



Arbitrations CAS 2020/A/7008 Sport Lisboa e Benfica SAD v. Fédération Internationale de Football Association (FIFA) (180009) & CAS 2020/A/7009 Sport Lisboa e Benfica SAD v. FIFA (180010), award of 10 May 2021

Panel: Prof. Massimo Coccia (Italy), President; Mr Bernhard Heusler (Switzerland); Mr Mark Hovell (United Kingdom)

Football

Disciplinary sanction for violation of Art. 18bis RSTP

Reference to FIFA precedents as new evidence

Predictability of Art. 18bis RSTP

Binding nature of a rule and enforcement of such rule by adjudicating bodies

Principles of interpretation of statutes and regulations

Purpose and narrow interpretation of Art. 18bis RSTP

Concept of “influence” under Art. 18bis RSTP

Context and specific targets of the influence

Proportionality of the sanction

- 1. In proceedings against FIFA, making reference to previous FIFA decisions during the hearing does not constitute submission of new evidence in violation of Article R56 of the CAS Code, considering that such precedents (i) constitute FIFA’s own jurisprudence, (ii) are published on FIFA’s own website, with the twofold consequence that they are public and FIFA must be presumed to know them, and (iii) could be autonomously found by the CAS panel in doing its own research of relevant jurisprudence, based on the principle “*iura novit curia*” (or “*iura novit arbiter*”).**
- 2. For a sanction to be imposed, sports disciplinary rules must be sufficiently clear and precise in proscribing the misconduct with which someone is charged; in other words, *nulla poena sine lege clara* (principle of predictability). Article 18bis of the FIFA Regulations on the Status and Transfer of Players (RSTP) is sufficiently clear and precise in prohibiting clubs from entering into contracts which enable other parties to acquire the ability to influence, in employment and transfer-related matters, the independence, policies or teams’ performances of those clubs. The fact that Article 18bis RSTP is broadly drawn does not necessarily lack sufficient legal basis because of that character. Indeed, disciplinary provisions are not vulnerable to the application of the rule *nulla poena sine lege clara* merely because they are broadly drawn. Generality and ambiguity are different concepts, and a sports governing body is certainly entitled to draft a disciplinary provision of a reach capable of embracing the multifarious forms of behaviour considered unacceptable in the sport in question. Thus, the fact that Article 18bis RSTP is capable of catching an unspecified variety of contracts as providing a party with the ability to unlawfully influence clubs’ conduct does not mean that it lacks sufficient legal basis and predictability.**

3. Since its entry into force, Article 18bis RSTP became mandatory on all football clubs that are subject to the FIFA RSTP regime. Consequently, and for obvious reasons of legal certainty, the mandatory nature of Article 18bis RSTP and its enforceability are not left to the knowledge or understanding that its addressees might have of said rule. The consequences of the fact that, apparently, the FIFA disciplinary bodies did not investigate or sanction for several years those behaviors that could fit into the prohibition provided in Article 18bis RSTP must be weighed in determining any possible sanction. However, this circumstance does not in any way affect the binding, enforceable and coercive nature of Article 18bis RSTP.
4. The interpretation of statutes and regulations starts from the literal meaning of the rule, which falls to be interpreted (literal interpretation). There is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review. This may result from the drafting history of the provision, from its purpose, or from the systematic interpretation of the law. Where the text is not entirely clear and there are several possible interpretations, the true scope of the provision will need to be narrowed by taking into account all the pertinent factors, such as its relationship with other legal provisions and its context (systematic interpretation), the goal pursued, especially the protected interest (teleological interpretation), as well as the intent of the legislator as it is reflected, among others, from the drafting history of the piece of legislation in question (historical interpretation). When called upon to interpret a rule, a pragmatic approach is to be adopted and a plurality of methods be followed, without any priority to the various means of interpretation being assigned.
5. Article 18bis RSTP is aimed at (i) protecting the sporting policies and operations of football clubs from being unduly influenced by other parties and (ii) avoiding conflicts of interests that might lead to practices affecting the integrity of the competition. Article 18bis RSTP encompasses a prohibition related to the club's conduct when entering into a contract. It is thus a provision that has the potential to significantly restrict the parties' freedom of contract; this is a fundamental principle under Swiss Law and under any market-economy legislation. Accordingly, such a restrictive provision must be construed narrowly and applied on case-by-case basis bearing in mind that, in case of doubt, the adjudicating body must favour the principle of freedom of contract (*in dubio pro libertate*).
6. The prohibition enshrined in Article 18bis RSTP is not meant to be limited to instances of "direct" influence. Indeed, the wording of this rule does not distinguish between direct and indirect influence and, in accordance with the maxim "*ubi lex non distinguit, nec nos distinguere debemus*" (i.e. "where the law does not distinguish, neither should we distinguish"), there is no need to devise a distinction not provided by the relevant rule. Moreover, if that distinction were to be made, it would be easier to circumvent the

prohibition of Article 18bis RSTP; in particular, its pursued objective would be frustrated by simply drafting the relevant contractual clauses in order to avoid conferring any direct decision-making power to another party. Therefore, both the language and the purpose of Article 18bis RSTP point to a construal under which the influence exercised by another party on a club need not be “direct” to fall within the scope of said rule. The basic element to look at is, rather, the effectiveness and impact of the influence, irrespective of its being direct or indirect. In other words, the influence must be effective and have the potential to actually impact the club’s determinations to the degree required by the rule.

7. The proper interpretation of Article 18bis RSTP cannot merely be limited to the concept and meaning of “influence”. Indeed, every contract, by definition, restricts the freedom of action of the contracting parties and thus, inevitably, influences their behaviour. Therefore, a properly focussed interpretation of Article 18bis RSTP has to take into account the context in which such influence is exercised (“employment and transfer-related matters”) and its specific targets, namely the club’s “independence, its policies or the performance of its teams”. Therefore, Article 18bis RSTP cannot be construed and enforced in an aprioristic manner but, rather, it must be applied following a case-by-case approach. Indeed, in players’ employment and transfer matters, the degree of influence that a given contract, or certain contractual clauses, can exert on the “independence”, “policies” and “teams’ performance” of a contracting club can significantly differ depending on (i) the sporting and financial situation and weight of such club as opposed to the sporting and financial situation and weight of the other contracting party or parties, and (ii) the number and economic value of the players for which the club entered into a contractual relationship. In other words, in applying Article 18bis RSTP, there must be a case-by-case appraisal of the relative standing, prominence and market power of the involved clubs and companies.
8. While it should not easily tamper with the sanctions imposed by an appealed decision, its *de novo* power of review allows a CAS panel to find that the sanctions are disproportionate and to determine more appropriate sanctions. When determining the level of a pecuniary sanction, a decision making body should take into account: (i) the nature of the offence; (ii) the seriousness of the loss or damage caused; (iii) the level of culpability; (iv) the offender’s previous and subsequent conduct in terms of rectifying and/or preventing similar situations; (v) the applicable case law and (vi) other relevant circumstances.

I. INTRODUCTION

1. These appeals are brought by Sport Lisboa e Benfica SAD (“Benfica” or the “Appellant” or the “Club”) against the *Fédération Internationale de Football Association* (“FIFA” or the “Respondent”)

to challenge the FIFA Appeal Committee’s parallel decisions of 12 April 2019 in cases 180009 and 180010, which confirmed the FIFA Disciplinary Committee’s decisions of 1 March 2018 to sanction Benfica in both cases with a fine of CHF 75,000 and a warning, for having breached Article 18bis of the FIFA Regulations on the Status and Transfer of Players (“RSTP”) prohibiting third-party influence on clubs (see the text of this FIFA rule *infra* at para. 46).

II. PARTIES

A. The Appellant

2. The Appellant, Benfica, is a professional Portuguese football club based in Lisbon, Portugal. The Club plays in the top tier Portuguese league, the *Primeira Liga*, and is affiliated to the *Federação Portuguesa de Futebol* (“FPF”).

B. The Respondent

3. The Respondent, FIFA, is the international governing body of football at worldwide level, headquartered in Zurich, Switzerland.

III. FACTUAL BACKGROUND

4. Below is a short summary of the relevant facts and allegations based on the Parties’ written and oral submissions and evidence. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 31 January 2014, the Appellant entered into two Economic Rights Participation Agreements (singularly the “ERPA” and collectively the “ERPAs”) with the company Meriton Capital Limited (“Meriton”). Pursuant to the ERPAs, Meriton purchased from Benfica 100% of the economic rights (“Meriton’s Interest”) related to two players, André Tavares Gomes and Rodrigo Moreno Machado, through payment of an amount to the Club (“Meriton’s Grant Fee”).
6. The ERPAs are structured and worded in an essentially identical way save for, in particular, (a) the name of the player whose economic rights were secured by Meriton and (b) the amount of Meriton’s Grant Fee. The relevant clauses of the ERPAs are set out below.

A. Clauses that are common to both ERPAs

7. The following clauses are identically contained in both ERPAs (boldface parts as in the original contracts):

“1. DEFINITIONS

[...]

“Meriton’s Grant Fee” means the amount to be paid by Meriton to the Club pursuant to clause 3 in consideration for the right to receive Meriton’s Interest in the Economic Rights.

[...]

2. THE EMPLOYMENT CONTRACT

2.1 The Club warrants that the Employment Contract shall be enforceable, legal and binding on the parties to it until 30 June 2019.

2.2 Upon the Loan of the Player to a third club (the “Third Club”), in case there is a breach by the Third Club towards the Player vis-à-vis the relevant employment contract which is not remedied by the Club and the Player terminates its employment contract with the Third Club and also the Employment Contract with Benfica, Benfica shall be bound to pay to Meriton the amount of the Grant Fee already paid (plus interest at a rate per annum of 5%, such interest accruing from day to day) and Meriton shall be under no obligation to make any further payments to Benfica.

2.3 The Club hereby indemnifies Meriton against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Meriton arising out of or in connection with the warranty contained in clause 2.1.

[...]

4. COMMUNICATION OF TRANSFER APPROACHES

4.1. The Club shall notify Meriton of all transfer offers, communicating promptly (at least within 3 (three) calendar days) every detail about each Offer (the “Transfer Offer”) including but not limited to the club’s name, the Transfer Fee proposed and offered, whether the Club accepts or rejects the offer, intermediary fees (if any), terms and conditions of payment of the Transfer Fee and information about whether the Player has accepted the offer (the “Transfer Offer Information”).

