Arbitration CAS 2019/A/6590 FC Lugano S.A. v. Empoli FC S.p.A., award of 12 November 2020

Panel: Alexander McLin (Switzerland), Sole Arbitrator

Football
Training compensation
FIFA standing as a party in CAS proceedings
Discretion of a CAS panel with regard to procedural requests
Application of Article 6 Annexe 4 RSTP to Swiss clubs

1. **At the heart of the determinations an appellant must make prior to commencing proceedings before the CAS when appealing a decision of a FIFA disciplinary body is whether or not it should name FIFA as a respondent. This has consequential relevance throughout the proceeding, including the extent to which evidence can be obtained from non-parties: although a CAS panel may order further evidentiary measures not only upon request by one of the parties, but also on its own initiative, it has no power to order a third party to submit evidentiary measures or to produce a document. If the case is a "horizontal" dispute between two indirect members of FIFA over a right to training compensation but has, however, "vertical" elements associated with FIFA's own interpretation and application of its regulations, the choice not to name FIFA as a respondent means that the ability to challenge the application of these provisions as a whole and outside of the context of a specific case is already curtailed by this initial procedural decision.**

2. **In deciding upon a procedural request, a CAS panel must consider a number of factors, including the relevance and probative value of the request, as well as overall procedural efficiency. It is required to consider the evidence presented by the parties only to the extent that it is relevant to the outcome of the case. The arbitral tribunal does not violate the right to be heard if it makes a selection of the evidence presented to it by the parties.**

3. **Article 6 Annexe 4 of the FIFA Regulations on the Status and Transfer of Players does not apply to Swiss clubs when it comes to determining payment of training compensation.**

I. PARTIES

1. FC Lugano S.A. (the "Appellant" or "Lugano"), having its principal place of business in Lugano, Switzerland, is a Swiss professional football club affiliated with the Swiss Football

Association (the "SFA"), itself a member of the Fédération Internationale de Football Association ("FIFA"), the international governing body for the sport of football.

2. Empoli FC S.p.A. (the "Respondent" or "Empoli"), having its principal place of business in Empoli, Italy, is an Italian professional football club affiliated with the Italian Football Federation (the "IFF"), itself a member of the Fédération Internationale de Football Association ("FIFA"), the international governing body for the sport of football.

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence it he considers necessary to explain his reasoning.

4. C. (the "Player") is a football player born on 26 January 1998. He is a Swiss and Italian national and has played for teams in both Switzerland and Italy at different stages of his career.

5. Having evolved as an amateur at Swiss club FC Chiasso, he was the subject of a transfer to Italian club Juventus FC where he was registered as an amateur from 2 October 2014 until 24 August 2015. He was then registered with Empoli, again as an amateur, from 25 August 2015 until 23 July 2017.

6. On 13 July 2017, Empoli sent the Player an offer (received on 19 July 2017) to create an "addestramento tecnico" (a technical training relationship), which would have extended his term at Empoli as an amateur.

7. As of 25 July 2017, he was registered with Lugano, for the first time as a professional.

8. On 26 April 2018, Empoli claimed training compensation before FIFA in the amount of EUR 115,000 plus 5% interest as from the relevant due dates.

9. Lugano contested that any training compensation was due, on the basis that Empoli had not offered the Player a professional contract and that, applying the relevant FIFA regulations, Lugano was entitled to benefit from an exception that allowed it, as a Swiss club, to avoid owing training compensation to clubs in the European Union or European Economic Area (EU/EEA) provided certain criteria were met (such as *inter alia* the lack of an offer of a professional contract).

10. At the heart of its position before FIFA, Lugano held that the Player had been able to benefit from the EU/EEA-specific regulatory provisions when moving from FC Chiasso to Juventus FC, and that his transfer back across the border from Empoli to Lugano should allow for the interpretation of FIFA regulations in favour of Lugano, considering that Swiss clubs should

be able to benefit from similar interpretation of FIFA regulations in favour of Swiss clubs, as if Switzerland were an EU or EEA member.

11. In his decision dated 19 September 2019 (the "Appealed Decision"), the Single Judge of the sub-committee of the FIFA Dispute Resolution Committee ("DRC"), deciding that the lex specialis provisions concerning EU or EEA clubs were not applicable to FC Lugano, ruled as follows:

> *"1. The claim of the Claimant, Empoli FC, is accepted.*
>
> *2. The Respondent, FC Lugano, has to pay to the Claimant,* ***within 30 days*** *as from the date of notification of this decision, the amount of EUR 115,000 + 5% p.a. interest as from 25 August 2017 until the date of effective payment.*
>
> *3. In the event that the aforementioned sum plus interest are not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
>
> *4. The final costs of the proceedings in the amount of CHF 12,000 are to be paid by the Respondent* […]*"* (emphasis original).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 15 November 2019, the Appellant filed its Statement of Appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2019 edition) (the "Code"). In its Statement of Appeal, the Appellant requested that a sole arbitrator be appointed by the CAS.

13. On 22 November 2019, the CAS Court Office informed the Parties that the proceeding had been initiated, and provided a copy of the statement of appeal to FIFA, in accordance with Article R52 of the Code, setting a ten-day deadline for FIFA to state whether it intended to join the proceedings as a party further to Article R41.3 of the Code.

14. On 27 November 2019, the Respondent responded that it agreed to the appointment of a Sole Arbitrator, and to English as the language of the arbitration.

15. On 28 November 2019, the CAS Court Office notified the Parties of the above and that the Sole Arbitrator would be appointed by the President of the CAS Appeals Arbitration Division, in accordance with Article 54 of the Code.

16. On 28 November 2019, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.

17. On 29 November 2019, the CAS Court Office notified the Appeal Brief to the Parties and to FIFA.

18. On 2 December 2019, the Appellant wrote to the CAS Court Office, noting that the power of attorney provided by the Respondent empowered its counsel to act only before FIFA.

19. On 3 December 2019, the CAS Court Office invited the Respondent to comment on the Appellant's letter of 2 December 2019.

20. On 3 December 2019, the Respondent requested that, in accordance with Article R55 of the Code, the time limit for the filing of its answer be fixed after the payment of the advance of costs by the Appellant.

21. On 3 December 2019, the CAS Court Office acknowledged the Respondent's letter of the same day and noted that a new time limit for the filing of the answer would be fixed upon receipt of the Appellant's payment of its share of the advance of costs.

22. On 6 December 2019, the CAS Court Office informed the Parties of FIFA's decision to renounce its right of possible intervention in the instant proceedings, notified on 5 December 2019, in which FIFA stated that notwithstanding this decision, *"FIFA will remain at disposal of the Court of Arbitration for Sport and the relevant Panel in order to answer specific questions about the case at issue"*.

23. On 6 December 2019, the Respondent provided an updated power of attorney for its counsel, duly notified to the Parties by the CAS Court Office the same day.

24. On 18 December 2019, the CAS Court Office acknowledged receipt of payment of the Appellant's share of the advance of costs, set a deadline for receipt of the Respondent's answer in accordance with Article R55 of the Code, and informed the Parties on behalf of the President of the CAS Appeals Arbitration Division that the Sole Arbitrator appointed to decide the present matter was constituted as follows:

    Sole Arbitrator: Alexander McLin, Attorney-at-law in Geneva, Switzerland

25. On 20 December 2019, further to the Respondent's request and with the Appellant's consent, the CAS Court office notified the Parties that the Respondent was granted a 20-day extension to file its answer.

