



Arbitration CAS 2015/A/4137 Olympique Lyonnais v. AS Roma, award of 16 November 2015

Panel: Mr Dirk-Reiner Martens (Germany), Sole Arbitrator

Football

Player transfer

Solidarity contribution

Interpretation of contract

Calculation of solidarity contribution

1. **According to the applicable regulations, solidarity contribution is paid by the new club by deducting the relevant percentage from the total amount of compensation negotiated for the player transfer (i.e. the gross transfer value).**
2. **When interpreting a contract, Swiss law foresees that first and foremost the true intention of the parties at the time of forming their agreement has to be considered. Alternatively, and in case the parties' true intention cannot be identified, an objective interpretation has to be conducted in which the parties' contractual declarations should be understood the way the other party of the contract could and in good faith should have understood them. Interpreting a contractual agreement from an objective perspective must necessarily start from the wording of the parties' arrangement.**
3. **Pursuant to the RSTP, 5% of any transfer compensation shall be deducted from the total amount of the compensation as solidarity contribution and distributed by the new club. The wording of the RSTP does not prohibit that the amount specified in a transfer contract represents only 95% of the gross transfer value, as long as the solidarity contribution in the end is still deducted from the gross transfer value and distributed in conformity with the wording of the RSTP.**

I. FACTUAL BACKGROUND

1. The Parties

1. Olympique Lyonnais (hereinafter the "Appellant" or "OL") is a football club from Lyon, France. It is a member of the Fédération Française de Football ("FFF"), which in turn is a member of the Fédération Internationale de Football Association ("FIFA").
2. Associazione Sportiva Roma ("Respondent" or "AS Roma") is a football club from Rome, Italy.

It is a member of the Italian Football Association, which in turn is a member of FIFA.

2. The Dispute between the Parties

3. OL challenges before the Court of Arbitration for Sport (“CAS”) a decision issued by the FIFA Dispute Resolution Chamber (“DRC”) on 28 August 2014, which rejected a claim brought by OL against AS Roma for payment of solidarity contribution in the amount of EUR 181,577.00, at the same time partially accepting a counter-claim by AS Roma in the amount of EUR 161,491.00 (the “Decision”). The circumstances stated below are a summary of the main relevant facts as submitted by the parties.
4. From 18 August 1997 until 21 July 2004, the Bosnian player M. (the “Player”), born on 2 April 1990, was registered with FC Schiffflange 95 in Luxemburg.
5. From 22 July 2004 until 30 June 2008, the Player was registered with FC Metz in France.
6. On 1 July 2008, the Player was registered with OL.
7. On 29 August 2011, the Parties concluded a contract relating to the transfer of the Player from OL to AS Roma (the “Transfer Agreement”).
8. The Transfer Agreement *inter alia* provides that:

“Article 3 – Payment of transfer compensation

a) Fixed Amount

In consideration of such transfer of registration, AS Roma agrees to pay to the transferor, by way of compensation for the player, a sum of 11 000 000 (eleven million) euros (net of any local taxes, VAT and solidarity contribution) to be paid in three instalments as follows;

- € 4 500 000 (four million five hundred thousand euros) upon delivery of the international transfer certificate

- € 3 500 000 (three million five hundred thousand euros) on the 30/06/2012

- € 3 000 000 (three million euros) on the 30/06/2013

[...]

b) Solidarity contribution

The parties agree that the transfer compensation [...] set out in this agreement does not include the FIFA solidarity contribution. Such compensation will be borne by AS Roma, and will not be deducted from the transfer compensation”.

9. On 1 September 2011, the Player was registered with AS Roma.

10. On 5 April 2012, OL sent an invoice to AS Roma, outlining the solidarity contribution which according to OL was to be paid by AS Roma in three instalments, amounting to EUR 181,577.00. According to the invoice the payments were to be made as follows:
 - on 30 April 2012 EUR 74,282.00
 - on 31 July 2012 EUR 57,775.00
 - on 31 July 2013 EUR 49,520.00
11. On 18 June 2012, OL sent an email to AS Roma requesting payment of the first instalment of the solidarity contribution.
12. On the same day, AS Roma replied by email that it had *“calculated the solidarity contribution [...] and we think the solidarity amount due to O. Lyonnais is already included into the total amount of the transfer compensation (11M)”*.
13. On 8 November 2012, OL sent another email to AS Roma requesting payment of the first and second instalments of the solidarity contribution.
14. On 9 November 2012, AS Roma answered to OL by email explaining that there was *“negative feedback from our Italian law [sic]”* and that AS Roma intended *“to pursue the matter with [its] international legal expert”*.
15. On 23 May 2013, OL sent a further email to AS Roma requesting once again payment of the first and second instalments of the solidarity contribution and reminding it about the impending due date of the third instalment.
16. On 26 June 2013, AS Roma paid the last instalment of the agreed transfer fee, i.e. EUR 11,000,000.00.
17. On 15 August 2013, OL sent an email to AS Roma requesting payment of the entire outstanding amount of solidarity contribution.
18. On 20 August 2013, AS Roma paid the last instalments of solidarity contribution to FC Schiffange 95 (in total EUR 83,102.73, paid in three instalments on 8 November 2011, 25 September 2012 and 20 August 2013) and to FC Metz (in total EUR 191,897.26, paid in three instalments on 26 October 2011, 25 September 2012 and 20 August 2013).

