning.

○ **Clause 9.1, 9.2, 9.3 and 9.4 of the ERPA:**

“The Club shall use its best endeavors to prevent the Player becoming a free agent and acknowledges that such endeavors are considered normal and ordinary business practice for professional football clubs.”

“Where the Player is considered by FIFA, the Portuguese Football Federation or any other competent court, state or arbitral, to be a free agent (prior to the expiry of its Employment Contract with the Club), the Club shall pay to Doyen as minimum payment, the Doyen’s Minimum Fee. The Parties agree that such minimum compensation represents a genuine pre-estimate of the minimum expectation of the Doyen’s Interest in the Economic Rights, and therefore accordingly the value of the minimum loss that would be suffered by Doyen and the minimum amount to be compensated to Doyen in order to repair its frustration on the Player’s Economic Rights. The Club, conscious of the harshness and the severity of the consequences of the present clause, insists in its acceptance as the Club considers the present clause as fair and necessary to cover the legitimate expectation of Doyen in the Player’s Economic Rights, waiving any right to request the modifications or reduction of such compensation.”

“Where the Player Re-Signs with the Club (whether a new employment contract, or an extension or modification of the Employment Contract), if such re-signment implies an increase equal or above a 100% (one hundred percent) of his current salary conditions with the Club and/or of his buy- out clause, Doyen will then have the following options that can be exercised at the Doyen's own discretion:

- a) At Doyen's request, the Club shall pay to the Doyen a compensation equal to the Doyen's Minimum Fee, within seven (7) business days of the day the Player Re-Signs with the Club; once the payment has been verified, the Club shall become entitled to recover the percentage of the Player Economic Rights owned by Doyen;*
- b) If Doyen does not exercise the above then Doyen shall keep its Doyen's Interest in the Player, during the term of the new employment contract of the Player or during the extension or modification of the Employment Contract and subject to the rest of terms and conditions of the present Agreement.”*

“In the event that the Player terminates the Employment Contract without just cause, the Club shall pursue a claim for unlawful termination of the Employment Contract without just cause against the Player using the Portuguese courts, the Portuguese Federation, FIFA, or any other competent institution, as applicable. In the event that the Portuguese courts, the Portuguese Federation or FIFA, or any other as applicable, makes an award in respect of the claim in favor of the Club, the Club shall pay to Doyen an amount equivalent to Doyen's Interest in such award. In the event that such amount arising from the award is less than the Doyen's Minimum Fee, the Club shall pay Doyen an amount equal to the Doyen's Minimum Fee.”

- 54. The Committee noted that clause 9 (including 9.1, 9.2, 9.3 and 9.4) titled “Free Agency and Player Re-Signing”, governs several conditions ranging from the Player becoming a “free agent” to re-signing with the Club or terminating the contract with the Club without just cause. Conditions are imposed by Doyen on the Club depending on which scenario unfolds. The Committee finds that Doyen, in conditioning the several scenarios, clearly impedes the Club from acting independently in employment related matters.
- 55. Firstly, the Club is obliged “(...) to use its best endeavours to prevent the Player becoming a free agent (...)”, the Club may not freely decide whether it wishes to retain the Player, which is a transfer and employment policy related matter. Furthermore, if the Player becomes a free agent prior to expiry of the employment agreement, the Club would be liable for Doyen’s “Minimum Fee” of EUR 8,500,000. Such clause adds further financial pressure on the Club to prevent such scenario from occurring, incentivizing e.g. the transfer of the Player, regardless of its own sporting preferences and policies in that regard.

56. Furthermore, in accordance with clause 9.4, the Club is obliged to "(...) pursue a claim for unlawful termination of the Employment Contract without just cause (...)". In the event of a successful outcome, Doyen would be entitled to its proportional share of 80% whereas in the event that the outcome is not as positive, the Club remains liable to pay Doyen an amount equivalent to its "Minimum Fee" of EUR 8,500,000. The Committee finds that the obligation for the Club to pursue a claim clearly affects the Club's independence and policies in employment-related matters.

o **Clause 10.1, 10.2, 10.4, 10.6 and 10.7 of the ERPA:**

"Where a club expresses an interest in securing the Transfer of the Player and makes an offer (the "Transfer Offer"), such Transfer Offer shall be communicated to Doyen pursuant to clause 6.1."

