Decision of the

Dispute Resolution Chamber

passed in Zurich, Switzerland, on 24 April 2015,

in the following composition:

Geoff Thompson (England), Chairman
Theo van Seggelen (Netherlands), member
Todd Durbin (USA), member

on the claim presented by the club

Club A, from country B

against the club

Club C, from country B

and the club

Club D, from country E

as Intervening party

regarding a solidarity contribution dispute related to the

the international transfer of the Player F
I. Facts of the case

1. According to the player passport issued by the Football Federation from country B, the player, Player F (hereinafter: *the player*), born on 15 February 1993, was registered with the club from country B, Club A (hereinafter: *Club A*), as from 9 July 2004 until 30 June 2008 as an amateur and from 1 July 2008 until 2 August 2012 as a professional.

2. The football seasons in country B during the period of time the player was registered with Club A started on 1 July and ended on 30 June of the following year.

3. The Football Federation from country B confirmed that the player was registered with its affiliated club, Club C, on 2 September 2013 as a professional.

4. According to Club A, Club C paid the amount of EUR 20,000,000 to the club from country E, Club D, for the definitive transfer of the federative rights of the player.

5. On 30 September 2014, Club A contacted FIFA claiming its proportion of the solidarity contribution in connection with the transfer of the player concerned from Club D to Club C. In particular, Club A requested 3,033% of the transfer compensation, equivalent to EUR 606,600 plus interest at a rate of 5% p.a. as of 30 September 2013.

6. In support of its claim, Club A explained that Club D and the player, in accordance with the specific decree from country E (hereinafter: *decree*), had included an indemnification clause in the employment contract, which stipulated that in case of a unilateral termination of the employment contract by the player, the latter had to pay the amount of EUR 20,000,000 to Club D.

7. In this context, Club A stated that Club D and Club C, following negotiations regarding the transfer of the player from Club D to Club C, eventually reached an agreement in this regard, which is why, subsequently, the player terminated the employment contract unilaterally and Club C allegedly directly paid the amount of EUR 20,000,000 to Club D, in order to transfer the player’s federative rights.

8. Club A argued that the aforementioned circumstances shall be considered an international transfer of a professional player, and, in this regard, referred to
the jurisprudence of the Court of Arbitration for Sport (hereinafter: CAS) and stressed that a transfer typically requires four elements, namely (1) the consent of the club of origin to the early termination of its contract with the player, (2) the willingness and consent of the club of destiny to acquire the player’s rights, (3) the consent of the player to move from one club to the other and (4) the price or the value of the transaction.

9. In this regard, Club A stated that (1) Club D gave its consent to transfer the player against payment of EUR 20,000,000 in advance, i.e. as an anticipated offer to a future transfer of the player, by putting such indemnification clause in the contract. Moreover, Club A argued that (2) Club C agreed to the terms of such anticipated offer by paying the amount of EUR 20,000,000 to Club D via the Country E League and by subsequently offering an employment contract to the player. Even though the buy-out or indemnification clause was put into the employment contract between Club D and the player because of the decree, Club A argued that (3) Club D and the player were absolutely free as regards the actual amount of indemnification to be put in the employment contract. Lastly, Club A stated that also (4) the player gave his consent to the transfer, given that he signed an employment contract with Club C.

10. Consequently, Club A argued that the move of the player from Club D to Club C should be considered as a transfer, hence triggering Club C’s obligation to pay solidarity contribution to the training clubs of the player.

11. Moreover, Club A referred to art. 1 of Annexe 5 of the FIFA Regulations on the Status and Transfer of Players (hereinafter: the Regulations), which stipulates that if “a professional moves during the course of a contract, 5% of any compensation […] shall be deducted […].” In this context and based on the wording of the aforementioned article, Club A stressed that art. 21 of the Regulations is not only limited to transfers in a narrow sense.