3. The Proceedings before the DRC

19. On 6 September 2013, the FFF, on behalf of OL, filed a claim against the Respondent before the DRC requesting it to order AS Roma to pay the envisaged solidarity contribution. In the submissions it was argued that the parties had concluded a valid contract by which AS Roma promised to OL a net transfer fee of EUR 11,000,000.00 plus OL's share of the solidarity contribution.

20. On 27 January 2014, AS Roma filed a counter-claim requesting OL to reimburse 5 % of the transfer compensation already paid (i.e. EUR 11,000,000.00), amounting to EUR 550,000.00.
21. On 28 August 2014, the DRC rejected OL's claim. At the same time, the DRC partially accepted the counter-claim of AS Roma, except for those amounts paid as first instalments to FC Schifflange 95 and FC Metz for being time-barred under the applicable regulations.
22. The operative part of the Decision reads as follows:

"1. The claim of the Claimant/Counter-Respondent, Olympique Lyonnais, is rejected.

2. The counter-claim of the Respondent/Counter-Claimant, AS Roma, is partially accepted insofar as it is admissible.

3. The Claimant/Counter-Respondent has to reimburse the amount of EUR 161,491 to the Respondent/Counter-Claimant within 30 days as from the date of notification of this decision.

4. If the aforementioned sum is not paid by the Claimant/Counter-Respondent within the aforementioned deadline, interest at the rate of 5 % p.a. will fall due as of expiry of the stipulated time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for its consideration and a formal decision.

5. The final costs of the proceedings in the amount of CHF 24,000 are to be paid within 30 days as from the date of the notification of the present decision as follows:

5.1 The amount of CHF 12,000 has to be paid by the Respondent/Counter-Claimant.

5.2 The amount of CHF 12,000 has to be paid by the Claimant/Counter-Respondent. Given that the Claimant/Counter-Respondent has already paid the amount of CHF 5,000 as advance of costs at the start of the present proceedings, the additional amount of CHF 7,000 has to be paid by the Claimant/Counter-Respondent to FIFA.

[...]"

23. The Decision with grounds was notified to the parties on 22 June 2015.

II. ARBITRAL PROCEEDINGS

1. Initiation of the CAS proceedings

24. On 13 July 2015, OL filed a Statement of Appeal against the Decision before the CAS and nominated Mr. Mark Hovell as arbitrator.
25. On 23 July 2015, AS Roma nominated Mr. Massimo Coccia as arbitrator and proposed to submit the present matter to CAS mediation. This proposal was declined by OL on the same day.

26. Also on 23 July 2015, the Appellant filed its Appeal Brief.
27. On 28 July 2015, the Appellant paid its share of the advance of costs.
28. On 6 August 2015, FIFA renounced its right to intervene in the proceedings.
29. On 17 August 2015, the Respondent filed its Answer.
30. On 18 August 2015, the Respondent declared its preference for a hearing to be held in the present matter.
31. On 21 August 2015, the CAS informed the parties about the constitution of the Panel as follows:

President:	Mr Dirk-Reiner Martens, Attorney-at-law in Munich, Germany
Arbitrators:	Mr Mark Hovell, Solicitor in Manchester, United Kingdom Mr Massimo Coccia, Professor in Rome, Italy
32. On 25 August 2015, the Appellant asked the CAS whether the Respondent had paid its share of the advance of costs. At the same time, the Appellant asked for an extension of the time-limit to indicate its preference whether to hold a hearing in the present matter.
33. On 28 August 2015, the Respondent declared that it had not paid the advance of costs and that it had no intention to do so.
34. On 31 August 2015, in view of Respondent's non-payment of its share of the advance of costs, the Appellant requested that the President of the CAS Appeals Division appoint a sole arbitrator.
35. On 1 September 2015, the Appellant declared that a hearing may not be necessary, but that it would leave it to the Panel to decide whether a hearing should be held.
36. On the same day, the Respondent objected to the case being decided by a sole arbitrator considering the importance of the matter.
37. On 7 September 2015, the parties were informed that the President of the CAS Appeals Arbitration Division, in accordance with Article R50 of the Code of Sports-related Arbitration ("CAS Code"), had decided to submit the matter to a sole arbitrator, Mr Dirk-Reiner Martens, who had previously been appointed as President of the Panel.
38. On 17 September 2015, the parties were informed that a hearing would be held on 23 October 2015.
39. On 21 September 2015, the Respondent signed the Order of Procedure.
40. On 24 September 2015, the Appellant signed the Order of Procedure.