26. On 27 January 2020 and as acknowledged by the CAS Court Office on 3 February 2020, the Respondent filed its Answer in accordance with Article R55 of the Code and made the following document requests:

    - from the Appellant: *"all training compensation claims submitted by Lugano to the FIFA DRC within at least the past five years"*; and

    - from FIFA and the SFA: *"all training compensation claims, involving Swiss clubs, in their possession that were submitted to the FIFA DRC within at least the past five years"* (as clarified by Respondent's letter of 10 February 2020).

27. On 11 February 2020, the CAS Court Office acknowledged receipt of the Parties' letters of the previous day in which the Appellant requested a hearing and the opportunity to comment on the Respondent's procedural requests, while the Respondent stated that a hearing was not necessary in its view.

28. On 17 February 2020, the Appellant provided its comments on the Respondent's document production requests.

29. On 26 February 2020, the CAS Court Office wrote to the Parties notifying them that the Respondent's document production requests were decided as follows by the Sole Arbitrator:

- *"The Respondent's request for disclosure of* 'all training compensation claims submitted by Lugano to the FIFA DRC within at least the past five years' *is partially granted. The Appellant is invited to provide the following information […]:*

  (1) whether it has ever made any claims for training compensation concerning a player that was transferred to a club in the EU/EEA;

  (2) whether such training compensation was refused on the grounds that it was not owed pursuant to Article 6.3 Annex 4 RSTP; and

  (3) if so, to produce the respective correspondence and decisions.

- *The Respondent's request that the Swiss Football Association discloses* 'all training compensation claims, involving Swiss clubs, in their possession that were submitted to the FIFA DRC within at least the past five years' *is dismissed.*

- *The Respondent's request that FIFA discloses* 'all training compensation claims, involving Swiss clubs, in their possession that were submitted to the FIFA DRC within at least the past five years' *is partially granted. The Parties will find enclosed a copy of the CAS Court Office letter of today to FIFA".*

30. On 26 February 2020, the CAS Court Office wrote to FIFA, referring to its letter of 5 December, stating:

"On behalf of the Sole Arbitrator, you are kindly requested to inform the CAS Court Office whether the special provisions for the EU/EEA provided by Article 6 of Annexe 4 of the FIFA Regulations on the Status and Transfer of Players have ever been applied by FIFA to a Swiss club on the grounds that Switzerland has a bilateral agreement with the EU on the free movement of workers".

31. On 4 March 2020, the Appellant responded, stating inter alia that:

"… [Lugano] has ***not*** *made any claim for training compensation before FIFA concerning a player that was transferred to a club in the EU/EEA in the last 5 (five) years.*

Just for the sake of completeness, […]

- *First, some U-23 players of FC Lugano signed their first professional contract with other Swiss clubs and this entitled [them] to ask for training compensation under ASF/SFL regulations, which are different from the applicable FIFA regulation and whereby no similar exception as the one of article 6.3 of Annex 4 FIFA RSTP exists (e.g. D. with FC Chiasso 2005 SA in the season 2017/2018; M. with BSC Young Boys in the season 2015/2016).*

- *Second, some former U-23 players of FC Lugano were transferred to EU/EEA clubs against a transfer fee and this means that FIFA training compensation was implicitly included in such fee (e.g. N. and L. to Juventus FC in Italy in the season 2019/2020; E. to Juventus FC in Italy in the season 2019/2020).*

- *Moreover, other U-23 players whose employment contracts naturally expired decided to join another Swiss club and, therefore, FIFA training compensation is not due (e.g. P. with FC Locarno in the season 2017/2018; B. with FC Chiasso 2005 SA in the season 2017/2018".*

32. On 9 March 2020, the Respondent requested a short time limit to comment on the Appellant's letter of 4 March 2020 and requested that the CAS request that FIFA respond to its letter of 26 February 2020.

33. On 10 March 2020, the CAS Court Office wrote to the parties granting the Respondent a deadline until 17 March 2020 to comment. It also provided the parties with a copy of a letter of the same day to FIFA inviting it to respond by 17 March 2020 to its letter of 26 February 2020.

34. On 17 March 2020, the Respondent provided the following observations:

"The Respondent took note of the Appellant's letter whereby it stated that Lugano FC has not made any claim for training compensation before FIFA concerning a player that was transferred to a club in the EU/EEA in the last 5 years.

Firstly, the Respondent wishes to highlight that the information contained in the Appellant's letter dated 4 March 2020 does not show if Art. 6 of Annex 4 of FIFA RSTP was ever applied to the Appellant or not.

The Appellant's letter mentions the names of some players for which FC Lugano did not make the aforementioned claim for training compensation.

However, after some research, the Respondent found several players for which FC Lugano could/should have made the aforementioned claim. Here are the name of the Players and the respective clubs they joined:

- *C., born […] 1998, joined Gil Vicente, Portugal in 2018*
- *X., born […] 1997, joined Vicenza, Italy in 2017*
- *A., born […] 1993, joined Kaposvar, Hungary in 2013*
- *Y., born […] 1991, joined Genoa, Italy, in 2011*

The Appellant will notice that two of the Players made their move more than 5 years ago. However, as CAS invited the Appellant in its letter dated 26 February 2020 to inform the CAS Court Office 'whether it has

ever made any claims for training compensation concerning a player that was transferred to a club in the EU/EEA', the Respondent deems that all the aforementioned players are relevant.

Thus, in view of the above, the Respondent kindly requests that the Appellant is invited to explain, if it wishes to do so, why the aforementioned cases weren't mentioned in its letter dated 4 March 2020 and if training compensation was claimed in said cases".

35. On 17 March 2020, FIFA responded as follows:

"… we wish to inform you that the Dispute Resolution Chamber has never applied the special provisions enshrined in Article 6 Annexe 4 RSTP to training compensation proceedings involving Swiss clubs.

The foregoing results from two main reasons:

1. *The application of the special provisions established in the RSTP for EU/EEA countries is primarily dependent on the concept of territoriality – i.e. it applies between the EU/EEA member states* [*CAS 2010/A/2069, paras. 37 ff.*] *–;*

2. *The training compensation mechanism governs the rewarding of training clubs rather than the transfer of players* per se [*CAS 2012/A/2968, para. 105, CAS 2009/A/1757, para. 13*].

Hence, since Switzerland is not a member of the EU/EEA and its relationship with the EU is limited to a bilateral treaty governing the free movement of persons, which bears no direct link with providing rewards to training clubs, Article 6 Annexe 4 RSTP cannot be applied to situations where Swiss clubs are involved. [*On the other hand, Article 19(2)(b) RSTP has been applied to the international transfers of minors involving Swiss stakeholders given its direct link to the freedom of movement of persons governed by the bilateral treaty between Switzerland and the EU.*]

In other words, its inapplicability to Swiss clubs does not hinder the freedom of movement of persons preserved by the bilateral treaty that Switzerland has in place with the EU".

36. On 18 March 2020, the CAS Court Office invited the Appellant to comment on the Respondent's letter of 17 March 2020 and invited the Parties to comment on FIFA's letter.

37. On 6 April 2020, the Appellant provided the following comments to the Respondent's letter of 17 March 2020:

"FC Lugano does not follow the Respondent where it states that 'the information contained in the Appellant's letter dated 4 March 2020 does not show if Art. 6 of Annex 4 of FIFA RSTP was ever applied or not". This was neither part of its own request of disclosure nor of the Sole Arbitrator's instructions. Above all, it is obviously impossible in cases where the training compensation was not asked to have such information let alone that, as recalled in our letter of 17 February 2020 to CAS, it is for the respondents to such possible claims, and not for the alleged claimant (FC Lugano), to raise such exception not to pay training compensation.