[...]

4.3. Meriton shall inform the Club within 3 (three) calendar days of receipt of the Transfer Offer Information whether it accepts or rejects the Transfer Offer.

4.4. If Meriton rejects the Transfer Offer and the Club proceeds with the Transfer, the provisions of clause 5 shall apply.

[...]

5. TRANSFER

5.1. Without prejudice to clause 5.2 below, where the Transfer of the Player has commenced without Meriton's acceptance and the Club has received the Transfer Fee, the Club shall pay to Meriton, within 7 calendar days of the Club receiving the Transfer Fee, one of the following amounts (whichever is higher):

a) Meriton's Interest; or

b) Meriton's Grant Fee, plus interest from the dates of payment of each of its instalments at a rate per annum of 5% (five per cent). Such interest shall accrue from day to day.

[...]

6. LOAN OF THE PLAYER

6.1. Upon the Loan of the Player, the Club shall pay to Meriton 100% of any Loan Fee received by the Club within 7 calendar days of receipt by the Club of such Loan Fee.

6.2. The Club shall, upon reasonable request, provide Meriton with copies of any and all documents, invoices and agreements relating to any Loan of the Player as evidence of the conditions of the Loan and the Loan Fee paid to the Club for the Loan of the Player. Meriton shall not share the Transfer Information with third parties other than its own advisers while such information remains out of the public domain.

7. PLAYER RE-SIGNING

7.1. Where the Player Re-Signs with the Club, Meriton shall have the option to either: (a) demand that the Club pays Meriton an amount equal to its Grant Fee within 7 calendar days of the day the Player Re-Signs with the Club, and the Club shall become entitled to retain 100% (one hundred percent) of the Player's Economic Rights; or

(b) maintain Meriton's Interest.

[...]

11. MERITON'S OBLIGATIONS

In compliance with the mandatory provisions of the Portuguese Football League and the FIFA Regulations on the Status and Transfer of Players Meriton recognises that the Club is an independent entity in so far as the Club's employment and transfer-related matters are concerned and that Meriton shall not seek to exert influence over these matters on the Club's policies or the performance of its teams.

12. TERMINATION

[...]

12.3. In the event that the Player terminates the Employment Contract without just cause, the Club shall pursue a claim for unlawful termination of the Employment Contract without just cause against the Player before Portuguese courts, Portuguese Football Federation or FIFA, as applicable. In the event that Portuguese courts, Portuguese FA or FIFA, as applicable, make an award in respect of the claim in favour of the Club, the Club shall pay to Meriton the correspondent amount. Any and all amounts to be paid by the Club to Meriton arising from any award rendered by the aforementioned sports bodies and organizations in line with the present clause shall become due and payable after three (3) business days have expired from the date on which the Club effectively receives the amounts from the losing party to the proceedings”.

B. Clauses included in the ERPA for the player André Filipe Tavares Gomes

8. The ERPA related to the player André Filipe Tavares Gomes contains, *inter alia*, the following clauses (boldface parts as in the original contract):

“1. DEFINITIONS

*“**Benfica’s Interest**” means 25% (twenty five per cent) of the Transfer Fee in excess of € 15.000.000.00, in case the Transfer Fee is higher than € 15.000.000.00.*

[...]

*“**Meriton’s Interest**” means 100% of the Economic Rights after deduction of Benfica’s Interest, if applicable.*

[...]

3. PAYMENT OF THE GRANT FEE

3.1 In full consideration for the acquisition of Meriton’s Interest pursuant to clause 5 below and in reliance on the warranties contained in this Agreement (and subject only to the Conditions Precedent), Meriton shall pay the Club the following amounts:

- a) 5 million Euros within 15 days from today’s date;*
- b) 5 million Euros on or before 30th June 2014;*
- c) 5 million Euros on or before 31st December 2014”.*

[...]

4. COMMUNICATION OF TRANSFER APPROACHES

[...]

4.5. If Meriton accepts the Transfer Offer, the Club shall make payment to Meriton of 100% of the proposed transfer fee contained in the Transfer Offer (after deduction of Benfica's Interest, if applicable) within 7 (seven) calendar days of having received such a demand for payment from Meriton whether or not the Transfer proceeds (without prejudice, if applicable, of clause 5.2 below). The offer and the value described in this paragraph relate, solely and exclusively, to non-Portuguese clubs. Therefore, the Club shall not be obliged, in any event and under any circumstances, to accept an offer for the Player if said offer comes from a Portuguese Club, regardless of its value and the specific terms and conditions.

[...]

5. TRANSFER

[...]

5.2 Payments of the amounts referred in Clause 5.1 shall be made on a pro-rata temporis basis as the Club effectively receives the Transfer Fee.

5.3. The Club shall, upon reasonable request, provide Meriton with copies of any and all documents, invoices and agreements relating to any Transfer of the Player as evidence of the Transfer Fee paid to the Club for the transfer of the Player. Meriton shall not share the Transfer Information with third parties other than its own advisers while such information remains out of the public domain”.

C. Clauses included in the ERPA for the player Rodrigo Moreno Machado

9. The ERPA related to the player Rodrigo Moreno Machado contains, *inter alia*, the following clauses (boldface parts as in the original contract):

“1. DEFINITIONS

[...]

“Meriton's Interest” means 100% of the Economic Rights.

[...]

3. PAYMENT OF THE GRANT FEE

3.1 In full consideration for the acquisition of Meriton's Interest pursuant to clause 5 below and in reliance on the warranties contained in this Agreement, Meriton shall pay the Club the following amounts:

- a) 10 million Euros within 15 days from today's date;*

b) 10 million Euros on or before 30th June 2014;

c) 10 million Euros on or before 31st December 2014;

d) 5 million Euros, if applicable, on the last day of the season in which the Player scores his 30th goal in official matches (for which purpose only the goals scored within the 2014/2015 and/or the 2015/2016 seasons shall be taken into account);

e) 5 million Euros, if applicable, on the last day of the season in which the Player is for the first time ranked in the top three players of the FIFA Player of Year award within the 2014/2015 and/or 2015/2016 seasons”.

4. COMMUNICATION OF TRANSFER APPROACHES

[...]

4.5. *If Meriton accepts the Transfer Offer, the Club shall make payment to Meriton of 100% of the proposed transfer fee contained in the Transfer Offer within 7 (seven) calendar days of having received such a demand for payment from Meriton (without prejudice, if applicable, of clauses 5.2 and 5.3 below) whether or not the Transfer proceeds. The offer and the value described in this paragraph relate, solely and exclusively, to non-Portuguese clubs. Therefore, the Club shall not be obliged, in any event and under any circumstances, to accept an offer for the Player if said offer comes from a Portuguese Club, regardless of its value and the specific terms and conditions”.*

5. TRANSFER

[...]

5.3 *Payment of the amounts referred in Clause 5.1 shall be made on a pro-rata temporis basis as the Club effectively receives the Transfer Fee.*

5.4. *The Club shall, upon reasonable request, provide Meriton with copies of any and all documents, invoices and agreements relating to any Transfer of the Player as evidence of the Transfer Fee paid to the Club for the transfer of the Player. Meriton shall not share the Transfer Information with third parties other than its own advisers while such information remains out of the public domain”.*

10. In June 2015, Benfica accepted an offer made by the Spanish club Valencia FC and transferred both Players to the latter for, respectively, EUR 15 million (player André Filipe Tavares Gomes) and EUR 30 million (player Rodrigo Moreno Machado).

IV. FIFA DISCIPLINARY PROCEEDINGS

11. On 23 January 2018, FIFA initiated parallel disciplinary proceedings against the Appellant for a possible violation of Article 18bis RSTP (whose text is quoted *infra* at para. 46) with reference to both ERPA.
12. On 1 March 2018, the FIFA Disciplinary Committee issued two parallel decisions – with grounds subsequently notified on 13 February 2019 - whose operative parts read as follows:

- (a) FIFA Disciplinary Committee's decision in case 180009, related to the player André Filipe Tavares Gomes:

- “1. *The club SL Benfica is declared liable for the violation of art. 18bis of the Regulations on the Status and Transfer of Players (RSTP) for entering into a contract which enabled a third-party to influence to acquire the ability to influence the club's independence in employment and transfer-related matters in relation to the player André Filipe Tavares Gomes.*
2. *The club SL Benfica is ordered to pay a fine to the amount of CHF 75,000. This fine is to be paid within 30 days of receipt of the ruling. [...].*
3. *In application of art. 10 a) and art. 13 of the FIFA Disciplinary Code, the club SL Benfica is warned on its future conduct. The club SL Benfica is ordered to undertake all appropriate measures in order to guarantee that the FIFA regulations, in particular the RSTP and its provisions related to third-party influence, are strictly complied with. Should such infringements occur again in the future, the FIFA Disciplinary Committee may impose harsher sanctions on the club SL Benfica.*
4. *The costs and expenses of these proceedings amounting to CHF 3,000 shall be borne by the club SL Benfica and be paid according to the modalities stipulated under 2. above”.*

- (b) FIFA Disciplinary Committee's decision in case 180010, related to the player Rodrigo Moreno Machado:

- “1. *The club SL Benfica is declared liable for the violation of art. 18bis of the Regulations on the Status and Transfer of Players (RSTP) for entering into a contract which enabled a third-party to influence to acquire the ability to influence the club's independence in employment and transfer-related matters in relation to the player Rodrigo Moreno Machado.*
2. *The club SL Benfica is ordered to pay a fine to the amount of CHF 75,000. This fine is to be paid within 30 days of receipt of the ruling. [...].*
3. *In application of art. 10 a) and art. 13 of the FIFA Disciplinary Code, the club SL Benfica is warned on its future conduct. The club SL Benfica is ordered to undertake all appropriate measures in order to guarantee that the FIFA regulations, in particular the RSTP and its provisions related to third-party influence, are strictly complied with. Should such infringements occur again in the future, the FIFA Disciplinary Committee may impose harsher sanctions on the club SL Benfica.*

4. *The costs and expenses of these proceedings amounting to CHF 3,000 shall be borne by the club SL Benfica and be paid according to the modalities stipulated under 2. above”.*

