

**Arbitration CAS 2014/A/3710 Bologna FC 1909 S.p.A. v. FC Barcelona, award of 22 April 2015**

Panel: Mr Efraim Barak (Israel), President; Prof. Massimo Coccia (Italy); Mr Michael Gerlinger (Germany)

*Football**Training compensation**Principle and exceptions regarding obligation to pay training compensation**Proof of the real intention to continue the employment relationship**Offer made in bad faith**Regulatory right of the training club to offer a renewed contract to a player**“Genuine interest” requirement**Effects of the loan of a player on the chain of the training period when calculating the training compensation**Categorisation of clubs for the calculation of the training compensation**Role of the player passport for the categorisation of clubs*

1. **Training compensation is due, even after an employment contract expired and regardless of whether a new contract was offered to the player by the training club. However, for the specific category of “*players moving from one association to another inside the territory of the EU/EEA*”, no training compensation is payable to the player’s training club if the player is transferred at the end of his contract and if the training club did not offer the player a “new” contract before expiry of his current contract. As an exception to the exception provided for the EU/EEA territory, even if the player’s former club did not offer a “new” contract to the player, the training club can still “*justify that it is entitled to such compensation*”.**
2. **The FIFA Commentary may not be interpreted in a way that contradicts the clear wording of article 6(3) of Annex 4 to the FIFA Regulations on the Status and Transfer of Players (RSTP), which is unequivocal in stating that offering a renewed contract to a player is *per se* a demonstration of the training club’s “real intention” to continue its employment relationship with him.**
3. **There might be specific circumstances, linked to a training club’s act or conduct of misrepresentation, that would justify the proposition that a training club’s offer to a player would be in bad faith and, as such, ineffective vis-à-vis the interested player and/or another club. However, under circumstances of this kind, there would be no need to resort to an interpretation of article 6(3) of Annex 4 RSTP which would find no basis in the language of the rule, as a party in good faith would be anyways protected by Swiss legal principles such as the prohibition of *venire contra factum proprium* and the doctrine of “*apparence efficace*”.**
4. **A training club’s regulatory right to offer a renewed employment contract to a player at**

least 60 days before expiry of the current contract cannot be set aside by the conclusion of an employment contract between the player and a third club prior to this 60-day deadline, for the conclusion of such employment contract is a *res inter alios acta* that cannot affect the interests of the training club, which is not privy to such contract. The only exception would be the bad faith of the training club.

5. Article 6(3) of Annex 4 RSTP does not require that the training club shows a genuine interest in the player as a condition to obtain training compensation. The “genuine interest” requirement, which derives from CAS jurisprudence, is only relevant when no contract is offered.
6. The loan of a player shall not be considered as a permanent transfer in the sense of the RSTP and does not disconnect the chain of the training period for the purpose of the calculation of training compensation, *i.e.* the amount of training compensation that the training club is entitled to receive shall be calculated as from the player’s first registration with the training club until the date of his definitive transfer to the club that shall pay training compensation, provided that the period during which the player was loaned to a third club shall be excluded from the period over which training compensation is to be awarded to the training club.
7. The intention behind the categorisation of clubs in the RSTP is to classify clubs in four different categories, depending on the total investments made by the club in youth development in general. Whether a specific player plays in a club’s A team or in any other team of the club does not influence the total investment made by the club and, as such, does not alter the category in which the club is classified for the calculation of the amount of training compensation.
8. Although the player passport is relevant to establish the career history of a player and plays an important role in the calculation of the amount of training compensation due, it is not decisive for the categorisation of clubs, as in many countries – maybe in most of them – it does not contain the category of the club, nor is this required by the RSTP.

I. PARTIES

1. Bologna FC 1909 S.p.A. (hereinafter: “Bologna FC” or the “Appellant”) is a football club with its registered office in Bologna, Italy. Bologna FC is registered with the Italian Football Federation (*Federazione Italiana Giuoco Calcio* – hereinafter: the “FIGC” or the “Italian FA”), which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter: “FIFA”).
2. FC Barcelona (hereinafter: “FC Barcelona” or the “Respondent”) is a football club with its registered office in Barcelona, Spain. FC Barcelona is registered with the Spanish Football

Federation (*Real Federación Española de Fútbol* – hereinafter: the “RFEF” or the “Spanish FA”), which in turn is also affiliated to FIFA.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the main relevant facts, as established on the basis of the parties’ written and oral submissions and the evidence examined in the course of the present appeals arbitration proceeding. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
4. M. (hereinafter: the “Player”) is a professional football player of Spanish nationality, born in 1991, who was registered with FC Barcelona since 29 October 1999, when he was 8 years old.
5. On 27 August 2010, at the age of 19, the Player signed his first professional employment contract with FC Barcelona, valid until 30 June 2012.
6. On 13 January 2011, the Player was loaned to SSV Vitesse (hereinafter: “Vitesse”), a football club with its registered office in Arnhem, the Netherlands, until 30 June 2011, after which the Player returned to FC Barcelona.
7. On 9 January 2012, Mr Roberto Zanzi, General Director of Bologna FC, issued a letter to FC Barcelona informing it that “*in accordance with Chapter IV Art. 18 par. 3 of FIFA Regulations on the Status and Transfer of Players, we would like to enter into negotiation with [the Player] to offer a contract for the next sport season, knowing that his current contract will end on 30/06/2012*”, which letter remained unanswered by FC Barcelona.
8. On 18 January 2012, the Player and Bologna FC concluded, using the Italian FA’s official forms, a contract headed “*preliminary agreement valid for the sport season 2012/2013*” (hereinafter: the “Preliminary Agreement”) for a period of four seasons, *i.e.* valid until 30 June 2016.
9. On 25 January 2012, Mr Zanzi issued another letter to FC Barcelona, informing it that “[*o*]ur club has negotiate [sic] with the player an agree for the next season. We didn’t have any news by You, so we want however inform that we are available to meet You, hoping that the current situation will not damage the future relations between the clubs. We specify that what happened was an usual situation for the players transfers [sic]”.
10. On 26 April 2012, FC Barcelona sent an offer to the Player for the extension of his employment with FC Barcelona, which offer remained unanswered.
11. On 1 July 2012, the Player was registered by Bologna FC as a free agent in accordance with the Preliminary Agreement.

B. Proceedings before the Dispute Resolution Chamber of FIFA

12. On 18 June 2013, FC Barcelona lodged a claim against Bologna FC with the Dispute Resolution Chamber of FIFA (hereinafter: the “FIFA DRC”). FC Barcelona maintained that it was entitled to receive training compensation in the amount of EUR 535,000, plus 5% interest *p.a.* as of 1 September 2012 and the procedural costs, from Bologna FC on the ground that the Player was transferred as a free agent from FC Barcelona to Bologna FC before the end of his 23rd birthday, while it had offered the Player a renewed employment contract.
13. Bologna FC contested FC Barcelona’s allegations.
14. On 27 February 2014, the FIFA DRC rendered its decision (hereinafter: the “Appealed Decision”), with, *inter alia*, the following operative part:
 1. *“The claim of [FC Barcelona] is partially accepted.*
 2. *[Bologna FC] has to pay to [FC Barcelona], within 30 days as of the date of notification of the present decision, the amount of EUR 535,000 plus 5% interest p.a. on said amount as of 1 September 2012 until the date of effective payment.*
 - [...]
 4. *Any further claim lodged by [FC Barcelona] is rejected”.*
15. On 6 August 2014, the grounds of the Appealed Decision were communicated to the parties, determining the following:
 - As to Bologna FC’s argument that FC Barcelona is not entitled to any training compensation for the period between the 1998/1999 and 2010/2011 seasons, since FC Barcelona loaned the Player to another club and, therefore, FC Barcelona was not the Player’s former club in the sense of article 3(1) of Annex 4 to the FIFA Regulations on the Status and Transfer of Players (hereinafter: the “FIFA Regulations”), the FIFA DRC *“came to the firm conclusion that for the purposes of the provisions of the Regulations governing training compensation, the loan of a young player from his club of origin to other clubs does not interrupt the ongoing training period of the player, and the obligation to pay training compensation arises only in case a player is transferred on a definitive basis, with the effect that, at that moment, the club which transferred the player on a loan basis to another club is entitled to training compensation for the entire period of time during which it effectively trained the player, however, excluding the period of time of the loan”.*
 - As to the examination of whether the Player’s training period had already been completed before the season of the player’s 21st birthday, the FIFA DRC held that *“cases involving a possible early completion of a player’s training period have to be assessed on a case-by-case basis, whereby all the specific circumstances and all the evidence produced has to be taken into consideration. Hence, several factors and indications have to be considered in order to assess and establish whether a particular player’s training has indeed been completed before the season of his 21st*