*Regarding the '*several*'(i.e. four) players quoted by the Appellant, the understanding of the Appellant was that the disclosure be limited, in accordance with the Respondent's procedural request to '*all training

compensation claims (…) within at least the past five years*'. Therefore, being the transfers of A. and Y. occurred 7 1/2 and 8 1/2 years ago, that is why the Appellant disregarded them in its previous letter.*

On the other side, it is important to emphasize that the same Respondent's and the Sole Arbitrator's request regarded 'any claims for training compensation*' for players transferred to EU/EEA clubs. FC Lugano has clearly stated in its letter of 4 March 2020 that it has never filed such type of claims. The further information, additional to the procedural order complied with, was provided to show the full transparency of the Appellant.*

Accordingly, the Appellant is also prepared to further comment the following on the four players quoted by the Respondent:

- *C., […] 1998. FC Lugano could not file any claim against Gil Vicente as the latter is (was) a category IV club and therefore it is (was) exempt to pay training compensation as per article 2.2 lit. ii) of Annex 4 of FIFA RSTP.*

- *X., […] 1997. FC Lugano and Vicenza Calcio reached an agreement according to which FC Lugano renounced to any training compensation against a 20% sell-on of a possible future transfer. Besides, this player eventually joined Vicenza Calcio with amateur status and therefore, FC Lugano was not entitled anyway to request any training compensation as per article 2.2 lit. iii) of Annex 4 of FIFA RSTP.*

- *A., […] 1993. FC Lugano loaned twice this player to the Hungarian club Kaposvári Rákóczi FC on a free basis. Then, FC Lugano and the player mutually terminated their employment relationship, as the Appellant wanted to save on salary expenses, with full renunciation of any right by FC Lugano to help the future development of the player's career.*

- *Y., […] 1991. This player was transferred from FC Lugano to Genoa CFC against a transfer fee and therefore the training compensation was already included therein".*

38. On 6 April 2020, the Appellant provided the following comments to FIFA's letter:

"At the outset, the Appellant is surprised by the conduct of FIFA: whilst on one side FIFA renounced to be a party to this arbitration, on the other it now filed a reasoned submission rather than a mere reply to the limited Sole Arbitrator's order, i.e. a reply limited to inform the CAS that it has apparently never applied the provision of article 6(3) Annexe 4 RSTP to training compensation proceedings involving Swiss clubs.

The irregular response by FIFA jeopardises the procedural rights of FC Lugano in this case as, not being FIFA a party, the Appellant is prevented to request clarifications on its comments and/or to cross-examine its representatives during any further step of this procedure. A procedural request is thus put forward by FC Lugano at the end of these comments.

Faced with such unpleasant legal situation, FC Lugano cannot however abstain to comment on the partial and unilateral – as well as unsupported – assertions made by FIFA in its letter.

First*, it is very indicative that the Challenged Decision in this dispute, notwithstanding it regards a matter like the ones commented by FIFA recalls only the* alleged 'reason' *that Switzerland is not member of the EU for the non-applicability by FIFA of the provision under article 6(3) Annexe 4 RSTP. The other*

'reasons' *linked to the allegedly different nature and principles at the basis of article 19(2)(b) compared to article 6(3) Annex 4 do not appear anywhere in the Challenged Decision. Therefore, this letter appears now as a late attempt by FIFA – from a privileged position outside this arbitration – to "fill" its Challenged Decision of contents it does not have.*

This way of proceeding must be squashed by CAS and the Appellant respectfully but firmly requests that the comments filed by FIFA in addition to the mere information asked by the Sole Arbitrator, be disregarded and excluded from the file of this procedure without them being a possible legal argument.

Second, *these comments come from the Head of Litigation and a Senior Counsel of FIFA, who are high-level employees of an administrative department that provided their own legal opinion and not by the FIFA DRC, which is the deciding body in charge to apply and interpret the FIFA regulations in practical cases. These comments could be part of this proceeding only if FIFA decided to participate as a party. Again, the fact that the FIFA DRC in the present matter has not adduced in the Challenged Decision part of the same arguments, but has used other (unfounded) ideas to disregard the Appellant's defence, runs in favour of the Appellant's vision and contrary to this late attempt of FIFA to cure its purported deficiencies.*

Third, *the comments of FIFA are not supported by any jurisprudence of the same FIFA or any regulatory text or clarification (by way of circular letter, for instance) officially issued by such governing body.*

In addition to such preliminary remarks, saved for the procedural request above and pending a decision of the Sole Arbitrator accordingly, FC Lugano is obliged to file the following comments as per the CAS letter 18/19 March 2020.

The Appellant understands that FIFA sets forth two concepts in its letter to not apply the article at stake to clubs in Switzerland: (i) the principle of territoriality*, enshrined in the* 'special provisions established in the RSTP for the EU/EEA countries' *(thus in both article 19(2)(b) and article 6(3) Annexe 4 RSTP) strictly applies only to these countries and (ii) the* principle of rewarding training clubs *of the training compensation mechanism [of article 6(3) of Annexe 4)] has nothing in common with the* transfer of players per se *[of article 19(2)(b)].*

FIFA starts from the point that Switzerland is not a member of the EU/EEA.

Although this is formally correct, the Appellant has already extensively explained why Switzerland, and Swiss clubs, thanks to the Agreement on Free Movement of Persons *between Switzerland and EU (the "**AFMP**") must enjoy the same position of EU/EEA based clubs in the application of all the EU/EEA exceptions provided by the RSTP, thus both article 19(2) and article 6(3) of Annexe 4 (see* Appeal Brief, *§§ 43- 52).*

*The CAS cases quoted by FIFA in this respect are useless considering that they involve a Turkish club (*CAS 2010/A/2069*) and a Turkish and a Brazilian club (*CAS 2012/A/2968*). With due respect, these cases are evidently not linked at all with the arguments of the Appellant in this case, based on the AFMP Switzerland – EU/EEA, as no similar agreement exists between Turkey, Brazil and EU/EEA.*

The first argument of FIFA is thus groundless.

It is even more groundless if compared to the consistent use made by the same FIFA of the exception of article 19(2)(b) RSTP to transfers of players moving from Switzerland to EU/EEA and vice-versa, as actually occurred in this matter as well (see Appeal Brief, *§§62-63). In such regard, the consistent use of such exception for cases involving Swiss clubs could amount to a violation of the* venire contra factum proprium *by FIFA, which refutes to equate Switzerland to EU/EEA countries but still allows this* special provision *created for them to apply to clubs based in Switzerland.*

If Switzerland is not part of the EU/EEA, article 19(2)(b) RSTP must not apply to Swiss Clubs. The fact FIFA keeps applying it, shows the true interpretation of FIFA, even expressly stated at footnote 95 at page 59 of its Commentary to FIFA RSTP *(see* Appeal Brief, *§44), in considering Switzerland as a territory part of the EU/EEA area for the purposes of the RSTP.*

That is why, contrary to what averred in its letter, the same FIFA is well aware that Switzerland and Swiss clubs are equated to the EU/EEA and the clubs based therein.