41. On 23 October 2015, a hearing took place at the CAS in Lausanne.

2. Parties' Positions and Prayers for Relief

42. The following section summarizes the parties' main arguments in support of their respective prayers for relief.

a. *The Appellant*

43. The Appellant argues that the parties concluded a valid contract in which the Respondent promised to pay to the Appellant for the transfer of the Player an amount of EUR 11,000,000.00 plus the Appellant's share of the solidarity contribution, i.e. EUR 183,329.48.
44. The Appellant is of the opinion that the wording of Article 3 of the Transfer Agreement is clear in thus far as it states that the transfer fee was net of any solidarity contribution and that the Respondent must pay the Appellant's share of the solidarity contribution in addition to the transfer fee. The Appellant argues that the Respondent must comply with the terms of the Transfer Agreement according to the principle of *pacta sunt servanda*.
45. Further, the Appellant refers to CAS jurisprudence (CAS 2006/A/1018; CAS 2012/A/2707) in similar cases, according to which it would be perfectly proper for the parties to a transfer agreement to stipulate that the new club must pay the solidarity contribution in addition to the transfer fee. The Appellant points out that according to this jurisprudence such an agreement would not be contrary to the FIFA Regulations on the Status and Transfer of Players ("RSTP").
46. The Appellant contests that the Respondent merely forgot or accidentally "*omitted*" to deduct the 5% solidarity contribution from the transfer fee when transferring the whole amount of EUR 11,000,000.00 to the Appellant. According to the Appellant, the Respondent correctly and fully understood the meaning of Article 3 of the Transfer Agreement. Otherwise the Respondent would not have paid solidarity contribution to FC Schifflange 95 and FC Metz on top of the EUR 11,000,000.00 it paid to the Appellant.
47. The Appellant sees its position corroborated by the fact that the Respondent sought reimbursement of the solidarity contribution only after the Appellant's filing of the claim before the DRC.
48. The Appellant further argues that Article 3 of the Transfer Agreement does not aim to set aside the obligation to distribute solidarity contribution according to the RSTP. Article 3 merely changed the calculation basis of the solidarity contribution.
49. According to the Appellant, the solidarity contribution needs to be calculated as follows: the amount of EUR 11,000,000.00 represents 95 % of the gross transfer value. 100% of the gross transfer value thus amounts to EUR 11,578,947,37. In application of Article 1 of Annex 5 of the RSTP and on the basis of the gross transfer fee as well as the duration of the Player's registration with the Appellant, the latter concludes that it is entitled to a portion of 1,5833 % of the the total gross transfer value as solidarity contribution, i.e. EUR 183,329,48.

50. According to Article 2(1) of Annex 5 of the RSTP, the afore-mentioned amount would have had to be paid by the Respondent in three instalments no later than 30 days after the respective payments of the transfer fee, on 1 October 2011, 30 July 2012 and 30 July 2013, respectively. Because the Respondent did not pay on time, interest must be charged accordingly.

51. In light of the above, the Appellant initially requested the CAS to rule as follows:

I. The appeal is upheld.

II. The FIFA decision issued on 28 August 2014 in the matter between Olympique Lyonnais and AS Roma is annulled in full.

Ruling de novo

III. Associazione Sportiva Roma is ordered to pay EUR 183.329,48 (one hundred eighty-three thousand three hundred and twenty-nine euro and thirty-five cents), plus interest at 5 % per year from the following dates

- o from 1 October 2011 on EUR 74,998.42;*
- o from 30 July 2012 on EUR 58,332.11;*
- o from 30 July 2013 on EUR 49,998.95.*

IV. Associazione Sportiva Roma is ordered to pay Olympique Lyonnais CHF 5000 (five thousand) in reimbursement of the advance of costs paid by Olympique Lyonnais in the FIFA proceedings.

V. Associazione Sportiva Roma shall bear all the costs of this arbitration and shall be ordered to reimburse Olympique Lyonnais all advances of costs paid by the latter to the CAS.

VI. Associazione Sportiva Roma shall be ordered to pay Olympique Lyonnais a contribution towards the legal and other costs incurred by the latter in the framework of these proceedings, in an amount to be determined at the discretion of the Panel”.

52. At the hearing held on 23 October 2015, the Appellant withdrew its prayer for relief under IV. above.

b. The Respondent

53. The Respondent requests CAS to render an award as follows:

“i. to confirm the Challenged decision d.d. August 28, 2014 in its entirety;

ii. to condemn the Appellant to the payment of the whole CAS administration cost and the Arbitrators fees”.

54. The Respondent argues that the gross total transfer value amounts to only EUR 11.000.000,00

and that the solidarity contribution must be deducted from this amount.