"Both the Club and Doyen declare that they consider the amount of €20,000,000 (twenty million euros) a reasonable Transfer Offer and the market value of the Player. In case of a Transfer Offer equal or superior to this amount, IF ACCEPTED by Doyen, the Club is obliged to accept the offer or compensate Doyen accordingly as stated in clause 10.4."

"Considering the Transfer Offer is equal or above the amount of €20,000,000 (twenty million euros), if the Club decides NOT TO ACCEPT the Transfer Offer but if Doyen accepts, at Doyen's sole discretion, Doyen can request and the Club is obliged to make payment to Doyen of the equivalent to the Doyen's Interest in the proposed transfer fee made by the transferee club in the Transfer Offer, payable according to the payment calendar dates referred in the Transfer Offer."

"If the Transfer Offer implies a partial or complete exchange of players from the transferee club to the Club involving the Player, the parties accept that the Doyen shall have the option to either:

- a) If a partial exchange of players takes place, to substitute the Doyen's Interest in the Player for the Doyen's Interest in any exchange offer fee, plus the Doyen's Interest over the new player's object of such exchange; or*
- b) If a complete exchange of players takes place, to substitute the Doyen's interest in the Player for the Doyen's Interest over the new player(s) object of such exchange; or*
- c) Demand that the Club shall pay to Doyen an amount equal to the Doyen's Minimum Fee.*

Doyen shall transmit the Club its decision within 7 (seven) days from the date of exchange of players. In case of selection by Doyen of alternative a) or c), the Club shall pay any amount within 7 (seven) days from the date of notification from Doyen.

In case of dispute regarding the value of the players object of the exchange, the parties should nominate four (4) independent experts (two indicated by the Club and two indicated by the Doyen) in order to have a fair valuation of the exchange. The valuation from the experts shall prevail for the purposes of application of the present clause."

"If the Transfer Offer for the Player includes another player's, and Doyen doesn't agree with the valuation given to the Player participated by the Doyen in such offer then, in case of dispute, regarding the value of the Player, the parties have agreed that:

- a) Doyen shall have the right to purchase the rest of the Economic Rights of the Player for the proportional value, stated in such offer, of the percentage of the Economic Rights not in possession of Doyen.*
- b) The parties should nominate four (4) independent experts (two indicated by the Club and two indicated by the Doyen) in order to have a fair valuation of the transaction and of the value of the Player. The valuation from the experts shall prevail for the purposes of application of the present clause.*

- 57. Clause 10 of the ERPA titled "Offer of Transfer" governs the situation that arises when the Club receives a transfer offer for the Player. Moreover, the clause establishes that the Club and Doyen consider an offer of EUR 20,000,000 or more as reasonable and the market value of the Player. As a result of such established market value, the Club cannot independently assess or decide the evolution on the Player's value since it has already been determined by a third party.
- 58. The Committee finds that Clauses 10.2 and 10.4, stipulating that the Club is obliged to accept – if accepted by Doyen - any transfer offer that is equal to or superior to EUR 20,000,000, failing to do so resulting in an obligation for the Club to compensate Doyen accordingly, is a clear and blatant violation of article 18bis of the RSTP. The Committee deems that an independent Club cannot be subject to such influence. The Club is essentially forced to accept any transfer, regardless of its sporting preferences or policies, where failure to do so results in financial penalties.
- 59. Similarly, the same situation arises when the Club is offered a transfer with a partial or complete exchange of players. The acceptance of such offer and the conditions of such are made fully dependent on Doyen's preference with a corresponding financial sanction imposed on the Club in the event of differing preferences. Such dependence clearly influences the Club's independence and its policies in employment and transfer-related matter and potentially even the performance of its teams.

60. The structure of the agreement is designed in such a way that rejecting the offer would be so prejudicial to the Club, that the Club could never be in a position to do so, regardless of its real sporting interests. These clauses undoubtedly and abusively influence the Club's employment and transfer related matters in breach of article 18bis of the RSTP.
61. The Committee also considers article 10.7 to be a breach of article 18bis of the RSTP, given that Doyen can unilaterally decide to purchase the remaining percentage of economic rights that is not in its possession.

