Arbitration CAS 2016/A/4858 Delfino Pescara 1936 v. Envigado CF, award of 12 June 2017

Panel: Mr José Juan Pintó (Spain), Sole Arbitrator

Football
Transfer
Methods of interpretation of ambiguous contractual clauses
Determination of the moment a contractual obligation to pay falls due
Determination of the debt settled by an unspecified payment
Non-excessive annual default interest rate for late payment

1. **The interpretation of a contractual provision in accordance with article 18 of the Swiss Code of Obligations (SCO) aims at ascertaining the true common intentions (consensus) the parties had when they concluded the contract. Where a factual consensus cannot be proven, the declarations of the parties must be interpreted pursuant to the principle of good faith in the sense in which they could and should have been understood, taking into account the wording, the context, as well as all circumstances.**

2. **According to article 102 SCO, where an obligation is due, the debtor is in default as soon as he receives a formal reminder from the creditor. Where a deadline for performance of the obligation has been set by agreement or as a result of a duly exercised right of termination reserved by one party, the debtor is automatically in default on expiry of the deadline.**

3. **According to article 87 SCO, when the debtor does not specify which of its debts it is paying to its creditor and the payment receipt does not indicate how the payment has been allocated, it is allocated to whichever debt is due or, if several are due, to the debt that first gave rise to enforcement proceedings against the debtor or, in the absence of such proceedings, to the debt that fell due first.**

4. **One party's argument that the contractual interest rate to be applied to the outstanding sums it owes to its creditor is excessive is to be rejected if said parties' agreement expressly recognised as valid and accepted the interest rate at stake and if the debtor has failed to prove the excessive nature of this rate in accordance with the applicable law. Based on article 157 of the Swiss Penal Code, and taking into account the circumstances of a case and in particular the commercial nature of a contract as well as the value of the parties' obligations, a CAS panel considered in a past case an annual default interest rate of 17% *p.a.* as being the maximum rate that can be granted without violating the Swiss public policy.**

I. PARTIES

1. Delfino Pescara 1936 (hereinafter the "Appellant" or "Pescara") is an Italian football club with its registered seat in Pescara, Italy. It is affiliated with the *Federazione Italiana Giuoco Calcio*, which in turn is a member of the *Fédération Internationale de Football Association* (hereinafter "FIFA").

2. Envigado CF (hereinafter the "Respondent" or "Envigado") is a Colombian football club with its registered seat in Envigado, Colombia. It is affiliated with the *Federación Colombiana de Fútbol*, which is also a member of FIFA.

II. FACTUAL BACKGROUND

3. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties' written submissions, the evidence filed with these submissions, and the statements made by the parties and the evidence taken at the hearing held in the present case. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Sole Arbitrator refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning. The Sole Arbitrator, however, has considered all the factual allegations, legal arguments, and evidence submitted by the parties in the present proceedings.

4. On 2 March 2009, Envigado and the player J. (hereinafter the "Player") entered into an employment agreement valid until 1 March 2012.

5. Furthermore, on 29 December 2011, Envigado and the Player entered into a new employment agreement which extended their relationship until 1 March 2015.

6. On the same 29 December 2011, Envigado transferred the Player on a loan basis to the Colombian club Atletico Nacional, S.A. (hereinafter "Nacional"). The corresponding loan agreement provided a purchase option in favour of Nacional on 75% of the economic rights of the Player.

7. In the summer transfer window of 2012, Pescara became interested in the Player's services and, after negotiations among the three parties, Pescara sent to Envigado and Nacional a draft agreement which established, *inter alia*, the following conditions (hereinafter the "Accordo"):

> *"(…)* ***ACCORDO***
>
> - *Pescara acquista l diritti economici e federativi del calciatore J. (18/1/93)*
>
> - *Club Envigado F.C S.a cede l diritti di cui è titolare e Club Atletico Nacional rinuncia al diritti di cui è titolare alle seguenti condizioni:*
>
> - *Prezzo di vendita complessivo di 2,100,000.00 USD$ (per 80% diritti economici e 100% diritti federativi)*

Il prezzo è comprensivo del diritti di formazione e indemnità;

Il prezzo è comprensivo del diritto di partecipazione dal trasferimento por el Jugador

Condiciones de pago:

750,000.00 USD entro 30/7/12 o comunque prima del rilascio del transfer
- di cui: 400milla USD a Envigado e 350 milla USD ad Atletico Nacional

700,000.00 USD entro e non oltre il 15/1/2013
- di cui: 400milla USD a Envigado e 300 milla USD ad Atletico Nacional

650,000.00 entro 30/7/13
- Ad Atletico Nacional

Il Pescara riconosce al Club Envigado F.C S.a il 20% sul prezzo di una futura vendita del calciatore ad altro club sulla pluzvalenza di 2,100,000" (emphasis added);

Which can be freely translated into English as follows:

"(…) ***AGREEMENT***

- *Pescara acquires the economic and federative rights of the player J. (18/1/93)*

- *Club Envigado F.C.S.a. sells the rights of which the club is the owner and Club Atletico Nacional renounces their rights on the following conditions;*

- *Total sale price of 2,100,000 USD (for 80% of economic rights and 100% of federative rights)*

  The price includes the rights for training compensation

  The price includes the right of participation in the transfer of the Player

Payment conditions:

750,000.00 USD no later than 30/7/12 and in any event before the release of the transfer
-of which: 400 thousand USD to Envigado and 350 thousand USD to Atletico Nacional

700,000.00 USD no later than 15/1/13
-of which: 400 thousand USD to Envigado and 300 thousand USD to Atletico Nacional

650,000.00 USD no later than 30/7/13
-to Atletico Nacional

Pescara recognizes to Club Envigado F.C.S.a. 20% on the price of a future sale of the football player to another club on the surplus of 2.100.000" (emphasis added).

8. Envigado signed the Accordo and sent it to Pescara, but before signing it crossed-out the sentence *"sulla pluzvalenza di 2,100,000"* and added the sentence *"20% neto de una venta futura"*. The wording of the relevant clause reads as follows after the amendment carried out by Envigado:

> *"Il Pescara riconosce al Club Envigado F.C S.a il 20% sul prezzo di una futura vendita del calciatore ad altro club ~~sulla pluzvalenza di 2,100,000~~ 20% neto de una venta futura".*

Which can be freely translated as follows:

> *"Pescara recognizes to Club Envigado F.C.S.a. 20% on the price of a future sale of the football player to another club ~~on the surplus of 2.100.000~~ 20% net of a future sale".*

9. On 16 July 2012, Pescara, Envigado, Nacional and the Player signed a document titled *"Acuerdo de Transferencia"* (hereinafter the "Agreement") which in its relevant parts, reads as follows (emphasis added):

> *"CONSIDERANDO:*
>
> *(A) Envigado es titular de los Derechos Federativos y Económicos del jugador y (…) Envigado es el único titular de su registro, de conformidad con las reglas de la Federación Colombiana de Fútbol y la FIFA.*
>
> *(…)*
>
> *(F) Pescara está interesado en adquirir los derechos federativos del jugador con Envigado y a negociar con Nacional la cesión de la opción de compra que tiene con el jugador según preacuerdo firmado entre las partes el día 13 de julio de 2012.*
>
> *Según lo anterior, se ACUERDA lo siguiente:*
>
> *1. Nacional cede a Pescara el derecho de ejercer la opción de compra que tiene sobre el jugador, la cual es aceptada por Envigado FC.*
>
> *2. Nacional, renuncia a ejercer la opción de compra sobre los derechos federativos y económicos del jugador y cede el derecho de compra a Pescara a cambio de recibir la suma de US$ 1.300.000 dólares (un millón trescientos mil dólares americanos) como contraprestación.*
>
> *3.* ***Nacional autoriza a Envigado a efectuar la venta de los derechos federativos y económicos del jugador a Pescara. Para lo cual establecen una cifra de US$800.000 dólares (ochocientos mil dólares americanos) por los derechos federativos y el 80% (Ochenta por ciento) de los derechos económicos, en este valor está incluido el***

***mecanismo de solidaridad*. Envigado quedará con el 20% (veinte por ciento) de los derechos económicos del jugador para una futura venta.**

(…)

6. Pescara deberá pagar en total la suma de USD 2.100.000 (dos millones cien mil dólares) como única contrapartida de la transferencia y como un todo de la negociación, los cuales se distribuirán como se establece en los numerales 2, 3 y 7 del presente acuerdo.

7. El valor pactado por la transferencia será pagada en tres (3) cuotas de la siguiente forma:

- *Primera cuota: USD 750.000,00 a la firma del presente acuerdo y antes de la liberación del Certificado de Transferencia Internacional (CTI), la cual se estima que sea antes del 31 de julio de 2012.*
- *Segunda cuota: USD 700.000,00 a más tardar el 15 de enero 2013.*
- *Tercera cuota; USD 650.000,00 a más tardar el 30 de julio 2013.*

(…)

Pescara se compromete a pagar independientemente a Nacional y Envigado (…) en las siguientes cuentas:

(…)

ENVIGADO FUTBOL CLUB S.A.

