



Arbitration CAS 2014/A/3560 Club Galatasaray A.S. v. Olympique Lyonnais, award of 25 August 2014

Panel: Mr Lars Hilliger (Denmark), President; Mr Efraim Barak (Israel); Mr Olivier Carrard (Switzerland)

Football

Breach of transfer agreement

Interpretation of the French word “l’effectif” in a contract

If, in the context of an agreement, the word “*l’effectif*” refers to the number of persons composing the team, the specific wording “*que le joueur figure ou non à l’effectif*” (*whether the player is part of the team roster or not*) is found, linguistically, to comprise probably every possible situation regarding a player, including for instance a situation where the player, if sustaining a serious injury, would never have been able to perform the obligations under his contract with the club or a situation like the present one where the player is transferred to another club. The wording “*que le joueur figure ou non à l’effectif*” therefore does not in any way suggest, whether directly or indirectly, that the player is required still to be registered with the club.

1. THE PARTIES

- 1.1 Club Galatasaray A.S. (the “Appellant”) is a Turkish football club, whose headquarters are located in Istanbul, Turkey. The Appellant is a member of the Turkish Football Federation, which in turn is a member organisation of the Fédération Internationale de Football Association (“FIFA”).
- 1.2 Olympique Lyonnais (the “Respondent”) is a French football club, whose headquarters are located in Lyon, France. The Respondent is a member of the French Football Federation, which in turn is a member of FIFA.

2. FACTUAL BACKGROUND

- 2.1 The elements set out below are a summary of the main relevant facts of the case as established by the Panel on the basis of the decision rendered by the Single Judge of the Players’ Status Committee (the “FIFA PSC”) on 10 December 2013 (the “Decision”), the written submissions of the Parties and the exhibits filed. Additional facts may be set out, where relevant, in connection with the legal considerations of the present Award.

- 2.2 On 1 July 2009, the Appellant and the Respondent signed a transfer agreement (the “Agreement”) regarding the transfer of the professional football player A. (the “Player”) from the Respondent to the Appellant.
- 2.3 According to the Agreement, the Appellant undertook to pay a guaranteed transfer compensation in the amount of EUR 7,500,000.00 to the Respondent which amount has indisputably been paid in accordance with the Agreement.
- 2.4 Furthermore, the Agreement, which was drafted in French, stated *inter alia* as follows:

“3/ Indemnité complémentaire:

A chaque qualification directe ou indirecte pour la phase de poules de l’UEFA CHAMPIONS LEAGUE disputée au cours des saisons 2010/2011, 2011/2012, 2012/2013 et 2013/2014, que le joueur figure ou non à l’effectif, le Club de GALATASARAY versera à l’Olympique Lyonnais dans les 15 jours de la date à laquelle la qualification sera acquise, une indemnité de 500 000 € HT (Cinq cent mille Euros).

Au titre de cette indemnité complémentaire, l’Olympique Lyonnais ne pourra recevoir plus de 1 500 000 € HT (Un million cinq cent mille Euros) et moins de 1 000 000 € HT (Un million d’Euros), quel que soit le nombre de qualification acquise.

Si GALATASARAY se qualifie au plus une fois au cours des quatre saisons sportives sus visées, le solde de l’indemnité minimum revenant à l’Olympique Lyonnais sera versé dans les quinze jours suivant le jour du tirage au sort de la phase de poules de l’UEFA CHAMPIONS LEAGUE au titre de la saison sportive 2012/2013”.

In the translation used by the FIFA PSC:

“3/ Additional compensation:

For each qualification, direct or indirect, for the group stage of the UEFA Champions League played during the seasons 2010/2011, 2011/2012, 2012/2013 and 2013/2014, whether the player is part of the team roster or not (in French: “que le joueur figure ou non à l’effectif), Galatasaray shall pay to Olympique Lyonnais within 15 days as of the date of qualification, an indemnity of EUR 500,000 (five hundred thousand euros).

In respect of this additional compensation, Olympique Lyonnais cannot receive more than EUR 1,500,000 (one million five hundred thousand euros) and less than EUR 1,000,000 euros), regardless of the number of qualifications.