The administrative department of FIFA then, probably aware of its incoherent argument in the letter, twists its own opinion and differentiates the applicability to Switzerland – Swiss clubs of article 19(2)(b) RSTP from the non-applicability of article 6(3) of Annexe 4 RSTP. In doing so, it argues that, whilst the provision for minors is allegedly *based on the* principle of freedom of movement of persons *- which would be in line with the AFMP - article 6(3) Annexe 4 RSTP is* purportedly *based on a non-better specified* principle of rewarding training clubs*, that had no* 'direct *link' to the free movement of persons. Therefore, the latter would not be applicable* 'to situations where Swiss clubs are involved'.

This second idea of FIFA is equally erroneous.

The Appellant refutes the idea of FIFA that the two provisions, articles 19(2)(b) and article 6(3) of Annexe 4 RSTP, are based on different *principles and thus FIFA judging bodies can* differ *their approach towards Swiss clubs when applying one or the other. This differentiation is artificial and with no regulatory or jurisprudential basis.*

First, as recalled above and contended as well by FIFA in its letter, both article 19(2)(b) and article 6(3) of Annexe 4 RSTP are based on the territoriality principle.

Suffice to mention that article 19(2)(b) RSTP allows transfer of minors if 'the transfer takes place **within the territory** of the European Union (EU)*'. No mention is made to nationality of the minor involved, rather to the fact that he must be domiciled and move within the territory of the EU. On the other hand, it is very revealing that article 6(3) Annexe 4 RSTP is titled* 'special provisions for the EU/EEA*' (and not, for instance,* 'for players with EU/EEA nationalities*') and that then it limits its applications to* 'players moving from one association to another inside the territory of the EU/EEA*' (p. 1) and* 'inside the EU/EEA*' (p. 2, being the same applicable to the following p. 3 at stake).*

Second, if Switzerland is equated via the AFMP to an EU/EEA state, as accepted by the same FIFA for article 19(2)(b) RSTP, the consequence is that article 6(3) Annexe 4 must apply to transfers to Swiss clubs as well, like in this matter.

Third, it is fundamental to point out that – contrary to what averred by FIFA – in both provisions the freedom of movement of persons *is also equally involved. As the European Court of Justice ruled in the so called Bernard Case (*'Case C-325/08 OL SASP v. Olivier Bernard*'), rules set forth which preclude or deter a national of a member state from leaving his country by - for instance - ordering him to pay compensation related to his training set at an excessive level, are likely to discourage that player to exercise his right of free movement (and, the Appellant adds, his new club to register him due to the excessive costs to pay to the former club). That is a pertinent example for the case at stake where FC Lugano had not registered the Player if it had considered due the FIFA* training compensation *up to the amount asked by Empoli FC and confirmed by FIFA in the Challenged Decision and inapplicable article 6(3) of Annexe 4 RSTP. In view of the above, not only the* freedom of movement *principle is enshrined – together with the* territoriality principle *– in article 19(2)(b) but also in article 6 of Annexe 4 RSTP. Consequently, the difference averred by FIFA does not stand. A clear indication in such regard is the reduction of* training compensation *to its average only when a player moves from a lower to a higher ranked club, to ease indeed his movement, according to its para. 1.*

Fourth, the erroneous interpretation followed by the administrative department of FIFA in its letter would be contrary to the principle of equal treatment of the (Swiss) members of FIFA in respect to its other (EU/EEA) members. In practical terms, EU/EEA clubs could sign 16 years old minor players registered with Swiss clubs just paying training compensation *whilst, when faced with obligations arising from their duty to offer them a contract not to lose their* training compensation *in the opposite 'trip back' to Switzerland, they can evade such obligations.*

*The quotation made by FIFA to a CAS award involving two EU/EEA based clubs (*CAS 2009/A/1757*) does not help to sustain its weak "differentiative" argument. The paragraph quoted by FIFA ruled that the purpose of the* training compensation *rules is to encourage the training of young footballers by awarding financial compensation to clubs that have invested in their education. The Appellant does not contest it and fully supports such reasoning but this is not contrary to the application of the exception of article 6(3) Annexe 4 RSTP, which is equally based on the principle of* free movement of persons and of territoriality. *In this case, where this exception is applicable, the right of Empoli FC to a training compensation fails against its negligent conduct of not having offered a contract to the Player.*

*This vision derives from the origin of the rule and, in this respect, we remind that a rule of a federation must be objectively interpreted according to its wording and literal meaning having regard to the intention of the legislator and its historical background (*CAS 2016/A/4787*;* CAS 2010/A/2071*).*

The same CAS Award that FIFA quoted at §14 states that '(…) provisions on training compensation were integrated into the FIFA Regulations following a lengthy procedure before the European Commission which culminated in 2001 and which resulted in a substantial overhaul of the FIFA rules concerning the international transfer of players*'.*

*In its letter FIFA remarks that '*the free movement of persons bears no direct link with providing rewards to training clubs*' and the '*inapplicability to Swiss clubs*' of article 6(3) Annexe 4 RSTP '*does not hinder the freedom of movement of persons preserved by the bilateral treaty that Switzerland has in place with the EU*'.*

This assertion is erroneous because it starts from the wrong presumption that article 19(b)(2) is based ***only*** *on the* freedom of movement *whilst article 6.3 Annexe 4* ***only*** *on the* principle of territoriality*, which is not, as they are both based on the two connected principles. After the discussions between UEFA, FIFA and the EU in 2001 both* territoriality exceptions *of article 19.2 and article 6.3 Annexe 4 were inserted in the FIFA RSTP due to their common link to the* free movement of persons.

To simply put, the differentiation between the two provisions raised by FIFA does not stand even checking the preparatory works of the provisions at stake and their origin.

In view of the foregoing and the arguments set forth in its Appeal Brief, the Appellant firmly maintains that the exception of article 6(3) of Annex 4 of the FIFA RSTP, equally based on the principles of territoriality *and of* freedom of movement *applied to EU/EAA clubs as per article 19(2)(b) RSTP, must be also applied to the clubs with seat in Switzerland like FC Lugano in this case.*

Finally, in order to protect the right to be heard of FC Lugano in view of the comments filed by FIFA in this procedure albeit not being a party, the Appellant respectfully requests the Sole Arbitrator, pursuant to article R44.3 in combination with R56 of the CAS Code, to ***request an additional disclosure to FIFA****, in its capacity of governing body and association which issued the first instance Challenged Decision, in relation to the information provided with its letter on 17 March 2020 and, in particular:*

1. *The number of training compensation cases involving a Swiss and an EU/EEA club during the period decided by the Sole Arbitrator but no less than 10 (ten) years.* This request is necessary insofar FIFA attests the existence of such cases in its letter.

2. *In how many of these cases the respondent club has raised the applicability of article 6.3 Annexe 4 RSTP to avoid paying training compensation. This request is necessary insofar FIFA stated that the FIFA DRC has never applied such special provision in those cases.*

3. *In case there is indeed one or more cases in the record of FIFA in which a party raised the argument used by FC Lugano in this matter as per point 2., that a full and fair disclosure of such award/s is made by sending them to CAS and grating the parties to this procedure the possibility to comment on it/them. This request is necessary to comply with the right to a fair and transparent proceeding of the Appellant.*

It is the understanding of FC Lugano that this is the first case on this topic that CAS is requested to analyse and decide upon. Therefore, it is not only in the Appellant's interests, but also in the interest of the whole football community (at least from Switzerland), that a thorough and detailed scrutiny be undergone".

39. On 20 April 2020, the CAS Court Office wrote to the Parties and informed them that the Appellant's additional request for disclosure to FIFA was dismissed, and that reasons would be provided in the final Award.