12. In its reply to Club A’ claim, Club C emphasized that the decisive question in this regard is the nature of the “consent rendered in advance” that was given by Club D when the decree clause was included in the player’s employment contract with Club D and whether in absence of such consent on the part of Club D, a transfer arises which would require the payment of solidarity contribution to Club A.

13. In this regard, Club C argued that the consent to a future transfer as it is manifested in a buy-out clause is different to the one given in an
indemnification clause, as in the latter case it was included by obligation under the decree.

14. As to the argument of Club A that the consent of Club D to a future move of the player is irrelevant for the assessment if such move should be considered as a transfer in the sense of the Regulations, Club C also referred to the jurisprudence of CAS and referred to the circumstances of a similar dispute in connection with the decree which was decided by CAS, and which was inter alia based on the conclusion that “the player’s release from the Employment Agreement was not effected by [the former club of the player] but by operation law, [the former club of the player] did not consent to the early termination of the Employment Agreement: It was obliged to “tolerate” it, as imposed by the law. [The former club of the player] actually, stipulated in the Indemnification Clause the amount to be paid by the Player in the event of exercise of the statutory right of termination. But the claim for such payment would have existed irrespective of the Indemnification Clause, and cannot be regarded to refer to a consideration for the grant of a (termination) right to the Player”.

15. Moreover, Club C, again by referring to the relevant CAS award, stressed that in said decision no consent of the club of origin arose as a result of the particular nature of the decree and that this had adverse consequences for a claim filed by Club A against Club D. Therefore, Club C concluded that, contrary to what Club A alleged, it is far from being established that the absence of consent from Club D with respect to the termination of the player’s employment agreement would enable Club A to rely on a right for solidarity contribution, especially in view of the fact that there is no clear jurisprudence in this regard.

16. Finally, Club C argued that if it should be ordered to pay solidarity contribution to Club A on top of the amount it directly paid to Club D for the buyout of the player, the latter club should be asked to join the present proceedings since it might be legally feasible that Club D is obliged to reimburse the relevant amount of solidarity contribution to Club C, as it has been established by the DRC in its jurisprudence regarding similar cases in which 100% of the transfer compensation was paid to the former club of the player.

17. Club D, in its comments to the positions of Club A and Club C, argued that according to the law in country E as well as to the employment contract between the player and Club D, the player had the right to early terminate his
employment relationship without just cause by paying an amount for the “legal and definitive termination of the employment contract as well as the damages suffered by Club D”.

18. In this context, Club D held that, on 28 August 2013, it was notified of the intention of the player to leave the club. Subsequently, on 29 August 2013, a legal representative of Club C appeared together with the player at the office of the Country E League and deposited a check in the amount of EUR 20,000,000 in favour of Club D. In this respect, the player declared that with the payment of the buyout clause, all his economic obligations towards Club D are fulfilled and Club D is, as a result, compensated for the damages suffered due to the early termination of the employment relationship. Besides, Club C declared that it was interested in the services of the player and that for that reason, it was willing to pay the buyout clause for the player to compensate the damages suffered by Club D.

19. As a result, Club D stated that the amount of EUR 20,000,000 it received should be considered a net amount destined to compensate its damages and that any solidarity contribution should be paid by Club C on top of the buyout clause.

20. In this respect, Club D pointed that, upon the payment of the buy-out amount, the player was a free agent and, in particular, that it neither negotiated with Club C in order to transfer the player nor gave consent to the transfer of the player. Consequently, Club D referred to the CAS jurisprudence in similar cases and in particular to the aforementioned CAS award and concluded that it is a third party and, hence, solidarity contribution cannot impact its economic rights.

21. In its reply to the comments of Club D, Club C argued that it was always in good faith during the present proceedings. In this regard, Club C stated that despite the level of legal uncertainty in connection with movement of players following the termination of player contracts in application of the decree, it offered to pay solidarity contribution to Club A in case Club D would have agreed to reimburse the relevant amount. However, after it asked Club D to either pay solidarity contribution to Club A or to reimburse Club C, the club from country E refused to make any payments in connection with the relevant move of the player.