If Galatasaray qualifies at most once during the four above mentioned sporting seasons, the remainder of the minimum compensation payable to Olympique Lyonnais will be paid within 15 days following the date of the draw for the group stage of the UEFA Champions League for the 2012/2013 sporting season”.

- 2.5 On 24 May 2012, and following the qualification of the Appellant for the group stage of the UEFA Champions League 2012/2013, the Respondent forwarded an invoice to the Appellant, requesting payment of EUR 500,000.00 in accordance with the provisions set out in Article 3 of the Agreement.
- 2.6 On 4 June 2012, the Appellant answered the Respondent as follows:
- “I am contacting you regarding the invoice that you have sent. We would like to underline the fact that A. and Galatasaray mutually terminated the employment contract on 06.07.2010 and the Player joined AL-Saad Sports Club right after the termination. He is not our Player and definitely he is not registered with Galatasaray A.S. during the season 2011-2012 in which the Club Galatasaray A.S. became the champion.*
- Indeed, it is not possible to apply the 3rd clause in the transfer agreement which named as “Indemnité complémentaire”.*
- In this respect, we would like to inform you that Olympic Lyon is not entitled to receive any bonus payments including the one that is in the amount of EUR 500.000”.*
- 2.7 By letters of 12 June 2012 and 27 June 2012 to the Appellant, the Respondent maintained the claim, arguing *inter alia* that the provision regarding additional payment in case of qualification for the UEFA Champions League group stage applies “... *whether or not the player has still a contract of employment with your club as, regarding to the agreement, such a condition is not a written term. If the parties’ willingness would have been to set the presence of the player as a condition of the payment, such a term would have been clearly written in the agreement, which is not the case. ... We therefore demand that you proceed to the payment within the next three days, otherwise a legal action will be taken*”.
- 2.8 On 17 July 2012, the Respondent lodged a claim with FIFA against the Appellant for breach of contract, indicating that the Appellant had qualified directly for the 2012/2013 group stage of the UEFA Champions League. Consequently, the Respondent argued that the condition in Article 3 of the Agreement was applicable and, therefore requested the amount of EUR 500,000 from the Appellant as well as legal interest.
- 2.9 On 28 September 2012, the Appellant replied to the claim lodged against it and stated that the employment contract of the Player was terminated with mutual consent on 6 July 2010 and that the Player joined the Qatari club, Al-Saad Sports Club, immediately after said termination. Therefore, the Appellant argued that the Player was not only “*out of the squad*”, but also no longer registered with the Appellant when it qualified for the UEFA Champions League, i.e. during the 2011/2012 season. Since the Player did not contribute to the qualification for the UEFA Champions League, the Appellant concludes that the above-mentioned clause cannot apply to the present case.
- 2.10 On 28 November 2012, the Respondent amended its claim and requested the amount of EUR 1,000,000 from the Appellant based on the second and third paragraphs of Article 3 of the Agreement, stating that it is entitled to a minimum additional compensation of EUR 1,000,000.