13. In both decisions, the FIFA Disciplinary Committee made the following considerations *inter alia*:

- (i) The rationale of Article 18bis RSTP is to avoid that clubs be influenced in employment and transfer-related matters by third parties, thereby preserving the transparency of international transfers and, relatedly, the transparency and integrity of football itself. Furthermore, it is aimed at protecting clubs’ independence from third parties that may have interests other than the pursuit of the clubs’ sporting activities and may also give rise to conflicts of interest that, in turn, could contribute to match-fixing or match manipulation practices. Consequently, any possibility that a third party acquire such an ability shall be absolutely forbidden;
- (ii) With respect to the clauses of both ERPAs:
 - Under Article 2.1 of the ERPAs, Benfica guarantees that the employment contracts in force with the Players be enforceable and binding until 30 June 2019. The employment contract between a club and a player, its duration and the obligations arising therefrom should only be incumbent on its parties. Conversely, this clause allows a third party, Meriton, to influence Benfica’s possibility to terminate the contract earlier than the date provided in the ERPAs.
 - Under Articles 2.2 and 2.3 of the ERPAs, should the relevant Player be loaned to a third club, in case the third club breaches the employment contract thereby allowing the Player to terminate the employment contract with the third club and the employment contract with Benfica, Benfica is obliged to remedy such breach in order not to pay an amount to Meriton. Consequently, Benfica is undoubtedly influenced by Meriton, since it cannot freely decide which strategy to follow in case it faces the situation envisaged under Article 2.2 of the ERPAs.
 - Under Article 4.1 of the ERPAs, Benfica has to inform Meriton of all the details concerning the transfer offers it receives for the Players. A fully independent club would not be obliged to share any transfer offer information with any third party. Moreover, this could create a situation of conflict of interest if Meriton had similar rights under an agreement with the club interested in obtaining the transfer of the Players or either of them.
 - Under Articles 4.3, 4.4, 4.5 and 5.1 of the ERPAs, Meriton has a direct and major influence on Benfica, as to the decision of the latter to accept or reject a transfer offer. Indeed, in case Meriton does not agree with the choice made by Benfica (for instance, in case Benfica accepts a transfer offer that Meriton would have rejected), Benfica shall pay a considerable amount to Meriton. Therefore, Benfica

is implicitly obliged to act in accordance with Meriton's decision, since the agreement is designed in such a way that a decision against Meriton's opinion would be prejudicial to Benfica, regardless of the latter's sporting interests.

- Under Article 6.1 of the ERPAs, in case either of the Players is loaned to a third club, Benfica is bound to pay to Meriton 100% of the loan fee each time; therefore, Benfica is not in a position to freely negotiate the terms of the loan.
 - Article 7 of the ERPAs allows Meriton to influence Benfica's determinations as to the possible extension of the Players' contracts since, in such case, Meriton is entitled to decide whether to (a) demand payment of Meriton's Grant Fee, thereby allowing Benfica to retain 100% of the Players' economic rights or (b) maintain Meriton's Interest.
 - Article 11 of the ERPAs provides that Meriton shall have no influence on Benfica as to the Club's independence, policies or performance of its teams. However, such clause is irrelevant and does not prevail over the other provisions of the ERPAs which enable Meriton to have an undue influence over Benfica.
 - Pursuant to Article 12 of the ERPAs, in case either or both of the Players terminate their employment contract without just cause, Benfica is not free to decide whether or not to pursue a claim for unlawful termination, but rather it "shall" lodge a claim against the Players.
- (iii) Benfica is to be sanctioned with a fine, amounting to CHF 75,000 considering, *inter alia*, (a) that it was already sanctioned in two occasions in the past for violating Article 18bis RSTP, (b) that it never admitted to its violation and/or showed any regret and (c) the amounts received by Meriton under the ERPAs.
14. On 17 February 2019, Benfica appealed before the FIFA Appeal Committee both decisions of the FIFA Disciplinary Committee.
15. On 12 April 2019, the FIFA Appeal Committee issued two parallel decisions, the grounds of which were notified on 7 April 2020.
16. The FIFA Appeal Committee's decisions confirmed the findings of the FIFA Disciplinary Committee in their entirety, ruling as follows:
- (a) FIFA Appeal Committee's decision in case 180009, related to the player André Filipe Tavares Gomes:
- "1. *The appeal lodged by the club SL Benfica is rejected and the decision of the FIFA Disciplinary Committee rendered on 1 March 2018 is confirmed in its entirety.*

2. *The costs and expenses of the proceedings amounting to CHF 3,000 are to be borne by the club SL Benfica. This amount is set off against the appeal fee of CHF 3,000 already paid by the club SL Benfica*".
- (b) FIFA Appeal Committee's decision in case 180010, related to the player Rodrigo Moreno Machado:
1. *The appeal lodged by the club SL Benfica is rejected and the decision of the FIFA Disciplinary Committee rendered on 1 March 2018 is confirmed in its entirety.*
 2. *The costs and expenses of the proceedings amounting to CHF 3,000 are to be borne by the club SL Benfica. This amount is set off against the appeal fee of CHF 3,000 already paid by the club SL Benfica*".
17. The FIFA Appeal Committee fully concurred with the FIFA Disciplinary Committee's analysis of the cases and, *inter alia*, set out the following considerations:
- (i) With respect to the prohibition foreseen in Article 18bis RSTP:
 - Article 18bis RSTP prohibits any club from entering into an agreement with third parties "*which enables*" the latter to have the "*ability to influence*" the club's sporting activity. Benfica argued that Article 18bis RSTP should be interpreted narrowly and thus only cover cases of "direct influence". However, a correct interpretation of such provision shall consider its true meaning and thus "*the purpose sought, the interest protected as well as the intent of the legislator*". In this respect, considering the wording of the article, the use of the verb "enable" entails that the club is liable even if it passively allows a third party to have such influence. Furthermore, in a previous case (TAS 2017/A/5463) a panel of the Court of Arbitration for Sport (the "CAS") ruled that the prohibition enshrined in Article 18bis RSTP applies in case a third party is granted a "*real ability*" to impact the behaviour of a club. As a consequence, the distinction between "direct" and "indirect" influence is irrelevant. Furthermore, the infringement occurs *per se* every time a clause in violation of Article 18bis RSTP is included in a contract, regardless of its actual exercise.
 - Benfica's argument that many clauses of the ERPAs were standard TPO clauses while TPO agreements were still not sanctioned when the ERPAs were signed (31 January 2014) is misplaced. In fact, even though Article 18ter RSTP prohibiting TPO agreements only entered into force in April 2015, the relevant provision in Benfica's situation is Article 18bis RSTP, which has been in force and mandatorily applicable since 2008, thus well before the ERPAs were signed.

(ii) With respect to the contractual clauses of the ERPAs:

- *Clauses related to the Players' employment contracts.*
 - Article 2.1 of the ERPAs forces Benfica to guarantee that the Players' employment contracts remain in force until a certain date, subject to, and thus influenced by, the obligation to pay compensation to Meriton pursuant to Article 2.3 of the ERPAs in case such contracts are terminated beforehand;
 - Pursuant to Article 2.2 of the ERPAs, Benfica shall pay to Meriton the amount of Meriton's Grant Fee plus interest in case either or both of the Players, while on loan to a third club, terminated the employment contract with the third club for just cause and thus terminate the contract with Benfica; accordingly, Benfica is bound to prevent the Players from being in a position to terminate the contract with just cause;
 - Article 7.1 of the ERPAs provides Meriton with the power to decide whether to maintain its interest in the Players or receive Meriton's Grant Fee from Benfica, in case either or both of the Players' employment contracts are extended. Therefore, Benfica inevitably bears the economic consequences of Meriton's decision and it is influenced when determining whether or not to extend the Players' employment contracts;
 - Under Article 12.3 of the ERPAs, Benfica is forced to (a) file a claim against either of both of the Players in case they terminate the employment contracts without just cause and (b) transfer any amount awarded to Benfica to Meriton.
- *Clauses related to Benfica's disclosure obligation towards Meriton.*
 - Under the ERPAs, Benfica has the obligation to disclose to Meriton information concerning (a) all the transfer and loan offers it receives with all details related thereto, and (b) all documents concerning the Players' transfers or loans;
 - Although the mere act of sharing information with a third party is not directly encompassed in Article 18bis RSTP, such obligation shall be read in conjunction with other clauses of the ERPAs (see subsection □ below) concerning Benfica's determinations as to the Players' future transfers or loans. Notably, Article 4.1 of the ERPAs enables Meriton to be informed of any offer received by third clubs and of Benfica's acceptance or rejection and, ultimately, to approve or disapprove such decisions, with financial consequences involved, while Articles 5.3 of the ERPA related to the player André Filipe Tavares Gomes, 5.4 of the ERPA related to the player Rodrigo Moreno Machado, and 6.2 of both ERPAs ensure that Meriton is provided with confidential information whereby it can control whether

the transfer or loan was properly executed and whether the amounts paid to Benfica are correct.

- A truly independent club would not be obliged to disclose any information concerning its transfer offers and/or related documents to any third party.

➤ *Clauses concerning potential transfers or loans of the Players.*

- Under Article 4.3 of the ERPAs, Meriton has the power to either accept or reject a transfer offer that Benfica received from a third club; depending on such decision, Articles 4.4 or 4.5 of the ERPAs apply;
- Articles 4.4 and 5.1 of the ERPAs are applicable if, notwithstanding Meriton's rejection, Benfica accepts the transfer offer and transfers either or both of the Players; in such case, Benfica would have to pay to Meriton the higher amount between Meriton's Interest and Meriton's Grant Fee;
- Article 4.5 of the ERPAs is applicable if Meriton accepts a transfer offer; in such case, Benfica is obliged to pay to Meriton the transfer fee contained in the transfer offer, regardless of whether or not the transfer actually takes place;
- Article 6.1 of the ERPAs stipulates that, in case either or both of the Players are loaned to a third club, Meriton is entitled to 100% of the loan fee;
- In light of the above clauses, although it is true that Meriton *per se* does not decide and/or instruct Benfica as to its transfer choices, it cannot be denied that the latter is influenced by the financial consequences that it would bear, under the ERPAs, depending on Meriton's decision.