22. Furthermore, Club C held that in accordance with the FIFA Regulations in conjunction with the relevant commentary to it, moves of players under the decree can be expressly interpreted as buy-out clauses. Therefore, Club D, by
providing for such a clause stipulating the amount of EUR 20,000,000, demonstrates that it could be interpreted as having provided consent in advance to the unilateral termination of the player. In particular, Club C pointed to the fact that Club D not only chose to include an agreed amount in the event of a unilateral termination on this basis, but also to expressly state that it viewed the amount of EUR 20,000,000 as being the relevant amount in the event of a termination expressly connected to the FIFA Regulations. Based on the above, Club C stressed that this renders it impossible to accept Club D’s assertion that it never gave advance consent for the termination of the employment contract between it and the player.

23. Moreover, as to Club D’s assertion that the amount of EUR 20,000,000 was a net amount, Club C stressed that such consideration was neither ever negotiated nor stipulated in any agreement between the parties. Therefore, this allegation should be deemed non sustainable.

24. Likewise, Club C pointed to the aforementioned CAS award and emphasized that said award did not relate to the issue of solidarity contribution as in the present dispute, but to a sell-on-fee, which is why its conclusions cannot be directly applied to the present dispute.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as DRC or Chamber) analysed which Procedural Rules were applicable to the matter at hand. In this respect, it referred to art. 21 of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (hereinafter: the Procedural Rules) as well as to the fact that the present matter was submitted to FIFA on 30 September 2014. Therefore, the DRC concluded that the 2014 edition of the Procedural Rules is applicable to the matter at hand.

2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. (d) of the Regulations on the Status and Transfer of Players (edition 2015), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns the distribution of solidarity contribution between clubs belonging to different associations.

3. In this respect, the Chamber was eager to emphasize that contrary to the information contained in FIFA’s letter dated 20 April 2015 by means of which
the parties were informed of the composition of the Chamber, the member Philippe Diallo and the member Leonardo Grosso refrained from participating in the deliberations in the case at hand, due to the fact that the member Philippe Diallo has the same nationality as Club A as well as Club C and that, in order to comply with the prerequisite of equal representation of club and player representatives, also the member Leonardo Grosso refrained from participating and thus the Dispute Resolution Chamber adjudicated the case in presence of three members in accordance with art. 24 par. 2 of the Regulations.

4. Furthermore, and taking into consideration that the player was registered with his new club on 2 September 2013, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that in accordance with art. 26 par. 1 and par. 2 of the Regulations on the Status and Transfer of Players (editions 2012, 2014 and 2015), the 2012 version of the said Regulations is applicable to the present matter as to the substance.

5. The competence of the DRC and the applicable regulations having been established, the Chamber entered into the substance of the matter. The members of the Chamber started by acknowledging the facts of the case as well as the documentation on file. However, the Chamber emphasized that in the following considerations it will refer only to the facts, arguments and documentary evidence which it considered pertinent for the assessment of the matter at hand.

6. In this regard, the DRC started by acknowledging that Club A is requesting solidarity contribution in the amount of EUR 606,600 based on the amount of EUR 20,000,000 paid by Club C to Club D in connection with the move of the player from Club D to Club C.

7. In continuation, the DRC took note that, on the one hand, the player and Club D signed an employment contract valid until which, inter alia, based on the decree from country E, stipulated the right of the player to terminate his employment contract against the payment of EUR 20,000,000.

8. The Chamber also observed that it had been established that on 28 August 2013, the player informed Club D of his intention to unilaterally terminate the employment contract. Furthermore, the Chamber took note of the fact that on 29 August 2013, a legal representative of Club C appeared together with the player
at the office of the Country E League and deposited a check in the amount of EUR 20,000,000 in favour of Club D.