- 2.11 On 5 February 2013, the Appellant submitted its response to the amended claim, and *inter alia* reiterated its position that since the Player did not have an employment contract with the Appellant for the 2010/2011 and 2011/2012 seasons, the provision of Article 3 of the Agreement is not applicable.
- 2.12 The Single Judge of the FIFA PSC first of all acknowledged that it was undisputed between the Parties that the provision of Article 3 as well of the rest of the Agreement had been agreed between the Parties. Equally, it was undisputed that the Appellant had qualified during the 2011/2012 season for the group stage of the 2012/2013 edition of the UEFA Champions League, and it was further undisputed that the Player had left the Appellant on 6 July 2010 by mutual consent between the Appellant and the Player to join another club.
- 2.13 In this regard, and after having analysed the wording of the bonus clause, the Single Judge held that the bonus clause refers to “*que le joueur figure ou non à l’effectif*”. Therefore, the Single Judge, considering that the relevant clause was clear and unambiguous, concluded that the wording “*que le joueur figure ou non à l’effectif*” covered both the scenario in which the Player was indeed registered with the Appellant when it qualified for the group stage of the UEFA Champions League but did not play, and the scenario in which the Player was no longer registered with the Respondent when it qualified for the UEFA Champions League.
- 2.14 Moreover, the Single Judge recalled that the said provision stipulates that “(the Respondent) *ne pourra recevoir plus de 1,500,000 EUR (...) et moins de 1,000,000 EUR (...) quelque soit le nombre de qualification acquise*” or in English “(the Respondent) *cannot receive more than EUR 1,500,000 (...) or less than EUR 1,000,000 (...) regardless of the number of qualifications*” as well as “*le solde de l’indemnité minimum revenant à (the Respondent)*” or in English “*the remainder of the minimum compensation payable to (the Respondent)*”.
- 2.15 In this regard, and after having analysed the wording of the second and third paragraphs of Article 3 of the Agreement, the Single Judge held that the bonus clause refers to a minimum additional compensation of EUR 1,000,000, regardless of the number of qualifications.
- 2.16 On 10 December 2013, the Single Judge of the FIFA PSC rendered the Decision and decided, in particular, that:
1. *The claim of the Claimant, Olympique Lyonnais, is partially accepted.*
 2. *The Respondent, Galatasaray A.S., has to pay to the Claimant, within 30 days as from the date of notification of this decision, the amount of EUR 1,000,000 plus 5% interest p.a. on said amount as of 28 November 2012 until the date of effective payment.*
 3. *If the aforementioned sum plus interest is not paid within the aforementioned deadline, 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 the Claimant is rejected.*

5. *The final costs of the proceedings in the amount of CHF 12,000 are to be paid by the Respondent within 30 days as from the date of notification of the present decision as follows:*
- 5.1. *The amount of CHF 7,000 has to be paid to FIFA*
- 5.2. *The amount of CHF 5,000 has to be paid directly to the Claimant”.*

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 3.1 On 11 April 2014, the Appellant filed in the English language a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “Code”).
- 3.2 On 14 April 2014, the CAS Court Office initiated an appeals arbitration procedure under the reference CAS 2014/A/3560 Club Galatasaray A.S. v. Olympique Lyonnais.
- 3.3 By letter of 15 April 2014, the Respondent objected to English being the language of the proceedings and requested the CAS to proceed in French, arguing that (i) the Agreement, ratified by both Parties was drafted in French, (ii) neither the Parties nor their respective counsel were of English nationality and (iii) that English is not the mother tongue of the Parties but that the Respondent and its counsel are of French nationality.
- 3.4 By letter of 18 April 2014, the Appellant relied on Article R29 of the Code and argued that the language of the Parties’ counsel or the nationality of the Parties is of no relevance to the selection of the language of the arbitration.
- 3.5 The Appellant further argued that the Decision was issued in English and also pointed out that the Parties’ counsel are not native English speakers or residents of an English-speaking country, which will ensure that both Parties are placed in an equal situation during their written and oral arguments. The Appellant finally alleged that the signature of the Agreement in French does not mean that the Parties automatically selected French as the language of the proceedings before the CAS.
- 3.6 On 23 April 2014, the Appellant filed its Appeal Brief.
- 3.7 By Order of Language of 24 April 2014, the President of the Appeals Arbitration Division decided in consideration of the above-mentioned arguments that English shall be the language of the arbitral proceedings.
- 3.8 By letter of 14 May 2014 from the CAS Court Office, the Parties were informed that the deadline for the Respondent to file its answer had been extended by five days following the request from the Respondent.
- 3.9 On 15 May 2014, the Respondent filed its Answer.