55. The Respondent asserts that it mistakenly paid the solidarity contribution to FC Schifflange 95 and FC Metz and that it mistakenly omitted to deduct the 5 % solidarity contribution when paying the transfer fee to the Appellant.
56. The Respondent argues that the RSTP supersede any clause in the Transfer Agreement and that the parties were not able to derogate from the legal regime set out in the RSTP. In this regard, the Respondent is of the opinion that Article 3 of the Transfer Agreement contradicts Article 1 Annex 5 of the RSTP because it does not provide that the compensation is “deducted” from the transfer compensation of EUR 11,000,000.00. Any other interpretation of Article 1 Annex 5 of the RSTP in the present case would destabilize the football solidarity system and undermine the legal certainty of the RSTP. As a result, the Respondent concludes that Article 3 of the Transfer Agreement is null and void because of a violation of the RSTP.
57. Further, the Respondent refers to DRC jurisprudence and an alleged FIFA Circular Letter of 7 December 2010 which are in line with the appealed Decision. The Respondent argues that the CAS must respect the DRC jurisprudence and the FIFA Circular Letter.
58. At the same time, the Respondent is of the opinion that the Award CAS 2006/A/1018 cited by the Appellant must be distinguished from the case at hand as it concerned the RSTP (2001 edition) which provided that the solidarity contribution had to be “distributed”, not “deducted” from the transfer compensation as foreseen in the applicable RSTP (2010 edition). Furthermore, the Award CAS 2008/A/1544 explicitly stated that “*FIFA is keen with its rules to make sure that no internal arrangement between transferring club and new club can anyhow complicate the legal position of such other clubs that are entitled to solidarity contribution*”.
59. According to the Respondent, the solidarity contribution must be calculated as follows: The amount of EUR 11,000,000.00 paid by the Respondent represents 100% of the gross transfer value and therefore more than what was actually owed to the Appellant, i.e. only 95% of the gross transfer value plus solidarity contribution due to the Appellant in the amount of 1,583%, amounting to only EUR 174,130.00. This amount was already included in the compensation paid to the Appellant.
60. Finally, the Respondent submits that the only reason imaginable why the actual gross transfer fee was not mentioned in the Transfer Agreement is that the Appellant wanted to trick the Respondent into agreeing to a transfer fee which is significantly higher than negotiated.

III. IN LAW

1. Jurisdiction

61. The jurisdiction of the CAS, which is not disputed by the parties, derives from Article R47 of the CAS Code and Article 66(1) of the FIFA Statutes in connection with Article 24(2) of the FIFA Transfer Regulations.

62. Article R47 of the CAS Code stipulates:

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

63. Articles 66(1) of the FIFA Statutes states:

“FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and players’ agents”.

64. Article 24(2) of the FIFA Transfer Regulations provides that:

“[...] Decisions reached by the Dispute Resolution Chamber or the DRC judge may be appealed before the Court of Arbitration for Sport (CAS)”.

65. The present appeal is directed against a final decision of a federation, the statutes and regulations of which provide for an arbitration clause in favour of the CAS. Thus, the appeal falls within the scope of Article R47 CAS Code. It follows that CAS has jurisdiction over the present matter.

2. Admissibility

66. In accordance with Article 67(1) of the FIFA Statutes,

“[a]ppeals against final decisions passed by FIFA’s legal bodies [...] shall be lodged with CAS within 21 days of notification of the decision in question”.

67. The Decision was notified to the Appellant on 22 June 2015 and the Statement of Appeal was filed on 13 July 2015, hence within the required 21 day time-limit. As a result the appeal is admissible.

3. Scope of the Sole Arbitrator’s Review

68. According to Article R57 of the CAS Code, the Sole Arbitrator has full power to review the facts and the law of the case. Furthermore, the Sole Arbitrator may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

4. Applicable Law

69. The applicable law is identified by the Sole Arbitrator in accordance with Article R58 of the CAS Code and Article 66(2) of the FIFA Statutes.

70. Pursuant to Article R58 of the CAS Code, the Sole Arbitrator is required to 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”.

71. Article 66(2) of the FIFA Statutes provides:

“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”.

72. The Sole Arbitrator notes that the parties agreed in the Transfer Agreement that their contract is governed by the *“FIFA Regulations and French law”*. However, in their submissions before the CAS, and throughout the proceedings, both parties have argued that the FIFA Regulations shall apply primarily and, if at all, Swiss law.

73. Accordingly, and in light of Article R58 of the CAS Code and Article 66(2) of the FIFA Statutes, the Sole Arbitrator rules that the Statutes and Regulations of FIFA shall apply primarily and, subsidiarily, Swiss law.

74. With regard to the question which edition of the RSTP shall apply, the Sole Arbitrator agrees with the parties and the DRC that, on the basis of Article 26(1) of the RSTP (2012 edition), the RSTP (2010 edition) are applicable because the Transfer Agreement was concluded in 2011.