Banco: (…)

(…)

Cuenta:

(…)

9. (…)

- *Por otra parte,* **cualquier cantidad debida en virtud del presente Acuerdo estará sujeta a intereses de retraso a la tasa del 15% anual a partir de la fecha de incumplimiento. La obligación de pagar los intereses se reconoce expresamente por parte de Pescara como la tasa de interés válida y aceptable** *independientemente de los daños y perjuicios efectivamente causados a Nacional y Envigado por la demora y, además de los daños y perjuicios de los 50.000 euros previstos anteriormente. La aplicación de la tasa de interés es automática con cualquier monto diferido y no requiere ninguna acción por parte de Nacional y Envigado el fin de que sean aplicables.*

(…)

12. ***Este Acuerdo incorpora y establece el acuerdo y el entendimiento de las partes y sustituye todos los anteriores acuerdos escritos o verbales, entendimientos o acuerdos relacionados con la materia objeto de este Acuerdo.*** *El presente Acuerdo no se modificará, corregirá, alterará o completará, excepto por escrito por representantes debidamente autorizados de las partes del mismo.*

13. ***Este acuerdo está sujeto a, y se regirá por las leyes y reglamentos de la FIFA en vigor de vez en cuando y además la ley de Suiza.***

(…)

15. Este acuerdo se realiza en el Idioma Español. Si existe algún conflicto en el significado entre la versión en Español de este Acuerdo y cualquier otra versión o traducción de este Acuerdo en cualquier otro idioma, la versión en Español prevalecerá y se considera exclusivamente predominante".

Which can be freely translated into English as follows:

"WHEREAS:

(A) Envigado is the holder of the federative and economic rights of the player and (…) Envigado is the only holder of his registration, in conformity with the rules of the Colombian Football Federation and FIFA.

(…)

(F) Pescara is interested in acquiring the federative rights of the player from Envigado and to negotiate with National the purchase option right that it has over the Player, as agreed in the pre-contract signed between the parties on 13 July 2012.

According to the aforementioned, the following is AGREED:

1. Nacional assigns to Pescara the purchase option right that it has over the player, which is accepted by Envigado FC.

2. Nacional waives its right to exercise the purchase option over the federative and economic rights of the player and transfers the purchase right to Pescara in exchange for US$ 1.300.000 dollars (one million three hundred thousand American dollars) as compensation.

3. ***Nacional authorizes Envigado to sell the federative and economic rights of the player to Pescara. For which they establish an amount of US $800.000 dollars (eight hundred thousand American dollars) for the federative rights and the 80% (Eighty percent) of the economic rights, in which the solidarity mechanism is included. Envigado will retain 20% (twenty percent) of the economic rights of the player for a future sale.***

(…)

6. Pescara shall pay the total amount of USD 2.100.000 (two million one hundred thousand dollars) as unique compensation for the transfer and for the negotiation, which would be distributed as established in the numerals 2, 3 and 7 of the present agreement.

7. The agreed transfer value shall be paid in (3) three installments in the following terms:

- *First installment: USD 750.000,00 at the moment of the signature of the present agreement and before the issuance of the International Transfer Certificate, which is estimated before 31 July 2012.*
- *Second installment: USD 700.000 no later than 15 January 2013.*
- *Third installment: USD 650,000.00 no later than 30 July 2013.*

(…)

Pescara undertakes to pay independently to Nacional and Envigado (…) to the following bank accounts;

(…)

ENVIGADO FUTBOL CLUB S.A.

Bank: (…)

(…)

Account:

(…)

9. (…)

- *On the other hand,* ***any amount owed by virtue of the present Agreement will be subject to interests for late payment at the rate of 15% per year as from the date of the breach. The obligation regarding the payment of interests is expressly recognized by Pescara as a valid and acceptable interest rate*** *independently of the damages effectively caused to Nacional and Envigado by the delay and, in addition to the 50.000 euros established above as damages. The application of the interest rate is automatic with any delayed payment and does not require any action from Nacional and Envigado to be applicable.*

(…)

12. ***This Agreement includes and establishes the agreements and understandings of the parties and substitutes all the previous verbal and written contracts, understandings or agreements related to the object of this Agreement****. The present Agreement would not be modified, corrected, altered or added, except by the written consent of the representatives duly authorized by the parties.*

13. ***This agreement is subject to, and will be ruled by, the FIFA regulations in force from time to time and, additionally, Swiss law.***

(…)

15. This agreement is drafted in Spanish. If any conflict exists between the Spanish version of this Agreement and any other version or translation of this Agreement in any other language, the Spanish version shall prevail and shall be considered exclusively predominant".

10. One year later, on 13 July 2013, Pescara transferred 50% of the Player's economic rights to the Portuguese club FC Porto (hereinafter, "Porto"), in exchange of a fixed payment of EUR 5.000.000 payable in several instalments. Furthermore, the parties also agreed on an extra fee of EUR 4.500.000 subject to Porto's decision to acquire the remaining 50% of the Player's economic rights.

11. On 9 August 2013 Porto paid a first instalment of EUR 3.000.000 to Pescara[1].

12. On 23 December 2013, Envigado requested from Pescara 20% of the compensation derived from the Player rights' transfer to Porto.

13. On 8 January 2014, Pescara answered Envigado that the transfer to Porto *"involved – so far – only 50% of the economic rights. The remaining 50% is conditioned upon the occurrence of certain events"* and that Envigado should *"[r]***ecall that 20% is claimed to be calculated on the value of the sale less the amount already paid to the company for the purchase Envigado** *(Sic)*

(…) the balance of 50% is timetabled between January 2014 and July 2014" (emphasis added).

14. On 12 January 2014, the counsel of Envigado answered Pescara that according to the Accordo and to the Agreement *"(…) it is evident that my client [Envigado] is entitled to receive* ***20% net of all amounts received out of the transfer of the player to a third club****, in casu, FC Porto, as well as that no deductions of any kind of the aforementioned entitlement of my client have been agreed between parties.*

(…)

To my knowledge, Pescara received from FC Porto for the transfer of the player in question a first installment of EUR 3,000,000 in September 2013. Apparently, further partial payments have been made to Pescara by FC Porto recently or will be done in the near feature. (…).

[1] This information has been taken from the FIFA decision object of this appeal and neither party has objected to it in these proceedings.

Consequently, Pescara is kindly requested to transfer ***20% net of all amounts it received from FC Porto up to today's date*** *(…)"* (emphasis added).

15. On 28 February 2014, Envigado sent another communication to Pescara stating that *"(…) Envigado FC is entitled to receive* ***20% of the amounts Pescara FC received and will receive from FC Porto*** *for the transfer of the player J."* (emphasis added).

16. On 2 March 2014 Porto paid to Pescara the amount of EUR 500.000[2].

17. On 6 April 2014 Porto paid to Pescara the amount of EUR 500.000[3].

18. On 20 June 2014, after not having received any answer from Pescara, Envigado's counsel sent a further communication to propose a meeting in Italy in order to settle the matter amicably and warned that if the matter was not settled amicably, it would have no other alternative but to claim the amount of EUR 1.000.000 plus interest against Pescara before FIFA.

19. On 30 June 2014, Envigado's counsel traveled to Rome for a meeting with some representatives of Pescara; however, no settlement was reached.

20. On 31 July 2014, Porto issued an invoice to Pescara requesting the payment of EUR 138.500 in concept of "solidarity mechanism" derived from the Player's transfer.

21. On 4 August 2014 Porto paid to Pescara the amount of EUR 1.000.000[4].

III. PROCEEDINGS BEFORE THE FIFA'S PLAYERS' STATUS COMMITTEE

22. On 7 August 2014, Envigado lodged a claim against Pescara before the FIFA Players' Status Committee (hereinafter "FIFA PSC") requesting EUR 1.000.000 (20% of EUR 5.000.000 derived from the sale of 50% of the Player's economic rights to Porto) plus interest at the rate of 15% *p.a.* as from the dates Pescara received the transfer price payments from Porto. Furthermore, Envigado requested that Pescara should pay *"****20% net of all future economic benefits it received from FC Porto*** *in connection with any kind of the transaction related to the player J".*

23. On 10 August 2015, Envigado informed the FIFA PSC that Porto had paid the additional amount of EUR 4.500.000 for the remaining 50% of the Player's economic rights and, consequently, modified its claim by also requesting 20% of such amount.

[2] *Idem* footnote 1.
[3] *Idem* footnote 1.
[4] *Idem* footnote 1.

24. On 26 April 2016, the Single Judge of the FIFA PSC partially accepted Envigado's claim and ordered Pescara to pay the amount of EUR 1.900.000 plus 15% interest *p.a.* The operative part of this decision (hereinafter, the "Appealed Decision") reads in the pertinent part as follows:

> *"(…)*
>
> *1. The claim of the Claimant, Envigado FC, is partially accepted.*
>
> *2. The Respondent, Delfino Pescara 1936, has to pay to the Claimant, Envigado FC, within 30 days as from the date of notification of this decision, the amount of EUR 1,900,000, plus 15% interest p.a. as follows:*
>
> *- on the amount of EUR 600,000 as of 9 August 2013;*
> *- on the amount of EUR 100,000 as of 2 March 2014;*
> *- on the amount of EUR 100,000 as of 6 April 2014;*
> *- on the amount of EUR 200,000 as of 4 August 2014;*
> *- on the amount of EUR 900,000 as of 10 August 2015;*
>
> *3. If the aforementioned sum, plus interests as established above, are not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to the FIFA's Disciplinary Committee for consideration and a formal decision.*
>
> *4. Any further claims lodged by the Claimant, Envigado CF, are rejected.*
>
> *5. The final amount of costs of the proceedings in the amount of CHF 18,000 are to be paid by the Respondent, Delfino Pescara 1936, within 30 days of notification of the present decision as follows:*
>
> *5.1 The amount of CHF 13,000 to FIFA to the following bank account with reference to case nr. 14-01524/itr: (…)*
>
> *5.2 The amount of CHF 5,000 to the Claimant, Envigado CF.*
>
> *6. The Claimant, Envigado FC, is directed to inform the Respondent, Delfino Pescara 1936, immediately and directly of the account number to which the remittance under points 2. and 5.2 are to be made and to notify the Players' Status Committee of every payment received".*

25. On 24 May 2016, the FIFA PSC notified the operative part of the Appealed Decision to the parties.

26. On 24 June 2016, before receiving the grounds of the Appealed Decision, Envigado and Pescara entered into a "Memorandum of Understanding" (hereinafter, the "MoU") in which Pescara accepted to pay the amount of EUR 1.500.000 in five instalments but without recognizing the correctness of the Appealed Decision and with the right to appeal against it before the Court of Arbitration for Sport. Envigado, on its part, insisted on the confirmation of the full amounts provided in the Appealed Decision and instructed Pescara that the payments should be made

to the bank account of its lawyer. The relevant clauses of the MoU read as follows (emphasis added):

"(…)

1) Pescara is ready to proceed with the payment of the following amounts as transfer fee for the player J.