- 3.10 On 27 May 2014 and on 4 June 2014, and upon request from the CAS Court Office, the Respondent and the Appellant respectively informed the CAS Court Office that they did not prefer for a hearing to be held in this matter.
- 3.11 By letter of 12 June 2014, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Lars Hilliger, Attorney-at-Law, Copenhagen, Denmark (President of the Panel), Mr Efraim Barak, Attorney-at-Law, Tel Aviv, Israel (appointed by the Appellant), and Mr Olivier Carrard, Attorney-at-Law, Geneva, Switzerland (appointed by the Respondent).
- 3.12 On 25 June 2014, the CAS Court Office informed the Parties that the Panel deemed itself sufficiently well informed to decide the case and render an award based solely on the written submissions received without holding a hearing.
- 3.13 On the same date, the CAS Court Office sent to the Parties an Order of Procedure, which was signed and returned on 26 June 2014 by the Appellant and on 1 July 2014 by the Respondent. The Parties confirmed that their right to be heard has been respected.

4. JURISDICTION OF THE CAS AND ADMISSIBILITY OF THE APPEAL

- 4.1 Article R47 of the Code states as follows:

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

...”.

- 4.2 With respect to the Decision, the jurisdiction of the CAS derives from article 67 of the FIFA Statutes. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, and both Parties confirmed the CAS jurisdiction when signing the Order of Procedure.
- 4.3 The Decision with its grounds was notified to the Appellant on 24 March 2014, and the Appellant’s Statement of Appeal was lodged on 11 April 2014, i.e. within the statutory time limit set forth by the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the Code.
- 4.4 As a result, the Panel finds that the CAS has jurisdiction to decide on the Appeal of the Decision and that the Appeal of the Decision is admissible.
- 4.5 Under Article R57 of the Code, the Panel has full power to review the facts and the law and may issue a de novo decision superseding, entirely or partially, the decision appealed against.

5 APPLICABLE LAW

5.1 Article 66 par. 2 of the FIFA Statutes states as follows:

“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

5.2 Article R58 of the Code states as follows:

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

5.3 The Panel notes that in the present matter the Parties have not agreed on the application of any specific national law. The applicable law in this case will consequently be the rules and regulations of FIFA and, additionally, Swiss law due to the fact that FIFA, which issued the challenged decision, is domiciled in Switzerland.

6 THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS

6.1 The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

6.2 The Appellant

6.2.1 In its Statement of Appeal of 11 April 2014 and in its Appeal Brief of 23 April 2014, the Appellant requested the following from the CAS:

- “1. To accept the present appeal against the challenged decision;*
- 2. To set aside the challenged decision;*
- 3. To establish that the Appellant shall not pay any amount to the Respondent;*
- 4. To condemn the Respondent to the payment in the favor of the Appellant of the legal expenses incurred;*
- 5. To establish that the costs of the arbitration procedure shall be borne by the Respondent”.*

6.2.2 In support of its requests, the Appellant submitted as follows:

- a) It is undisputed that the Parties signed the Agreement regarding the transfer of the Player to the Appellant.
- b) In accordance with the Agreement, the Appellant has paid to the Respondent the agreed guaranteed transfer compensation in the amount of EUR 7,500,000.
- c) Furthermore, it is undisputed that the Agreement in Article 3 contained a complementary remuneration that every time Galatasaray A.S. is entitled to compete in the group stage of UEFA Champions League, the Respondent is entitled to receive EUR 500,000 within 15 days from the date the qualification is definite and whether the Player is an effective player or not.
- d) However, the Appellant is not obliged to pay EUR 1,000,000 to the Respondent as a complementary remuneration regarding this provision.
- e) The Agreement was drafted in French by the Respondent.
- f) Article 3 of the Agreement is not clear and is subject to different interpretations, however the said article can never be interpreted as the Single Judge did in the Decision.
- g) When a provision is subject to different interpretations, the deciding body shall interpret it against the party who drafted it, which is a fundamental principle.
- h) The Single Judge failed to respect this fundamental principle.
- i) Both the Respondent and the Single Judge refer to the clause *“que le joueur figure ou non à l’effectif”* as being clear and unambiguous, concluding the wording covered both the scenario in which the Player was indeed registered with the Appellant when it qualified for the group stage of the UEFA Champions league but did not play, as well as the scenario in which the Player was no longer registered with the Appellant when it qualified for the group stage of the UEFA Champions League.
- j) Unlike Article 2 of the Agreement, which covered the unconditional and guaranteed payments of the guaranteed transfer compensation in the amount of EUR 7,500,000, Article 3 was actually conditional in two different ways.
- k) The first condition, not contended by the Parties, is the qualification for the UEFA Champions League.
- l) The second condition is and should only be whether the Player is an effective player or not with the Appellant as indicated in the wording: *“que le joueur figure ou non à l’effectif”*.
- m) The main word in the clause is *“l’effectif”* (effective) and effective’s lexical meaning is *“successful in producing a desired or intended result”*.
- n) Furthermore, *“l’effectif”* is synonymous with the word *“efficace”* in the French language, and also this word corresponds to the word *“efficient”* in the English language.
- o) In relation to the Agreement, it is not decisive whether the Player should be considered an effective Player, even if sitting on the bench of the Appellant’s team.
- p) In this case, the disputed fact is not whether the Player is an effective Player or not.