birthday. For the sake of completeness, the Chamber pointed out that, so far, both the Chamber as well as the CAS have adopted a strict approach in establishing that a player's training had indeed been completed before the season of a player's 21st birthday, so as to not jeopardize the right of training clubs to, in principle, receive training compensation. In this respect, the Chamber referred to art. 12 par. 3 of the Procedural Rules, in accordance with which, any party claiming a right on the basis of an alleged fact shall carry the burden of proof. In particular, the Chamber was of the view that [Bologna FC] failed to provide enough evidence that the player had already terminated his training before the age of 21".

- *As to the assessment of whether FC Barcelona complied with the prerequisites of article 6(3) of Annex 4 to the FIFA Regulations, the FIFA DRC "emphasized that, in accordance with art. 6 par. 3 sent. 1 of Annexe 4 of the Regulations, if the former club does not offer the player a contract, no training compensation is payable unless the former club can justify that it is entitled to such compensation. The former club must offer the player a contract in writing via registered mail at least 60 days before the expiry of his current contract (cf. art. 6 par. 3 sent. 2 of Annexe 4 of the Regulations). In light of the above, the Chamber examined the documents presented by [FC Barcelona] and considered that [FC Barcelona] had indeed offered the player a contract of an equivalent value at least 60 days prior to the expiry of his contract. For the sake of good order, the Chamber pointed out that this was also not disputed by [Bologna FC] in any way. In light of the foregoing, the Chamber established that [FC Barcelona] had complied with art. 6 par. 3 of Annexe 4 of the Regulations".*
- *As to Bologna FC's argument that a club that, after being informed of the intention of another club to hire the player, offers a contract to the player loses its entitlement to training compensation, the FIFA DRC "referred once more to the rules applicable to training compensation. In this context, the Chamber underlined that the player was transferred within the EU territories at the end of his employment contract before the season of his 23 birthday and that [FC Barcelona] had offered an employment contract of a better value than the current one to the player in April 2012, this is 60 days prior to the expiration of his current employment contract, in accordance with the Regulations. Furthermore, the Chamber referred once again to art. 12 par. 3 of the Procedural Rules. In particular, the Chamber underscored that [Bologna FC] is of the opinion that [FC Barcelona] was not genuinely interested in the player when offering the contract, but failed to provide evidence in that respect. With this established, and contrary to [Bologna FC's] opinion, the Chamber concluded that [FC Barcelona] fulfilled all the requirements in the Regulations and that, therefore, training compensation was, in general, due".*
- *As to the categorisation of FC Barcelona, the FIFA DRC "emphasized that it is notorious that [FC Barcelona] is a top European club and that it is based in a country which clubs can be allocated in four different categories. Moreover, [FC Barcelona] has been in the first division of the Spanish Championships during the relevant period. Equally, the DRC also noted that the information contained in TMS, which entered into force in 1 October 2010, also confirms that [FC Barcelona] belonged to category 1. In this context and considering all the above, the DRC was of the view that there are good reasons to deem that the allocation of [FC Barcelona] in category 2 is not justified in view of the specific circumstances of the present matter. Consequently, the Chamber decided that the club category 1 shall apply to [FC Barcelona]".*

- As to the calculation of the training compensation to be paid by Bologna FC to FC Barcelona, the FIFA DRC “observed that according to the documentation on file as well as the foregoing considerations, both [FC Barcelona] and [Bologna FC] belonged to the category I (indicative amount of EUR 90,000 per year) and that the player was registered with [FC Barcelona] as from 29 October 1998 until 12 January 2011 as well as that the player was loaned to [Vitesse] as from 13 January 2011 until 30 June 2011 and then, the player was again registered for [FC Barcelona] for the period between 7 July 2011 to 30 June 2012. Consequently, and in light of the above-mentioned considerations, the Chamber decided to accept [FC Barcelona’s] claim and decided that [Bologna FC] is liable to pay training compensation to [FC Barcelona] in the amount of EUR 535,000”.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 25 August 2014, Bologna FC lodged a Statement of Appeal, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (hereinafter: the “CAS Code”). In this submission, Bologna FC nominated Prof. Massimo Coccia, Law Professor and Attorney-at-law in Rome, Italy, as arbitrator.
17. On 2 September 2014, FC Barcelona nominated Dr. Michael Gerlinger, Director of Legal Affairs of FC Bayern München in Munich, Germany, as arbitrator.
18. On 8 September 2014, FIFA renounced its right to request its possible intervention in the present appeals arbitration proceedings.
19. On 26 September 2014, Bologna FC filed its Appeal Brief, pursuant to Article R51 of the CAS Code. This document contained a statement of the fact and legal arguments giving rise to the appeal. Bologna FC challenged the Appealed Decision, submitting the following requests for relief:

“Bologna lodges the present appeal brief to request Court of Arbitration for Sport:

1. *to acknowledge the competence of CAS to decide the present appeal;*
2. *on the merit, to accept the present appeal and:*
 - a. *to set aside and to revoke the FIFA DRC decision and:*
 - i. *in first instance: to declare that Barcelona shall not be entitled to receive any training compensation;*
 - ii. *in second instance: to calculate the training compensation for Barcelona pursuant to Bologna’s scheming sub point 5.4, firstly considering*
 - i. *only the sport season 2011/2012 as former club;*
 - ii. *the specific provisions for transfer within EU territories;*
 - iii. *the category of Barcelona indicated in the Player’s sport passport;*
 - iii. *in third instance: being disproportionate the training compensation acknowledged by FIFA DRC, to calculate the amount following equal and justice principles due to the specific case, also considering:*
 - i. *the category indicated in Player’s sport passport;*
 - ii. *the specific provisions for transfer within EU territories;*

3. *in any case, condemn Barcelona to bear all the cost of the present proceeding with the reimbursement of the costs paid by Bologna, with a contribution for the legal and other cost incurred by the Appellant in the arbitration procedure”.*
20. On 15 October 2014, FC Barcelona filed its Answer, pursuant to Article R55 of the CAS Code, whereby it requested CAS to decide the following:
- “Given all the above, FC BARCELONA wishes for BOLOGNA FC’s appeal to be fully rejected and, by its merits the resolution of the FIFA Dispute Resolution Chamber of 27 January 2014 should be confirmed, along with all the verdicts that it contains.*
- Additionally, BOLOGNA FC should be sentenced to pay all of the costs of the PRESENT procedure, as well as the expenses incurred by FC BARCELONA as a consequence of the same”.*
21. On 20 October 2014, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the parties were informed that the Panel appointed to decide the present matter was constituted by:
- Mr Efraim Barak, Attorney-at-law, Tel Aviv, Israel, as President;
 - Prof. Massimo Coccia, Law Professor and Attorney-at-law, Rome, Italy, and;
 - Dr. Michael Gerlinger, Director of Legal Affairs of FC Bayern München, Munich, Germany, as arbitrators
22. On 20 and 23 October 2014 respectively, FC Barcelona informed the CAS Court Office that it preferred the Panel to issue an award solely based on the parties’ written submissions and Bologna FC informed the CAS Court Office of its preference for a hearing to be held.
23. On 21 November 2014, upon the request of the President of the Panel, pursuant to Article R57 of the CAS Code, FIFA provided CAS with a copy of its file related to the present matter.
24. On 8 and 9 January 2015 respectively, FC Barcelona and Bologna FC returned duly signed copies of the Order of Procedure to the CAS Court Office.
25. On 27 January 2015, a hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed not to have any objection as to the constitution and composition of the Panel.
26. In addition to the Panel, Mr Fabien Cagneux, Counsel to the CAS, and Mr Dennis Koolgaard, *Ad hoc* Clerk, the following persons attended the hearing:
- a) For Bologna FC:
- 1) Mr Mattia Grassani, Counsel;
 - 2) Mr Lorenzo Maestrini, Counsel;
 - 3) Mr Luigi Carlutti, Counsel;