EUR 300,000 within and no later than 1 July 2016;
EUR 300,000 within and no later than 1 August 2016;
EUR 300,000 within and no later than 1 September 2016;
EUR 300,000 within and no later than 1 October 2016;
EUR 300,000 within and no later than 1 November 2016;

***Envigado expressly instructs and authorizes Pescara to proceed with the payment of the transfer fee to the bank account of the attorney-at-law of Envigado** indicated below and **it will indemnify and hold Pescara harmless of any consequences and/or any claims of third parties**, for any title whatsoever, arising from the payment of the transfer fee being executed to the bank account of the attorney-at-law of Envigado.*

Bank: (…)

Account: (…)

Beneficiary: MS Entertainment Law, Melanie Schärer, attorney-at-law.

*2) The aforementioned payments are no recognition of any kind by any party, **since both, Pescara and Envigado wish to continue with the pending dispute**. In particular, **Envigado insists on the confirmation of the decision taken by Single Judge of the Players' Status Committee** on 26 de April 2016, while **Pescara declared to appeal the referred decision at the Court for Arbitration of Sports (CAS), once FIFA will notify the parties the grounds of the aforementioned decision.***

*3) Consequently, **any payment executed by Pescara in accordance with this Memorandum of Understanding are not corresponding to a settlement agreement by the parties**. The parties will go and wait for a final and binding decision of FIFA or CAS. Therefore, **Pescara expressly reserves the right to claim back any amounts paid to Envigado but not considered due to Envigado in the relevant CAS award**".*

27. Pescara paid Envigado the first three instalments provided in the MoU on 6 July 2016, 1 August 2016 and 2 September 2016, respectively. However, Pescara failed to pay the last two instalments in due time (*see infra,* para.44).

28. On 21 October 2016, the FIFA PSC notified the grounds of the Appealed Decision to the parties. These grounds can be briefly summarized as follows:

- According to the Agreement, Pescara accepted to pay Envigado the amount of USD 800.000 for the Player's transfer as well as 20% of a potential subsequent transfer. Furthermore, clause 12 of the Agreement clearly stipulated that this Agreement replaced all previous written or verbal agreements between the parties.

- In accordance with the legal principle *pacta sunt servanda,* Pescara has to pay the total sum of EUR 1.900.000, *i.e.* 20% of the EUR 9.500.000 that Pescara received from Porto plus interest.

- The interest rate of 15% *p.a.* stipulated by the parties in the Agreement is not excessive according to the longstanding jurisprudence of the FIFA PSC.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

29. On 11 November 2016, in accordance with Article R47 *et seq.* of the Code of Sports-Related Arbitration (the "Code"), the Appellant filed the relevant Statement of Appeal before the Court of Arbitration for Sport ("CAS") against the Appealed Decision. In its statement, the Appellant requested that the CAS:

"(…)

1) Declare the present appeal admissible

2) Set aside the decision of the Single Judge of the FIFA Players' Status Committee under appeal

3) Decide that the percentage of the future transfer due to Respondent shall be calculated on the basis of the net surplus received by Appellant for the transfer of the player J.

4) Decide that Appellant has no payment obligation towards Respondent beyond the amounts indicated in the memorandum of understanding signed between the parties

5) Decide that Respondent is liable to pay to FIFA costs of the proceedings before the FIFA Players' Status Committee

6) Decide that Respondent is liable to compensate to Appellant the legal costs incurred by Appellant in the proceedings before the FIFA Players' Status Committee

7) Award any further or other relief to Appellant as the Panel deems fit

8) Decide that Respondent must bear all the costs of the present arbitration

9) Decide that Respondent must compensate Appellant for the legal costs incurred in the present proceedings

10) Decide that any amount payable by Respondent to Appellant shall be subject to interest for late payments at the applicable rate from the date on which the amount become due".

30. On 25 November 2016, the Appellant filed its Appeal Brief with the following requests for relief:

> *"(…)*
>
> *1) Set aside the decision of the Single Judge of the FIFA Players' Status Committee under appeal*
>
> *2) Decide that the percentage due to Respondent for the future transfer of J. shall be calculated on the basis of the net surplus received by Appellant*
>
> *3) Decide that Appellant has no payment obligation towards Respondent beyond the amounts indicated in the memorandum of understanding signed between the parties*
>
> *4) Decide that the decision of the Single Judge regarding interests is erroneous and must be modified in accordance with what has been presented above*
>
> *5) Decide that Respondent is liable to pay to FIFA costs of the proceedings before the FIFA Players' Status Committee*
>
> *6) Decide that Respondent is liable to compensate to Appellant the legal costs incurred by Appellant in the proceedings before the FIFA Players' Status Committee*
>
> *7) Award any further or other relief to appellant as the Panel deems fit*
>
> *8) Decide that Respondent must bear all the costs of the present arbitration*
>
> *9) Decide that Respondent must compensate Appellant for the legal costs incurred in the present proceedings".*

31. On 29 November 2016, the parties were informed that the President of the Appeals Arbitration Division had nominated Mr José Juan Pintó as Sole Arbitrator to hear the present appeal. The parties were also informed that Mr Pintó had accepted his nomination, but wished to disclose certain information.

32. On 18 December 2016, the Respondent filed its Answer to the Appeal, requesting the CAS:

> *"(…)*
>
> *1) To reject the Appellant's appeal of the decision passed by the Single Judge of the Players' Status Committee (PSC) in the meeting in Zurich, Switzerland, on 26 April 2016, and to confirm the challenged decision.*
>
> *2) To order the Appellant to bear all the costs incurred through the present procedure, as well as all legal costs incurred by the Respondent".*

33. On 21 December 2016, the CAS Court Office informed the parties that they were no longer authorized to supplement or amend their requests or their arguments, produce new exhibits, or specify further evidence on which they intended to rely.

34. On 10 January 2017, the CAS Finance Director informed the parties that it had been informed by its bank that the payment of the advance of costs made by the Appellant had been rejected and returned to the Appellant. The CAS Finance Director enclosed the letter from the bank in question (hereinafter, the "Bank Letter"). The Bank Letter, *inter alia*, read as follows:

> *"(…) Le paiement suivant a été transféré en votre faveur: (…)*
>
> *Motif du paiement (si disponible) : CAS 2016/A/4858 DELFINO PESCARA 1936 V. ENVIGADO CF (…).*
>
> *En tant que banque internationale, le Crédit Suisse s'engage à respecter un grand nombre de lois locales. Pour ce faire, le Crédit Suisse tient compte notamment des sanctions de la Suisse, de l'Union européenne, des États-Unis d'Amérique et de l'Organisation des Nations Unies qui interdisent certaines transactions en relation avec des pays, sociétés et/ou personnes sanctionnés. Par conséquent, le Crédit Suisse n'exécute aucun paiement ayant un lien (économique) direct ou indirect avec ces pays, personnes ou sociétés.*
>
> *Un tel lien, par exemple, lorsqu'un paiement provient, directement ou indirectement, d'un pays (ou d'une région) sanctionné, lorsqu'il est à destination de ce pays ou lorsque le paiement est en rapport avec des personnes, sociétés et produits ou services qui ont un lien avec un pays sanctionné ou une région sanctionnée (p. ex, l'Iran, le Soudan, la Syrie, la Corée du Nord, Cuba ou la Crimée). De même sont concernés les paiements qui constituent un lien, direct ou indirect avec des personnes, des sociétés ou des produits qui sont l'objet de sanctions.*
>
> *Ces restrictions s'appliquent à toutes les transactions, indépendamment du montant et de la monnaie.*
>
> *N'ayant pas reçu la preuve incontestable que le paiement susmentionné ne présente aucun lien de ce type, nous avons supprimé le paiement et restitué l'argent. (…)".*

Which can be freely translated into English as follows:

> *"(…) The following payment has been transferred in your favour: (…)*
>
> *Ground for payment (if available): CAS 2016/A/4858 DELFINO PESCARA 1936 V. ENVIGADO CF (…).*
>
> *As an International Bank, Credit Suisse is committed to respect a large number of local laws. Therefore, Credit Suisse takes into account, especially, the sanctions from Switzerland, the European Union, the United States of America and the United Nations which prohibit certain transactions in relation with sanctioned countries, companies and/or persons. In consequence, Credit Suisse does not execute any payment that has direct or indirect (economic) relation with these countries, persons or companies.*

Such links exist, for example, when a payment comes, directly or indirectly, from a sanctioned country (or region), when its destination is one of these countries, or when the payments are related to persons, companies or products or services that, in turn, are related to a sanctioned country or a sanctioned region (e.g. Iran, Sudan, Syria, North Korea, Cuba or Crimea). In the same way, this also concerns the payments directly or indirectly related to persons, companies or products that are subject to sanctions.