75. The relevant sections of the RSTP in the present matter provide for the following:

“21 Solidarity mechanism

If a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his former club (solidarity contribution). The provisions concerning solidarity contributions are set out in Annexe 5 of these regulations”.

“Annex 5

1 Solidarity contribution

If a professional moves during the course of a contract, 5% of any compensation, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the club(s) involved in his training and education over the years. This solidarity contribution reflects the number of years (calculated pro rata if less than one year) he was registered with the relevant club(s) between the seasons of his 12th and 23rd birthdays, as follows:

- Season of 12th birthday: 5% (i.e. 0.25% of total compensation);
- Season of 13th birthday: 5% (i.e. 0.25% of total compensation);
- Season of 14th birthday: 5% (i.e. 0.25% of total compensation);
- Season of 15th birthday: 5% (i.e. 0.25% of total compensation);
- Season of 16th birthday: 10% (i.e. 0.5% of total compensation);
- Season of 17th birthday: 10% (i.e. 0.5% of total compensation);
- Season of 18th birthday: 10% (i.e. 0.5% of total compensation);
- Season of 19th birthday: 10% (i.e. 0.5% of total compensation);
- Season of 20th birthday: 10% (i.e. 0.5% of total compensation);
- Season of 21st birthday: 10% (i.e. 0.5% of total compensation);
- Season of 22nd birthday: 10% (i.e. 0.5% of total compensation);
- Season of 23rd birthday: 10% (i.e. 0.5% of total compensation).

2 Payment procedure

1. *The new club shall pay the solidarity contribution to the training club(s) pursuant to the above provisions no later than 30 days after the player's registration or, in case of contingent payments, 30 days after the date of such payments.*
2. *It is the responsibility of the new club to calculate the amount of the solidarity contribution and to distribute it in accordance with the player's career history as provided in the player passport. The player shall, if necessary, assist the new club in discharging this obligation. [...]*

5. Merits

76. In order to determine whether the Decision was incorrect and whether the Appellant can claim from the Respondent an additional amount of EUR 183,329.48 on top of the EUR 11,000,000.00 it has received, the Sole Arbitrator must answer the following questions:
 - a. What exactly is the content of the parties' arrangement in Article 3 of the Transfer Agreement?
 - b. Depending on the content of Article 3 of the Transfer Agreement, is the parties' arrangement valid under the RSTP and/or Swiss law?

c. Did the Appellant delude the Respondent in connection with the Transfer Agreement, making it invalid under Swiss law?

77. However, before entering into a detailed discussion on the above questions, the Sole Arbitrator takes note of the following undisputed aspects:

78. The parties agree that the Appellant is in principle entitled to a share of solidarity contribution for the training and education of the Player under the applicable rules, namely Article 21 and Annex 5 of the RSTP. The parties differ only in regard to whether the Appellant's share of the solidarity contribution needed to be paid on top of the transfer sum of EUR 11,000,000.00 or whether it was already included in the transfer sum (meaning that the Appellant has been overpaid and must reimburse the Respondent accordingly).

79. The size of the share of solidarity contribution due to the Appellant under Article 1 Annex 5 of the RSTP is calculated as follows:

Player's Age	Season	Dates	Percentage of solidarity contribution
19	2008/2009	1 July 2008 until 30 June 2009	0,5%
20	2009/2010	1 July 2009 until 30 June 2010	0,5%
21	2010/2011	1 July 2010 until 30 June 2011	0,5%
22	2011/2012	1 July 2011 until 31 August 2011	0,083%
			1,5833%

80. Looking at the applicable regulations, solidarity contribution is paid by the new club by deducting the relevant percentage from the total amount of compensation negotiated for the player transfer (i.e. the gross transfer value).

a. *The content of Article 3 of the Transfer Agreement*

81. At the outset, the Sole Arbitrator recalls the different viewpoints of the parties with regard to their contractual arrangement: the Appellant argues that the Respondent promised to pay an amount of EUR 11,000,000.00 plus solidarity contribution for the training of the Player, amounting to EUR 183.329.48, while the Respondent is of the view that the transfer sum of EUR 11,000,000.00 already included any solidarity payments to be paid by the Respondent. More precisely, the Appellant is of the opinion that the transfer sum of EUR 11,000,000.00 represents only 95% of the gross transfer value on top of which an additional 1,5833% of the gross transfer value needed to be paid as solidarity contribution. The Respondent, on the other hand, argues that the transfer sum of EUR 11,000,000.00 represents 100% of the gross transfer value from which 5% had to be deducted and paid as solidarity contribution to all training clubs,

including the Appellant.

82. In order to answer the question whether the parties indeed concluded an agreement in which the Respondent promised to pay to the Appellant not only the transfer sum but also an additional amount of solidarity contribution, the Sole Arbitrator relies on Swiss law regarding the interpretation of contracts, as the Rules and Regulations of FIFA do not provide for this.