- q) The main dispute is if the Player is no longer registered with the Appellant, can the Respondent then request a contribution-founded bonus payment?
- r) It is undisputed that the Appellant and the Player mutually terminated their employment relationship during the summer of 2010, after which the Player right away joined Al-Saad Sports Club for the 2010/2011 season.
- s) Due to the fact that the Player was no longer registered with the Appellant, it was not possible to describe the Player either as an effective or non-effective player.
- t) Consequently, since the Player was not a registered player with the Appellant in the 2011/2012 season, in which the Appellant qualified for the group stage of the UEFA Champions League, the Respondent shall not be entitled to receive the amount stipulated in Article 3 of the Agreement.

6.3 The Respondent

6.3.1 In its Answer of 15 May 2014, the Respondent requested the following from the CAS:

- “1. To confirm the decision given on 10 December 2013 by the Single Judge of FIFA Players’ Status Committee ordering Club GALATASARAY to pay OLYMPIQUE LYONNAIS the sum of EUR 1,000,000 and the sum of 12,000 CHF in respect of the cost of the proceeding in the first instance.
- 2. To reform the decision given on 10 December 2013 by the Single Judge of FIFA Players’ Status Committee ordering Club GALATASARAY to pay OLYMPIQUE LYONNAIS late payment interest of 5% only from 28 November 2012.
- 3. To order Club GALATASARAY, consequently and in this regard, to pay OLYMPIQUE LYONNAIS late payment interest of 5% on the sum of EUR 500,000 from 24 May 2012 (the date of invoice no. 8088 and on the sum of EUR 500,000 from 31 August 2012 (the date of invoice n. 8225), the foregoing until full payment.
- 4. To order Club GALATASARAY to pay OLYMPIQUE LYONNAIS damages of EUR 50,000 in respect of its abuses of right and of process.
- 5. To order Club GALATASARAY to contribute to the legal costs incurred by OLYMPIQUE LYONNAIS to a value of EUR 40,000.
- 6. To order Club GALATASARAY to contribute to the interpreting costs incurred by OLYMPIQUE LYONNAIS to a value of EUR 6,000.
- 7. To order the Club GALATASARAY to bear and pay for all the arbitration costs”.

6.3.2 In support of its requests, the Respondent submitted as follows:

- a) It is undisputed that the Parties entered into the Agreement regarding the transfer of the Player to the Appellant.
- b) Furthermore, it is undisputed that the Agreement in Article 3 contained a complementary remuneration that every time Galatasaray A.S. is entitled to compete in the group stage of

the UEFA Champions League, the Respondent is entitled to receive EUR 500,000 within 15 days from the date the qualification is definite and whether the Player is an effective player or not.