4) Mr Luca Smacchia, Counsel

b) For FC Barcelona:

- 1) Mr Lucas Ferrer, Counsel;
- 2) Mrs Laura Anguera Armengol, In-house Counsel;
- 3) Mrs Cristina Belloque Acasuso, In-house Counsel

27. The Panel heard evidence of Mr Roberto Zanzi, Director of Bologna FC, by telephone. Mr Zanzi was invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss Law. Each party and the Panel had the opportunity to examine and cross-examine Mr Zanzi. The parties then were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
28. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.
29. The Panel confirms that it carefully heard and took into account in its discussions and subsequent deliberations all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES

30. Bologna FC's submissions, in essence, may be summarized as follows:
 - Primarily, Bologna FC maintains that FC Barcelona did not offer the Player a "*real, concrete and effective offer of contract with genuine interest and bona fide in retaining the Player in first squad*". FC Barcelona allegedly never responded to the communications of Bologna FC regarding the negotiations with the Player and the conclusion of the "*preliminary agreement*". Only on 26 April 2012, FC Barcelona offered the Player a new employment contract, at a time when the Player had already concluded the "*preliminary agreement*" with Bologna FC.
 - According to Bologna FC, to condemn a European club hiring a European player coming from a club from another European country represents a clear violation of the freedom of movement of workers in the European Union.
 - Bologna FC submits that pursuant to article 6(3) of Annex 4 to the FIFA Regulations "*(sixty days before the expiration) must be anticipated and interpreted correctly as «before the signature of the new contract in case of receipt of information pursuant art. 18, para 3, of FIFA RSTP»*".
 - Bologna FC furthermore contends that FC Barcelona, by offering an employment contract to the Player, attempted to induce a breach of contract by the Player. With reference to CAS jurisprudence, Bologna FC asserts that should the Player have

accepted FC Barcelona's offer, both the Player and FC Barcelona would have incurred sporting sanctions because of breach of the Player's employment contract with Bologna FC.

- Should the Panel decide that FC Barcelona is nevertheless entitled to training compensation, Bologna FC refers to the Player's player passport. With reference to article 10(1) of the FIFA Regulations and a CAS award, Bologna FC maintains that a loan shall be considered as a permanent transfer and that FC Barcelona is therefore only entitled to training compensation over the period after the Player's return from Vitesse to FC Barcelona. Bologna FC remarks that the period of registration of the Player must be divided into three different segments of time and, complying with FIFA rules, FC Barcelona had the possibility to receive training compensation from Vitesse.
 - Finally, Bologna FC stresses that the FIFA DRC wrongly applied the FIFA Regulations as to the categorisation of clubs. Based on the player passport, the Player was registered with a category IV club until the 2009/2010 season and with a category II club until the end of the 2011/2012 season. With reference to the FIFA Commentary on the Regulations for the Status and Transfer of Players (hereinafter: the "FIFA Commentary"), Bologna FC maintains that the "*player passport will play a fundamental role in establishing the entitlement of the clubs to training compensation*". The only indication that must be followed is the evidence contained in the player passport. Based on this categorisation, Bologna FC calculates the training compensation *pro rata* for each season and concludes that the maximum amount of training compensation payable is EUR 330,273.94, which amount shall be reduced based on the specific circumstances of the case.
31. FC Barcelona's submissions, in essence, may be summarised as follows:
- FC Barcelona stated that it had offered in writing an employment contract to the Player on 26 April 2012, *i.e.* more than two months before the end of his employment contract. This offer was valid. Bologna FC provided no evidence based on which it must be assumed that FC Barcelona, in fact, did not try to extend the employment contract with the Player.
 - FC Barcelona finds that the negotiations between Bologna FC and the Player were totally unconnected to FC Barcelona. The Player never told FC Barcelona that he had reached an agreement of any nature. The Player was allowed to receive offers from other clubs, but the Player could not join any other club prior to the expiry of his employment contract with FC Barcelona. Bologna FC informed FC Barcelona that it was negotiating an employment contract with the Player, but never that such employment contract had been concluded.
 - With reference to jurisprudence of the FIFA DRC, FC Barcelona maintains that the loan of a player does not constitute a subsequent transfer of a player in the sense of article 3(1) of Annex 4 to the FIFA Regulations.

- FC Barcelona maintains that the FIFA DRC in the Appealed Decision correctly applied the categorisation of FC Barcelona and followed the regulations governing this matter and that there is no reason to mitigate the amount of training compensation.

V. ADMISSIBILITY

32. The appeal was filed within the 21 days set by article 67(1) of the FIFA Statutes (2013 edition) and by article R49 of the CAS Code. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.
33. It follows that the appeal is admissible.

VI. JURISDICTION

34. The jurisdiction of CAS, which is not disputed, derives from article 67(1) of the FIFA Statutes as it determines that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question” and Article R47 of the CAS Code.
35. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.
36. It follows that CAS has jurisdiction to decide on the present dispute.

VII. APPLICABLE LAW

37. Article R58 of the CAS Code provides the following:

“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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

38. The Panel notes that article 66(2) of the FIFA Statutes stipulates the following:

“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”.

39. The parties agreed to the application of the various regulations of FIFA and, subsidiarily, to the application of Swiss law. The Panel is therefore satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

A. The Main Issues

40. As a result of the above, the main issues to be resolved by the Panel are:
- i. Did FC Barcelona comply with the formal regulatory requirements to safeguard its right to receive training compensation from Bologna FC for the transfer of the Player?
 - ii. Did FC Barcelona offer a renewed employment contract to the Player in bad faith?
 - iii. If the answer to the previous question would be in the affirmative, what impact, if at all, does this have on the entitlement of FC Barcelona to receive training compensation?
 - iv. Do the applicable provisions of the FIFA Regulations violate the free movement of workers?
 - v. If FC Barcelona is entitled to training compensation, shall the loan of the Player to Vitesse be considered as a permanent transfer, or does this loan by any means have an impact on the calculation of the training compensation due?
 - vi. If FC Barcelona is entitled to training compensation, what amount of training compensation is FC Barcelona entitled to receive from Bologna FC?
- i. Did FC Barcelona comply with the formal regulatory requirements to safeguard its right to receive training compensation from Bologna FC for the transfer of the Player?*
41. Before determining whether FC Barcelona complied with the formal regulatory requirements, the Panel deems it useful to provide a short overview of the legal framework governing the concept of training compensation.
42. The Panel observes that the following provisions in the FIFA Regulations are relevant to determine whether FC Barcelona is entitled to receive training compensation for the Player from Bologna FC:

Article 20 FIFA Regulations (*“Training compensation”*)

“Training compensation shall be paid to a player’s training club(s): (1) when a player signs his first contract as a professional and (2) each time a professional is transferred until the end of the season of his 23rd birthday. The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player’s contract. The provisions concerning training compensation are set out in Annexe 4 of these regulations”.