83. Article 18(1) of the Swiss Code of Obligations (“SCO”) provides that:

“When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement”

[Official translation of the Swiss Code of Obligations provided under <https://www.admin.ch/opc/en/classified-compilation/19110009/201507010000/220.pdf>].

84. Pursuant to Article 18 SCO, the Sole Arbitrator first and foremost has to analyze the true intention of the parties at the time of forming their agreement (cf. KOSTKIEWICZ/NOBEL/SCHWANDER/WOLF, Schweizerisches Obligationenrecht, 2nd edition 2009, Article 18, para. 2). Alternatively, and in case the parties’ true intention cannot be identified, an objective interpretation has to be conducted in which the parties’ contractual declarations should be understood the way the other party of the contract could and in good faith should have understood them (*id.*, Article 18, para. 6).

85. Interpreting a contractual agreement from an objective perspective must necessarily start from the wording of the parties’ arrangement (*id.*, Article 18, para. 8).

86. In its relevant parts, Article 3 of the Transfer Agreement (see above para. 8) provides under the heading “*a) Fixed Amount*” that the Respondent undertakes to pay

“a sum of 11 000 000 (eleven million) euros (net of any local taxes, VAT and solidarity contribution) to be paid in three instalments”.

87. Additionally, under the heading “*b) Solidarity contribution*” the Transfer Agreement states that

“the transfer compensation [...] does not include the FIFA solidarity contribution. Such compensation will be borne by AS Roma, and will not be deducted from the transfer compensation”.

88. It becomes obvious that the Transfer Agreement clearly distinguishes between a transfer fee on the one hand and the solidarity contribution on the other: first, the Transfer Agreement refers to a sum of EUR 11,000,000.00 “*net*” of solidarity contribution. Second, it states that the transfer compensation does “*not include*” solidarity contribution. Third, it provides that the solidarity payments will “*not be deducted*” from the transfer compensation.

89. Under these circumstances, the wording of the Transfer Agreement does not leave room for an interpretation in line with Respondent’s argument that the solidarity contribution must indeed be deducted from the the transfer sum.

90. While the wording of the Transfer Agreement in the Sole Arbitrator's view may in theory allow an interpretation to the effect that the Appellant is entitled to an amount not less but also not more than EUR 11,000,000.00, since there is no explicit mention that the Appellant's share of solidarity contribution was to be paid additionally, the parties in their submissions have made it clear that they did not understand Article 3 of the Transfer Agreement in such a way. For them, the Transfer Agreement provides for an obligation of the Respondent to pay either

- EUR 11,000,000.00 plus the Appellant's share of solidarity contribution amounting to EUR 183,329,48 (i.e. 1,5833% of EUR 11,578,947.40) (Appellant)

or

- EUR 10,624,130.00 (i.e. EUR 11,000,000.00 minus 5 %, plus the Appellant's share of solidarity contribution amounting to EUR 174,130.00 (i.e. 1,5833% of EUR 11,000,000.00)) (Respondent).

91. Because the latter option is clearly not arguable under the wording of the parties' contractual arrangement, as it would mean that the Appellant would ultimately receive less than EUR 11,000,000.00 from the Respondent, and because the wording of the Transfer Agreement acknowledges that the Respondent must pay an amount of EUR 11,000,000.00 irrespective of the obligation to also pay solidarity contribution, the Sole Arbitrator is of the opinion that the parties agreed that the Respondent has to pay to the Appellant a sum of EUR 11,000,000.00 plus the latter's share of the solidarity contribution.

92. The Sole Arbitrator's interpretation is not changed by the fact that the wording of Article 3 of the Transfer Agreement did not specify the actual gross transfer value, i.e. $\text{EUR } 11,000,000.00 / 95 \times 100 = \text{EUR } 11,578,947.40$. It is reasonable and also commonly accepted that parties to financial agreements spare themselves the burden of having to calculate tax and similar deductions from any gross amount by agreeing to a net payment.

93. The fact that the Appellant until these appeal proceedings itself did not know how much solidarity contribution it was able to claim under the parties' arrangement, namely 1,5833% of EUR 11,578,947.40, i.e. EUR 183,329.48, does not indicate that the parties in fact intended to agree on something different.

b. The validity of the Transfer Agreement

94. The Sole Arbitrator now turns to the question whether the Transfer Agreement as set out above, was valid under the applicable regulations.

95. In the Decision, the DRC stated the following:

"[...] the solidarity mechanism is a principle well-established in the Regulations, from which the parties signing a transfer contract cannot derogate through the contents of a contract. In other words, the obligation to distribute solidarity contribution in accordance with the Regulations cannot be set aside by means of a contract concluded between clubs involved in a player's transfer. Thus, as for the distribution of the

solidarity contribution, the amount to be taken into account when calculating the solidarity contribution payments due to the club(s) involved in the player's education and training, is the amount actually agreed upon as the total compensation payable by the new club to the former club, regardless of any provision to the contrary stipulated in the transfer or loan contract.