(iii) With respect to the proportionality of the sanction:

- According to the jurisprudence of CAS, a decision-making body, when determining the level of the sanction, should take into account (a) the nature of the offence, (b) the seriousness of the loss or damage caused, (c) the level of culpability, (d) the offender's previous and subsequent conduct as to rectifying and/or preventing similar situations, (f) the applicable law and (g) other relevant circumstances;
- Article 18bis RSTP is aimed at safeguarding the clubs' independence in transfer-related matters with a view to protecting the integrity of the game; therefore, any possible influence from third party shall be absolutely forbidden and clubs are responsible to ensure their independence in this respect;

- In the case at hand, Benfica entered into the ERPAs on 31 January 2014 and, only on 30 March 2015, it was notified with the grounds of two disciplinary decisions ruling that it had infringed Article 18bis RSTP with reference to previous contracts; nonetheless, it is worth noting that the disciplinary proceedings were actually initiated months before that date (*i.e.* on 27 November 2013) and thus Benfica was well aware of them when signing the ERPAs and should have been more cautious when entering into another contract with a third party.

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 27 April 2020, in accordance with Articles R47 and R48 of the 2019 edition of the Code of Sport-related Arbitration (the “CAS Code”), the Appellant filed two Statements of Appeal against the above-mentioned decisions of the FIFA Appeal Committee on cases 180009 and 180010, adopted on 12 April 2019 and notified with grounds on 7 April 2020 (the “Appealed Decisions”).
19. Accordingly, the CAS Court Office opened the parallel proceedings CAS 2020/A/7008 (related to the sanction imposed by FIFA on Benfica in case 180009 for the ERPA concerning the player André Filipe Tavares Gomes) and CAS 2020/A/7009 (related to the sanction imposed by FIFA on Benfica in case 180010 for the ERPA concerning the player Rodrigo Moreno Machado).
20. On 4 May 2020, the CAS Court Office informed the parties that, in view of the parties’ agreement, the procedures CAS 2020/A/7008 and CAS 2020/A/7009 would be submitted to the same Panel pursuant to Article R50(2) of the CAS Code.
21. On 21 May 2020, in accordance with Article R51 of the CAS Code, the Appellant filed its Appeal Briefs.
22. On 11 June 2020, the CAS Court Office notified the parties that, on behalf of the President of the CAS Appeals Arbitration Division and pursuant to Article R54 of the CAS Code, the Panel appointed to decide the matter would be constituted by Prof. Massimo Coccia as chairman, Dr Bernard Heusler designated by the Appellant and Mr Mark A. Hovell designated by the Respondent.
23. On 29 June 2020, the Respondent submitted its Answer in each case.
24. On 24 July 2020, a hearing was held by video-conference.
25. In addition to the Panel and Mr Giovanni Maria Fares (CAS Counsel), the following people were in attendance at the hearing:
 - for the Appellant: Mr Martin Francisco Páez Córdova, Mr Miguel Lopes Lourenço, and Ms Celia Falé (counsels for Benfica);

- for the Respondent: Ms Marta Ruiz-Ayúcar (Senior Legal Counsel), Ms Prisca Mutesi (TMS Compliance Legal Counsel) and Mr Miguel Liétard Fernández-Palacios (Director of Litigation).
26. At the outset of the hearing, the Parties made no preliminary objection, and, at the end of the hearing, they confirmed their satisfaction with the manner in which the Panel conducted the proceedings and raised no procedural objections thereto.
27. During the hearing, Benfica made reference to some FIFA decisions in order to support its arguments. FIFA objected and contended that those decisions could not be admitted into the file, since such references were not part of the materials mentioned in or annexed to the Appellant's Appeal Briefs. The Panel rejected the objection and communicated that the reasons for the Panel's decision would be provided in the final award (see *infra* at para. VIII.A).

VI. SUBMISSIONS OF THE PARTIES

A. The Appellant Sport Lisboa e Benfica SAD

28. In its Appeal Brief in CAS 2020/A/7008, the Appellant requested the following relief:

“(a) To uphold the present Appeal in its entirety;

(b) To annul and set aside the Decision passed on 12 April 2019 by the FIFA Appeals Committee, and to replace it with a new decision which determines that no violation of art. 18bis was committed by the Appellant;

(c) Subsidiarily, to reduce the fine set in the Decision in a way that is proportional to the infringement in question;

(d) To order FIFA to reimburse the Appellant for the payment of the CAS Court Office fee in the amount of CHF 1.000 (one thousand Swiss francs) and,

(e) To order FIFA to pay the Appellant a contribution towards its legal and other costs within this arbitration, in an amount of CHF 5.000 (five thousand Swiss francs)”.

29. In its Appeal Brief in CAS 2020/A/7009, the Appellant requested the following relief:

“(a) To uphold the present Appeal in its entirety;

(b) To annul and set aside the Decision passed on 12 April 2019 by the FIFA Appeals Committee, and to replace it with a new decision which determines that no violation of art. 18bis was committed by the Appellant;

(c) Subsidiarily, to reduce the fine set in the Decision in a way that is proportional to the infringement in question;

(d) To order FIFA to reimburse the Appellant for the payment of the CAS Court Office fee in the amount of CHF 1.000 (one thousand Swiss francs) and,

(e) To order FIFA to pay the Appellant a contribution towards its legal and other costs within this arbitration, in an amount of CHF 5.000 (five thousand Swiss francs)”.

30. The Appellant’s submissions, in essence, may be summarized as follows:

(i) Article 18bis RSTP is unclear.

(a) Article 18bis RSTP was introduced in 2008 as a response to the issues related to the “Tevez Case”, in which an agreement between an investment fund and a club allowed the former to decide on Tevez’s transfer regardless of the club’s choice. Accordingly, the article seems to sanction clubs that enter into agreements enabling a third party to have the “ability to influence”; however, the article has a very unclear application, especially with reference to the period in which, after the introduction of the article, Third-Party Ownership (“TPO”) agreements were still allowed (*i.e.* from 2008 to 2015).

(b) FIFA imposed no sanctions for violations of Article 18bis RSTP in the period between 2008 and 2015, thereby not allowing clubs to have information as to the conducts that would fall within the prohibition of such article. On the contrary, the only information available to clubs was the silence from FIFA and, as shown in a previous CAS case (TAS 2017/A/5463), this is an element that shall be taken into account when determining a possible sanction.

(c) As shown by FIFA case law, many clubs have recently faced disciplinary proceedings for violation of Article 18bis RSTP and most of them argued that the interpretation has strikingly changed, since FIFA was suddenly sanctioning clauses that had always been allowed and normally found in transfer agreements. Furthermore, those clubs consistently maintained that no breach was committed because the other party did not have the ability to decide for itself on such matters.

(d) There are several clauses that are widespread in the football industry and, notwithstanding their potential “ability to influence”, are not regarded as against Article 18bis RSTP, such as for example:

- *Sell-on clause*: since it provides a club with the right to participate in the revenues from future transfers of a player, it could be regarded as a possible influence on the other club, which may decide not to accept some transfer proposals due to the impact of the amount due as sell-on on the whole operation;

- *Buy-out clause*: since it allows a player to end his or her employment contract with a club through payment of a predetermined fee and, most of the times, such fee

- is paid by the player's future club, it provides third party clubs the potential right to influence a club's transfer policy without such club's approval;
- *Loan with option to buy*: in case the loanee exercises the option, the loaner is forced to transfer the player on a permanent basis for a price that is set at the time of the loan, thus beforehand and, possibly, with a value that may no longer reflect the player's actual value on the market; therefore, a loaner which would reject a transfer offer at such a low price is instead forced to accept it;
 - *Right of first refusal*: a previous club has the right to match the offer made by a third club and obtain the transfer of the player, with the consequence that the new club is influenced by this clause when deciding whether to further transfer the player and to which club;
 - *Reacquisition right*: the previous club has the option to obtain that the player be transferred back to it, for a value determined at the time of the transfer, with the consequence that the new club is forced to transfer the player back to the previous club for an amount that may not represent the player's current market value.
- (e) The rule and its application are not straightforward as FIFA seems to suggest. Notably, it is unclear why the aforementioned clauses, that are widespread in the football industry, are not subject to any sanction under Article 18bis RSTP while others are; accordingly, clubs are not able to discern which clauses are prohibited and which are not.
- (f) When Benfica entered into the ERPAs, TPO agreements were still allowed; in this respect, a very comprehensive report released by KPMG in August 2013 and named "Project TPO" (the "KPMG Report") gathers *inter alia* the key clauses used in TPO agreements at that time, clauses that are equal to those contained in the ERPAs and sanctioned by FIFA; therefore, one could argue that FIFA sanctioning a TPO agreement with typical TPO clauses equals to FIFA seeking to apply the TPO prohibition enshrined in Article 18ter RSTP retroactively;
- (g) The application and interpretation of Article 18bis RSTP in the Appealed Decisions violate some fundamental legal principles applicable to the interpretation of disciplinary regulations. In particular: (i) ambiguous rules shall be construed against the legislator pursuant to the *contra proferentem* principle; (ii) the principle of legality requires a clear connection between the prohibited conduct and the sanction, as well as the predictability of the latter, and it entails that rules shall be construed and interpreted narrowly; (iii) for years, FIFA has allowed clauses as the ones contained in the ERPAs without imposing any sanctions under Article 18bis RSTP on them and, accordingly, it is now estopped from applying such article differently ("estoppel by representation"); moreover, (iv) FIFA may not apply Article 18bis RSTP in a way that

renders TPO agreements impossible because it would be *de facto* a retrospective prohibition of TPOs.

(ii) The ERPAs do not violate Article 18bis RSTP and FIFA is seeking to sanction Benfica for entering into a standard TPO agreement at a time when such agreement was still allowed.

(a) *Clauses relating to the Players' employment contracts.*

- Article 2.1 of the ERPAs is a mere recognition of the principle of contractual stability, whereby Benfica grants that it will abide by the employment contract with the Players. This is a relevant guarantee in a TPO contract assigning a player's economic rights, since such assignment depends on the existence of an employment contract between the assigning club and the player.
- Articles 2.2, 2.3 and 12.3 of the ERPAs are aimed at providing Meriton with the right to be indemnified in case Benfica breaches or allows the termination of the employment contract with the Players due to a breach of contract. Such clauses have effects that are equal to common TPO clauses indicated in the KPMG Report, whereby the investor is entitled to an amount as compensation in case either the player or the club breaches the employment contract. Such clauses are necessary guarantees that a club needs to provide in return for a third party's investment. No TPO agreement would be signed without some minimum guarantees for the investor to secure its investment; notably, for a TPO agreement to be possible, there should be some obligation on the club related to the termination of the player's employment contract as, otherwise, the investor would lose its whole investment due to the mere will of the club. That said, Benfica's freedom to terminate the Players' employment contracts was not impaired; rather, it merely would have had to bear the consequences of such freedom on Meriton, which would have lost its investment.
- Article 7.1 of the ERPAs, which deals with the scenario in which the Players renew their employment relationships with Benfica, is once again among the most common TPO clauses, listed in the KPMG Report. Indeed, TPO agreements often regulated the case in which the player was not transferred to a third club within a certain date, event that would trigger the club's obligation to pay an amount to the investor, equal to the original investment. The only difference in the case at hand is that Meriton can decide whether to (a) receive the payment of Meriton's Grant Fee or maintain Meriton's Interest, thereby not leading to any amount being paid to it by Benfica.