This restriction applies to all transactions, regardless of the amount and currency.

Not having received irrefutable evidence that the aforementioned payment is not related to the prohibited links mentioned above, we have canceled the payment and reimbursed the money".

35. On 12 January 2017, the Appellant requested that the Bank Letter be admitted as evidence in the proceedings, as proof of the difficulties of third parties in engaging in transactions with Envigado.

36. On 13 January 2017, the CAS Court Office invited the Respondent to comment on the admissibility of the Bank Letter filed by the Appellant, by 17 January 2017.

37. On 20 January 2017, the CAS Court Office noted that the Respondent had not submitted any comments regarding the admissibility of the Bank Letter within the granted deadline and, consequently, it was deemed to have accepted that such document be admitted as evidence in these proceedings.

38. Also on 20 January 2017, the Appellant informed the CAS Court Office that it had again sought to transfer the advance of costs.

39. On 31 January 2017, the CAS Court Office acknowledged receipt of the payment of the advance of costs made by the Appellant. The CAS Court Office further informed the parties that, pursuant to Article R54 of the Code, the Panel appointed to hear this appeal would be constituted as follows:

Sole Arbitrator: Mr. José Juan Pintó, attorney-at-law in Barcelona, Spain

40. No objections were raised as to the appointment of the referred arbitrator to rule the present dispute.

41. On 8 February 2017, the CAS Court Office informed the parties that, pursuant to article R57 of the Code, the Sole Arbitrator had decided to hold a hearing in this matter.

42. On 9 February 2017, the CAS Court Office advised the parties that Mr. Roberto Nájera Reyes, attorney-at-law in Barcelona, Spain, would assist the Sole Arbitrator as *Ad Hoc* Clerk. No objections were raised as to the appointment of the referred *Ad Hoc* Clerk.

43. On 27 February 2017, the CAS Court Office informed the parties that, having duly considered the parties' positions and so as not to further delay these proceedings (several previous

alternative dates had already been proposed by the Sole Arbitrator, but to no avail), the Sole Arbitrator had decided that the hearing would take place in Lausanne, on 10 April 2017.

44. On 24 March 2017, Pescara informed the CAS Court Office that it had paid to Envigado the amount of EUR 600.000 corresponding to the two pending instalments agreed in the MoU.

45. On 30 March 2017, the Respondent filed with the CAS Court Office the written witness statements of Mr. Juan Carlos de la Cuesta Galvis, President of Nacional, and of Mr. J., the Player. Furthermore, the Respondent also filed the Order of Procedure duly signed by its representative.

46. On 31 March 2017, the Appellant filed with the CAS Court Office the written witness statements of Mr. Daniele Sebastiani, President of Pescara, and of Mr. Riccardo Calleri, football intermediary. Moreover, the Appellant also filed the Order of Procedure duly signed by its representative.

47. On 5 April 2017, the CAS Court Office acknowledged receipt of the Orders of Procedure duly signed by each party.

48. The hearing of the present procedure took place in Lausanne, Switzerland, on 10 April 2017. The Appellant was represented by its Vice-President, Mr. Gabriele Bankowski (who was assisted by a translator, Ms. Barbara Monteleone) and by its lawyers, Mr. Vittorio Rigo and Mr. Claude Ramoni. The Respondent was represented by its lawyer Ms. Melanie Schärer. In addition, Mr. José Luis Andrade, counsel to the CAS and Mr. Roberto Nájera Reyes, *Ad Hoc* Clerk, assisted the Sole Arbitrator at the hearing.

49. At the outset of the hearing, both parties confirmed that they had no objections as to the appointment of the Sole Arbitrator and did not object to the jurisdiction of the CAS.

50. In its opening statement, the Appellant filed some documents related to Swiss law and requested the Sole Arbitrator to admit them in the file. The Sole Arbitrator asked the counsel of the Respondent if she had any objection to the Appellant's request who, in turn, agreed on the admission of the referred documents. Therefore, the Sole Arbitrator decided to admit the new documents filed by the Appellant in accordance with Article R56 of the Code.

51. During the hearing, the parties had the opportunity to present their case, to submit their arguments and to answer the questions posed by the Sole Arbitrator. No witnesses were proposed to be examined. At the end of the hearing, the parties expressly declared that they did not have any objection with respect to the procedure and that their right to be heard had been fully respected.

V. SUMMARY OF THE PARTIES' SUBMISSIONS

52. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Sole Arbitrator, however,

has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

A. THE APPELLANT

53. The Appellant's submissions, in essence, may be summarised as follows:

54. The Appealed Decision is incorrect with respect to (a) the interpretation of the Agreement, (b) the calculation of the period of interests and (c) the applicable interest rate.

(a) The interpretation of the Agreement

55. The parties agreed in the Accordo that Envigado was entitled to receive a percentage of 20% of any profit made by Pescara from a possible future transfer of the Player. The draft of the Accordo sent to Envigado contained the following clause:

> *"Il Pescara riconosce al Club Envigado F.C S.a il 20% sul prezzo di una futura vendita del calciatore ad altro club sulla pluzvalenza di 2,100,000".*

Envigado returned the Accordo duly signed but with a small modification to this clause which read as follows:

> *"Il Pescara riconosce al Club Envigado F.C S.a il 20% sul prezzo di una futura vendita del calciatore ad altro club ~~sulla pluzvalenza di 2, 100,000~~ 20% neto de una venta futura".*

This modification did not change the sense of the clause because both versions meant the same, that Envigado was entitled to 20% of the benefit of a future transfer of the Player.

56. Subsequently, the parties entered into the Agreement, which did not change what had been agreed in the Accordo because clause 3 regulated exclusively the relationship between Nacional and Envigado (*"(…) National authorizes Envigado to sell the federative and economic rights (…)"*). In no way did clause 3 change the agreement reached by Pescara and Envigado with respect to the clause related to the future transfer of the Player, which remained the same: 20% of any possible profit made by Pescara from the sale of the Player (*i.e.* the net of a future sale). Furthermore, clause 3 must be considered ambiguous because the last sentence (*"(…) Envigado will retain 20% of the economic rights of the player (…)"*) leads to an understanding that Pescara and Envigado shared the property of the Player's rights, which was not true. In fact, the term "economic rights" does not exist in Italy and this led Pescara to understand that nothing changed with respect to the previous related clause agreed in the Accordo.

57. According to article 18 of the Swiss Code of Obligations, when the wording of a clause is objected, the common intention of the parties must prevail and any inexact expressions must be set aside. In the case at stake, the intention of the parties is self-evident because even though clause 3 can lead to understand that Envigado shared the property of the Player's "economic

rights", the intention of the parties was to transfer 100% of these rights to Pescara. Otherwise, Pescara could not have transferred the Player to Porto without the authorization and acceptance of Envigado. Furthermore, the term *"net of a future sale"* contained in the Accordo can only be understood as the amount that is finally received by Pescara from the future transfer minus the price that Pescara paid for acquiring the Player (USD 2.100.000).

58. The amount that has been claimed by Envigado is 20% "gross" of the transfer fee instead of 20% "net". If the parties had intended to calculate the percentage of the entire future transfer fee, they would have used the term "gross transfer fee" or similar. In fact, clauses whereby the *sell-on fee* is calculated on the "gross" transfer fee are uncommon because this would mean, for example, that if Pescara had sold the Player for USD 2.500.000 it would have had to pay Envigado USD 500.000 (20% of the "gross" price) meaning that Pescara would not only not gain a profit but also lose USD 100.000.

59. In any case, since the wording of clause 3 of the Agreement is ambiguous, the Sole Arbitrator must apply the legal principle *in dubio contra stipulatorem* against Envigado, which drafted the document in Spanish.

60. In conclusion, the Sole Arbitrator must overturn the Appealed Decision and resolve that the 20% is to be applied on the benefit obtained by Pescara for the transfer of the Player to Porto. This means that the amount of USD 2.100.000 paid by Pescara for acquiring the Player must be deducted from the amount that Pescara finally received from Porto (which in fact was EUR 9.361.500 and not EUR 9.500.000, as Pescara had to return the sum of EUR 138.500 to Porto relating to solidarity contribution). In this sense, Pescara has already paid the amount agreed in the MoU (EUR 1.500.000) and, therefore, no further amounts are due from Pescara to Envigado in relation to this matter.

(b) The calculation of the period of interests

61. In accordance with Swiss law, the interest period starts when the debtor is in default. In turn, the default of a payment obligation is materialized when the following four elements are met: i) the existence of a payment obligation, ii) the debtor fails to pay on the agreed date of the contract or, in absence of such date, it fails to pay after the formal reminder of the creditor, iii) the fulfilment of the obligation is possible and iv) there are no legitimate reasons to avoid the payment. These four elements are analysed hereunder in light of the facts of the case:

    i) The existence of a payment obligation: Pescara had the obligation to pay Envigado 20% of the "net benefits" received from Porto.

    ii) The debtor fails to pay on the agreed date of the contract or, in absence of such date, it fails to pay after the formal reminder of the creditor: The Accordo and the Agreement are silent with regard to when Pescara had to pay the percentage to Envigado. Therefore, the starting dates of the default periods provided in the Appealed Decision are incorrect and have no legal basis. The Sole Arbitrator has to set the default periods by taking into

account the dates in which Envigado formally requested to Pescara its percentage of the different instalments paid by Porto.

iii) The fulfillment of the obligation is possible: During the proceedings before FIFA, Pescara informed that from 19 November 2014 on, Envigado had been included in the *"list of Specially Designated Nationals and Blocked Persons by the United States Government"* (hereinafter, the "Clinton List") and it was declared a *"Specially Designated Narcotics Trafficking Kingpin"* by the government of the United States due to apparent links between the club and the drug cartels. Hence, all transactions with Envigado are forbidden until its removal from the Clinton List. Even if Pescara duly informed FIFA about this situation, the Appealed Decision remained silent and ignored this fact; Envigado did not give any explanation either. Therefore, Pescara had a partial impossibility to comply with clause 7 of the Agreement that provided Envigado's bank account for payments.