Annex 4 to the FIFA Regulations (*“Training compensation”*)

Article 1 *“Objective”*

1. *“A player’s training and education takes place between the ages of 12 and 23. Training compensation shall be payable, as a general rule, up to the age of 23 for training incurred up*

to the age of 21, unless it is evident that a player has already terminated his training period before the age of 21. In the latter case, training compensation shall be payable until the end of the season in which the player reaches the age of 23, but the calculation of the amount payable shall be based on the years between the age of 12 and the age when it is established that the player actually completed his training.

2. *The obligation to pay training compensation is without prejudice to any obligation to pay compensation for breach of contract”.*

Article 6 “Special provisions for the EU/EEA”

1. *For players moving from one association to another inside the territory of the EU/EEA, the amount of training compensation payable shall be established based on the following:*
 - a) *If the player moves from a lower to a higher category club, the calculation shall be based on the average training costs of the two clubs.*
 - b) *If the player moves from a higher to a lower category, the calculation shall be based on the training costs of the lower-category club.*
 2. *Inside the EU/EEA, the final season of training may occur before the season of the player’s 21st birthday if it is established that the player completed his training before that time.*
 3. *If the former club does not offer the player a contract, no training compensation is payable unless the former club can justify that it is entitled to such compensation. The former club must offer the player a contract in writing via registered post at least 60 days before the expiry of his current contract. Such an offer shall furthermore be at least of an equivalent value to the current contract. This provision is without prejudice to the right to training compensation of the player’s previous club(s)”.*
43. In respect of article 6 of Annex 4 to the FIFA Regulations, the FIFA Commentary determines the following in comment 3 and 4:

“If the former club does not offer a professional player a new employment contract, this club loses its entitlement to training compensation unless it can justify that it is entitled to such compensation. This justification may be very difficult to prove and limited to extraordinary circumstances to decide on the matter at hand.

In order to safeguard its entitlement to training compensation and demonstrate its real intention to continue its relationship with the player concerned, the former club must offer the player a contract in writing via registered mail at least 60 days before the expiry of his current contract. The offer in the new contract shall at least be of an equivalent value to the current contract, otherwise it is as if the club did not offer a contract at all, with the consequence that if the player moves to another club within the EU/EEA, no training compensation is payable to the former club”.

44. In view of the above, the Panel finds that the obligation to pay training compensation to a player’s training club, in principle, arises when the player’s transfer takes place “during or at the end of the player’s contract”. As such, the basic rule is that training compensation is due, even after

an employment contract expired and regardless of whether a new contract was offered to the player by the training club.

45. Article 6 of Annex 4 to the FIFA Regulations, however, provides for an exception to this general rule for the specific category of “*players moving from one association to another inside the territory of the EU/EEA*”. In view of article 6(3) of Annex 4 to the FIFA Regulations, no training compensation is payable to the player’s training club if the player is transferred at the end of his contract and if the training club did not offer the player a “new” contract before expiry of his current contract. The Panel considers this system to be in line with the EU free movement of workers principle especially considering that, as is widely known in the football community, the players’ transfer rules currently applicable within the territory of the EU (and the EEA) were enacted by FIFA following an agreement reached in March 2001 between FIFA and the EU Commission, which closed the infringement proceedings brought in 1998 by the EU Commission against FIFA with respect to the players’ international transfer rules then in force. The lawfulness of training compensation for transfers within the EU/EEA area has been confirmed in principle by the EU Court of Justice in the *Bernard* case, particularly at §§ 45 and 49 (Judgment of 16 March 2010, Case C-325/08, *Olympique Lyonnais SASP v. Olivier Bernard, Newcastle United FC*).
46. Then, the Panel observes that there is an exception to the exception provided for the EU/EEA territory; even if the player’s former club did not offer a “new” contract to the player, the training club can still “*justify that it is entitled to such compensation*”.
47. Applying the above general framework to the matter at hand, the Panel observes that it is not in dispute between the parties that the Player was transferred from one association to another inside the territory of the EU/EEA, *i.e.* the Player was transferred from a Spanish club to an Italian club, triggering the application of article 6 of Annex 4 to the FIFA Regulations.
48. The Panel is therefore required to assess whether FC Barcelona complied with the formal regulatory requirements to be entitled to receive training compensation from Bologna FC for the transfer of the Player.
49. The Panel finds that the regulatory requirements for a training club to ensure its entitlement to receive training compensation in respect of a specific player are clear. A new contract needs to be offered in writing via register post 60 days before the expiry of the current contract and this offer needs to be of at least an equivalent value to the current contract.
50. The Panel observes that it is not disputed that FC Barcelona formally complied with these requirements, but the Panel understands that Bologna FC submits that FC Barcelona made the offer in bad faith because it was aware that the Player had concluded an employment contract with Bologna FC before the offer was made and that it was, therefore, not genuinely interested in retaining the services of the Player, but only sought to ensure its right to be entitled to training compensation from Bologna FC.

51. The Panel will examine this issue in more detail below, but concludes here that FC Barcelona complied with the formal regulatory requirements to safeguard its right to receive training compensation from Bologna FC for the transfer of the Player.
- ii. Did FC Barcelona offer a renewed employment contract to the Player in bad faith?*
52. Bologna FC argues that FC Barcelona's contractual offer to the Player was "*only an attempt to formally fulfil the obligations requested by art. 6 para 3 Annexe 4 of FIFA Regulations to not lose training compensation or, in any case, it seems to be interpreted as an attempt to induce the Player to breach the contract with Bologna*". Bologna FC argues that article 6(3) of Annex 4 to the FIFA Regulations does not only require a club to comply with the formal requirements of this provision, "*but they also concern and show the real intent and will of the club to maintain the relationship*" and submits that FC Barcelona did not comply with this last requirement. In support of this argument Bologna FC also raised – for the first time at the hearing – that FC Barcelona had offered and signed contracts with other players extending agreements that were also due to expire (as in the Player's case) before the offer was made to the Player. With this argument, Bologna FC sought to establish that the offer made to the Player was not a genuine one as, otherwise, FC Barcelona would have made the offer to the Player earlier, at the same time it offered renewed contracts to the other players.
53. Furthermore, Bologna FC submits that pursuant to article 6(3) of Annex 4 to the FIFA Regulations "*(sixty days before the expiration) must be anticipated and interpreted correctly as «before the signature of the new contract in case of receipt of information pursuant art. 18, para 3, of FIFA RSTP»*".
54. FC Barcelona states that it offered in writing an employment contract to the Player on 26 April 2012, *i.e.* more than two months before the end of his employment contract. This offer was valid. FC Barcelona underlines that Bologna FC provided no evidence based on which it could be assumed that FC Barcelona, in fact, did not try to extend the employment contract with the Player.
55. Additionally, FC Barcelona asserts that the negotiations between Bologna FC and the Player were totally unconnected to FC Barcelona and that the Player never told FC Barcelona that he had actually signed an agreement of any nature. The Player was allowed to receive offers from other clubs, but the Player could not join any other club prior to the expiry of his employment contract with FC Barcelona. Bologna FC informed FC Barcelona that it was negotiating an employment contract with the Player, but never that such employment contract had been actually signed.
56. The Panel observes that although article 6(3) of Annex 4 to the FIFA Regulations does not specifically require a training club to be genuinely interested in continuing its relationship with a player, an argument could be made that such additional requirement might derive from the FIFA Commentary, determining that "*[i]n order to safeguard its entitlement to training compensation and demonstrate its **real intention** to continue its relationship with the player concerned, the former club must offer the player a contract in writing via registered mail at least 60 days before the expiry of his current*

contract” (Emphasis added by the Panel). However, the Panel is not persuaded by this argument.