(b) *Clauses relating to Benfica's obligation to provide information to Meriton.*

- Benfica's obligation, under Article 4.1 of the ERPAs, to inform Meriton of every transfer offer it receives is reasonable since (a) Meriton deserves to know whether

third clubs may affect its investment and, also, (b) it is the only way to trigger the obligations set forth under Articles 4.4, 4.5 and 5.1 of the ERPAs.

- In any case, also with reference to Articles 5.3 (or 5.4) and 6.2 of the ERPAs, the obligation to disclose some information cannot *per se* entail the receiving party's ability to influence the disclosing one. Indeed, there are several hypotheses in which clubs are obliged to provide information in transfer-related matters without any restraint on their independence. For instance, as also stated in CAS case law, clubs bound by payment obligations under a sell-on clause are obliged to disclose to the previous club the terms of a future transfer. FIFA has never considered such obligation to be in breach of Article 18bis RSTP.
- FIFA's argument that providing such information may cause Meriton to be in conflict of interest (in case it has similar agreements with other clubs) is devoid of merits and outside the scope of Article 18bis RSTP, considering that, a possible conflict of interest related to third clubs does not entail an ability to influence.

(c) *Clauses relating to a potential transfer or loan of the Players.*

- Under Articles 4.3, 4.4, 4.5 and 5.1 of the ERPAs, Benfica has payment obligations towards Meriton, which differ based on the relevant scenario: if Meriton rejects a transfer offer that was accepted by Benfica, Meriton is entitled to the higher amount between Meriton's Interest and Meriton's Grant Fee; if Meriton accepts a transfer offer, it is entitled to the transfer fee provided therein. Meriton's decision does not influence Benfica's freedom to decide upon the transfer offer, but rather it is aimed at triggering the payment obligation towards Meriton. Moreover, such clause is equal to some of the usual TPO clauses listed in the KPMG Report, providing for a payment in favour of the investor in case of definitive transfer of the player, to be considered as a return on the investment;
- Article 6.1 of the ERPAs, providing for payment to Meriton of any loan fee received for the temporary transfer of the Players, is another standard TPO clause, whereby the investor is entitled to receive a percentage of the transfer price from the club;
- All the above clauses are standard TPO clauses and are necessary for such kind of agreement to be viable, since they provide a necessary degree of security to the investor.

(iii) The sanction is disproportionate.

- (a) The FIFA Disciplinary Committee wrongfully took into account that Benfica had been sanctioned twice before entering into the ERPAs. However, the grounds of the relevant disciplinary decisions were notified to Benfica only after it signed the ERPAs

and thus such circumstance cannot be relied upon to determine the amount of the fine.

- (b) in a recent decision of the FIFA Disciplinary Committee, FC Porto was sanctioned for two different breaches of Article 18bis RSTP and the relevant fine amounted to CHF 50,000.
- (c) the amount of Meriton's Grant Fee in the two ERPAs is completely different and, actually, the amount of Meriton's investment for the Player Machado (case 180010) doubles the amount invested in the Player Gomes (case 180009); however, in both cases the FIFA Disciplinary Committee issued a CHF 75,000 fine; accordingly, at least the second sanction should be reduced.

B. The Respondent FIFA

31. In its motions for relief in both CAS 2020/A/7008 and CAS 2020/A/7009, the Respondent requests the CAS to issue an award:

- “(a) rejecting the reliefs sought by the Appellant;*
- (b) confirming the Appealed Decision;*
- (c) ordering the Appellant to bear the full costs of these arbitration proceedings; and*
- (d) ordering the Appellant to make a contribution to FIFA's legal costs”.*

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

- (i) Article 18bis RSTP is clear and enforceable.
 - (a) Pursuant to Swiss Law and as shown by CAS in its constant jurisprudence, the interpretation of a provision shall be based on its true meaning, which can only be understood through the analysis of its purpose, the protected interest and the intent of the legislator. Moreover, Article 18bis RSTP became mandatory on clubs in 2008 and legal certainty requires its enforcement regardless of the addressees' understanding of its content. That being said, the provision is clear and intentionally broad, to address all kinds of external influences on a club's ability to determine its policies as to the performance of its teams, transfers and employment relationships with the players.
 - (b) The plain and literal meaning of “influence” (“power or capacity of causing an effect in indirect or intangible ways”) clearly allows to determine the behaviour prohibited by Article 18bis RSTP. In any case, Benfica's self-serving interpretation is meritless since Article 18bis RSTP does not in any way differentiate between “direct” and “indirect” interest; rather, as confirmed by the CAS in the award TAS 2017/A/5463,

such provision prevents clubs from entering into agreements enabling a third party to have the “real ability” to influence their conduct, regardless of whether such influence is direct or indirect. Moreover, there is no need for such influence to be actually exercised, since the mere presence of clauses providing for the ability to influence is *per se* an infringement of Article 18bis RSTP.

- (c) Benfica’s argument that FIFA remained silent as to the application of Article 18bis RSTP from 2008 to 2015 is groundless. Indeed, in 2013 – thus before the ERPAs were signed – FIFA had already opened two disciplinary investigations against Benfica for violating Article 18bis RSTP; therefore, despite the fact that the relevant decisions were notified to Benfica only after the ERPAs were entered into, the Club was well aware of the existence of such proceedings and thus could and should have been more cautious. Moreover, FIFA’s absence of investigations on this matter in the first years is merely due to the fact that, until that time, clubs had no obligation to disclose that kind of agreements and thus usually the latter remained concealed. It is also worth considering that the TMS system was created and became mandatory only in 2010 and clubs had the obligation to disclose the existence of third-party influence only from December 2012, while only in 2015 did it become mandatory to upload all TPO agreements on TMS. Therefore, it was very difficult for FIFA to obtain sufficient information to open investigations on such matters beforehand. Lastly, it is inaccurate to state that FIFA allowed some clauses to be widely used in TPO agreements since, actually, FIFA was not aware of any clauses due to the fact that clubs had no obligation to disclose such agreements. Moreover, and in any case, despite the lack of investigations on the matter, Article 18bis FIFA RSTP was in force many years before the ERPAs were signed, and thus mandatorily applicable.
- (d) In 2015, the RSTP was amended (i) to introduce the prohibition to enter into TPO agreements (Article 18ter RSTP), and (ii) to widen the scope of Article 18bis RSTP, to prevent not only clubs entering into agreements whereby they would be influenced by a third party but also, “*vice versa*”, clubs intending to influence other clubs. In this respect, the introduction of 18ter RSTP has no bearing on the aspects covered by Article 18bis RSTP, which had already been in place since 2008. Benfica’s contentions are thus misplaced and aimed at diverting the discussions on a different provision (Article 18ter RSTP) which does not apply to the case at hand. Moreover, Benfica is wrong when it states that, without the clauses mentioned in the Appealed Decision, the ERPAs would not have been viable and the risk would have been excessive for the investor. Indeed, the Club had other ways to secure the investment without contravening Article 18bis RSTP (e.g. through reference to broadcasting rights, sponsorship rights, etc.). As to the KPMG Report, it was created by an entity that has no links to FIFA and did not consult with FIFA when drafting it; therefore, it is simply unreasonable to rely on it to interpret a FIFA provision.
- (e) It is incorrect to state that there are widely used clauses that would *per se* fall within the scope of Article 18bis RSTP but are not being sanctioned since they are widespread.

Conversely, each of such clauses is legitimate only as long as it is not structured in a way that enables the other party to have an undue influence on a club's decision-making process; notably:

- *Sell-on clause*: Benfica did not mention that, usually, clubs agreeing on a sell-on fee merely determine the percentage of the future transfer fee that will be due to the old club. Such clause is thus perfectly legitimate, as long as (i) it does not also provide the old club with the right to influence the decisions of the other club as to the future transfer of the player and/or (ii) the percentage provided therein is applicable regardless of the amount of the transfer fee.
- *Buy-out clause*: Article 17 RSTP allows the parties to an employment contract to stipulate an amount to be paid to the other party as compensation in case of breach of contract. In this respect, both parties accept in advance that, if the player receives an offer from a third club and intends to terminate the employment contract, it will have to pay a predetermined amount. The possibility that such amount be paid by the new club does not entail that the latter has an influence on the old club's decisions on the matter, but rather that it agrees with the amount that had been previously and independently determined by the old club and the player in their contract.
- *Right of first refusal*: such right applies only after the selling club has already agreed to the offer of a third club and, therefore, only after it has already made a transfer-related decision in this respect and cannot be affected by the club entitled to match the offer.
- *Reacquisition right*: the parties determine in advance that the old club will be entitled to re-engage the player for a predetermined amount. Therefore, the old club's decision-making process is determined way before its decision as to whether or not to take the player back. Moreover, such circumstance will not influence the new club's transfer decisions since, when receiving transfer offers from third clubs, it will already be aware of the existence of the reacquisition right.
- *Loan with option to buy*: the loaner and the loanee agree in advance that the loanee will have the right to obtain the permanent transfer of the player. There is no influence on the decision-making process of the loaner, since it had already agreed upon some predetermined conditions under which the player would be permanently transferred beforehand.

(ii) The ERPAs constitute a violation of Article 18bis RSTP.