As it has been proven with the Bank Letter, being in the Clinton List is not a minor issue and banks are prevented from executing payments directly or indirectly linked with Envigado. Moreover, Envigado never provided another bank account (or another form of payment) until the signature of the MoU (24 June 2016) when it authorized its counsel to receive the payments. In short, according to Swiss law, Pescara could not comply with its payment obligation from 19 November 2014 until 24 June 2016 and no interests shall accrue during this period.

iv) There are no legitimate reasons to avoid the payments: With the inclusion of Envigado into the Clinton List, Pescara had a legitimate reason to avoid the payment. The Sole Arbitrator shall understand that if Pescara had paid, the authorities could understand that Pescara was supporting illegal activities. It is true that Pescara has paid the amounts agreed in the MoU but this is only because the parties agreed that the payments would be made to the Swiss account of the legal representative of Envigado, and Envigado would indemnify Pescara of any consequence arising from these payments.

62. Moreover, with the signature of the MoU (24 June 2016) the parties agreed that the uncontested amount (EUR 1.500.000) would be payable in new different dates. It would be senseless that Envigado accepts the deferral of the payment and at the same time, it claims the interests for the period in which the new dates become due.

(c) The applicable interest rate

63. Regarding the interest rate, clause 9 of the Agreement provided an interest of 15% *p.a.* in case of late payment. In fact, it is unclear if such interest was applicable to the default payment of the Player's transfer fee (USD 2.100.000) or to the default payment of the 20% percentage. Due to this ambiguity, and applying the *in dubio contra stipulatorem* principle, the Sole Arbitrator should consider that it applied only to the transfer fee.

Moreover, the interest stipulated in the Agreement and granted in the Appealed Decision must be considered excessive. According to the longstanding FIFA jurisprudence, the excessive

interests must be reduced (*"(…) the agreement established an interest rate of 0.1% per day on the amounts due, the Single Judge decided that said interest rate was clearly excessive and therefore he decided that, as an alternative and in accordance with the longstanding practice of the Players' Status Committee, the Respondent has to pay 5% default interest as from the first day after the respective due dates of each installment until the date of payment"*) (case 8121699).

64. Consequently, the Sole Arbitrator shall decide that the interest of 15% *p.a.* should be reduced to 5% *p.a.*

B. THE RESPONDENT

65. The Respondent's submissions, in essence, may be summarized as follows:

66. As settled in the Agreement, Pescara paid USD 2.100.000 to acquire the federative and economic rights of the Player: USD 1.300.000 were paid to Nacional who renounced to its purchase option right and USD 800.000 were paid to Envigado. Moreover, the parties agreed that Envigado would retain 20% of the economic rights of the Player or, in other words, that Envigado would receive 20% "net" from the compensation of the Player's future transfer. Obviously, the term "net" meant that Pescara should pass 20% of the amount it received from any third club for such transfer without making deductions of any kind (taxes, solidarity contribution, or any other deduction).

67. According to international civil law and Swiss law, to interpret a contract the Sole Arbitrator shall assess, firstly, the wording of the clauses; secondly, the place, time, the interest of the parties at the moment of concluding the contract and their behavior before and after the conclusion of the agreements; and, thirdly (and only if the two aforementioned methods left doubts on the interpretation), the principle *in dubio contra stipulatorem* shall be applied.

a) Wording of the Agreement

68. Clause 3 of the Agreement is clear and there is no room for interpretation. The parties decided that 20% of all sums upon the next transfer of the Player would go to Envigado without deduction of any kind, and drafted the clause accordingly. If the parties would have wished to limit this entitlement to 20% of the benefit, they would have drafted a clause in this sense. The same applies with respect to the "solidarity contribution" because in any clause of the Agreement the parties agreed that such concept was to be deducted.

69. Furthermore, Pescara cannot claim that it did not understand the wording of the Agreement because it was not "familiar" with the term "economic rights of a player" or because it was drafted in a different language than its own. Pescara is a big Italian club and the term "federative and economic rights" is internationally known in the world of football. Moreover, clause 15 of the Agreement established that the parties freely agreed that Spanish was the language of the Agreement and that it would prevail in case of conflict.

70. If the literal interpretation of clause 3 is the one to be taken into account, the content of the Accordo is irrelevant because clause 12 provided that the Agreement would replace *"(…) all the previous verbal and written contracts, understandings or agreements related to the object of this Agreement"*.

71. Therefore, in accordance with the clear wording of the Agreement, Envigado is entitled to receive 20% of the Player's transfer to Porto, *i.e.* EUR 1.900.000 (EUR 9. 500.000 x 20%).

b) Interest of the parties at the moment of concluding the contract and their behavior before and after the conclusion of the Agreement

72. The Accordo serves as an indication of what the parties were discussing before the Agreement and reflects their intention regarding the future transfer of the Player.

In particular, the parties agreed that *"Il Pescara riconosce al Club Envigado F.C S.a il 20% sul prezzo di una futura vendita del calciatore ad altro club ~~sulla pluzvalenza di 2, 100,000~~ 20% neto de una venta futura"*. By crossing out the phrase *"sulla pluzvalenza di 2,100,000",* the parties explicitly - and evidently - excluded that the percentage was to be calculated on the added value or benefit. Pescara may have understood that the clause meant "20% of the added value" or "20% after the deduction of the amounts already paid" or even "20% after the deduction of the amounts already paid and after the deduction of the solidarity contribution" but it did not communicate anything in this respect to Envigado before signing the Agreement. By not doing so, Envigado could only understand that Pescara accepted in good faith that it was going to share the future transfer price with Envigado (20% without deduction of any kind). The interpretation of Pescara is against contractual good faith.

73. It is clear that Envigado's intention was to bet on the future sale of the Player and to receive from Pescara 20% "net" of such future transaction.

74. Therefore, the Agreement *"must be interpreted as having Pescara committed itself to pay to Envigado 20% of the monies that it [would] receive from Porto without the deduction of any kind"*. Taking into account that the wording of the Agreement and the intention of the parties leave no room for ambiguities, the principle *"in dubio contra proferentem"* is not applicable to the case at hand.

c) Regarding the period of interests

75. Envigado could not predict when the Player's future transfer would take place and, therefore, it is evident that the payments to Envigado had to be made by Pescara immediately after the latter received the payments from a third club (*in casu*, Porto). In other words, the payments to Envigado became due when Porto paid Pescara the different instalments and these dates should be the ones to be taken into account in order to set the period of interest regardless of Envigado's formal reminders.

76. It is true that Envigado has been included in the Clinton List, in which the names of almost all inhabitants of the city of Envigado (neighboring city of Medellín, where Pablo Escobar sadly gave Colombia a bad reputation) are included. Nevertheless, the Clinton List has no impact on

Envigado and payments can be made to the club. Otherwise, the Colombian Football Federation, the Colombian League, or even FIFA would have suspended Envigado from any football activity a long time ago. Moreover, the local authorities have not opened criminal proceedings against the club either.

77. The real intention to bring this defamatory argument is to distract the Sole Arbitrator from the truth because, in fact, Pescara never informed that they were willing to pay the amounts due to Envigado. Moreover, Pescara had at least two other options to comply with the payment: i) the first letter sent by Envigado on 23 December 2013 attached the power of attorney that authorized Envigado's counsel to receive the payments, and; ii) according to art. 96 of the Swiss Code of Obligations, Pescara could have deposited the payment before a court in order to avoid the default.

78. The MoU was signed by Pescara because, after the notification of the operative part of the Appealed Decision, it needed to reach an agreement with Envigado in order to register new players and to obtain the license for the season 2016/2017 from the Italian Football Federation. It has been proven that the will of Pescara was not to comply with the MoU since it only made the first three instalments on time but the following were not paid until the last stage of this procedure. There is no doubt about the Appellant's bad faith.

79. Contrary to what is alleged by the Appellant, the MoU does not exempt Pescara from the payment of interests. The parties expressly agreed that the MoU would not have any legal impact on the Appealed Decision and that Pescara was only accepting, at least, the uncontested amount of EUR 1.500.000.

80. Therefore, the Sole Arbitrator shall confirm the period of interest as reflected in the Appealed Decision.

d) Interest rate

81. Clause 9 of the Agreement clearly established that the agreed interest was to all payments derived from the Agreement, including the one claimed in these proceedings.

82. The interest is not excessive as claimed by the Appellant. According to the *Swiss Statute on Consumers Credits* the maximum applicable interest on loans is 15%. Additionally, Swiss Criminal Law provides that an interest between 18% and 20% *p.a.* may be considered excessive. Finally, the consistent jurisprudence of FIFA, the CAS and the Swiss Federal Tribunal accept an interest rate of 15% *p.a.*

83. For all the above, the Sole Arbitrator shall confirm the Appealed Decision.

VI. JURISDICTION

84. Article R47 of the CAS Code reads as follows:

"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 it prior to the appeal, in accordance with the statutes or regulations of that body".