In this regard, the DRC considered that if one would follow the [Appellant's] interpretation of the transfer agreement and the [Appellant's] argument that the [Respondent] should pay the [Appellant] the total compensation of EUR 11,000,000 without deducting any amount(s) in conformity with the rules regarding solidarity contribution, it would mean that, in the present matter, the amount of EUR 11,000,000 would constitute 95% of the total amount of compensation for the transfer of the player. The DRC stressed that would this line be followed, the total amount of compensation would be EUR 11,578,947 (EUR 11,000,000.00 / 95 × 100 = EUR 11,578,947). Consequently, the DRC considered that would the solidarity contribution be calculated in the way the [Appellant] argued, the 5% solidarity contribution would, according to the Regulations, then be calculated on the basis of EUR 11,578,947 instead of EUR 11,000,000, a calculation which, in the DRC's view, is incorrect as such an approach would destabilize the entire system of the solidarity mechanism and would undermine the legal certainty the Regulations provide. It would further be to the detriment of the training clubs, which received solidarity contribution on the basis of the transfer fee of EUR 11,000,000 instead of EUR 11,578,947. Therefore, a strict application of the rules regarding solidarity contribution should be followed and, hence 5% should have been deducted from the EUR 11,000,000 and distributed to the club(s) involved in the player's training and education”.

96. The Respondent in essence agrees with the assessment of the DRC and also points to previous DRC jurisprudence, including a decision of 30 January 2012 in which the DRC found that:

“the obligations derived from the solidarity mechanism, in particular, the obligation of the player's new club to deduct from a particular transfer compensation the relevant share of solidarity contribution in order to distribute it to the club(s) concerned as well as the obligation of the player's former club to reimburse that same share of solidarity contribution in the event that the player's new club omitted to deduct the relevant share, are now well established principles and cannot be derogated from, even by means of specific contractual clauses that parties signing a transfer contract might agree upon”.

97. Furthermore, the Respondent points to a DRC decision of 7 December 2010 which states that:

“the solidarity contribution cannot be added to the agreed transfer compensation but, on the contrary, has to be deducted from such compensation, the Chamber considered that the Claimant has already received the solidarity contribution and possibly received more than it is entitled to [...]”.

98. With regard to the DRC decision of 7 December 2010 the Respondent further submits that

“[it] was even published by Circular dated December 7, 2010 (Annex 2). FIFA sent this Circular to all its affiliated member which is an undeniable signal that FIFA considered this ruling to establish the standard of reference”.

99. The Sole Arbitrator notes that contrary to the Respondent's submissions, it did not submit as evidence “Annex 2” the mentioned FIFA Circular Letter of 7 December 2010 but only the

above-mentioned decision which was in fact “*passed by way of circular on 7 December 2010*”. In fact, no FIFA Circular Letter of the same date has been provided by the Respondent and it appears that the Respondent indeed may have been confused by the phrase “*passed by way of circular*”. A circular decision is a mechanism that allows the judges to render a decision without a hearing or physical meeting of the tribunal. It does not mean necessarily that the decision was part of a FIFA Circular Letter nor that the decision indeed had the weight attributed to it by the Respondent.

100. More importantly, the DRC decision of 7 December 2010 was overturned in the proceeding CAS 2012/A/2707 (Award of 12 October 2012, i.e. later than any of the DRC decisions submitted by the Respondent), in which the Panel stated the following:

“105. The Panel considers that on the occasion of a player’s transfer, the former club and the new club certainly cannot deviate from the FIFA RSTP provisions on solidarity contribution in issues affecting third parties, like the amount to be received by the training clubs as solidarity contribution (5% of the transfer compensation), or the party which shall make the relevant payments to the beneficiaries of such contribution (the new club).

106. However, in the Panel’s view, there is no legal obstacle which prevents the clubs from agreeing (as the parties did in the case at stake) that the new club, apart from paying the transfer price, additionally bears the solidarity contribution.

107. In fact, some CAS precedents confirm this position. The awards in the cases CAS 2009/A/1773 & 1774 Borussia Mönchengladbach v. Asociación Atlético Argentinos Juniors or CAS 2008/A/1544 RCD Mallorca v. Al Arabi state in the pertinent part that the FIFA RSTP foresee the following principles on solidarity contribution (emphasis added by the Panel):

(i) It is the new club that has the obligation to pay the solidarity contribution to the club(s) entitled to it.

(ii) Towards third parties, i.e. the clubs entitled to the solidarity contribution, the obligation to pay the contribution remains with the new club, even if there are internal arrangements between the new club and the transferring club.

(iii) The transferring club and the new club are free to agree on a shift of the final, financial burden of the solidarity contribution and, in particular, to agree on a rule regarding any reimbursement due or not.

108. In addition, in the award of the case CAS 2008/A/1544 RCD Mallorca v. Al Arabi it is expressly mentioned that:

Furthermore, neither the 2005 FIFA Regulations nor other FIFA rules do prohibit the parties on such an internal arrangement [...].