(a) *Clauses relating to the Players' employment contracts.*

- Article 2.1 of the ERPAs concerns the relationship between Benfica and the Players. No third party should be entitled to oblige Benfica to keep such relationship in place until a certain date. This is not a mere matter of contractual stability, rather it could influence Benfica's decision as to whether or not to terminate the employment contract, with or without just cause.
- Article 2.2 of the ERPAs influences Benfica's decision as to whether or not to seek a remedy to the Players terminating the employment contract in force with a loanee during a loan period and thus the one in force with Benfica. Indeed, when making such decision, it would have to consider that if it does not remedy such situation it has to pay Meriton's Grant Fee.
- Article 2.3 of the ERPAs entitles Meriton to be indemnified for liabilities and costs incurred in case the employment contracts with the Players do not remain in force until 30 June 2019. Clearly, this stems from the fact that if the Players became free agents, Meriton would lose the value of its investments. Therefore, the ERPAs are structured in such a way that the financial consequences on Benfica in case the Players became free agents would be so prejudicial that the Club is forced to strive to prevent such event from taking place. Accordingly, Benfica is influenced in its employment-related matters.
- Under Article 7.1 of the ERPAs, in case the Players renew their employment contract with Benfica, Meriton can ask either to maintain its interest or to receive Meriton's Grant Fee back. Such financial burden influences Benfica which, when deciding whether to agree to an extension of the employment contracts, has to bear the financial consequences of Meriton's decision.
- As to Article 12.3 of the ERPAs, it obliges Benfica to file a claim against the Player in case it terminates the employment contract without just cause, regardless of its willingness to pursue such claim.

(b) *Clauses relating to Benfica's obligation to provide information to Meriton*

- As stated in the Appealed Decisions, the clauses providing Meriton with the right to receive some information must be read in conjunction with other clauses triggering Benfica's payment obligation in case of transfer of the Players. In this respect, it is clear that the sole purpose of such disclosure obligations is to allow Meriton to ensure that the transfer was properly executed as well as to check the correctness of the amount indicated therein. Furthermore, although admittedly Article 18bis RSTP does not make reference to conflicts of interest, undoubtedly

this matter is encompassed in the purpose of such provision since, in particular, allowing situations of conflict of interests may contribute to match-fixing practices.

- In any case, a club cannot be considered fully independent if it has to disclose information concerning the transfer/loan of a player to a third party so that the latter can control its execution.

(c) *Clauses relating to a potential transfer or loan of the Players*

- Under Article 4.3 of the ERPAs, Meriton must be informed of the transfer offers received by Benfica and can thus influence the Club's determination as to whether or not to accept an offer.
- Articles 4.4 and 5.1 of the ERPAs enable Meriton to receive compensation in case it rejects a transfer offer received by Benfica. In this respect the Club, when evaluating a transfer offer, will have to take into account the amounts that will be due to Meriton and thus will not be allowed to concentrate on purely sporting matters. Clearly, such a burdensome clause would only be accepted by a club in need for liquidity and thus, accordingly, Benfica would not be in a position to accept an offer lower than Meriton's Grant Fee, since in such case it would have to pay the latter amount back to Meriton.
- Article 4.5 of the ERPAs applies in the situation in which Meriton accepts a transfer offer. In such case, Benfica is deprived of all its independence as to the decision to be made concerning the transfer, since it is obliged to pay to Meriton the amount of the transfer fee, even in the hypothesis in which it rejects such transfer offer. Such provision clearly influences Benfica's decisions in transfer-related matters. Indeed, the financial consequences are so prejudicial that Benfica is put in the position not to reject an offer that has been accepted by Meriton, although sporting reasons would lean towards a different decision.
- Article 6.1 of the ERPAs, on the other hand, influences Benfica with reference to the possible loan of the Players to a third club since, in such case, Benfica has to consider that the entire loan fee would be due to Meriton.

(iii) The sanctions imposed by FIFA are proportionate.

- (a) The CAS can amend a disciplinary decision of a FIFA body only in case the latter has imposed the sanction in an arbitrary way *i.e.* if it is excessively disproportionate to the offence.
- (b) Benfica is a renowned professional club in Portugal and shall thus be aware of the regulatory framework in which it carries out its activity.

- (c) Benfica had been sanctioned twice by the FIFA Disciplinary Committee in the past for the same infringement. Although the ERPAs were entered into before the relevant disciplinary decisions were notified to Benfica, the disciplinary investigations were already ongoing and thus the club could and should have been more careful.
- (d) The amount of the sanction is proportionate to that imposed on other clubs in the past, considering, in particular, that all other clubs that have received fines amounting to CHF 50,000 had not been investigated and/or charged with the same violation beforehand. Furthermore, in any case, the FIFA disciplinary bodies have the power to impose higher sanctions based on the circumstances of the case.
- (e) Although the exercise of an actual influence is irrelevant to establish the violation of Article 18bis RSTP, in the case at hand Meriton clearly influenced Benfica in its transfer-related decisions. Indeed, it is worth noting that both Players were transferred to the Spanish club Valencia FC (“Valencia”), and both the latter and Meriton have the same owner *i.e.* Peter Lim; in this respect, both Players were first loaned for free to Valencia and then transferred to the latter for a transfer fee amounting to the Meriton’s Grant Fee (*i.e.* EUR 15 million for Gomes and EUR 30 million for Machado, respectively).

VII. JURISDICTION

33. Article R47 of the CAS 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”.

34. Articles 55.3, 57.1 and 58 of the FIFA Statutes respectively provide:

Art. 55.3: *“Decisions pronounced by the Appeal Committee shall be irrevocable and binding on all the parties concerned. This provision is subject to appeals lodged with the Court of Arbitration for Sport (CAS)”;*

Art. 57.1: *“FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents”;* and

Art. 58.1: *“Appeals against final decisions passed by FIFA’s legal bodies ... shall be lodged with CAS within 21 days of notification of the decision in question”.*

35. The Parties do not dispute the jurisdiction of the CAS and, moreover, confirmed it by signing the Order of Procedure. It follows that the CAS has jurisdiction to hear and adjudicate the disputes in both proceedings.

VIII. PRELIMINARY PROCEDURAL ISSUES

A. Admissible reference to FIFA precedents

36. As mentioned (*supra* at para. 27), during the hearing FIFA objected to the reference made by the Appellant to some FIFA decisions, because such decisions had not been mentioned in or annexed to the Appellant's Appeal Briefs. The Panel rejects this objection and considers as fully admissible the Appellant's references to some FIFA precedents.
37. The Panel simply notes that making reference to previous FIFA decisions does not constitute submission of new evidence in violation of Article R56 of the CAS Code, considering that such precedents (i) constitute FIFA's own jurisprudence (the persuasiveness of which must of course be evaluated by the Panel), (ii) are published on FIFA's own website, with the twofold consequence that they are public and FIFA must be presumed to know them, and (iii) could be autonomously found by the Panel in doing its own research of relevant jurisprudence, based on the principle "*iura novit curia*" (or "*iura novit arbiter*").

B. Single award for both cases

38. Although the cases adjudicated in this award – CAS 2020/A/7008 and CAS 2020/A/7009 – were referred to the same Panel with the agreement of the Parties (in accordance with Article R50, second paragraph), they have not been consolidated; hence, in principle, the Panel should issue two separate arbitral awards. However, given that both cases raise identical issues and are based on almost identical contracts, the Panel is of the view that reasons of procedural economy and efficiency dictate dealing with both appeals in a single award, as already occurred in similar situations in the past (see for example CAS 2018/A/5166 & CAS 2018/A/5405).
39. On 15 December 2020, the Panel asked the Parties whether they agreed on this approach, and the Parties explicitly accepted it with parallel communications dated 16 December 2020. Accordingly, the Panel confirms that the present award disposes of both appeals, even though the proceedings CAS 2020/A/7008 and CAS 2020/A/7009 remain formally distinct.

IX. ADMISSIBILITY

40. Article R49 of the CAS Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt

of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document”.

41. Article 58 of the FIFA Statutes (see *supra* at para. 34) provides a time limit of 21 days after notification to lodge an appeal against a decision adopted by one of FIFA’s legal bodies, such as the FIFA Appeal Committee.
42. The Appealed Decisions were notified with grounds to the Appellant on 7 April 2020. The Appellant timely lodged both appeals with the CAS Court Office on 27 April 2020, *i.e.* within the twenty-one days allotted under the aforementioned provision. It follows that both appeals are admissible.

X. APPLICABLE LAW

43. Article R58 of the CAS Code provides 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”.

44. Article 57.2 of the FIFA Statutes so provides:

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

45. Accordingly, the present dispute must be decided in accordance with the applicable FIFA rules and regulations, such as in particular the RSTP and the FIFA Disciplinary Code; additionally, the Panel shall apply Swiss law.
46. The provision of the RSTP relevant to the merits of the dispute between the Parties is Article 18bis (“*Third-party influence on clubs*”) in its version in force until 1 April 2015, which provides as follows:
 1. *No club shall enter into a contract which enables any other party to that contract or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams.*
 2. *The FIFA Disciplinary Committee may impose disciplinary measures on clubs that do not observe the obligations set out in this article”.*

XI. MERITS

47. The task of the Panel is to determine whether Benfica violated Article 18bis RSTP when it entered into the ERPAs. In this respect, Benfica argues that Article 18bis RSTP is unclear and thus cannot be held against the Appellant. It also contends that it entered into a standard TPO agreement, conduct that was not interdicted at that time. On the other hand, FIFA contends that Article 18bis RSTP has a clear and straightforward application and was violated by Benfica when entering into the ERPAs. Therefore, in order to establish whether Benfica acted in breach of Article 18bis RSTP, the Panel should first assess the content of the prohibition enshrined in such provision and then determine its application to the case at hand to verify whether it was violated by the Appellant. If the violation stands, even partially, the Panel then has to determine whether the sanctions imposed by the FIFA Disciplinary Committee and confirmed in the Appealed Decisions remain appropriate or need to be amended.