85. The jurisdiction of the CAS, which has not been disputed by the parties, arises out of Articles 57 and 58 of the FIFA Statutes, in connection with the abovementioned Article R47 of the CAS Code and is also confirmed in the Order of Procedure which was duly signed by the parties. Therefore, the Sole Arbitrator considers that the CAS is competent to rule on this case.

VII. ADMISSIBILITY

86. Pursuant to Article 58, paragraph 1 of the FIFA Statutes, in connection with Article R49 of the CAS Code, the Appellant had 21 days from the notification of the Appealed Decision to file its Statement of Appeal before the CAS.

87. The grounds of the Appealed Decision were communicated to the Appellant by facsimile on 21 October 2016, and the Statement of Appeal was filed on 11 November 2016 *i.e.* within the time limit required both by the FIFA Statutes and Article R49 of the CAS Code.
88. Consequently, the Appeal filed by the Appellant is declared admissible.

VIII. APPLICABLE LAW

89. Article R58 of the CAS Code reads as follows:

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

90. In addition, Article 57, paragraph 2 of the FIFA Statutes establishes 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".

91. Furthermore, clause 13 of the Agreement reads as follows:

"(…). This agreement is subject to, and would be ruled by, the FIFA regulations in force and, additionally, Swiss law".

92. Taking into account the aforementioned provisions, the Sole Arbitrator concludes that the applicable law to the present dispute is the FIFA Regulations and, additionally, Swiss Law, as confirmed by both parties in these proceedings.

IX. MERITS

93. According to R57 of the Code, the Sole Arbitrator *"has full power to review the facts and the law. [He] may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance".*

94. Taking into account the facts of the case, the parties' submissions and the further grounds and statements raised at the hearing of the present proceedings, the Sole Arbitrator considers that the following issues shall be addressed to settle the dispute:

- The amount to be received by Envigado from Pescara with regard to the transfer of the Player to Porto, if any.

- If it is the case, the determination of the interest period.

- Whether the interest rate of 15% *p.a.* foreseen in the Agreement is to be considered excessive or not.

A. THE AMOUNT TO BE RECEIVED BY ENVIGADO

95. The Sole Arbitrator shall start his reasoning by checking what the parties convened in the Agreement with regard to the payment of this disputed 20% deriving from the transfer of the Player from Pescara to Porto.

96. In the Agreement, the parties included in its relevant part the following statements and clauses (emphasis added):

"(…)

(A) Envigado es titular de los Derechos Federativos y Económicos del jugador y (…) Envigado es el único titular de su registro, de conformidad con las reglas de la Federación Colombiana de Fútbol y la FIFA.

(…)

(F) Pescara está interesado en adquirir los derechos federativos del jugador con Envigado y a negociar con Nacional la cesión de la opción de compra que tiene con el jugador según preacuerdo firmado entre las partes el día 13 de julio de 2012.

Según lo anterior, se ACUERDA lo siguiente:

1. Nacional cede a Pescara el derecho de ejercer la opción de compra que tiene sobre el jugador, la cual es aceptada por Envigado FC.

2. ***Nacional, renuncia a ejercer la opción de compra sobre los derechos federativos y económicos del jugador y cede el derecho de compra a Pescara a cambio de***

> ***recibir la suma de US$ 1.300.000 dólares*** *(un millón trescientos mil dólares americanos) como contraprestación.*
>
> *3.* ***Nacional autoriza a Envigado a efectuar la venta de los derechos federativos y económicos del jugador a Pescara. Para lo cual establecen una cifra de US$800.000 dólares (ochocientos mil dólares americanos) por los derechos federativos y el 80% (Ochenta por ciento) de los derechos económicos, en este valor está incluido el mecanismo de solidaridad. Envigado quedará con el 20% (veinte por ciento) de los derechos económicos del jugador para una futura venta.***
>
> *(…)*
>
> *6. Pescara deberá pagar en total la suma de USD 2.100.000 (dos millones cien mil dólares) como única contrapartida de la transferencia y como un todo de la negociación, los cuales se distribuirán como se establece en los numerales 2, 3 y 7 del presente acuerdo".*

97. The wording of the Agreement thus foresees, *inter alia*, that (i) Envigado owned 100% of the Player's federative and economic rights and Nacional had a purchase option to acquire such rights, (ii) Nacional assigned to Pescara its purchase option over the Player's rights in exchange for USD 1.300.000, (iii) Envigado was authorized by Nacional to transfer to Pescara the Player's federative and economic rights, for which the parties established *"an amount of US $800.000 dollars (eight hundred thousand American dollars) for the federative rights and the 80% (Eighty percent) of the economic rights, in which is included the solidarity mechanism"* and (iv) Envigado retained 20% of the economic rights of the Player for a future sale.

98. Even if in accordance with clause 12 of the Agreement, the Agreement *"includes and establishes the agreements and understandings of the parties and substitutes all the previous verbal and written contracts, understandings or agreements related to the object of this Agreement"*, the Sole Arbitrator deems it appropriate to also analyze the terms of the Accordo, as it may be an element to be taken into account for interpretation purposes, in light of the disagreement between the parties in this respect.

99. With regard to the Accordo, the Sole Arbitrator notes that Pescara sent to Envigado a draft including a clause stating that *"Il Pescara riconosce al Club Envigado F.C S.a il 20% sul prezzo di una futura vendita del calciatore ad altro club sulla pluzvalenza di 2,100,000"*, while Envigado returned the Accordo duly signed but with the following modification in the mentioned clause: *"Il Pescara riconosce al Club Envigado F.C S.a il 20% sul prezzo di una futura vendita del calciatore ad altro club ~~sulla pluzvalenza di 2, 100,000~~ 20% neto de una venta futura".*

100. The interpretation made by the parties of the aforementioned clauses is radically different. Pescara claims that only 20% of the surplus of a future transfer of the Player is payable to Envigado. It contends that clause 3 of the Agreement was binding only between Nacional and Envigado and that Pescara had no relation whatsoever with it. Furthermore, it claims that this clause is ambiguous since the term "economic rights of the Player" is unknown in Italy. Pescara also relies on the wording of the Accordo (*"Il Pescara riconosce al Club Envigado F.C S.a il 20% sul*

prezzo di una futura vendita del calciatore ad altro club ~~sulla plusvalenza di 2, 100,000~~ 20% neto de una venta futura"), which in its view provides that Envigado was entitled to 20% of the "net benefits" received by Pescara from Porto, and states that nothing in the Agreement may change this understanding. On the other hand, Envigado claims that by virtue of clause 3 of the Agreement, it retained 20% of the economic rights of the Player or, in other words, that Envigado is entitled to receive 20% of the future transfer of the Player without deductions of any kind. In its view, this is additionally clear because, in the Accordo, the parties excluded the term "surplus" and included the term "net" in the wording of the relevant clause.

101. Given the different interpretations adduced by the parties, the Sole Arbitrator shall point out that, pursuant to article 18.1 of the Swiss Code of Obligations (hereinafter referred to as "CO"): *"Pour apprécier la forme et les clauses d'un contrat, il y a lieu de rechercher la réelle et commune intention des parties, sans s'arrêter aux expressions ou dénominations inexactes dont elles ont pu se servir, soit par erreur, soit pour déguiser la nature véritable de la convention"* (which can be freely translated into English as *"In order to assess the form and the terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or denominations that they may have used, either in error or to conceal the true nature of the agreement"*).

102. Article 18 CO has been extensively interpreted and applied by the CAS, and the result is a consistent jurisprudence line according to which, *ad exemplum*, *"[t]he interpretation of a contractual provision in accordance with article 18 SCO aims at assessing the intention the parties had when they concluded the contract. On this basis, Swiss scholars (WIEGAND, in Basler Kommentar, No. 7 et seq., ad Art. 18 CO) and case law (decisions of the Federal Tribunal of 28 September 1999, ATF 125 III 435, and of 6 March 2000, ATF 126 III 119) have indicated that the primary goal of interpretation is to ascertain the true common intentions (consensus) of the parties. Where a factual consensus cannot be proven, the declarations of the parties must be interpreted pursuant to the principle of good faith in the sense in which they could and should have been understood, taking into account the wording, the context, as well as all circumstances"* (CAS 2010/A/2098).

103. In his task of trying to search for the "true and common intention of the parties", the Sole Arbitrator has analyzed the arguments raised by the parties and the evidence brought to the proceedings in this respect, and after doing so he is satisfied that Envigado is entitled to receive 20% of the Player's transfer price, and not only 20% of the surplus or benefit as sustained by Pescara.

The Sole Arbitrator notes that in clause 3 of the Agreement, the parties agreed on and established *"una cifra de US$800.000 dólares (ochocientos mil dólares americanos) por los derechos federativos* ***y el 80%*** *(Ochenta por ciento)* ***de los derechos económicos****, en este valor está incluido el mecanismo de solidaridad.* ***Envigado quedará con el 20% (veinte por ciento) de los derechos económicos del jugador*** *para una futura venta"*. Even if the wording of the clause was not totally fortunate (a proof of this is that Pescara sold 100% of the Player's rights to Porto, and not only 80%), it is for the Sole Arbitrator indubitable that it reveals the parties' intention to share the future transfer price and not simply the benefit, or in other words that Envigado was entitled to receive 20% of the future sale price of the Player.