Therefore, upon analysis of the aforementioned provisions, the Panel concludes that neither the relevant provisions of the FIFA Regulations nor those of Swiss Law forbid the parties to stipulate who will carry the financial burden of the solidarity contribution”. (emphasis added by the Panel)” (cf. CAS

2012/A/2707, paras. 105 et seq., pages 28 and 29).

101. Coming back to the DRC's argument in the appealed Decision that football parties cannot derogate from the regime under the RSTP, the Sole Arbitrator deems that he does not have to decide whether this is indeed correct, because contrary to the view of the DRC and that of the Respondent, the Sole Arbitrator is convinced that there is no derogation from the RSTP in the case at hand.
102. The DRC correctly explained that the net agreement between the parties leads to the situation that the agreed transfer sum of EUR 11,000,000.00 constitutes only 95% of the total amount of compensation for the transfer of the player, while the gross transfer value is EUR 11,578,947 (EUR 11,000,000.00 / 95 x 100 = EUR 11,578,947).
103. That said, the parties' agreement is also covered by the wording of Article 1 Annex 5 of the RSTP, which provides that 5% of any transfer compensation shall be deducted from the total amount of the compensation and distributed by the new club. The wording of the RSTP does not prohibit that the amount specified in a transfer contract represents only 95% of the gross transfer value, as long as the solidarity contribution in the end is still deducted from the gross transfer value and distributed in conformity with the wording of Article 1 Annex 5 of the RSTP.
104. If the parties comply with the principles outlined above, the Sole Arbitrator fails to see any destabilizing effect of the Transfer Agreement on the solidarity system as a whole and how it would undermine the legal certainty of the RSTP. The wording of the Transfer Agreement is clear (see above para. 86 et seq.). The fact that a net agreement leads to the situation that a club can no longer calculate the solidarity contribution simply by deducting 5% from the amount stipulated in the transfer contract but that it will have to make a slightly more sophisticated calculation as mentioned above (first step: transfer fee / 95 x 100 = gross transfer value; second step: gross transfer value x 0.05 = solidarity contribution), does not lead to a destabilization of the system.
105. Furthermore, if solidarity contribution had been paid correctly by the Respondent, the Transfer Agreement would have rather enhanced the solidarity system as the training clubs should have received more money from the Respondent. It is unconvincing if the DRC implies that because the Respondent failed to pay the correct amounts to the other training clubs by calculating on the basis of EUR 11,000,000 instead of EUR 11,578,947, that a net agreement *per se* would be detrimental to other training clubs.
106. The Sole Arbitrator's view is consistent with other CAS jurisprudence, in particular the Award in CAS 2012/A/2707 (see above para. 100), which relies on the Awards in CAS 2009/A/1773 & 1774 and CAS 2008/A/1544. A discussion concerning the ratio of the Award in CAS 2006/A/1018, which was based on the RSTP (2001 edition) according to which the solidarity contribution had to be "distributed" only, not "deducted" from the transfer compensation, is not necessary.
107. It follows from the above that the Transfer Agreement between the parties is valid and that the Appellant in principle has a claim against the Respondent for its share of the solidarity

contribution, i.e. EUR 183,329.48.

c. Did Appellant trick Respondent into signing the Transfer Agreement?

108. With regard to Respondent's argument that the Appellant deliberately phrased the Transfer Agreement in order to trick the Respondent into signing a contract, the content of which it could not fully understand, the Sole Arbitrator deems that Respondent's allegations are not supported by the facts as established by the Parties. No evidence has been proffered by the Respondent in support of its argument.

d. The Request for interest

109. In addition to the payment of EUR 183,329,48 the Appellant has requested the Sole Arbitrator to order the Respondent to pay interest in the amount of 5 % per annum

- on an amount of EUR 74,998.42 as of 1 October 2011;
- on an amount of EUR 58,332.11 as of 30 July 2012;
- on an amount of EUR 49,998.95 as of 30 July 2013.

110. The Sole Arbitrator sees no reason not to award such interest of 5% per annum, which corresponds to the legal interest provided under Swiss law pursuant to Article 104 SCO. The start dates correspond to the payment procedure outlined in Article 2(1) Annex 5 of the RSTP.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 13 July 2015 by Olympique Lyonnais against the decision rendered by the FIFA Dispute Resolution Chamber on 28 August 2014 is upheld.
2. The decision rendered by the by the FIFA Dispute Resolution Chamber on 28 August 2014 is set aside.
3. Associazione Sportiva Roma is ordered to pay to Olympique Lyonnais EUR 183.329,48 plus interest at 5 % per annum

on an amount of EUR 74,998.42 as of 1 October 2011;

on an amount of EUR 58,332.11 as of 30 July 2012;

on an amount of EUR 49,998.95 as of 30 July 2013.

(...)

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