- c) Since the Appellant indisputably did qualify for the group stage of the UEFA Champions League for the 2012/2013 season, the invoices from the Respondent, amounting to EUR 1,000,000 and forming the subject of this case, are indisputably due.
- d) The invoices are in correspondence with existing CAS jurisprudence, even if the wording "*que le joueur figure ou non à l'effectif*" is disregarded.
- e) The Parties agreed that the condition to be satisfied in order for the complementary remuneration to fall due was the qualification of the Appellant for the group stage of the UEFA Champions League.
- f) If the Parties had wished to make any other conditions for the remuneration to fall due, the Parties would have inserted such additional conditions in the Agreement.
- g) The Parties never had that wish, and such possible additional conditions are therefore not a part of the Agreement.
- h) If the Parties had agreed that it was a condition for the complementary remuneration to be payable that the Player should still be registered with the Appellant at the time of the effective qualification for the group stage of the UEFA Champions League, this would amount to making the contract meaningless since this would give the Appellant the power of deciding, as it saw fit, whether or not to pay the additional compensation by transferring the Player before the club's qualification.
- i) However, the Parties never agreed on such additional condition for the payment, which is why the complementary remuneration amounting to EUR 1,000,000 is payable by the Appellant even if the wording "*que le joueur figure ou non à l'effectif*" was not stipulated in the Agreement.
- j) That the complementary remuneration is payable to the Respondent is even clearer when the wording "*que le joueur figure ou non à l'effectif*" is taken into account.
- k) The interpretation and translation made by the Appellant of the wording "*que le joueur figure ou non à l'effectif*" are incorrect.
- l) "*l'effectif*" (the workforce, the team roster) is a noun which designates the number of individuals constituting a group, such as a company or, in this case, a football club.
- m) "*figurer*" (to be present, to be included) is a verb which means to belong to a group.
- n) Thus, "*figurer à l'effectif*" (to be present in the workforce, the team roster), means to belong to a group.
- o) In this instance the meaning of the clause in the Agreement is that the additional compensation relating to the qualification for the group stage of the UEFA Champions League is due for payment whether or not the Player belongs to the Appellant ("*que le joueur figure ou non à l'effectif*" / whether or not the Player is present in the team roster).

- p) This meaning is clear, precise and unequivocal, as was moreover found by the Single Judge in the Decision.
- q) Thus, it is in this sense irrelevant whether the Player was no longer registered with the Appellant at the time when the Appellant qualified for the group stage of the UEFA Champions League.
- r) However, if the Panel, after having considered the foregoing arguments, finds it necessary to interpret the wording “*que le joueur figure ou non à l’effectif*”, the wording must be interpreted in accordance with its common, vulgar, secular meaning.
- s) The burden of proof is incumbent on the party claiming that the meaning should be different from the “objective” meaning of the wording, which burden the Appellant has not discharged.
- t) Furthermore, there is no reason for the Panel to believe that the wording does not correspond to the wishes of the Parties at the time of signing the Agreement.
- u) It must be underlined that the qualification of the Appellant for the group stage of the UEFA Champions League is a sporting random factor, which has to be seen in connection with the fact that everyone knows that such a qualification is richly rewarded.
- v) As such, and in accordance with the negotiations and the Parties’ wishes, the additional compensation is expressly disconnected from the presence of the Player.
- w) The fact that the Agreement is drafted in the French language is of no significance in this case.
- x) Furthermore, the principle of *in dubio contra stipulatorem* is not applicable when the subjective or objective interpretation has enabled the meaning of "the contract" to be determined, which is indeed the case in this matter.
- y) With regard to payment of interest, the Appellant should pay interest of 5% p.a. on EUR 500,000 from 24 May 2012 and on EUR 500,000 from 31 August 2012, which are the dates of the respective invoices from the Respondent to the Appellant.
- z) Furthermore, it has been sufficiently demonstrated that its abusive appeal and other actions were only dictated by its determination to defer in bad faith payment of what it knows to be its debts.
- aa) Such actions are contrary to Article 2 of the Swiss Civil Code, or to Article 41 of the Code of Obligation, with the result that the Appellant should be ordered to pay damages to the Respondent reasonably assessed at EUR 50,000 in respect of its abuses of right and of process.

7. DISCUSSION ON THE MERITS

- 7.1 Initially, the Panel notes that it is not disputed between the Parties that on 1 July 2009 they both signed the Agreement according to which the Appellant undertook to pay a guaranteed transfer compensation in the amount of EUR 7,500,000.00 to the Respondent, which amount has already been paid.