If the parties had wanted to refer to "surplus" or "benefit" or "plusvallenza", they should have so stated in the Agreement in a clear manner, especially after the "apparent" disagreement showed on the occasion of signing the Accordo, where Envigado crossed out the term "plusvallenza" in the copy that it signed. This was not a brand new issue but something which had been already discussed by the parties. Therefore it is reasonable to believe that if the parties' intention was to refer to *"plusvallenza"* or "surplus" or "benefit", Pescara would have raised this matter and would have requested to include this concept in the Agreement, and additionally Pescara would not have accepted to state in the Agreement that Envigado retained 20% of the economic rights of the Player. Needless to say moreover that Pescara has not proven (or even alleged) having complained about the deletion and amendment made by Envigado in the Accordo (deletion of *"sulla plusvallenza di 2,100,000"* and addition of *"20% neto de una venta futura"*) right after its signature, which is quite revealing in the Sole Arbitrator's opinion.

The Sole Arbitrator cannot accept that the concept of *"economic rights of the Player"* foreseen in the Agreement was unknown to Pescara on the basis that it does not exist in Italy, and that it can be raised as a valid excuse to distort the aforementioned conclusion. This is an international concept widely known in the world of football and also used in Italy and by Pescara. This is confirmed by the fact that this concept appears both in the Accordo and the Agreement and also in Pescara's letter of 8 January 2014, where Pescara informed to Envigado that - at that time - *"only 50% of the economic rights"* of the Player had been transferred to Porto. The same is to be said concerning Pescara's allegation that clause 3 of the Agreement only concerns Envigado and Nacional and is not binding on Pescara, *inter alia,* because Pescara signed the Agreement with all the other parties and is therefore a party to the Agreement.

104. Having thus made clear that Envigado is entitled to 20% of the transfer price and not to 20% of the "benefit" of the transfer, the Sole Arbitrator shall address another point on which the parties disagree, namely the exact basis on which the aforementioned 20% shall be calculated. In short, Pescara understands that the solidarity contribution paid by Porto to third clubs and reinvoiced to Pescara (EUR 138.500) shall be deducted from Porto's transfer fee, while Envigado understands that this deduction is not to be applied.

105. The Sole Arbitrator notes that there is no clear indication neither in the Agreement nor in the Accordo specifically referring to this concrete issue. However, the Sole Arbitrator has observed that the Respondent, in several moments, has asserted that the mentioned 20% had to be calculated on the amounts that Pescara "received" from Porto (emphasis added):

- In the letter dated 12 January 2014 sent by Envigado to Pescara the former stated that *"(…) it is evident that my client [Envigado] is entitled to receive* ***20% net of all amounts received out of the transfer of the player to a third club*** *(…) Pescara is kindly requested to transfer* ***20% net of all amounts it received from FC Porto****"*.

- In the further letter dated 28 February 2014, Envigado stated that it was *"(…) entitled to receive* ***20% of the amounts Pescara FC received and will receive from FC Porto*** *for the transfer of the player (…)"*.

- In the letter dated 10 August 2015 Envigado requested *"(…) to receive **20% net** of all financial benefits that **the Respondent received from FC Porto** (…)"*.

- In the Answer to the Appeal the Respondent sustained that: *"In clause 3 of the Main Contract (…) the parties clearly agreed and stipulated that Envigado shall keep 20% of the economic rights of the player or, with other words, that Envigado will receive **20% net** of the compensation from a future transfer of the player while **the term "net" obviously means that Pescara shall pass on 20% of the amount it receives from a third club without making deductions of any kind** (…)"*.

  *"(…) the relevant clause thereof must be interpreted as having **Pescara committed itself to pay to Envigado 20% of the monies that it will receive from Porto without the deduction of any kind** (…)"*.

106. Having this in mind, it is noted that Pescara transferred the Player to Porto for an amount of EUR 9.500.000. However, Pescara has produced to the file an invoice issued by Porto to Pescara on 31 July 2014, by means of which Porto requested the payment of EUR 138.500 from Pescara due to *"Mecanismo de Solidariedade"*. The Sole Arbitrator understands from this invoice that, when the transfer occurred, Porto did not withhold the relevant share of the transfer price in concept of solidarity contribution as provided in article 1 of the Annexe 5 of the FIFA Regulations on the Status and Transfer of Players and paid the whole transfer fee to Pescara. Later on, apparently, Porto requested the reimbursement of the relevant monies from Pescara, without Pescara complaining about this reimbursement request, which leads the Sole Arbitrator to believe that Pescara and Porto had agreed to proceed that way at the time of concluding the transfer. At the hearing, Pescara confirmed that it paid this solidarity contribution reimbursement to Porto, and Envigado did not object to such an assertion.

107. This would mean that Pescara did not *de facto* and ultimately "receive" EUR 9.500.000 but a lower amount (EUR 9.361.500), as it had to bear some part of cost of the solidarity contribution. Consequently, the Sole Arbitrator considers that EUR 9.361.500 shall be the basis to calculate the 20% fee and, therefore, Envigado should be thus entitled to EUR 1.872.300 (EUR 9.361.500 x 20%) and not to EUR 1.900.000 as foreseen in the Appealed Decision.

108. However, as Envigado has already received the amount of EUR 1.500.000 from Pescara, the sum that Pescara shall be ordered to pay shall be EUR 372.300 that is to say the difference between EUR 1.872.300 and EUR 1.500.000.

B. THE DETERMINATION OF THE INTEREST PERIOD

109. Given that Envigado is entitled to receive some monies from Pescara, the Sole Arbitrator shall address the issue of the calculation of interests raised by the parties in their submissions.

110. The parties dissent on the period of accrual of interest derived from the failure to comply with the payment of the aforementioned 20% of the transfer price. In particular, while the Respondent agrees with the interest period determined by FIFA in the Appealed Decision, the

Appellant claims that (i) the starting dates of this period cannot be those in which Porto made the payments to Pescara (ii) the interests accrual should stop when Envigado was included in the Clinton List and (iii) the MoU provided new dates for payment of the amounts due by Pescara and, therefore, those are the ones to be taken into account in order to start calculating the interest period.

111. The Sole Arbitrator shall recall that in accordance with article 102 CO (emphasis added):

> *"1. Where an obligation is due, the obligor is in default as soon as he receives a formal reminder from the obligee.*
>
> *2. Where a deadline for performance of the obligation has been set by agreement or as a result of a duly exercised right of termination reserved by one party, the obligor is automatically in default on expiry of the deadline".*

112. It shall be firstly stressed that neither the Agreement nor the Accordo foresee a specific date by which Pescara is to execute the payments to Envigado related to the 20% fee. In light of the above and in accordance with article 102 CO, the Sole Arbitrator considers that the period of interest shall start when Envigado formally requested to Pescara the payment of its percentage of the different payments made by Porto as regards the transfer of the Player, and not when Porto paid the instalments to Pescara.

113. In accordance with the statements made by the parties and the evidence brought to the proceedings, the Sole Arbitrator considers that the date of payments made by Porto to Pescara and the different requests of payment made by Envigado to Pescara are as follows:

Payments made by Porto to Pescara		**Envigado's requests for payment**	
Dates arising from the Appealed Decision[5]	**Amount (EUR)**	**Formal request**	**Entitlement (20%) (EUR)**
9 August 2013	3.000.000	Letter dated **23 December 2013**	600.000
2 March 2014	500.000	Letter dated **20 June 2014**	100.000
6 April 2014	500.000	Letter dated **20 June 2014**	100.000
4 August 2014	1.000.000	Claim before FIFA on **7 August 2014**	200.000
10 August 2015	4.500.000 – 138.500 (Solidarity Contribution) = 4.361.500	Amendment of Claim before FIFA **10 August 2015**	872.300

[5] Not contested by the parties.

114. The Sole Arbitrator shall also take into account for the determination of the interest accrual period that Pescara made several payments to Envigado after the signature of the MoU, namely the following in accordance with the information brought to these proceedings:

- EUR 300.000 on 6 July 2016;
- EUR 300.000 on 1 August 2016;
- EUR 300.000 on 2 September 2016;
- EUR 600.000 on 24 March 2017.

115. In addition the Sole Arbitrator notes that articles 86 and 87 CO stipulate the rules of attribution of payments as follows:

> *"Art. 86*
> *1. A debtor with several debts to the same creditor is entitled to state at the time of payment which debt he means to redeem.*
> *2. In the absence of any statement from the debtor, the payment will be allocated to the debt indicated by the creditor in his receipt, unless the debtor objects immediately".*
>
> *Art. 87*
> *1. Where no valid debt redemption statement has been made and the receipt does not indicate how the payment has been allocated, it is allocated to whichever debt is due or, if several are due, to the debt that first gave rise to enforcement proceedings against the debtor or, in the absence of such proceedings, to the debt that fell due first".*

116. Before entering into the determination of the interest accrual period as per the considerations made above, the Sole Arbitrator wants to analyze the arguments raised by the Appellant concerning (i) the inclusion of Envigado in the Clinton List and its alleged consequences and (ii) the effect of the MoU in the determination of the interest accrual period.

117. The Sole Arbitrator has examined the documents filed by the Appellant with regard to the issue of the Clinton List and, in particular, the press release from the U.S. Department of Treasury of the United States which reads as follows:

> *"(…) all assets of those designated [persons] that are based in the United States or are in the control of U.S. persons are frozen, and U.S. persons are generally prohibited from engaging in transactions with them".*

In light of this, the Sole Arbitrator concludes that the aforementioned general prohibition imposed by the Government of the United States does not appear to apply to Pescara since the latter is a *Società per Azioni* incorporated and domiciled in Italy.

The Sole Arbitrator also notes that the Appellant relies on the Bank Letter to prove its payment impossibility. After carefully reviewing this document, the Sole Arbitrator cannot safely conclude that the bank rejected the payment as a direct and exclusive result of the involvement of Envigado in the transaction. In fact, the name of Envigado does not appear in the document.