9. Thus, in view of the above, the DRC concluded that it had been established and was not contested by the parties that the employment contract between the player and Club D had terminated at the above mentioned date, i.e. on 29 August 2013, as a result of the payment of the sum of EUR 20,000,000 to Club D.

10. The DRC further noted that the parties did not dispute that the player in question signed an employment contract with Club C subsequently and was registered with the latter club on 2 September 2013.

11. In a next step, the Chamber took note of the argument of Club A that the move of the player from Club D to Club C should be considered as a transfer, taking into account that, by inserting the aforementioned early termination clause, Club D gave its consent to transfer the player against the payment of EUR 20,000,000 in advance, as an anticipated offer to a future move of the player. Moreover, Club A stressed that Club C agreed to the terms of such anticipated offer by paying the amount of EUR 20,000,000 to Club D and by subsequently offering an employment contract to the player. Finally, the DRC took note that Club A argued that Club D and the player freely agreed upon the indemnification amount and that the player also gave his consent to the transfer to Club C.

12. Moreover, the DRC took note that Club A also argued that art. 1 of Annexe 5 of the Regulations stipulates that if “a professional moves during the course of a contract, 5% of any compensation […]” from which it can be concluded that the payment of solidarity contribution would not be limited to transfers in a narrow sense but to any move.

13. Subsequently, the DRC continued by taking note of the arguments of Club C and in particular of the fact that the latter club argued that contrary to the situation in case of a classic buy-out clause, the alleged consent of Club D to a future move of the player was included in the relevant employment contract by obligation under the decree, which is why Club D was merely obliged to tolerate an early termination of the employment contract by the player. Consequently, in view of the absence of the consent of Club D to a future move of the player, Club C argued that the move of the player should not be considered a transfer.
14. Likewise, the DRC took note that Club C further stressed that in case the DRC would consider the move of the player a transfer having the consequence that it was liable to pay solidarity contribution to Club A, Club D should be asked to join the present proceedings since it would then be required to reimburse the relevant amount of solidarity contribution to Club C since the latter club did not have the opportunity to deduct the 5% from the “transfer compensation” as it is the case in a regular transfer of a player.

15. On the other hand, the Chamber acknowledged the arguments of Club D, according to which the amount of EUR 20,000,000 it received from Club C should be considered a net amount to compensate for the damages it suffered due to the early termination of the employment contract by the player. Therefore, Club C should be obliged to pay solidarity contribution on top of the net amount of EUR 20,000,000.

16. In this regard, the DRC took note that Club C had argued that Club D’s consideration that the amount of EUR 20,000,000 was a net amount was neither negotiated nor stipulated in any agreement between the parties.

17. Consequently, and in view of the opposing views of the parties, the Chamber deemed that it had to decide on the following two questions at the centre of the dispute:

- Was the payment of the amount of EUR 20,000,000 in the above circumstances equivalent to the payment of transfer compensation which would thus trigger Club C’s obligation to pay solidarity contribution to Club A?

- In case that Club C has to pay solidarity contribution to Club A, does Club D have the obligation to reimburse the relevant amount to Club C?

18. Thus, the Chamber firstly analysed the relevant indemnification clause of the employment contract between the player and Club D. In this regard, the deciding authority underlined that this release clause, the content of which had been approved by the above two parties, should not be interpreted literally, i.e. by adhering only to the letter of the clause in question, but in accordance with the theory of the parties’ recognisable intent, i.e. by ascertaining the meaning that the parties could reasonably have wished to give to the contractual clause in question. The Chamber highlighted the fact that according to this interpretation, it appears likely, according to the principle of good faith and in view of the considerable sum of EUR 20,000,000
set forth in the clause in question, that Club D and the player were providing for the possibility of a third club indirectly intervening in the payment of the release clause on a subsidiary basis with a view to contracting the services of the player in question.