40. On 20 April 2020, the CAS Court Office wrote to the Parties and informed them that a hearing would be held and inquired as to the Parties' availability therefor.

41. On 30 April 2020, the Appellant wrote to the CAS, and raising the following point:

"At the outset, we refer to your letter dated 20 April 2020 informing about the Sole Arbitrator's dismissal of our procedural request of disclosure towards FIFA.

We hereby formally disagree with and dispute such Sole Arbitrator's ruling, whose reasoning is not even available to the Appellant. We kindly but firmly point out that without the further clarifications and data we requested, the information provided by FIFA remain partial and unsupported and thus useless to this arbitration.

We therefore maintain our request of additional disclosure as set forth in our letter of 6 April 2020.

Separately, the Appellant respectfully requests the Sole Arbitrator to be informed whether the submission filed by FIFA without being party to this procedure shall be disregarded and excluded from the file without being a possible legal argument or whether it is kept.

As previously stated, we reiterate that such submission must be removed as a whole for being contrary to the procedural rules of the CAS and outside the scope of review of the Challenged Decision.

The Appellant reserves all its rights accordingly and is prepared to further comment on these subjects during the hearing".

42. On 1 May 2020, the CAS Court Office wrote to the Parties, *inter alia* confirming receipt of the Appellant's letter, noting that it reiterated its request for disclosure and its request that the FIFA letter be removed from the case file, adding that further instructions in this regard would follow in due course.

43. On 4 May 2020, the Respondent provided comments to the Appellant's letter of 1 May 2020 as follows (emphasis original):

"With regards to the Appellant's letter dated 30 April 2020, the Respondent hereby reiterates the importance and crucial relevance of FIFA's letter dated 17 March 2020 to the solution of the present case.

The information provided by FIFA is not partial and unsupported, as alleged by the Appellant, but rather it is a clear explanation of the purpose of the regulations in dispute, given by the very own legislator.

Furthermore, the Appellant states that said letter is a submission filed by FIFA without being a party and it is contrary to the procedural rules of the CAS. However, the Appellant fails to demonstrate to what rules it would be contrary.

Such failure is due to the fact that FIFA's letter is not at all contrary to the procedural rules of the CAS. In fact, it is exactly the opposite. Although FIFA is not a formal party to the present proceedings, not only is it the governing body that issued the challenged decision, but also the legislator of the regulations at stake.

*Moreover, the CAS asked FIFA in the very beginning of the present proceedings if FIFA wished to take part of it, and FIFA answered on 05 December 2019 that it would not intervene as a party, but it would "**remain at disposal of the Court of Arbitration for Sport and the relevant Panel in order to answer to specific questions regarding the case at issue**". Thus, the letter from FIFA dated 17 March 2020 and its content are perfectly in line with the procedural rules of the CAS and are of high*

importance for the Sole Arbitrator to decide upon the case at hand, since, as mentioned before, it explains the purpose of the regulations and the intent of the legislator.

Finally, it must be highlighted that the procedural rules of the CAS in this regard, provided for in Art. R44.3, par. 2, of the Code of Sports-related Arbitration, give the Panel or the Sole Arbitrator an extensive evidentiary power as at any time it may order the production of additional documents, if deemed appropriate. Therefore, the Sole Arbitrator has full power and discretion to request evidence when it deems relevant to the solution of the case.

Thus, as the Sole Arbitrator deemed relevant the Respondent's request for disclosure by FIFA, he only exercised his evidentiary power, exactly in accordance with the procedural rules. Hence, the FIFA's letter dated 17 March 2020 shall be kept in the file and used by the Sole Arbitrator for the solution of the case, due to its clear and unequivocal relevance to the dispute".

44. On 28 May 2020, a hearing was held via videoconference. Mr Marco Bertelli, former Head of Youth Academy at Empoli appeared as witness for the Respondent. At the hearing, the Parties' representatives stated that they considered their right to be heard had been respected, though the Appellant made a reservation concerning its outstanding procedural and disclosure requests.

45. On 29 May 2020 the Appellant wrote the following to the CAS Court Office:

"With reference to the hearing of yesterday in the captioned matter, as anticipated in our final remarks and for the sake of clarity, the Appellant requests that the Sole Arbitrator reconsiders his decision regard the procedural requests / request of disclosure set forth by FC Lugano SA in its letters on 6 and 30 April 2020 as well as during the yesterday hearing.

Only with the granting of such requests, and a consequent possibility to comment on their result, the Appellant will consider its right to be heard and to equal treatment be fully respected in this matter".

46. On 15 July 2020 the Appellant wrote to the following to the CAS Court Office:

"We refer to our letter on 29 May 2020 […] on the procedural request / request of disclosure towards FIFA, remained unanswered.

Waiting for your and the Sole Arbitrator's position, we respectfully point out for the Sole Arbitrator's information the content of the public award "CAS 2013/A/33393 […]" […] and especially its §§ 44-49 which are herein attached.

We consider such precedent relevant for the outcome of the present procedure and, not being a document but rather a publicly available jurisprudence, we ask to take it into account and to insert it in the file of this arbitration".

47. On 17 July 2020, the Respondent wrote the following to the CAS Court Office:

"The Appellant mentions that its procedural request for disclosure by FIFA remains unanswered and, further, encloses parts of the award n. CAS 20[1]3/A/3393 to be considered in the present proceedings.

With regards to the Appellant's procedural request, the Respondent reiterates its position whereby it agrees with the Sole Arbitrator in rejecting such request, as the Sole Arbitrator is the recipient of the evidence produced within the proceedings and has the discretion to allow or reject whatever he feels, to his comfortable satisfaction, is relevant – or not – to the solution of the case.

As to the award mentioned and partially enclosed by the Appellant in its letter dated 15 July 2020, the Respondent highlights that, despite being a public document available on CAS website, if the Appellant intended to rely upon such decision as an evidence, it should have had mentioned it within its Appeal Brief, i.e. its written submission, in respect to Articles R44.1, par. 2, and R51, of the Code of Sports-related Arbitration.

Thus, pursuant to Article R57, par. 3, of the Code of Sports-related Arbitration, the Respondent requests that the above-mentioned document sent by the Appellant be excluded from the file and not taken into consideration by Sole Arbitrator to the solution of the case at stake, exactly because, as mentioned by the Appellant, it is "a publicly available jurisprudence"*, which was available to the Appellant when filing its written submissions.*

Finally, even if the above-mentioned award is not excluded from the file of the present arbitration, the Respondent hereby highlights that said decision has no relation whatsoever with the present case, being irrelevant to its solution, as, in that procedure, one of the parties expressly requested an amicus curiae *brief from FIFA and the Panel rejected it, while in the dispute at hand there was never such a request. In the present case, the Sole Arbitrator requested himself evidentiary measures to FIFA, because he deemed it relevant, by free exercising his extensive evidentiary power, in accordance with Article 44.3 of the Code of Sports-related Arbitration.*

Therefore, the Respondent hereby requests that the Appellant's pending requests be rejected and that the final award be issued by the Sole Arbitrator".

IV. SUBMISSIONS OF THE PARTIES

48. The Appellant's submissions, in essence, may be summarized as follows:

- At the time of the Player's initial transfer from Switzerland to Italian club Juventus FC, he benefitted from the following provision of the FIFA Regulations on the Status and Transfer of Players (the "RSTP") 2012 edition, with the same content in the current 2019 version), which provides as follows:

  "19. Protection of minors (…)

  1. *International transfers of players are only permitted if the player is over the age of 18.*

  2. *The following three exceptions to this rule apply (…)*

     b) The transfer takes place within the territory of the European Union (EU) or European Economic Area (EEA) and the player is aged between 16 and 18. In this case, the new club must fulfil the following minimum obligations (…)".