Additionally, the Sole Arbitrator wants to clarify that the Bank Letter was issued to Pescara due to the – apparent – rejection of the advance of costs for the present arbitration, and not due to the rejection of a payment addressed to Envigado. Hence, the Sole Arbitrator has no proof that Pescara, at some point, wanted to pay the disputed 20% and that these payments were rejected by a bank due to inclusion of Envigado in the Clinton List.

Therefore the Sole Arbitrator concludes that the Appellant's alleged impossibility to make the payments (or the alleged legitimate reason not to make them) based on the Clinton List is not proven and therefore the Appellant's aforementioned argument is rejected.

118. The Sole Arbitrator also rejects that the signature of the MoU would have triggered a new interest accrual period, since, as agreed by the parties in the MoU itself, the payments provided therein were *"**no recognition of any kind by any party, since both, Pescara and Envigado wish to continue with the pending dispute**. In particular, **Envigado insists on the confirmation of the decision taken by Single Judge of the Players' Status Committee** on 26 de April 2016, while **Pescara declared to appeal the referred decision at the Court for Arbitration of Sports (CAS), once FIFA will notify the parties the grounds of the aforementioned decision.** (…). Consequently, **any payment executed by Pescara in accordance with this Memorandum of Understanding are not corresponding to a settlement agreement by the parties**"*. Therefore the Sole Arbitrator cannot consider that the MoU has any incidence in the interest accrual period, as no party accepted any liability and both of them stated their will to continue with the proceedings.

119. Having all the above mentioned in mind, and in particular (i) the dates on which Porto paid the transfer price instalments to Pescara, (ii) the dates of request for payment from Envigado to Pescara, (ii) the payments already made by Pescara to Envigado as regards the MoU and articles 86 and 87 CO, the Sole Arbitrator is of the view and resolves that Pescara shall be ordered to pay interest on the amounts and for the periods mentioned below:

- On the amount of EUR 300.000, as of 23 December 2013 (date on which Envigado claimed for 20% of the first installment paid by Porto - EUR 3.000.000 -) until 6 July 2016 (date on which Pescara paid the first instalment provided for in the MoU - EUR 300.000 -);

- On the amount of EUR 300.000, as of 23 December 2013 (date on which Envigado claimed for 20% of the first installment paid by Porto - EUR 3.000.000 -) until 1 August 2016 (date on which Pescara paid the second instalment provided for in the MoU - EUR 300.000 -);

- On the amount of EUR 200.000, as of 20 June 2014 (date on which Envigado claimed again for the relevant 20% after the second - EUR 500.000 - and third instalments - EUR 500.000 - being paid by Porto to Pescara) until 2 September 2016 (date on which Pescara paid the third instalment of the MoU - EUR 300.000 -);

- On the amount of EUR 100.000, as of 7 August 2014 (date on which Envigado started proceedings against Pescara before the FIFA PSC and after Porto paid the fourth instalment to Pescara - EUR 1.000.000 -) until 2 September 2016 (date on which Pescara paid the third instalment of the MoU - EUR 300.000 -);

- On the amount of EUR 100.000, as of 7 August 2014 (date on which Envigado started proceedings against Pescara before the FIFA PSC and after Porto paid the fourth instalment to Pescara - EUR 1.000.000 -) until 24 March 2017 (date on which Pescara paid the fourth and fifth instalment of the MoU - EUR 600.000 -);

- On the amount of EUR 500.000, as of 10 August 2015 (date on which Envigado claimed, within the FIFA PSC proceedings, for the 20% on the EUR 4.500.000 paid by Porto to Pescara) until 24 March 2017 (date on which Envigado paid the fourth and fifth instalment of the MoU - EUR 600.000 -);

- On the amount of EUR 372.300, as of 10 August 2015 (date on which Envigado claimed for the 20% on the EUR 4.500.000 paid by Porto to Pescara) until the date of payment.

C. THE INTEREST RATE

120. Concerning the applicable default interest rate, the Sole Arbitrator shall analyse the arguments raised by the Appellant in accordance to which (i) clause 9 of the Agreement would allegedly be not clear enough because there is no certainty that the agreed interest applied to the failure of payment of the disputed 20% percentage and (ii) the rate of 15% *p.a.* shall be considered excessive pursuant to Swiss law.

121. The Sole Arbitrator shall firstly examine the content of clause 9 of the Agreement, which reads as follows:

> *"(…) Por otra parte,* ***cualquier cantidad debida en virtud del presente Acuerdo estará sujeta a intereses de retraso a la tasa del 15% anual a partir de la fecha de incumplimiento. La obligación de pagar los intereses se reconoce expresamente por parte de Pescara como la tasa de interés válida y aceptable*** *independientemente de los daños y perjuicios efectivamente causados a Nacional y Envigado por la demora y, además de los daños y perjuicios de los 50.000 euros previstos anteriormente".*

Freely translated into English as follows:

> *"(…) On the other hand,* ***any amount owed by virtue of the present Agreement will be subject to interests for late payment at the rate of 15% per year as from the date of the breach. The obligation regarding the payment of interests is expressly recognized by Pescara as a valid and acceptable interest rate*** *independently of the damages effectively caused to Nacional and Envigado by the delay and, in addition to the 50.000 euros established above as damages".*

122. After reading this clause the Sole Arbitrator cannot share the Appellant's view on the ambiguity or lack of clarity about the applicability of the 15% *p.a.* interest rate to this case. On the contrary, it is crystal clear for the Sole Arbitrator in accordance with clause 9 that *"any amount owed"* by virtue of the Agreement was subject to 15% interest from the date of the relevant breach. There is no reason to believe that the payment of the amount in discussion herein is to be excluded and no evidence has been brought by the Appellant in this respect.

123. Furthermore, the Sole Arbitrator is convinced that the interest rate agreed between the parties is not excessive in the matter at stake. Firstly, because it was *"expressly recognized by Pescara as valid and acceptable"* (using the wording of clause 9), which leads the Sole Arbitrator to conclude that the issue of the interest rate was specifically addressed in the negotiations between the parties and Pescara specifically and consciously accepted it. And secondly, Pescara has not proven the excessive nature of this rate in accordance with the applicable law. The case resolved by the FIFA decision to which Pescara refers to in order to ground the excess is not analogous to our case, as the interest rate in that case was 0.1% per day (*i.e.* 36.5% per annum) which is more than double of 15%. In addition, it shall be emphasized that CAS jurisprudence has even accepted as non-excessive rates higher than 15%, as in CAS 2010/A/2128, which in the pertinent part reads as follows:

> *"(…) The Panel observes that under Swiss Law it is considered usury as per art. 157 of the Swiss Penal Code where a loan is granted with an interest rate of 18% to 20% p.a. or where there is a disproportion of 25% between the value of the obligations of the Parties. Further, Swiss law foresees a maximum of 15% p.a. for loans granted to consumers.*
>
> *(…).*
>
> *Based on the above, and taking in consideration the circumstances of the case and in particular on the commercial nature of the contract and the value of the obligations of the Parties, the Panel deems in this case an annual default interest rate of 17 % p.a. as being the maximum rate that can be granted without violating Swiss public policy".*

124. Based on the above, the Sole Arbitrator considers that the annual default interest rate of 15% *p.a.* agreed by the parties shall apply and is not to be considered excessive, there being no reasons to reduce this rate in the present case.

D. CONCLUSION

125. In light of the aforementioned considerations, the Sole Arbitrator considers that Pescara shall be ordered to pay to Envigado the amount of EUR 1.872.300 plus interest at the rate of 15% *p.a.* as follows:

- On the amount of EUR 300.000, as of 23 December 2013 until 6 July 2016;
- On the amount of EUR 300.000, as of 23 December 2013 until 1 August 2016;
- On the amount of EUR 200.000, as of 20 June 2014 until 2 September 2016;
- On the amount of EUR 100.000, as of 7 August 2014 until 2 September 2016;

- On the amount of EUR 100.000, as of 7 August 2014 until 24 March 2017;
- On the amount of EUR 500.000, as of 10 August 2015 until 24 March 2017;
- On the amount of EUR 372.300, as of 10 August 2015 until the date of payment.

126. The Sole Arbitrator notes that, of the above mentioned principal amount, Pescara has already paid the amount of EUR 1.500.000 which is consequently not due anymore.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Delfino Pescara 1936 against the decision rendered on 26 April 2016 by the Single Judge of the FIFA Players' Status Committee is partially upheld.

2. The decision rendered on 26 April 2016 by the Single Judge of the FIFA Players' Status Committee is confirmed, except for paragraph 2, section III of such decision which is set aside and modified as follows:

   Delfino Pescara 1936 is ordered to pay Envigado FC the amount of EUR 1.872.300, plus 15% interest *p.a.* as follows:

   - On the amount of EUR 300.000, as of 23 December 2013 until 6 July 2016;
   - On the amount of EUR 300.000, as of 23 December 2013 until 1 August 2016;
   - On the amount of EUR 200.000, as of 20 June 2014 until 2 September 2016;
   - On the amount of EUR 100.000, as of 7 August 2014 until 2 September 2016;
   - On the amount of EUR 100.000, as of 7 August 2014 until 24 March 2017;
   - On the amount of EUR 500.000, as of 10 August 2015 until 24 March 2017;
   - On the amount of EUR 372.300, as of 10 August 2015 until the date of payment.

3. The amount of EUR 1.500.000 already paid by Delfino Pescara 1936 to Envigado FC shall be deducted from the abovementioned principal amount of EUR 1.872.300.

4. (…).

5. (…).

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