19. The Chamber then recalled that it is not disputed by any of the parties that Club C deposited the amount in question, EUR 20,000,000, in favour of Club D, so that the player could terminate the employment contract signed with Club D.

20. In this regard, the DRC compared the content of the relevant indemnification clause of the employment contract signed between the player and Club D as well as the facts of this case, to a transfer agreement signed by two clubs for the transfer of a player. The Chamber underlined that a typical transfer agreement signed by two clubs and a player generally stipulates a sum of money freely agreed between the player’s former and new club in exchange for the early termination of the contractual relationship between the player and his former club, which is thus tantamount to the early termination of the employment contract in question by means of the payment of a sum commonly described as the “transfer amount”. Furthermore, the Chamber underlined that the professional services that a player renders to a club is a factor that is liable to be assessed by the employer from a financial standpoint. Consequently, when a club shows an interest in the professional services of a player who has a valid employment contract with another club, the interested club must reach an agreement with the old club with regard to the value of this transfer, with a view to compensating the old club for agreeing to dispense with the professional services of the player in question before the expiry of the employment contract.

21. In view of the above paragraph, the Chamber deemed that the two situations, i.e. the concrete one at hand in the present procedure concerning the payment of EUR 20,000,000 by Club C in accordance with the clause in the employment contract signed between the player and Club D and the payment of a sum by one club to another in connection with a typical transfer agreement, are similar and have the same characteristics, in that they both constitute a transfer agreed between two clubs and a player for a specific amount for the early termination of a former labour relationship, except for the fact that in this dispute, at first the value of the transfer was agreed bilaterally, i.e. without the intervention of Club C. Yet, the latter gave its agreement to the move of the player, thus to his transfer, at a later stage, namely when it
agreed to sign the player and to pay the amount in accordance with the pertinent clause of the employment contract and the decree.

22. With regard to the similarities in the above two situations, the DRC highlighted that in both cases a sum was paid to the player’s former club to enable him to terminate the employment contract before the contractually stipulated expiry date, with a view to being transferred to a new club. The DRC further stressed that the only difference resided in the fact that in the present case, the “transfer amount” was set bilaterally and Club C was not consulted at first, although it nevertheless subsequently freely accepted it and paid the relevant amount, EUR 20,000,000, to the player so that he could forward it to Club D. The Chamber thus concluded that the facts of the present case constitute a transfer agreed to by Club D, in the terms it had offered at the time of concluding the employment contract with the player.

23. Consequently, and in view of the above paragraphs, and bearing in mind the established jurisprudence of the DRC in this regard, the Chamber decided that in the present case, the activation of the relevant contractual clause by the player, bearing in mind that the sum in question, EUR 20,000,000, was voluntarily borne by Club C, has to be considered a transfer in the sense of the Regulations and in particular with regard to art. 21 and art. 1 of Annexe 5 of the Regulations which clearly stipulates that “if a professional moves during the course of a contract, 5% of any compensation, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation (...)” (emphasis added). This is also in line with the spirit and the ratio of the Regulations which basically provide that training clubs are entitled to a share of the solidarity contribution for any compensation paid by the new club to the former club. Therefore, the Chamber concluded that Club C has to pay solidarity contribution to Club A.

24. In this regard, having confirmed the above-mentioned obligation incumbent on Club C, the DRC went on to establish the proper calculation of the relevant proportion of solidarity contribution due to Club A.

25. To that end, the DRC referred to art. 1 of Annexe 5 of the Regulations which provides the figures for the distribution of the solidarity contribution, according to the period of time the player was effectively trained by a specific club and taking into consideration the age of the player at the time he was being training and educated by the club(s) concerned.
26. In this respect, the DRC recalled that the Football Federation from country B had confirmed that the player, born on 15 February 1993, was registered with Club A as from 9 July 2004 until 2 August 2012 and that the player was registered with Club C on 2 September 2013 as a professional as well as that the relevant compensation amounts to EUR 20,000,000.