7.2 Furthermore, it is not disputed that the Agreement included the following provision:

“3/ Indemnité complémentaire:

A chaque qualification directe ou indirecte pour la phase de poules de l’UEFA Champions League disputé au cours des saisons 2010/2011, 2011/2012, 2012/2013 et 2013/2014, que le joueur figure ou non à l’effectif, le Club de Galatasaray versera à l’Olympique Lyonnais dans les 15 jours de la date à laquelle la qualification sera acquise, une indemnité de 500 000 EUR HT (Cinq cent mille Euros).

Au titre de cette indemnité complémentaire, l’Olympique Lyonnais ne pourra recevoir plus de 1 500 000 EUR HT (Un million cinq cent mille Euros) et moins de 1 000 000 EUR HT (Un million d’Euros), quel que soit le nombre de qualification acquise.

Si Galatasaray se qualifie au plus une fois au cour des quatre saisons sportives susvisées, le solde de l’indemnité minimum revenant à l’Olympique sera verse dans les quinze jours suivant le jour du tirage au sort de la phase de poules de l’UEFA Champions League au titre de la saison sportive 2012/2013”.

In the translation used by the FIFA PSC:

“3/ Additional compensation:

For each qualification, direct or indirect, for the group stage of the UEFA Champions League played during the seasons 2010/2011, 2011/2012, 2012/2013 and 2013/2014, whether the player is part of the team roster or not (in French: “que le joueur figure ou non à l’effectif), Galatasaray shall pay to Olympique Lyonnais within 15 days as of the date of qualification, an indemnity of EUR 500,000 (five hundred thousand euros).

In respect of this additional compensation, Olympique Lyonnais cannot receive more than EUR 1,500,000 (one million five hundred thousand euros) and less than EUR 1,000,000euros), regardless of the number of qualifications.

If Galatasaray qualifies at most once during the four above mentioned sporting seasons, the remainder of the minimum compensation payable to Olympique Lyonnais will be paid within 15 days following the date of the draw for the group stage of the UEFA Champions League for the 2012/2013 sporting season”.

7.3 Finally, it is undisputed that the Player and the Appellant by mutual agreement terminated their employment contract during the summer of 2010, after which the Player right away joined Al-Saad Sports Club for the 2010/2011 season, and the Player was consequently not registered with the Appellant during the 2011/2012 season, during which the Appellant qualified for the group stage of the UEFA Champions League 2012/2013.

7.4 Thus, the main issue to be resolved by the Panel is whether the Respondent is entitled to receive the agreed additional compensation due to the Appellant’s qualification for the group

stage of the UEFA Champions League even if the Player was not registered with the Appellant during the season of the qualification.

- 7.5 Based on the submissions of the Parties, the Panel finds that sufficient evidence has been produced to show that the Respondent, prior to the Parties' conclusion of the Agreement, had requested to receive EUR 8,500,000.00 as a guaranteed transfer compensation, but that the Parties, in the Agreement, agreed on a guaranteed transfer compensation of EUR 7,500,000.00, but with the possibility of receiving an amount between EUR 1,000,000.00 and EUR 1,500,000.00, provided that the Appellant qualified to the group stage of the UEFA Champions League at least once within the agreed period.
- 7.6 Accordingly, the Panel subsequently notes that it is clearly evident from Article 3 of the Agreement that the overarching condition for the Appellant's obligation, if applicable, to pay the agreed additional compensation is that the Appellant qualifies one or more times for the group stage of the UEFA Champions League within the agreed period.
- 7.7 In that connection, the Agreement expressly provides that the Respondent, in such case, is entitled to receive an additional compensation "*que le joueur figure ou non à l'effectif*" (*whether the player is part of the team roster or not*), which, in the Panel's view, emphasises even further that it is the actual qualification that constitutes the relevant condition to be taken into consideration, whereas the question as to whether the Player in reality played an active role in this qualification is of no significance for the Parties according to the Agreement.
- 7.8 The Panel finds that the wording "*que le joueur figure ou non à l'effectif*" (*whether the player is part of the team roster or not*) provides sufficient evidence of the agreement between the Parties on this point.
- 7.9 Against the background of the submissions of the Appellant, the question is, however, whether this wording also covers the specific situation where the Player was no longer registered with the Appellant during the qualification.
- 7.10 As already mentioned above, whether the Player played an active role in connection with the actual qualification is not, according to the Agreement, essential to resolving the issue of payment of additional compensation.
- 7.11 The Panel further finds that the wording "*que le joueur figure ou non à l'effectif*" (*whether the player is part of the team roster or not*) does not in any way suggest, whether directly or indirectly, that the Player is required still to be registered with the Appellant.
- 7.12 Nor has such a requirement of continued registration with the Appellant as a further condition of payment of additional compensation been agreed between the Parties elsewhere in the Agreement.
- 7.13 On the contrary, the specific wording "*que le joueur figure ou non à l'effectif*" (*whether the player is part of the team roster or not*) is found, linguistically, to comprise probably every possible situation