- While the Appealed Decision suggests that the Player was able to achieve this transfer and benefit from the RSTP Article 19.2.b exception by virtue of his Italian nationality, this is erroneous and does not take into account that Switzerland is considered as part of EU/EEA territory for purposes of applying the RSTP.

- This is highlighted in the 2005 FIFA Commentary on the FIFA RSTP (the "Commentary"), which, in footnote 95 to the entry for Article 19 RSTP states as follows:

  "In the agreement reached between the EU and FIFA/UEFA in March 2001, this provision was included so as not to contravene the free movement of employees within the EU/EEA. Moreover, players from a country that has a bilateral agreement with the EU on the free movement of workers (e.g. Switzerland) profit from the same conditions as EU players".

- As a result, Switzerland has to be considered an integral part of EU/EEA territory when applying all exceptions of the RSTP that apply to it, including Article 6.3 of Annex 4, which provides as follows:

  "If the former club does not offer the player a contract, no training compensation is payable unless the former club can justify that it is entitled to such compensation. The former club must offer the player a contract in writing via registered post at least 60 days before the expiry of his current contract. Such an offer shall furthermore be at least of an equivalent value to the current contract. This provision is without prejudice to the right to training compensation of the player's previous club(s) (…)".

- To consider that Swiss players can benefit from the Article 19.2 RSTP exception but that Swiss clubs cannot benefit from the Annex 4 Article 6.3 RSTP exception would create unequal treatment between Lugano and Empoli.

- By not offering the Player a contract according to the requirements of Annex 4 Article 6.3 RSTP, Empoli did not meet its requirements and cannot therefore be found to have a right to training compensation. The offer which it made to the Player to enter into an "addestramento tecnico" (a technical training relationship) is insufficient to meet the applicable requirements which, according to FIFA and CAS precedent, must demonstrate a genuine interest, in good faith, to retain the Player.

- The fact that the offer of the "addestramento tecnico" came only after the Player's announcement that he was signing with Lugano demonstrates the lack of such a genuine interest by Empoli in retaining the Player, and rather an artificial means of seeking to secure training compensation. The fact that the offer made by Empoli was not of equal or higher value to that made by Lugano demonstrates lack of good faith.

- The Appellant makes the following prayers for relief:

  "[…] *FC Lugano SA respectfully requests the CAS to rule as follows:*

  i. The appeal filed by FC Lugano SA is upheld;

  ii. The Challenged Decision is set aside and annulled.

iii. Empoli FC S.p.A. shall pay FC Lugano SA an amount of CHF 9,000 to cover the costs of the FIFA proceedings.

In any case

iv. Empoli FC S.p.A. shall bear all the procedural costs of this arbitration procedure.

v. Empoli FC S.p.A. shall compensate FC Lugano SA for all the legal fees and other costs incurred in connection with this arbitration in an amount to be determined at the discretion of the Panel".

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

- Empoli considers that Lugano has failed to demonstrate that Annex 4 Article 6 para. 3 RSTP applies to Switzerland, as it is a *lex specialis* to the general rule applicable only where players move from one association to another inside the territory of the EU/EEA. Switzerland is neither a member of the EU, nor of the EEA.

- Since the transfer of the Player did not occur from one national association to another inside the EU/EEA, Empoli did not have an obligation to offer the Player a contract in order to be able to claim training compensation.

- The RSTP contain two exceptions to the general rules regarding player transfers that are specifically applicable in the EU/EEA context. The first exception, embodied in Article 19.2 RSTP (the subject of footnote 95 Commentary) is about the international registration of minor players within the territory of EU/EEA and with regard to their nationality. The second exception, the subject of Annex 4 Article 6 para. 3 RSTP, is about the membership of clubs to associations of the EU/EEA and how that affects their right to training compensation regardless of a player's nationality.

- While FIFA chose to extend the first exception's application to Swiss minor players when registering with associations in countries that are EU/EEA members, it did not, for purposes of the first exception, go so far as to bestow upon Switzerland as a country the status of an EU/EEA member for purposes of the general application of the RSTP.

- Specifically, FIFA chose not to extend the application of the second exception to Swiss clubs as regards their entitlement to training compensation. This is evidenced by the absence of such a position in the Commentary or in any decisions, meaning that there is no reason to depart from the unambiguous wording of Annex 4 Article 6 para. 3 RSTP in this respect.

- The Appellant's reasoning does not account for the hierarchy of applicable rules, which provides that FIFA Regulations should be applied first, with the Commentary as a guideline. According to Article 57 para. 2 of the FIFA Statutes and Article R58 of the Code, FIFA Regulations apply primarily, and Swiss law applies subsidiarily/additionally only. As a result, the *Agreement on the Free Movement of Persons* entered into by Switzerland

and the EU and other Swiss law should only be used to fill lacunae in the rules and regulations of FIFA.

- The Appellant's argument that it would suffer "unequal treatment" is baseless as equality before the law only applies to identical or similar situations. In the present case, Juventus FC and the Player (not Empoli) benefited from the application of the first exception, and Lugano is requesting that it benefit from the second exception. Since the requests are entirely different in nature and scope of application, they cannot be used as a meter to allege unequal treatment.

- A more appropriate comparison would be to determine whether Swiss clubs, including Lugano, have received training compensation without having to offer a contract to Players being transferred out of Switzerland to the EU/EEA.

- In any event, Empoli displayed interest in keeping the Player and offered him a contract. The "addestramento tecnico" meets the definition of a professional contract according to Article 2.2 RSTP, which provides that *"a professional is a player who has a written contract with a club and is paid more for his footballing activity than that expenses he effectively incurs"*.

- As the Player would have been remunerated EUR 850 net per month under this technical relationship, it qualifies as a professional contract under the FIFA Regulations even if does not correspond to a professional status under the Italian regulations.

- According to established CAS jurisprudence, the bar of proof to demonstrate interest in keeping amateur players is lower than that for players that are already professional and need not necessary require a formal contractual offer. In the present case, Empoli held talks with the Player with a view to establishing a professional contract, sent him a letter indicating its intent to keep him for the next sports season, and addressed the letter to the IFF in accordance with its internal regulations. This meets the criteria identified in case CAS 2014/A/3587, and Empoli's actions were also compliant with the findings of CAS 2011/A/2682 when it comes to time limitations or formalities, which also corresponded to the timelines applicable to the professional evolution of other youths of the same age as the Player under the IFF regulations.

- The FIFA RSTP do not require a training club to offer better contractual conditions than those possibly put forward by another club in order to be entitled to training compensation, as provided in FIFA DRC decision no. 87277 of 10 August 2007.

- The Respondent makes the following requests for relief:

  "[…] *the Respondent … petition*[s] *for the order of the following pleas for relief:*

  a) That the present appeal be rejected in totum*;*

  b) That the Appealed Decision be confirmed in totum*, being the initial claim of the Respondent fully accepted;*

c) That the Appellant be ordered to bear the entire cost and fees of the present arbitration;

d) That the Appellant be ordered to pay the Respondent a contribution towards legal fees and other expenses incurred in connection with the proceedings in the amount of CHF 8,000, or the amount deemed fair by the Sole Arbitrator".