○ **Clause 16 of the ERPA:**

"The Club hereby grants Doyen, the Intermediate Put Options stated in the present clause, by which the Club grants to Doyen the right by which Doyen is entitled to sell to the Club and the Club is obliged to purchase from Doyen, the following stakes of the Doyen's Interest in the Player's Economic Rights:

- a) *In case the Club has not exercised the Call Option stated in above clause 15.1. a) above and the Player has not been transferred, independently of the reason or cause, before September 1st 2015, at Doyen request and option, Doyen will be entitled to exercise and request the execution of an Intermediate Put Option 1 selling to the Club a 20% (twenty percent) of Doyen's Interest in the Player's Economic Rights for a fee equivalent to €2,300,000 (two million and three hundred thousand euros). Such Intermediate Put Option 1 to be exercised by Doyen at any time after September 1st 2015. In case of exercise of the Intermediate Put Option 1 the Club shall be obliged to pay Doyen within 7 (seven) business days from the date in which the exercise and execution of the present Intermediate Put Option 1 is communicated to the Club by Doyen.*
- b) *In case the Club has not exercised the Call Option stated in above clause 15.1. b) above and the Player has not been transferred, independently of the reason or cause, before September 1st 2016, at Doyen request and option, Doyen will be entitled to exercise and request the execution of an Intermediate Put Option 2 selling to the Club a 10% (ten percent) of Doyen's Interest in the Player's Economic Rights for a fee equivalent to €1,200,000 (one million and two hundred thousand euros). Such Intermediate Put Option 2 to be exercised by Doyen at any time after September 1st. In case of exercise of the Intermediate Put Option 2 the Club shall be obliged to pay Doyen within 7 (seven) business days from the date in which the exercise and execution of the present Intermediate Put Option 2 is communicated to the Club by Doyen."*

62. Further to the abovementioned clauses in clear breach of article 18bis of the RSTP, the Committee finds that clause 16 *"Intermediate Put Option"* whereby Doyen is granted the right to sell to the Club and the Club is obliged to purchase a percentage (20 or 10%) of Doyen's *"Interest"* in case the Player is not transferred before 1 September 2015 or 2016 respectively, also breaches article 18bis of the RSTP. The Club is clearly pressured to transfer the Player prior to 1 September 2015 or 2016, where failing to transfer the Player would result in the obligation for the Club to re-acquire a certain percentage of the Player's economic rights at a unilateral price imposed by Doyen. The pressure exerted by this clause to transfer the Player before such deadlines clearly affects the Club's independence and policies in transfer-related matters.

○ Clause 17.1 and 17.2 of the ERPA:

"To end, Doyen will be entitled, at Doyen request and option, to exercise a Final Put Option, granting the right of Doyen to sell to the Club, and having the Club the obligation to buy, the balance of the Economic Rights of the Player in possession of Doyen for a fee to be determine under a value of a 50% (fifty percent) equivalent to €6.500.000 (six and half million euros), (50% =6.5M€ -> Z% = X). As an example, if the balance of the Economic Rights of the Player in possession of Doyen is a 30%, then the fee for the present Put Option shall be €3,900,000 (three million and nine hundred thousand euros).

Such Final Put Option to be exercised by Doyen at any time after September 1st 2017. In case of exercise of the Final Put Option, the Club shall be obliged to pay Doyen the Put Option Fee within 7 (seven) business days from the date in which the exercise and execution of the present Put Option is communicated to the Club by Doyen."

"Provided that the Club exercises and requests the execution of the Final Put Option stated in clause 17.1, if during any of the next two (2) transfer windows after September 1st 2017, the Club transfers the Player to a third club and/or alienates/transfers the totality or part of its percentage of the Economic Rights of the Player to another investor, Doyen should have the right to the 25%.

(twenty-five percent) of the transfer fee paid to the Club by any third club and/or the 25% (twenty-five percent) of the fee paid to the Club by any third party that acquires any portion of the Player's Economic Rights, deducting from the amount to be paid from the Club to Doyen, the Intermediate Put Option Fees and the Final Put Option Fee stated in clause 17.1, effectively paid to Doyen. In such circumstances the Club shall notify and forward a copy of the proposition received to Doyen."