regarding the Player, including for instance a situation where the Player, if sustaining a serious injury, would never have been able to perform the obligations under his contract with the Appellant or a situation like the present one where the Player is transferred to another club.

- 7.14 The Appellant's interpretation of the word "*l'effectif*" does not match the etymological development of the word, as the word "*l'effectif*" in the context of the Agreement refers to the number of persons composing the team.
- 7.15 The Panel further notes that the Respondent, according to the Agreement, had no influence on whether the Appellant and the Player could terminate their internal contract of employment prior to the expiry date originally agreed upon.
- 7.16 If it was a condition for payment of additional compensation that the Player was still registered with the Appellant during the qualification, the Appellant could in reality make the Respondent's chances of receiving an additional compensation under the Agreement illusory by transferring the Player to another club, which the Respondent would have to accept passively.
- 7.17 In doing so, the Appellant would be able to gain a "double" economic benefit by transferring the Player prior to a possible qualification for the group stage of the UEFA Champions League, as the Appellant, besides receiving a transfer compensation from the Player's new club, could at the same time preclude the Respondent from claiming payment of an additional compensation under the Agreement.
- 7.18 The Panel finds that this has not been the intention of the clause in question.
- 7.19 Given these and other circumstances, the Panel finds that it was specifically the qualification for the group stage of the UEFA Champions League that was the decisive factor behind the Appellant's obligation to pay an additional compensation under the Agreement to the Respondent, although the Player was no longer registered with the Appellant during the qualification.
- 7.20 The Panel notes in that connection, as a matter of form, that the Panel finds it irrelevant that the Agreement was drafted in the French language by the Respondent.
- 7.21 As it is not disputed between the Parties that the minimum additional compensation payable under the Agreement in case of qualification for the UEFA Champions League amounts to EUR 1,000,000.00, and as the Appellant only qualified for the group stage of the UEFA Champions League once during the agreed period, the Panel finds that this is the amount the Appellant is obliged to pay to the Respondent in accordance with the Agreement.
- 7.22 Besides claiming payment of this additional compensation in accordance with the Agreement, the Respondent requests that the CAS orders the Appellant to pay to the Respondent late payment interest of 5% on the sum of EUR 500,000 from 24 May 2012 and on the sum of EUR 500,000 from 31 August 2012.

- 7.23 Furthermore, the Respondent requests the CAS to order that the Appellant shall pay to the Respondent damages of EUR 50,000 in respect of its abuses of right and of process.
- 7.24 The Panel finds that both the request regarding late payment interest and the request regarding damages should be considered as counterclaims.
- 7.25 Since counterclaims, according to Article R55 of the Code, may not be filed in appeals arbitration procedures before the CAS, the Panel finds the counterclaims inadmissible.

8. SUMMARY

- 8.1 Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Panel finds that the Appellant shall pay to the Respondent an amount of EUR 1,000,000.00, which amount will carry interest at the rate of 5 per cent p.a. as from 28 November 2012 until payment is made.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Club Galatasaray A.S. on 11 April 2014 against the decision rendered by the Single Judge of the Players' Status Committee on 10 December 2013 is dismissed.
2. The decision rendered by the Single Judge of the Players' Status Committee on 10 December 2013 is upheld.
3. (...).
4. (...).
5. Any further and other claims for relief are dismissed.