V. JURISDICTION

50. Article R47 of the Code provides 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".

51. The Appellant relies of Article 57(1) of the FIFA Statutes as conferring jurisdiction on the CAS.

52. The jurisdiction of the CAS was not contested by the Respondent and the Order of Procedure was signed by both Parties.

53. Accordingly, the CAS has jurisdiction to decide this appeal.

VI. ADMISSIBILITY

54. Article 58.1 of the FIFA Statutes (2019 ed.) states:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question".

55. Article 58.2 of the FIFA Statutes (2019 ed.) states:

"Recourse may only be made to CAS after all other internal channels have been exhausted".

56. The Parties received the grounds of the Appealed Decision from FIFA on 28 October 2019.

57. The Appellant submitted its Statement of Appeal on 15 November 2019. The Statement of Appeal complies with all the other requirements set forth by Article R48 of the Code.

58. Accordingly, the appeal is therefore admissible.

VII. APPLICABLE LAW

59. Article 187(1) of the Swiss Private International Law Act ("PILA") provides as follows:

"The arbitral tribunal shall decide on the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection".

60. Article R58 of the Code provides more specifically 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

61. Article 57 para. 2 of the FIFA Statutes provides as follows:

"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss Law".

62. As a result, the applicable FIFA regulations and statutes will be applied primarily, and Swiss law shall apply subsidiarily.

VIII. PROCEDURAL DETERMINATIONS

63. The following procedural questions are addressed in turn:

a. The Appellant's request for exclusion of the FIFA letter of 17 March 2020;

b. The Appellant's requests of 6 and 30 April 2020 for further disclosure from FIFA;

c. The Appellant's addition submission of CAS precedent on 15 July 2020.

A. The Appellant's request for exclusion of the FIFA letter of 17 March 2020

64. The Appellant considers that the FIFA letter of 17 March 2020, which was a response to a question to FIFA by the Sole Arbitrator in lieu of granting a broader request from the Respondent, should be excluded from the case file. If not, it considers that only the answer provided in the first paragraph of FIFA's letter should be admitted, and that the reasoning should be disregarded.

65. The Appellant considers that, as FIFA had renounced to intervene as a party to this arbitration, it should not have the ability to submit what the Appellant considers is a "reasoned submission", which moreover jeopardizes the Appellant's procedural rights as it does not have the ability to request clarifications on its comments and/or to cross-examine its representatives. The Appellant considers that the position put forward by FIFA's litigation department is partial as the latter will naturally seek to justify and support the Appealed

Decision of the DRC, and notes that it is unsupported by reference to any decisions. The Appellant grounds its position in the award CAS 2013/A/3393 (*see infra*), in which the panel excluded an *amicus curiae* brief from FIFA for what it considers to be analogous reasons.

66. The Respondent considers rather that the Sole Arbitrator has broad evidentiary powers under Article R44.3 para. 2 of the Code and has full discretion to request evidence where relevant. The Appellant has not demonstrated how allowing the document into the file would violate CAS procedural rules. It the Respondent's view, FIFA is not only the governing body that has issued the Appealed Decision, but also the legislator of the applicable regulations. As the latter, it is appropriate for it to provide necessary clarification as to the intent behind and purpose of the regulations. The Respondent grounds its position in the award CAS 2018/A/5513, in which the panel put specific questions to FIFA, the responses to which it considered in making its determinations.

67. The issue of the nature of FIFA's participation in CAS proceedings as a party has been the subject of significant consideration. At the heart of the determinations an Appellant must make prior to commencing proceedings before the CAS when appealing a decision of a FIFA disciplinary body is whether or not it should name FIFA as a respondent. This has consequential relevance throughout the proceeding, including the extent to which evidence can be obtained from non-parties: *"The Panel may order further evidentiary measures not only upon request by one of the parties, but also on its own initiative. However, it has no power to order a third party to submit evidentiary measures or to produce a document"* (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials, Edition 2015, comment under Article R44.3, para. 31, p. 335).

68. The present case is a "horizontal" dispute between two indirect members of FIFA over a right to training compensation (*see i.a.* CAS 2016/A/4836). It has, however, "vertical" elements associated with FIFA's own interpretation and application of Article 19.2 and Annex 4 Article 6 RSTP as regards Swiss clubs. The Appellant chose not to name FIFA as a respondent, meaning that its ability to challenge the application of these provisions to Swiss clubs as a whole and outside of the context of the present case is already curtailed by its own initial procedural decision.

69. In deciding upon a procedural request, a panel (or Sole Arbitrator) must consider a number of factors, including the relevance and probative value of the request, as well as overall procedural efficiency. It is *"required to consider the evidence presented by the parties only to the extent that it is relevant to the outcome of the case. The arbitral tribunal does not violate the right to be heard if it makes a selection of the evidence presented to it by the parties"* (BERGER/KELLERHALS, *International Arbitration in Switzerland*, 3nd ed., Berne 2015, para. 400). In light of the extensive requests made by the Respondent, the Sole Arbitrator considered it more apt to ask a specific question to FIFA. The parties had ample opportunity to comment on FIFA's response (both in writing and at the hearing), including the ability to point out how FIFA's answer may be considered to be somewhat self-serving by virtue of its adjudicatory body having rendered the Appealed Decision.

70. As a result, the Sole Arbitrator considers that the FIFA letter is to be included in the case file, its evidentiary weight to be modulated as appropriate by taking into account the arguments raised by the parties.

71. Accordingly, the Appellant's request to exclude the document from the file is denied.

B. The Appellant's requests of 6 and 30 April 2020 for further disclosure from FIFA

72. The Appellant's requests of 6 April 2020, reiterated at the hearing and in writing on 30 April 2020, are substantial requests from a non-party to the proceedings.

73. As considered above in determining the status of the FIFA letter of 17 March 2020, the Sole Arbitrator considers it relevant that the Appellant could have named FIFA as a respondent but opted not to do so. It did this knowing that it sought to arbitrate an issue that has a "vertical" component – the functioning of the training compensation system as applied to Swiss clubs and the latter's status as an EU/EEA member for purposes of the manner in which the RSTP is applied – a question that concerns the interests not only of the Parties but of numerous clubs whose players are transferred to and from Swiss clubs in general. FIFA undoubtedly has an interest in the application to the training compensation system and chose not to intervene in these proceedings for reasons that are its own. However, given the consequences of the Appellant's claim and the likelihood that it would be necessary to seek significant document requests from FIFA to prove its point, it might have opted to name FIFA as a party. The Sole Arbitrator does not find it appropriate to grant such an extensive request, particularly when FIFA's answer to his question (without taking into consideration the subsequent reasoning provided) is unambiguous. He also does not find reason to doubt that this position is less than accurate or misleading to the extent that it would justify the breadth of additional disclosure sought.

74. As a result, the Sole Arbitrator confirms his decision of 20 April 2020 to deny the Appellant's request.

C. The Appellant's additional submission of CAS precedent on 15 July 2020

75. As to the Appellant's additional submission of the case CAS 2013/A/3393 and its comments, it did indeed arrive late in the proceedings, particularly given its public availability. That said, the Sole Arbitrator notes that its nature as precedent is generally helpful to an understanding of the nature of FIFA's letter and its ability to be accepted into the case file (see *supra*). He also notes that the Respondent had and took the opportunity to express itself concerning this additional submission's relevance (or lack thereof). As a result, and given that the body of CAS case law is available in any event to a CAS panel in its decision-making, the Appellant's submission of 15 July 2020, and the Respondent's comments thereto, are admitted to the case file.