57. In fact, the Panel is of the view that the FIFA Commentary may not be interpreted in a way that contradicts the clear wording of article 6(3) of Annex 4 to the FIFA Regulations, which is unequivocal in stating that offering a renewed contract to a player is *per se* a demonstration of the training club’s “real intention” to continue its employment relationship with him. The Panel, however, acknowledges that there might be specific circumstances, linked to a training club’s act or conduct of misrepresentation, that would justify the proposition that a training club’s offer to a player would be in bad faith and, as such, ineffective vis-à-vis the interested player and/or another club. For example, a training club might have given unambiguous written assurance to the player alone or to the player and a third club that it would not claim training compensation but finally nevertheless does, or the training club might have informed the player before the 60-day deadline that it is no longer interested in his services and thus, based on such representation, the player might have signed a contract with a third club, but still the previous club would claim training compensation. The Panel finds that, under circumstances of this kind, justice would not be served if training compensation were to be awarded. In such cases, the Panel is of the opinion that there would be no need to resort to an interpretation of article 6(3) of Annex 4 to the FIFA Regulations which would find no basis in the language of the rule, as a party in good faith would be anyways protected by Swiss legal principles such as the prohibition of *venire contra factum proprium* and the doctrine of “*apparence efficace*” (see TERCIER/PICHONNAZ, *Le droit des obligations*, 5th edition, Zurich 2012, § 544).
58. In the case at hand, however, FC Barcelona did nothing – or, at least, there is no evidence that it did something – that could be interpreted by the Player and Bologna FC as showing that FC Barcelona did not have a “real interest” in continuing its relationship with the Player. In other words, there is no evidence of an act or conduct of misrepresentation attributable to FC Barcelona.
59. In this respect, the Panel observes that FC Barcelona never replied to the communications received from Bologna FC. Moreover, Bologna FC, in its letter to FC Barcelona dated 25 January 2012, informed FC Barcelona that “[o]ur club has negotiate [sic] with the player an agree [sic] for the next season”. The Panel notes that Bologna FC chose to use a terminology (“has negotiate[d]”) which implied that no contract had been concluded yet, although the agreement between Bologna FC and the Player was already signed seven days prior to the dispatch of this letter.
60. The Panel finds that FC Barcelona did not necessarily have to understand from this wording that Bologna FC had definitively concluded an employment contract with the Player. FC Barcelona could easily understand this letter as being informed that Bologna FC was in the process of negotiating an employment contract with the Player but that no definitive contract had been concluded yet. More importantly, FC Barcelona, even if it had understood from the letter that the Player had signed a preliminary agreement with Bologna FC, did nothing that could induce Bologna FC and the Player to assume that it had waived its right to offer a new contract to the Player.

61. Although the Panel is willing to accept that FC Barcelona was aware of the interest of Bologna FC in acquiring the services of the Player, and even if the Panel were to determine that FC Barcelona should have known that Bologna FC had concluded an employment contract with the Player, *quod non*, this in itself did not prevent FC Barcelona from exercising its right pursuant to article 6(3) of Annex 4 to the FIFA Regulations to offer a renewed employment contract to the Player 60 days before expiry of the current contract in order to preserve its entitlement to training compensation.
62. The Panel finds that a training club's regulatory right to offer a renewed employment contract to a player at least 60 days before expiry of the current contract cannot be set aside by the conclusion of an employment contract between the player and a third club prior to this 60-day deadline, for the conclusion of such employment contract is a *res inter alios acta* that cannot affect the interests of the training club, which is not privy to such contract. As said, the only exception could derive from a training club's act or conduct that would misrepresent its true intention vis-à-vis the concerned player and third club in order to later claim in bad faith the training compensation. Accordingly, the Panel is of the view that, whenever the training club has not performed any such act or conduct of misrepresentation and has simply stayed silent (as occurred in the case at hand), the interested player and the third club should take into account in their negotiations, as well as in the clauses of any agreement they might sign, that the player's training club might decide to offer the player a new contract until 60 days before expiry of his current contract. Determining otherwise would mean that a training club that had done nothing which could be seen as a waiver of its regulatory right to offer a renewed employment contract to the player would be unfairly deprived of such right and of the benefits deriving therefrom.
63. More importantly, holding that the conclusion of an employment contract by the player with a third club would preclude the training club from offering a new employment contract to the player in good faith would contravene the spirit of the regulations, which is to encourage the training of young players and to create a stronger solidarity among clubs by awarding financial compensation to clubs that have invested in training young players. If the player and a third club were able to prevent the training club from offering a new employment contract to the player in good faith, the training club would be deprived of being rewarded for the training provided to the player.
64. The Panel finds that the interest of a training club in being able to decide as late as possible whether to offer a new contract to a player, and thus to safeguard its entitlement to receive training compensation, has to be balanced against the player's interest in knowing whether he will be offered a new contract by his training club as soon as possible. The Panel understands that it is in this sense that FIFA implemented two deadlines. First, pursuant to article 18(3) of the FIFA Regulations, a player may conclude a contract with another club if his contract with his present club has expired or is due to expire within six (6) months. Second, pursuant to article 6(3) of Annex 4 to the FIFA Regulations, the training club must offer the player a contract at least 60 days before the expiry of his current contract in order to remain entitled to training compensation. The Panel finds that these two deadlines strike an appropriate balance between the interest of the training club and the player. Obviously, it will be up to the new club and the player to reciprocally protect themselves with appropriate contractual

- conditions if they sign an employment agreement in the lapse of time between said two deadlines. In this connection, the Panel is of the view that the interpretation proffered by Bologna FC of the 60-day deadline as meaning “60 days before the signature of the new contract” is untenable, as it would squarely contradict the clear text of the rule, it would be wholly uncertain as to its expiry date and it would alter the above mentioned reasonable balance between the player’s and training club’s interests.
65. With respect to the matter at hand, the Panel observes that Mr Zanzi confirmed during the witness examination that the agent of the Player had informed him that the Player’s employment contract with FC Barcelona was to expire at the end of the 2011/2012 football season and that FC Barcelona was not interested in extending the employment contract. The Panel also observes that Mr Zanzi, when asked during the hearing whether he had contacted FC Barcelona directly in order to ask whether it intended to offer a renewed employment contract to the Player, answered evasively and declared to have unsuccessfully attempted to contact Mr Zubizarreta (former technical director of FC Barcelona). Finally, and most importantly, Mr Zanzi confirmed to have been aware of the possibility that FC Barcelona could offer a renewed employment contract to the Player until the end of April 2012.
 66. The Panel has sympathy for Bologna FC’s eagerness to conclude an employment contract with the Player as soon as possible. Indeed, the Panel understands that it was potentially an interesting opportunity for Bologna FC to acquire a FC Barcelona-trained player as a free agent, particularly if it was informed by the Player and his agent that FC Barcelona was not interested in offering a renewed employment contract to the Player, which would mean that no training compensation would have to be paid by Bologna FC. The longer Bologna FC would wait to conclude an employment contract with the Player, the higher the risk that the Player would conclude a contract with another club.
 67. The Panel is, however, of the opinion that Bologna FC representatives were either negligent or naive in solely relying on self-serving statements made by the Player and his agent that FC Barcelona was not planning to offer a renewed contract to the Player. After all, the only entity which had the right under the FIFA rules to decide whether or not to offer a new contract to the Player, and which could thus signal its willingness to waive such right vis-à-vis the Player and/or Bologna FC, was FC Barcelona.
 68. Not having obtained from FC Barcelona neither a statement that it was not going to offer a renewed employment contract to the Player, nor a waiver of its right to training compensation, the Panel finds that Bologna FC could not simply rely on the expedient assurances of the Player and his agent.
 69. It must be emphasised that FC Barcelona’s discretion in deciding whether or not to offer a renewed contract to the Player did not prevent Bologna FC and the Player from concluding an employment contract. Indeed, pursuant to article 18(3) of the FIFA Regulations, the Player was allowed to conclude a contract with Bologna FC since his employment contract with FC Barcelona was to expire within 6 months. The Player was also in no way bound to accept a potential offer from FC Barcelona.