A. On the conduct prohibited under Article 18bis RSTP

48. The parties disagree as to the reach and interpretation of Article 18bis RSTP.
49. On the one hand, Benfica contends that Article 18bis RSTP was scarcely, if at all, applied by FIFA between its entry into force (2008) and the year in which Benfica entered into the ERPAs (2014), thereby leaving clubs with no guidance whatsoever as to its actual scope of application. Benfica argues that, notwithstanding the fact that Article 18bis RSTP has been in place for more than ten years, the rule is unclear and, in particular, the concept of providing a third party with the “*ability to influence*” is not straightforward and potentially includes clauses that are widely used – and perfectly legal – in the worldwide football sector. Benfica invokes the application of the *contra proferentem* principle and it argues that, as per the so-called “predictability test”, an unclear provision may not lead to the application of any sanction.
50. On the other hand, FIFA insists that the rule is clear and, regardless of the fact that there was no application of the rule in its first years, it has always been mandatory on clubs and it was violated in the cases at stake. FIFA also contends that the wording of the provision is intentionally broad in order to encompass all kinds of influence on clubs but, in any case, its wording is clear.
51. In order to resolve that disagreement, the Panel must preliminarily establish whether the wording and application of Article 18bis RSTP are flouting the “predictability test” because, if this were so, the Panel should set aside right away the sanctions imposed by FIFA on the Appellant. If, on the other hand, the predictability test were satisfied, the Panel should examine the conduct of the Appellant and ascertain whether it violated Article 18bis RSTP and, if so, in what measure.

a. *No violation of the predictability requirement*

52. The Appellant challenges the applicability of Article 18bis RSTP to its conduct on the basis that such provision does not conform to the principle of predictability.
53. The Panel agrees with the Appellant that CAS jurisprudence requires, for a sanction to be imposed, that sports disciplinary rules be sufficiently clear and precise in proscribing the misconduct with which someone is charged; in other words, *nulla poena sine lege clara* (principle of predictability). As a matter of course, CAS panels have held that sports organizations may not impose sanctions without a proper legal or regulatory basis and that such sanctions must satisfy a predictability test (see CAS 2001/A/330 at para. 17, CAS 2007/A/1363 at para. 16, CAS 2008/A/1545 at paras. 93-97, CAS 2014/A/3516 at para. 104, CAS 2014/A/3832 & 3833 at paras. 84-86, and CAS 2017/A/5086 at paras. 148-153).
54. However, the Panel finds that, in compliance with that jurisprudence, Article 18bis RSTP, is sufficiently clear and precise in prohibiting clubs from entering into contracts which enable other parties to acquire the ability to influence, in employment and transfer-related matters, the independence, policies or teams' performances of those clubs.
55. The Panel considers that a rule that is broadly drawn, such as Article 18bis RSTP, does not necessarily lack sufficient legal basis because of that character. Indeed, the CAS has previously held that "*disciplinary provisions are not vulnerable to the application of that rule [nulla poena sine lege clara] merely because they are broadly drawn. Generality and ambiguity are different concepts*"; therefore, a sports governing body is certainly entitled to "*draft a disciplinary provision of a reach capable of embracing the multifarious forms of behaviour considered unacceptable in the sport in question*" (CAS 2014/A/3516, at para. 105, quoted approvingly by CAS 2017/A/5086 at para. 151).
56. Thus, the fact that Article 18bis RSTP is capable of catching an unspecified variety of contracts as providing a party with the ability to unlawfully influence clubs' conduct does not mean that it lacks sufficient legal basis and predictability. In this connection, it must be recalled that, according to the established jurisprudence of the Swiss Federal Tribunal (or "SFT"), disciplinary sanctions imposed by sports governing bodies must conform to civil law standards and not to criminal law ones (see e.g. SFT Judgement of 31 March 1999, 5P.83/1999, at para. 8b), and civil law standards are often inherently vague and reveal their full meaning on the basis of judicial application (a typical example would be the concept of good faith set out in Article 2 of the Swiss Civil Code).
57. The fact, essentially undisputed by FIFA, that for some years (after its approval in 2008) the FIFA disciplinary bodies hardly or never prosecuted any clubs for violations of Article 18bis RSTP does not take away the binding character and enforceability of this provision, and the resulting duty of clubs not to breach it. Nonetheless, the Panel is of the view that this circumstance – FIFA's failure of enforcing of this rule for some time – might affect the assessment of the sanction.

58. In this regard, the Panel concurs with the panel in TAS 2017/A/5463, which, in dealing with the prohibition of third-party influence under said provision, stated the following:

“Desde la aprobación del art. 18bis (Circular nº 1130 de la FIFA) y su entrada en vigor el 1 de enero de 2008, dicha norma devino obligatoria para todos los clubes de fútbol que, como el Apelante, se encontrasen sometidos al régimen del RETJ de la FIFA. En consecuencia, y por motivos evidentes de seguridad jurídica, la obligatoriedad del art. 18bis del RETJ y su coercibilidad no quedaba al albur del conocimiento o del entendimiento que sus destinatarios (en este caso, el Apelante) pudieran tener de dicha norma, que en todo caso estaba en vigor y su cumplimiento resultaba exigible desde el día 1 de enero de 2008. Cuestión distinta son las consecuencias que para la imposición y/o determinación de una eventual sanción pueda tener el hecho de que, aparentemente, los órganos disciplinarios de la FIFA no investigasen ni sancionasen durante varios años aquellas conductas que pudiesen encajar en la prohibición prevista en el art. 18bis del RETJ, que es sin duda una circunstancia que debe ponderarse para la determinación de cualquier eventual sanción. No obstante, dicha circunstancia en nada afecta a la obligatoriedad, exigibilidad y coercibilidad del art. 18bis del RETJS que, al momento de los hechos, estaba ya en vigor” (TAS 2017/A/5463, para. 87).

Which can be freely translated into English as follows:

“Since the approval of art. 18bis (FIFA Circular No. 1130) and its entry into force on 1 January 2008, said rule became mandatory on all football clubs that, as the Appellant, were subject to the FIFA RSTP regime. Consequently, and for obvious reasons of legal certainty, the mandatory nature of art. 18bis RSTP and its enforceability were not left to the knowledge or understanding that its addressees (in this case, the Appellant) might have of said rule, which in any case was in force and its compliance could be required since 1 January 2008. The consequences of the fact that, apparently, the FIFA disciplinary bodies did not investigate or sanction for several years those behaviors that could fit into the prohibition provided in art. 18bis RSTP, for the imposition and or determination of a possible sanction, are a different matter, a circumstance that, undoubtedly, must be weighed in determining any possible sanction. However, this circumstance does not in any way affect the binding, enforceable and coercive nature of art. 18bis RSTP which, at the time of the events, was already in force”.

59. In conclusion, the Panel finds that Article 18bis RSTP does not breach the predictability requirement enshrined in the principle *nulla poena sine lege clara*.

b. How to interpret Article 18bis RSTP

60. The Panel must turn to the Parties’ disagreement over the interpretive criteria to be employed to correctly interpret Article 18bis RSTP. In defending the interpretive approach of its disciplinary bodies, FIFA has argued that the correct interpretation of this provision must reflect its true meaning through the analysis of the purpose sought and of the interests protected as well as of the intent of the legislator. The Appellant has criticized FIFA’s interpretation of Article 18bis RSTP for having changed in recent times and for relying on a purely purposive interpretation, and has advocated the application of the *contra stipulatorem* principle.

61. The Panel notes that it is well-established under CAS jurisprudence, making reference to the case law of the Swiss Federal Tribunal that, “[a]ccording to the SFT, the starting point for interpreting is indeed its wording (literal interpretation). There is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review. This may result from the drafting history of the provision, from its purpose, or from the systematic interpretation of the law. Where the text is not entirely clear and there are several possible interpretations, the true scope of the provision will need to be narrowed by taking into account all the pertinent factors, such as its relationship with other legal provisions and its context (systematic interpretation), the goal pursued, especially the protected interest (teleological interpretation), as well as the intent of the legislator as it is reflected, among others, from the drafting history of the piece of legislation in question (historical interpretation) (SFT 132 III 226 at 3.3.5 and references; SFT 131 II 361 at 4.2). When called upon to interpret a law, the SFT adopts a pragmatic approach and follows a plurality of methods, without assigning any priority to the various means of interpretation (SFT 133 III 257 at 2.4; SFT 132 III 226 at 3.3.5)” (see CAS 2013/A/3365 & 3366 at para. 139, emphasis added).
62. As stated in a similar vein by another CAS panel: “According to the jurisprudence of the Swiss Federal Tribunal [...], the interpretation of the statutes and rules of FIFA, a large sport association with seat in Switzerland, starts from the literal meaning of the rule, which falls to be interpreted, but must show its true meaning, which is shown by an examination of the relation with other rules and the context, of the purpose sought and the interest protected, as well as of the intent of the legislator. In this vein, CAS Panels (CAS 2008/A/1673; CAS 2009/A/1810; CAS 2009/A/1811) have held that the adjudicating body has to consider the meaning of the rule, looking at the language used, and the appropriate grammar and syntax, but has further to identify the intentions (objectively construed) of the association which drafted the rule, and such body may also take account of any relevant historical background which illuminates its derivation, as well as the entire regulatory context in which the particular rule is located” (CAS 2017/A/5173 at para. 74, emphasis added).
63. Therefore, in keeping with those precedents, the Panel finds that the starting point to interpret Article 18bis RSTP must be its literal meaning, complemented by the other available interpretive means to the extent needed to find its true meaning and its scope of application.
64. Thus, in starting with the language of said rule, the Panel must ascertain the meaning not only of the concept of “influence”, but also its relationship with the literal targets of such influence, i.e. the club’s “independence”, “policies” or “performance of its teams” in the context of “employment and transfer-related matters”.
65. In addition, in line with the quoted CAS jurisprudence, the Panel must consider the purpose of Article 18bis RSTP, which – as made clear by FIFA and confirmed by CAS precedents – is aimed at (i) protecting the sporting policies and operations of football clubs from being unduly influenced by other parties and (ii) avoiding conflicts of interests that might lead to practices affecting the integrity of the competition (see TAS 2017/A/5463, para. 80, and TAS 2016/A/4490, para. 101).
66. Furthermore, in examining this rule in the context of Swiss law, the Panel observes that Article 18bis RSTP encompasses a prohibition related to the club’s conduct when entering into a

contract (“*No party shall enter into a contract which enables [...]*”). It is thus a provision that has the potential to significantly restrict the parties’ “freedom of contract”; this is a fundamental principle under Swiss Law (and under any market-economy legislation), enshrined in particular in Article 19 of the Swiss Code of Obligations (“SCO”) and stemming from the economic freedom guaranteed under Article 27 of the Swiss Constitution. Accordingly, as persuasively stated in a CAS precedent (TAS 2017/A/5463, para. 92), such a restrictive provision must be construed narrowly and applied on case-by-case basis bearing in mind that, in case of doubt, the adjudicating body must favour the principle of freedom of contract (*in dubio pro libertate*).