63. Similar to the abovementioned clause 16, clause 17 "*Final Put Option*" grants Doyen a similar right to sell to the Club and the Club obliged to purchase "*the balance of the Economic Rights of the Player in possession of Doyen*" for a reference fee of 50% being equivalent to EUR 6,500,000.
64. The Committee considers that the abovementioned clauses are the most blatant as far as impact and influence on the Club's independence, policies and the performance of its teams.
65. The Committee took due note of the Club's argumentation that the ERPA does not provide Doyen with the ability to influence the Club and that no such influence was effectively exerted referring to the passage of time since concluding the agreement in July 2014. The Club refers to the passage of time since 2014, the Player being a valuable player still employed by the Club, despite the increase of the Player's market value no transfer having been concluded and the current sole ownership by the Club. The Committee however wishes to emphasize that a club is guilty of the prohibited conduct when the contract in question effectively enables or entitles the third party to have an influence on the club in such matters, regardless of whether or not this influence actually materializes. The Committee is not convinced by what it considers the Club's unsubstantiated arguments and reiterates that in any case, the theoretical ability to influence the Club suffices in order to conclude that there is a breach of article 18bis of the RSTP. In the Committee's view, this ability to influence is clearly present.
66. The Club further argues that the ERPA was merely a "*financial instrument*" where it was never the intention of the parties to let Doyen decide or influence the Club's decisions. The Committee considers that even if the ERPA was merely a "*financial instrument*", it considers that it is clear and undeniable that the clauses of the agreement enable Doyen to influence the Club's independence in transfer and employment related matters. The Committee does not consider the Club's argument that the agreement does not contain provisions obliging the Club to seek Doyen's authorization or approval for the Player's transfer or to take into account Doyen's opinion or advice, credible. Clause 6 of the ERPA *expressis verbis*, literally confirms Doyen's influence or to use the wording of the ERPA itself "*interference*": "*Doyen (...) shall be strictly prohibited from contacting or interfering in any way whatsoever, either directly or indirectly, with any of the parties (other than the Club)*".
67. The Club also states that the only party deciding whether the Player would be transferred is the Club itself although it acknowledges the financial consequences of the decisions. The Committee is adamant that the financial consequences (i.e. penalties) included in the ERPA are one of the main drivers of the influence exerted by Doyen. By attaching obvious and significant financial consequences to certain situations, *i.e.* situations deemed not favourable by Doyen (transfer below a certain amount, free agency, etc.), Doyen contractually influences the Club's decision making as evidenced by e.g. clauses 7, 9 and 10.

68. Following the analysis of the aforementioned clauses, the Committee considers that FC Porto entered into the ERPA with Doyen, enabling the latter to influence FC Porto's independence and policies in employment and transfer-related matters and is therefore liable for a breach of article 18bis of the RSTP.

D. Analysis of the facts: article 4.2 of Annexe 3 of the RSTP

69. The Committee further analyzes the content of article 4.2 of Annexe 3 of the RSTP, which establishes that "*Clubs must provide the following compulsory data when creating instructions, as applicable: [...] Declaration on third-party payments and influence [...]*" and noted that in TMS transfer instruction no. 96093, FC Porto apparently failed to declare "*third-party influence*".

70. Furthermore, as demonstrated above, the ERPA signed between the Club and Doyen, clearly enabled the latter to acquire the ability to influence FC Porto's independence, its policies and the performance of its teams in employment and transfer-related matters.

71. Therefore, by incorrectly declaring in TMS that there was no third-party influence, no third-party payments and no third-party ownership of the player's economic rights, the Club failed to disclose the correct information in TMS.

72. In view of the foregoing, the Committee concludes that the club FC Porto, by its conduct as described above, violated the following provisions of the RSTP:

- article 18bis, for entering into a contract (*i.e.* the ERPA) enabling a third-party to influence the Club;
- article 4 par. 2 of Annexe 3; for failing to enter correct information in TMS.

E. Determination of the sanction

73. As far as the sanctions applicable in this case are concerned, the Committee observes in the first place that FC Porto is a legal person. According to article 10 of the FDC, both natural and legal persons are punishable by the sanctions, including warnings, reprimands, fines and the return of awards. In addition, according to article 12 of the FDC, the sanctions applicable only to legal persons include transfer bans, playing matches without spectators and/or on neutral territory, bans on playing in a particular stadium, the annulment of the result of a match, expulsions, forfeits, the deduction of points and relegation to a lower division. Consequently, the FIFA Disciplinary Committee may impose the sanctions provided for under articles 10 and 12 of the FDC, as specified in article 13 *et seq* of the FDC.