IX. MERITS

76. The issues to consider are the following:

a. For purposes of the FIFA RSTP, is Switzerland part of the EU/EEA territory?

b. Does the Annex 4 Article 6 para. 3 RSTP requirement apply to Player's transfer from Empoli to Lugano? If so, were the requirements regarding a contractual offer met? If not, is Empoli entitled to training compensation, and in what amount?

A. For purposes of the FIFA RSTP, is Switzerland part of the EU/EEA territory?

77. The Appellant's case turns on whether or not Article 19.2 RSTP and Article 6 of Annex 4 RSTP must be applied based on a single premise: that Switzerland is either considered to be (or is treated as if it is) an EU/EEA member, or that it is not. In the Appellant's view, it would be inconsistent for these two provisions to be applied such that in the former case ("Exception One") Switzerland and/or Swiss individuals or entities are assimilated with those of EU/EEA members or the individuals or entities based in EU/EEA member nations, and in the latter ("Exception Two"), they are not. This inconsistency leads to unequal treatment if one exception is granted, so another must also be, based on the same territorial premise, to avoid such treatment.

78. The Respondent holds that the two exceptions are distinguishable and serve distinct purposes. Exception One applies to players, and Exception Two applies to clubs. FIFA's application of Exception One is logical when it comes to respecting the principles on free movement of persons which led to the EU/EEA-specific provisions in the RSTP. Its absence would have been incompatible with the single-market rights of individuals, including minors, to move freely within EU/EEA member states. Negotiations with the EU led to the adoption of specific provisions bringing the RSTP in line with European legal requirements. Exception Two is one of these provisions, and while Exception One refers directly to players' rights, Exception Two refers to clubs' rights and obligations. When it comes to determining which can or should be applied in the case of Switzerland, which has an agreement with the EU on the free movement of persons, as this application consists of an exception to an exception, it makes sense that it be applied as narrowly as possible.

79. The Appellant's position is essentially based on consistency. It posits that FIFA clearly applies Exception One to Swiss players, and it should therefore apply Exception Two to Swiss clubs as well. The Respondent highlights that while the FIFA Commentary specifically provides for the application of Article 19.2.b RSTP to Swiss players, there is no corresponding provision concerning Article 6 of Annex 4 RSTP, and that this is deliberate because training compensation applies to clubs and was not meant to apply outside of the EU/EEA, of which Switzerland is clearly not a member. It further grounds its case in a letter from the SFA's legal counsel, which states that to the SFA's knowledge, *"Article 6 of the Annex 4 of the RSTP doesn't apply to transfers involving a Swiss Club"*, and finally to the FIFA letter of 17 March 2020 which, in its view, reflects the legislator's intent.

80. The Sole Arbitrator is mindful of the Appellant's arguments concerning the FIFA letter being interpretable essentially as a justification of the DRC's rationale in the Appealed Decision. For this reason, the Sole Arbitrator, in his assessment, disregards the reasoning provided by FIFA as an explanation following the first paragraph of the letter, the latter being the direct answer to the question FIFA was asked to answer, namely:

"… we wish to inform you that the Dispute Resolution Chamber has never applied the special provisions enshrined in Article 6 Annexe 4 RSTP to training compensation proceedings involving Swiss clubs".

In the Sole Arbitrator's view, the determination can mostly be made by a *prima facie* reading of the salient provisions of the RSTP, their literal interpretation being sufficiently clear that there is no need to resort of further interpretational analysis.

81. There can be little doubt that the principal scope of application of Article 19 RSTP is minor players (it is titled *"Protection of minors"* and deals with conditions applicable to the transfers of minor players). The specific footnote 95 to the Commentary clearly refers to individuals:

"In the agreement reached between the EU and FIFA/UEFA in March 2001, this provision was included so as not to contravene the free movement of employees within the EU/EEA. Moreover, players from a country that has a bilateral agreement with the EU on the free movement of workers (e.g. Switzerland) profit from the same conditions as EU players" (emphasis added).

82. Conversely, Annex 4 RSTP is dedicated to the subject of training compensation, which is a right and responsibility for clubs, as illustrated by Article 3 Annex 4 RSTP:

"On registering a professional for the first time, the club with which the player is registered is responsible for paying training compensation within 30 days of registration to every club with which the player has previously been registered…" (emphasis added).

83. Article 6 of Annex 4 RSTP is an exception to a general rule that applies to clubs (regardless of whether it is triggered by the transfer of a player from one club to another), whereas Article 19.2 lists exceptions to the general rule restricting the transfers of minor players.

84. While the Appellant considers that an interpretation which distinguishes between clubs and players and thereby assimilates Swiss players to EU/EEA players for purposes of Exception One and not Exception Two would lead to unequal treatment, it does not meet its burden of proof in this respect. Whether or not Swiss clubs are considered to be "EU/EEA clubs" for purposes of the RSTP, there will be scenarios in which they stand to gain or lose more or less when it comes to rights to receive or obligations to pay training compensation depending on whether players are being bought or sold, and which clubs they are being bought from or sold to.

85. Moreover, in the Sole Arbitrator's view, in light of the above reasoning it is unnecessary to enter into a further analysis of whether the exceptions to the RSTP are linked to a territorial or personal understanding of the EU/EEA affiliation (or lack thereof) of Swiss clubs or players entering or leaving Switzerland to and from the EU/EEA.

86. From its correspondence issued in the context of this case, it is clear that Lugano considers that it may be owed training compensation when making transfers to EU/EEA clubs as it states that in the cases, for instance, of N., L. and E. to Juventus FC the players were transferred against a transfer fee and *"training compensation was implicitly included in such fee"*.

87. It is therefore difficult to understand that Lugano would not have had an expectation to pay training compensation to Empoli in the present case. While its interpretation of an enlarged scope of Exception Two to the transfer of the Player would certainly be more beneficial to it in this case, Lugano cannot reasonably have expected this to be the applicable interpretation of the relevant RSTP provisions, thereby freeing it of its responsibility to pay training compensation.

B. Does the Annex 4 Article 6 para. 3 RSTP requirement apply to Player's transfer from Empoli to Lugano? If so, were the requirements regarding a contractual offer met? If not, is Empoli entitled to training compensation, and in what amount?

88. As determined above, Article 6 para. 3 of Annex 4 RSTP does not apply to Swiss clubs when it comes to determining payment of training compensation. As a result, it matters not whether Empoli made an offer to the Player or not, or whether an offer of an "addestramento tecnico" is sufficient to constitute an offer that would trigger a right to training compensation if Lugano were assimilated to an EU/EEA club.

89. The result is that training compensation is indeed owed by Lugano to Empoli. Empoli provides a calculation of the amount that is equal to that awarded in the Appealed Decision and that, in the Sole Arbitrator's view is the correct application of the RSTP. Moreover, this amount is not contested by the Appellant, whose case is limited to arguing that no training compensation should be owed at all on the basis of the application of Exception Two to Swiss clubs. This has been found not to be applicable.

90. As a result, the Sole Arbitrator does not see a basis upon which to change the Appealed Decision.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FC Lugano S.A. on 15 November 2019 against the decision issued by the Single Judge of the sub-committee of the FIFA Dispute Resolution Chamber of 19 September 2019 is dismissed.

2. The decision issued by the Single Judge of the sub-committee of the FIFA Dispute Resolution Chamber of 19 September 2019 is confirmed.

3. (…).

4. (…).

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