27. On account of the above and in accordance with art. 1 of Annexe 5 of the Regulations, the Chamber considered that Club A is, thus, entitled to receive solidarity contribution for the period as from 9 July 2004 until 2 August 2012.

28. In view of all of the above, taking into account the EUR 20,000,000 as compensation paid by Club C to Club D, as well as taking into account the claimed amount by Club A, the DRC decided that Club C must pay to Club A the amount of EUR 606,000 plus default interest at a rate of 5% p.a. on said amount as of 3 October 2013 until the date of effective payment.

29. In continuation, the DRC recalled that Club C requested to be reimbursed by Club D for that amount. In this regard, the DRC first referred to the general rule that the player's new club has to remit the relevant proportion(s) of the 5% solidarity contribution to the club(s) involved in the player’s training and education in strict application of art. 1 and art. 2 of Annexe 5 of the Regulations whereas, at the same time, according to said well-established jurisprudence, the player’s former club is ordered to reimburse the same proportion(s) of the 5% of the compensation that it received from the player’s new club. However, in view of the particularities of the specific case and the characteristics of buy-outs in connection with the decree and the indemnification clause included in the employment contract between the player and Club D, the Chamber held that no reimbursement can take place. The indemnification clause amounted to EUR 20,000,000 and cannot be reduced by the Chamber by now ordering Club D to return a part of the paid amount to Club C. Consequently, Club C’s request for reimbursement has to be rejected.

30. Lastly, the DRC referred to art. 18 par. 1 of the Procedural Rules, according to which, in proceedings before the DRC, including the DRC relating to disputes regarding training compensation and the solidarity mechanism, costs in the maximum amount of CHF 25'000 are levied. The relevant provision further states that the costs are to be borne in consideration of the parties’ degree of success in the proceedings (cf. art. 18 par. 1 of the Procedural Rules).

31. According to Annexe A of the Procedural Rules, the costs of the proceedings are to be levied on the basis of the amount in dispute. On that basis, the DRC
held that the maximum amount of costs of the proceedings corresponds to CHF 25,000 (cf. table in Annexe A).

32. In respect of the above, and taking into account that the claim of Club A has been almost completely accepted, the DRC concluded that Club C has to bear the costs of the current proceedings in front of FIFA.

33. Considering the above, the DRC determined the costs of the current proceedings to the amount of CHF 15,000 which shall be borne by Club C.

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III. Decision of the Dispute Resolution Chamber

1. The claim of Club A is partially accepted.

2. Club C has to pay to Club A, **within 30 days** as from the date of notification of this decision, the amount of EUR 606,600 plus interest at a rate of 5% p.a. on said amount as from 3 October 2013 until the date of effective payment.

3. In the event that the aforementioned amount plus interest is not paid by Club C within the stated time limit, the present matter shall be submitted, upon request, to FIFA’s Disciplinary Committee for consideration and a formal decision.

4. Any further claim lodged by Club A is rejected.

5. The final costs of the proceedings in the amount of CHF 15,000 are to be paid by Club C, **within 30 days** of notification of the present decision, as follows:

   a) The amount of CHF 5,000 to Club A.

   b) The amount of CHF 10,000 to FIFA to the following bank account **with reference to case no.**: UBS Zurich
      Account number 366.677.01U (FIFA Players’ Status)
      Clearing number 230
      IBAN: CH 27 0023 0230 3666 7701U
SWIFT: UBSWCHZH80A

6. Club A is directed to inform Club C immediately and directly of the account number to which the remittances under points 2. and 5.a) are to be made and to notify the Dispute Resolution Chamber of every payment received.

7. The claim of Club C for reimbursement of solidarity contribution is rejected.

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Note relating to the motivated decision (legal remedy):

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

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

Court of Arbitration for Sport
Avenue de Beaumont 2
1012 Lausanne
Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org

For the Dispute Resolution Chamber:

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Jérôme Valcke
Secretary General
Encl.  CAS directives