74. As established above, FC Porto is guilty of having violated several provisions of the RSTP. As a result, there are concurrent infringements within the meaning of article 41 pars. 1 and 2 of the FDC. In accordance with the principles contained in the previous provisions, in such cases the sanction applicable to the most serious infringement should apply, which may be increased depending upon the specific circumstances as a result of the remaining concurrent infringements.
75. As a result, the following considerations refer to the sanction that may be imposed for the most serious infringement committed by FC Porto, namely the infringement related to the ban imposed by article 18bis of the RSTP. On the basis of the sanction that is to be imposed for this infringement, it will be decided below whether the sanction must be increased on the basis of the infringement of article 4 par. 2 of Annexe 3 of the RSTP, and depending on the case, how this should be done. All relevant factors of the case will be taken into account along with the degree of the offender's guilt (article 39 par. 4 of the FDC); it is therefore important to establish to which extent FC Porto can be considered guilty of misconduct.
76. With regard to the fine, according to the provisions of article 10 of the FDC *juncto* article 15 of the FDC, the Committee notes that it may not be lower than CHF 300 and greater than CHF 1,000,000 (cf. article 15 par. 2 of the FDC). Taking into account the relevant principles and conclusions set out above, as well as the amount imposed in the past for violations similar to the present case, the Committee considers a fine of CHF 45,000 to be adequate on account of the violation of article 18bis of the RSTP.
77. In accordance with the principles of article 41 of the FDC, in cases of repeated and concurrent breaches, the sanction will be based on the most serious offence committed and, depending on the specific circumstances, may be increased where appropriate.
78. In the present matter, the most serious offence committed is the violation of article 18bis of the RSTP. With regard to the other infringement committed, based on the considerations set out above, the Committee decides to supplement the fine of CHF 45,000 by a further fine of CHF 5,000 for the violation of article 4 par. 2 of Annexe 3 of the RSTP.
79. In addition, a warning is also issued pursuant to article 13 of the FDC in relation to FC Porto's conduct.

F. Costs

80. According to the provisions of article 105 par. 1 of the FDC, costs and expenses shall be paid by the unsuccessful party. In this case, FC Porto must be regarded as the unsuccessful party. The Committee accordingly orders that FC Porto shall bear the costs of the proceedings which are set at CHF 3,000.

III. therefore decided

1. The club FC Porto is declared liable for the violation of article 18bis of the Regulations on the Status and Transfer of Players [ed. 2012] (RSTP) for entering into a contract which enabled a third-party to acquire the ability to influence the club's independence in employment and transfer-related matters in relation to the transfer of the player Yacine Brahimi.
2. The club FC Porto is also declared liable for the violation of article 4 par. 2 of Annexe 3 of the Regulations on the Status and Transfer of Players [ed. 2012] as a result of failing to provide correct data in TMS in relation to the transfer of the player Yacine Brahimi (TMS instruction no. 96093).
3. The club FC Porto is ordered to pay a fine in the amount of CHF 50,000. The fine is to be paid within 30 days of notification of this decision. Payment can be made either in Swiss francs (CHF) to the account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to the account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to case no. 180929 aja.
4. In application of articles 10 a) and 13 of the FIFA Disciplinary Code, the club FC Porto is warned on its future conduct. The club FC Porto is ordered to undertake all appropriate measures in order to guarantee that the FIFA regulations, in particular the RSTP and the provisions related to third-party influence, are strictly complied with. Should such infringements occur again in the future, the FIFA Disciplinary Committee may impose harsher sanctions on the club FC Porto.
5. The costs and expenses of these proceedings amounting to CHF 3,000 shall be borne by the club FC Porto and be paid according to the modalities stipulated under 3. above.

Sent to: - FC Porto, c/o Mr David Casserly;
- Portuguese Football Association.

Note relating to the legal action:

This decision can be contested before the FIFA Appeal Committee (article 118 of the FDC). Article 121 of the FDC describes the grounds for appeal. Any party intending to appeal must announce its intention to do so in writing within three (3) days of notification of the decision. Reasons for the appeal must then be given in writing within a further time limit of seven (7) days, commencing upon expiry of the first time limit of three (3) days (article 120 of the FDC). The appeal fee of CHF 3,000 shall be transferred to below mentioned bank account before the expiry of the time limit of seven days for submitting the reasons for appeal (article 123 par. 1 of the FDC).

The appeal fee has to be paid either in Swiss francs (CHF) into account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to the account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Alexander Jacobs
Deputy Secretary to the Disciplinary Committee