70. The Panel finds that there were ample possibilities at the disposal of Bologna FC to ensure that it would not be held to pay training compensation if this was of crucial importance to it. As alluded above, Bologna FC could have sought to obtain a clear and unequivocal declaration from FC Barcelona that it would not request training compensation, or could have waited until the 60-day period had passed, or could have included a condition precedent in the Player's employment contract determining that the effectiveness thereof was dependent on the absence of a FC Barcelona's offer for a renewed employment contract.
71. Against this background, the Panel finds that FC Barcelona did not attempt to induce the Player to breach his employment contract with Bologna FC and was not prevented from offering a renewed employment contract to the Player because of the fact that he had concluded an employment contract with Bologna FC in the meantime.
72. As mentioned *supra*, the Player was not bound to accept an offer of FC Barcelona. Therefore, had the Player decided to accept FC Barcelona's offer it would have been in principle his own responsibility to terminate his employment contract with Bologna FC.
73. In view of the above, the Panel finds that the fact that Bologna FC concluded an employment contract with the Player before FC Barcelona's offer cannot lead to the conclusion that FC Barcelona offered the contract in bad faith or that it would have to be considered as inducement of breach of contract by FC Barcelona, if the Player had decided to cancel his agreement with Bologna FC as a result of the offer. In any case, this scenario did not occur in the case at hand and, thus, remains a hypothetical question that does not need any further elaboration by the Panel.
74. In the absence of any evidence submitted by Bologna FC that something in the relationship between FC Barcelona and the Player and/or Bologna FC itself should lead to the conclusion that FC Barcelona offered the employment contract in bad faith, the Panel has no reason to deem as invalid the FC Barcelona's offer of a renewed employment contract.
75. In any event, the Panel reiterates that article 6(3) of Annex 4 to the FIFA Regulations only requires, as a condition to obtain training compensation, that the training club offers an employment contract at least 60 days prior to the expiry of the current contract, and does not require that the training club shows a genuine interest in the Player. The "genuine interest" requirement, which derives from CAS jurisprudence (see CAS 2006/A/1152), is only relevant *when no contract is offered* and, therefore, does not apply in the case at hand. In view of this, the Panel finds that the argument adduced by Bologna FC, according to which FC Barcelona's lack of genuine interest in the Player would be proven by the fact that in January 2012 it had already offered and signed contracts with other young players whose contracts were also to expire at the end of June 2012, is utterly irrelevant and must be dismissed.
76. In conclusion, the Panel finds that no evidence has been submitted of an hypothetical FC Barcelona's act or conduct of misrepresentation of its intention towards the Player and/or Bologna FC. As a result, Bologna FC did not meet the burden to establish that FC Barcelona offered a renewed employment contract to the Player in bad faith and that such offer could be deemed invalid.

77. This finding of the Panel eliminates the need to address the 3rd question presented in §40 (iii) (“If the answer to the previous question would be in the affirmative, what impact, if at all, does this have on the entitlement of Barcelona to receive training compensation?”).

iv. Do the applicable provisions of the FIFA Regulations violate the free movement of workers?

78. Bologna FC maintains that FIFA, in order to comply with the EU principle on free movement of workers, implemented article 6(3) of Annex 4 to the FIFA Regulations in a way that safeguards the right of employees to be hired without any duty at the expense of the new employer, because otherwise the player would bear the risk to remain without occupation. FIFA limited the right of the training club to receive training compensation to the situation where the player can choose between the training club and a third club.

79. Bologna FC further argues that “[p]robably, if Bologna hadn’t contacted and hired [the Player], Barcelona wouldn’t have offered at all a new contract and [the Player] (UE citizen) after 30th June 2014 would have been without a work”. On this basis, Bologna FC argues that this “could represent a clear violation of the freedom of movement of the workers inside UE [sic]”, particularly since if the Player would have been transferred from a Spanish club to another Spanish club, or from an Italian club to another Italian club, no training compensation would have been due.

80. The Panel is not convinced by these arguments of Bologna FC. More specifically, it remains entirely hypothetical that FC Barcelona would not have offered a renewed employment contract to the Player if Bologna FC had not concluded an employment contract with him. Furthermore, the Panel finds that the internal regulatory framework regarding training compensation in place in Italy and Spain is not relevant to the dispute at hand because the present case concerns an international transfer and international transfers are governed by the FIFA Regulations, whereas national transfers are not.

81. The Panel concludes that Bologna FC’s argument that the FIFA Regulations are not compliant with the EU principle of free movement of workers was insufficiently substantiated to enable the Panel to assess this argument in detail. In any event, as already recalled, the current FIFA international transfer rules were blessed by the EU Commission and, in principle, acknowledged as lawful by the EU Court of Justice (see *supra* at §45). In view of this, the Panel is of the opinion that some truly remarkable evidence and arguments should be submitted in order to persuasively establish that the EU Commission – which is known as the “guardian of the Treaties”, due to its power and duty to oversee the application of EU law – was wrong in interpreting the relevant EU provisions and in allowing FIFA to enact the current transfer rules, and that said rules go beyond what was in principle endorsed by the EU Court of Justice in the *Bernard* case.

82. Consequently, the Panel finds that the application of the provisions of the FIFA Regulations in this case does not violate the free movement of workers and that FC Barcelona is thus entitled to receive training compensation from Bologna FC.

v. ***If FC Barcelona is entitled to receive training compensation, shall the loan of the Player to Vitesse be considered as a permanent transfer, or does this loan by any means have an impact on the calculation of the training compensation due?***

83. Having established FC Barcelona's entitlement to receive training compensation from Bologna FC in respect of the transfer of the Player to Bologna FC, the Panel turns its attention to the calculation of the amount of training compensation due.

84. In this respect, Bologna FC first of all maintains that the loan of the Player from FC Barcelona to Vitesse in the 2010/2011 football season shall be considered as a definitive transfer and that the amount of training compensation to be paid shall therefore only be calculated as from 30 June 2011, *i.e.* the date the Player returned to FC Barcelona.

85. Bologna FC bases this argument on article 10(1) of the FIFA Regulations in conjunction with article 3(1) of Annex 4 to the FIFA Regulations.

86. The Panel observes that article 10(1) of the FIFA Regulations provides the following:

"A professional may be loaned to another club on the basis of a written agreement between him and the clubs concerned. Any such loan is subject to the same rules as apply to the transfer of players, including the provisions on training compensation and the solidarity mechanism".

87. Article 3(1) of Annex 4 to the FIFA Regulations provides as follows:

"(...) The amount payable is calculated on a pro rata basis according to the period of training that the player spent with each club. In the case of subsequent transfers of the professional, training compensation will only be owed to his former club for the time he was effectively trained by that club".

88. The Panel observes that this issue of segmentation of training periods has been dealt with by CAS in recent times.

89. In this respect, the CAS awards in *CAS 2012/A/2908* and *CAS 2013/A/3119* are particularly relevant, both referring to other jurisprudence of CAS.

90. The Panel observes that the CAS panel in *CAS 2012/A/2908* determined the following:

*"(...) the question to be answered in this appeal and in the context of the interpretation of Annexe 4 Article 3.1 of the FIFA RSTP is whether the calculation of the training compensation owed to Paraná should be made in relation to the entire period in which the Player was registered with Paraná, before and after the loan to Iguaçu or whether the loan to Iguaçu has an impact on the period in a way that this loan actually reduced the period to be taken into consideration only to the last cycle *i.e.* the last period in which the Player was registered with Paraná after he returned from the loan period to Iguaçu.*

The Panel is of the opinion that the right and accurate interpretation of this Article is that the calculation of the training compensation should be made in respect to the former club only for the period of the last cycle of registration with that club. This was indeed held in CAS 2007/A/1320-1321.

Therefore the Panel can only understand the above mentioned rule in the sense of considering Panionios liable to pay the training compensation to Paraná (as the former club who has previously trained the Player) only for the period during which the Player was registered with Paraná after the loan to Iguaçu (from 1 April to 12 May 2009)” (CAS 2012/A/2908, §165-167).

91. The Panel observes that the CAS Panel in *CAS 2013/A/3119* determined the following:

“The Panel wishes to add that this view [that a loan does not break the chain, added by the Panel] is consistent with CAS jurisprudence, such as CAS 2011/A/2559, whereby it was determined that:

“(…) the obligation to pay training compensation arises only in case a player is definitively transferred from once club to another, with the effect that the club which transferred the player on a loan basis to another club is entitled to training compensation for the period of time during which it effectively trained the player, but excluding the period of time of the loans to the other club”.

The Panel also finds that this conclusion [that a loan does not break the chain, added by the Panel] is consistent with the actual rationale of the training compensation system, which is to encourage the recruitment and training of young players. To hold that the loan of a player would interrupt the training period could, in the opinion of the Panel, deter training clubs from loaning players. It occurs frequently in the world of football that young players are not proficient enough for the first team, or to give these players a chance to train and play in order to try and reach the required level to play for the first team, a solution regularly used is to loan the player concerned to another team in order for the player to gain experience with another club and to prepare him or give him the chance to reach the requisite professional level for playing in the first team of the training club. However, if the making of such loan would entail the consequence that the training club would thereby waive its entitlement to training compensation, the training club might decide not to loan the player to another club merely in order to secure its entitlement to training compensation. In such a situation, the player would be deprived from the very training considered to be the most suitable for him. The Panel would regard such a situation as undesirable, and endorses the view of the FIFA DRC insofar it argued that any other interpretation of the FIFA Regulations would potentially deprive young players of the opportunity to gain practical experience in official matches for another club in order to develop his footballing skills in a positive way” (CAS 2013/A/3119, §112-113).

92. This Panel fully endorses the view of the CAS panel in *CAS 2013/A/3119*, which clearly establishes the right interpretation of these two articles of the FIFA Regulations and sets aside the uncertainty caused by the decision in *CAS 2012/A/2908*. This Panel also understands from the overall context of the decision in *CAS 2012/A/2908* that, in the specific circumstances of that case, the panel was not convinced that the alleged loan agreement was indeed a genuine loan agreement. This may have led the panel to apply the FIFA Regulations on that occasion as if the agreement was indeed a definitive transfer agreement disguised under a loan agreement.
93. The Panel further notes that the issue of segmentation of training periods has also been debated in legal literature. The general conclusion appears to be that the loan of a player does not breach the chain, *i.e.* the amount of training compensation that the training club is entitled

to receive shall be calculated as from the player's first registration with the training club until the date of his definitive transfer to the club that shall pay training compensation, provided that the period during which the player was loaned to a third club shall be excluded.

94. In this respect, the Panel refers to the following conclusions drawn by two scholars after an analysis of both precedents:

"In conclusion, the Dundee United [CAS 2013/A/3119] case is to be welcomed" (MONBALIU, Training: Dundee United case and 'chain of entitlement', World Sports Law Report, Volume 12, Issue 10, October 2014, p. 3-5).

"This author suggests that the decision of the Panel in Dundee [CAS 2013/A/3119] represents a better interpretation of the Regulations and one that recognises the interconnected importance of the system of loans and training compensation to the development and education of young footballers". and *"It is submitted that CAS's decision in Dundee [CAS 2013/A/3119] is preferable to the conclusion on the interpretation of the Regulations reached by the Panel in Panionios [CAS 2012/A/2908]"* (THOMAS, The on-going football dispute over training compensation and player loans II: Dundee Utd -v- Club Atletico Velez, LawinSport, 14 January 2015).

95. As said, the Panel fully endorses the views expressed in *CAS 2013/A/3119*, which views also appear to be in conformity with the consistent approach of FIFA on this matter.
96. Consequently, the Panel finds that the loan of the Player from FC Barcelona to Vitesse shall not be considered as a permanent transfer in the sense of the FIFA Regulations and does not disconnect the chain of the training period for the purpose of the calculation of training compensation, provided that the loan period shall be excluded from the period over which training compensation is to be awarded to the training club.

vi. *What amount of training compensation is FC Barcelona entitled to receive from Bologna FC?*

97. Bologna FC maintains, on the basis of the player passport issued by the RFEF to the FIGC, that FC Barcelona was to be regarded as a category II club, whereas FC Barcelona maintains that it was and is a category I club.

98. In this respect, the Panel observes that Annex 4 to the FIFA Regulations provides as follows:

"Article 4 "Training costs"

1. *In order to calculate the compensation due for training and education costs, associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs' financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average "player factor", which is the ratio of players who need to be trained to produce one professional player.*

2. *The training costs, which are established on a confederation basis for each category of club, as well as the categorisation of clubs for each association, are published on the FIFA website (www.FIFA.com). They are updated at the end of every calendar year.*

Article 5 “*Calculation of training compensation*”

1. *As a general rule, to calculate the training compensation due to a player’s former club(s), it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself.*
2. *Accordingly, the first time a player registers as a professional, the training compensation payable is calculated by taking the training costs of the new club multiplied by the number of years of training, in principle from the season of the player’s 12th birthday to the season of his 21st birthday. In the case of subsequent transfers, training compensation is calculated based on the training costs of the new club multiplied by the number of years of training with the former club.*
3. *To ensure that training compensation for very young players is not set at unreasonably high levels, the training costs for players for the seasons between their 12th and 15th birthdays (i.e. four seasons) shall be based on the training and education costs of category 4 clubs. This exception shall, however, not be applicable where the event giving rise to the right to training compensation (cf. Annexe 4 article 2 paragraph 1) occurs before the end of the season of the player’s 18th birthday.*
4. *The Dispute Resolution Chamber may review disputes concerning the amount of training compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review.*

Article 6 “*Special provisions for the EU/EEA*”

1. *For players moving from one association to another inside the territory of the EU/EEA, the amount of training compensation payable shall be established based on the following:*
 - a) *If the player moves from a lower to a higher category club, the calculation shall be based on the average training costs of the two clubs.*
 - b) *If the player moves from a higher to a lower category, the calculation shall be based on the training costs of the lower-category club.*
2. *Inside the EU/EEA, the final season of training may occur before the season of the player’s 21st birthday if it is established that the player completed his training before that time.*
3. *If the former club does not offer the player a contract, no training compensation is payable unless the former club can justify that it is entitled to such compensation. The former club must offer the player a contract in writing via registered post at least 60 days before the expiry of his current contract. Such an offer shall furthermore be at least of an equivalent value to the current contract. This provision is without prejudice to the right to training compensation of the player’s previous club(s).”*

99. The Panel observes that, every year, FIFA provides its members with a circular letter regarding the categorisation of clubs. The attachments to the relevant FIFA Circular letters no. 1223

(dated 29 April 2010), no. 1264 (dated 19 May 2011) and no. 1299 (dated 27 April 2012), all contain a table showing the training costs for each category. For UEFA club members, the figures are the following:

- Category I: EUR 90,000
- Category II: EUR 60,000
- Category III: EUR 30,000
- Category IV: EUR 10,000

100. The Panel observes that the player passport issued by the RFEF to the FIGC contains, *inter alia*, the following information:

PASAPORTE JUGADOR				FIFA
NOMBRE: M.				
FECHA DE NACIMIENTO: 25/01/1991			NACIONALIDAD: ESPAÑA	
TEMPORADA	FECHA REGISTRO LICENCIA	NOMBRE DEL CLUB	CATEGORIA DEL CLUB	CLASE DE LICENCIA
1999/2000	29/10/1999	F.C. BARCELONA	4	Benjamin
2001/2002	27/09/2001	F.C. BARCELONA	4	Alevin
2002/2003	13/09/2002	F.C. BARCELONA	4	Alevin
2003/2004	26/08/2003	F.C. BARCELONA	4	Infantil
2004/2005	13/07/2004	F.C. BARCELONA	4	Infantil
2005/2006	08/08/2005	F.C. BARCELONA	4	Cadete
2007/2008	06/09/2007	F.C. BARCELONA	4	Juvenil
2008/2009	01/07/2008	F.C. BARCELONA	4	Juvenil
2009/2010	01/07/2009	F.C. BARCELONA	4	Juvenil
2009/2010	03/09/2009	F.C. BARCELONA	4	Juvenil
2010/2011	10/08/2010	F.C. BARCELONA	2	Aficionado
2010/2011	27/08/2010	F.C. BARCELONA	2	Aficionado
2011/2012	07/07/2011	F.C. BARCELONA	2	PROFESIONAL

101. Although the seasons 2000/2001 and 2006/2007 appear to be missing in the player passport, it is understood by the Panel that this is a typing mistake and that the Player continuously remained registered with FC Barcelona (which understanding was indeed confirmed during the hearing), with the exception of the loan to Vitesse in 2011.
102. The Panel observes that the FIFA Regulations and FIFA’s circular letters consistently refer to “categorisation of clubs”. The Panel finds that a distinction must therefore be made between a “club” and a “team”. Whereas a club has multiple teams, every team is part of only one club. The calculation of the amount of training compensation due in international transfers is based on the categorisation of the club in question, and thus not on the particular team within such club.

103. The Panel observes that the FIFA circular letters no. 1223, 1264 and 1299 mentioned *supra*, consistently determine that Spanish clubs are to be divided in four different categories, *i.e.* category I, II, III and IV.
104. The Panel further notes that FIFA circular letter no. 1249 (dated 6 December 2010) determines the following:
- “Category 1 (top level, e.g. high-quality training centre):*
- *all first-division clubs of member associations investing on average a similar amount in training players”.*
105. Considering FIFA circular letter no. 1249 in conjunction with FIFA circular letters no. 1223, 1264 and 1299, leads the Panel to the conclusion that Bologna FC should have been aware of the fact that FC Barcelona was a category I club at the time of the transfer of the Player. The fact that the Player usually played for FC Barcelona B and that FC Barcelona B participated in the second-highest level in Spain is not relevant for the calculation of the training compensation due. Furthermore, at the time Bologna FC decided to sign the contract with the Player, it was not aware of the content of the Player’s player passport and, thus, the decision to hire the Player was not based on the content of the player passport.
106. As determined in FIFA circular letter no. 826 (dated 31 October 2002), “[t]he new club of a player must pay the compensation for training and education of a player within 30 days of signing the first non-amateur contract and is responsible to calculate and distribute this amount”.
107. The Panel finds that this is indeed in line with article 3(1) of Annex 4 to the FIFA Regulations, determining that “[o]n registering as a professional for the first time, the club with which the player is registered is responsible for paying training compensation within 30 days of registration to every club with which the player has previously been registered (in accordance with the players’ career history as provided in the player passport) and that has contributed to his training starting from the season of his 12th birthday”. As such, the player passport is relevant to establish the career history of a player, but is apparently not decisive for the categorisation of clubs. Furthermore, in many countries – maybe in most of them – the player passport does not contain the category of the club, nor is this required by the FIFA Regulations.
108. Hence, although acknowledging that it might be relevant in which team a player plays in order to determine the amount of training compensation to be paid in case of a national transfer, *i.e.* in case of a transfer that is governed by the regulations of the relevant national football federation and not by FIFA, the specific team (within the structure of a club) in which a player performed is not relevant for the categorisation of the club in calculating the amount of training compensation to be paid in case of an international transfer, as in the present matter. The intention behind the categorisation of clubs in the FIFA Regulations is to classify clubs in four different categories, depending on the total investments made by the club in youth development in general. Whether a specific player plays in a club’s A team or in any other team of the club does not influence the total investment made by the club and, as such, does not alter the category in which the club is classified.

109. Although the player passport plays an important role in the calculation of the amount of training compensation due, the Panel finds that it is not decisive with regard to the category of the club. In the present matter, the Panel finds that Bologna FC must reasonably have been aware of the fact that FC Barcelona played in the Spanish first-division and, thus, was a category “I” club and that it would have to pay training compensation in accordance with this category.

110. In view of the above, the Panel finds that the amount of training compensation to be paid to FC Barcelona by Bologna FC is to be calculated as follows:

Season 1998/1999 – no training compensation due	-
Season 1999/2000 – no training compensation due	-
Season 2000/2001 – no training compensation due	-
Season 2001/2002 – no training compensation due	-
Season 2002/2003 – category IV (season of Player’s 12 th birthday)	EUR 10,000
Season 2003/2004 – category IV	EUR 10,000
Season 2004/2005 – category IV	EUR 10,000
Season 2005/2006 – category IV (season of Player’s 15 th birthday)	EUR 10,000
Season 2006/2007 – category I	EUR 90,000
Season 2007/2008 – category I	EUR 90,000
Season 2008/2009 – category I	EUR 90,000
Season 2009/2010 – category I	EUR 90,000
Season 2010/2011 – category I (1/2 season)	EUR 45,000
Season 2011/2012 – category I	EUR 90,000
Total amount of training compensation due	EUR 535,000

111. Pursuant to article 3(1) of Annex 4 to the FIFA Regulations, “*the deadline for payment of training compensation is 30 days following the registration of the professional with the new association*”. As such, since the Player was registered with Bologna FC on 1 July 2012, the Panel rules that Bologna FC should have paid FC Barcelona the above-mentioned amount of training compensation on 31 July 2012, with the consequence that interest should have started to accrue on this date.

112. However, the Panel finds that, in the absence of an independent appeal having been lodged by FC Barcelona, it is bound by the Appealed Decision that FC Barcelona asked to confirm and, therefore, has no other option but to confirm that interest shall only start to accrue as from 1 September 2012. Ruling otherwise would constitute a ruling *ultra petita*.

113. Consequently, the Panel finds that FC Barcelona is entitled to receive training compensation in the amount of EUR 535,000 from Bologna FC, plus interest at a rate of 5% *per annum* as from 1 September 2012 until the date of effective payment.

B. Conclusion

114. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Panel finds that:
- i. FC Barcelona complied with the formal regulatory requirements to safeguard its right to receive training compensation from Bologna FC for the transfer of the Player.
 - ii. It was not proven that FC Barcelona offered a renewed employment contract to the Player in bad faith.
 - iii. The application of the provisions of the FIFA Regulations in this case do not violate the EU principle of free movement of workers.
 - iv. The loan of the Player to Vitesse shall not be considered as a permanent transfer and it does not disconnect the training period for the purpose of the calculation of the training compensation.
 - v. The calculation of the training compensation due should be made in consideration of the training period until the loan to Vitesse and the period after the Player's return to FC Barcelona.
 - vi. FC Barcelona is entitled to receive training compensation in the amount of EUR 535,000 from Bologna FC, plus interest at a rate of 5% *per annum* as from 1 September 2012 until the date of effective payment.
115. Any further or different claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 25 August 2014 by Bologna FC 1909 S.p.A. against the Decision issued on 27 February 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.
 2. The Decision of the Dispute Resolution Chamber of the Fédération Internationale de Football Association issued on 27 February 2014 is confirmed.
- (...)
5. All other motions or prayers for relief are dismissed.