67. With this in mind, the Panel makes the following considerations.

c. *The relevant “influence” under Article 18bis RSTP*

68. The parties disagree as to the correct interpretation of the concept of “*influence*” provided in Article 18bis RSTP.

69. On the one hand, the Appellant contends that Article 18bis RSTP only prohibits agreements that provide other parties with a “direct” influence on transfer and employment matters *i.e.* that allow those parties to directly make a decision in such matters or to otherwise impair the club’s decision-making process. Therefore, it argues that such provision does not cover the situations of “indirect” influence where, as in the ERPA’s, the club’s decision-making process is independent and the contract merely requires that the club bears some economic obligations.

70. On the other hand, FIFA contends that the distinction between “direct” and “indirect” influence is irrelevant, since Article 18bis RSTP is aimed at sanctioning clubs that enable a third party to have a “real ability” to influence (either directly or indirectly) the club’s independence and policies in the matters referred to under such provision.

71. The Panel agrees with FIFA in considering that the prohibition enshrined in Article 18bis RSTP is not meant to be limited to instances of “direct” influence. Indeed, the wording of this rule does not distinguish between direct and indirect influence and, in accordance with the well-known interpretive maxim “*ubi lex non distinguit, nec nos distinguere debemus*” (i.e. “where the law does not distinguish, neither should we distinguish”), the Panel does not see the need to devise a distinction not provided by the relevant rule. Moreover, if that distinction were to be made, it would be easier to circumvent the prohibition of Article 18bis RSTP; in particular, its pursued objective would be frustrated by simply drafting the relevant contractual clauses in order to avoid conferring any direct decision-making power to another party.

72. Therefore, both the language and the purpose of Article 18bis RSTP point to a construal under which the influence exercised by another party on a club need not be “direct” to fall within the scope of said rule. In the Panel’s view, the basic element to look at in a case under Article 18bis RSTP is, rather, the *effectiveness and impact* of the influence, irrespective of its being direct or indirect. In other words, the influence must be effective and have the potential to actually impact the club’s determinations to the degree required by the rule. This interpretation is

corroborated by CAS jurisprudence and, in particular, by the notion of “real ability to influence”, as explained in TAS 2017/A/5463:

“incurren en tal prohibición únicamente aquellas situaciones en las que realmente se haya conferido a un tercero una posibilidad real y efectiva de influencia (esto es, haciendo nuestro el término empleado por la CD De la FIFA en la Decisión Disciplinaria, una “capacidad efectiva” de influir sobre el club) y no meramente hipotética o teórica, como ocurriría con aquellas previsiones contractuales programáticas, que carezcan de un contenido obligacional específico y efectivo” (para. 92, footnote omitted).

Which can be freely translated into English as follows:

“This prohibition applies only to those situations in which a third party has been granted a real and effective possibility of influence (that is, embracing the expression used by the DC of FIFA in the Disciplinary Decision, an “effective capacity” to influence the club) and not merely hypothetical or theoretical, as would occur with those programmatic contractual provisions that lack a specific and effective mandatory content”.

73. However, the Panel is of the view that the proper interpretation of Article 18bis RSTP cannot merely be limited to the concept and meaning of “influence”. Indeed, the Panel considers that every contract, by definition, restricts the freedom of action of the contracting parties and thus, inevitably, influences their behaviour.
74. Therefore, a properly focussed interpretation of Article 18bis RSTP has to take into account the context in which such influence is exercised (“employment and transfer-related matters”) and its specific targets, namely the club’s “independence, its policies or the performance of its teams”.
75. With the above in mind, and in line with CAS jurisprudence on third-party influence, the Panel finds that Article 18bis RSTP cannot be construed and enforced in an aprioristic manner but, rather, it must be applied following a case-by-case approach (see TAS 2017/A/5463, para. 92, and CAS 2019/A/6301, paras. 177-178).
76. Indeed, the Panel is of the view that, in players’ employment and transfer matters, the degree of influence that a given contract, or certain contractual clauses, can exert on the “independence”, “policies” and “teams’ performance” of a contracting club can significantly differ depending on (i) the sporting and financial situation and weight of such club as opposed to the sporting and financial situation and weight of the other contracting party or parties, and (ii) the number and economic value of the players for which the club entered into a contractual relationship. In other words, in applying Article 18bis RSTP, there must be a case-by-case appraisal of the relative standing, prominence and market power of the involved clubs and companies.
77. It must also be taken into account that, as acknowledged by FIFA, Article 18bis RSTP does not and cannot prohibit *per se* the signing of third-party ownership (“TPO”) agreements; this was made clear in TAS 2016/A/4490, where the CAS panel underlined (at paras.114-115) that FIFA was compelled to introduce a specific ban on TPO agreements in Article 18ter RSTP because

the rules in force until that moment (including Article 18bis RSTP) were inadequate to restrain such phenomenon.

78. Therefore, when assessing the cases at stake, the Panel must necessarily consider that, on the one hand, in order for a TPO agreement to be effective and attract an investor (when it was still lawful to make TPO agreements, as is the case of the Appellant for both ERPAs), it needed to include some clauses that could secure the investor's venture in the player; on the other hand, the guarantees for the investors could not be unfettered and needed to be weighed against the prohibition set forth by Article 18bis RSTP.
79. That said, the Panel shall consider in its analysis of the agreements at hand the actual impact on the Appellant's transfer and employment determinations. Furthermore, the Panel shall consider the importance, for the club's independence and policies, of both players' economic rights.
80. Having established the proper elements to be relied upon when applying Article 18bis RSTP, the Panel must turn to the provisions enshrined in the ERPAs and sanctioned in the Appealed Decisions and determine whether they constitute an undue influence in the terms described above.

B. The ERPAs provide Meriton with the ability to influence envisaged in Article 18bis RSTP

81. The Panel recalls that the ERPAs are two TPO agreements through which Meriton has purchased the economic rights of, respectively, the players André Filipe Tavares Gomes and Rodrigo Moreno Machado.
82. As already mentioned (at para. 78), TPO agreement were not prohibited at the time when the ERPAs were signed; as a consequence, it was in principle legitimate to include in the ERPAs some clauses that could guarantee the investments made by Meriton.
83. The task of the Panel is thus to analyse the clauses of the ERPAs and determine whether any of them provided Meriton with the ability to influence Benfica's "*independence*" or "*policies*" in violation of Article 18bis RSTP. There is no need to deal with the hypothetical influence on the "*performance of its teams*", because FIFA never stated in the Appealed Decisions or in its submissions to the CAS that the ERPAs could lead to match-manipulation practices involving the Appellant (FIFA only alluded, in a very vague way, to possible match-fixing practices involving other clubs linked to the same investor).
84. In order to analyse the ERPAs, the Panel will mirror the structure followed by the Appealed Decisions and divide the relevant clauses of the ERPAs into three groups:
 - (a) Clauses related to the Players' employment contracts;
 - (b) Clauses related to the Appellant's disclosure obligations towards Meriton;

(c) Clauses related to the potential transfer or loan of the Players.

a. Clauses related to the Players' employment contracts

85. The Panel recalls that the first group of clauses of the ERPAs analysed in the Appealed Decisions (see *supra* under □) concerns the relationships between the Appellant and the Players.
86. In particular, the Appellant argues that such clauses were aimed at ensuring that the contractual relationships between Benfica and the Players were maintained until the expiration date provided in their employment contracts (*i.e.* 30 June 2019) or, in case either or both of those relationships were ended beforehand, that Meriton was indemnified accordingly. Furthermore, they provided Meriton with the choice to keep its investment in case the Players re-sign with the Appellant after the end of the employment contracts.
87. FIFA contends that such provisions allow Meriton to unduly interfere in Benfica's determinations as to its contractual relationships with the Players.
88. The Panel rejects FIFA's interpretation.
89. Indeed, the Panel observes that the core of Meriton's investment consists in the Players' economic rights and, thus, it is more than reasonable for Meriton to be guaranteed that those Players do not leave the Club or, if that happens, that Meriton be indemnified for the loss of its investment.
90. Unlike FIFA, the Panel finds that, through the aforementioned clauses, Meriton is not provided with any real ability to influence the Appellant's independence or policies, since:
- (i) Article 2.1 of the ERPAs merely enshrines the principle of contractual stability, according to which, as a rule, the parties shall abide by the employment contract until its natural term; in this respect, the Panel notes that it is only reasonable for a club to seek to maintain the employment relationship with its players – unless there is a just cause to terminate it.
 - (ii) Under Articles 2.2 and 2.3 of the ERPAs, Benfica accepts to indemnify Meriton if (a) Benfica does not obtain that the employment contracts with the Players reach their natural expiry date, or (b) during a loan period, the loanee club breaches the employment contracts in force with a Player and such breach entails that Player's termination of his contract with Benfica. In this respect, the financial obligations towards Meriton have no bearing on the club's independence and policies, since they cannot determine Benfica's decisions concerning the Players.
 - (iii) Article 7.1 of the ERPAs enables Meriton to decide, in case the Players are not definitively transferred to a third club and thus agree to extend their employment with Benfica, whether to (a) request payment of Meriton's Grant Fee within 7 calendar days

or (b) maintain Meriton's Interest; in the Panel's view, this is a risk that can be borne by Benfica, the Players being the core of Meriton's investment. Furthermore, such contractual provision does not enable Meriton to have any influence as to Benfica's decisions. Indeed, it is worth considering that, in practical terms, it is unlikely that the option *sub* (a) becomes applicable, since it would be reasonable for Meriton to request such payment only if either or both of the Players were not profitable enough to maintain the investment; however, the Panel observes that, under a purely sporting point of view, a team of Benfica's stature would hardly consider extending its employment relationship with a non-profitable player, thus the clause has no ability to influence its independence and policies.

- (iv) Under Article 12. 3 of the ERPAs, in case the Players terminate their employment contracts without just cause, Benfica is forced to (a) file a claim for unlawful termination and (b) pay to Meriton any amount earned from such claim; this clause does not have any influence on Benfica's independence, since it is only reasonable for a club faced with a player's unjust termination to seek redress before the competent bodies and, in any case, the decision to rightfully pursue a claim has no bearing on its employment-related decisions.

91. In light of the above, the Panel finds that the aforementioned clauses do not provide Meriton with the ability to influence the club's independence and policies to a degree sufficient to fall under the prohibition of Article 18bis RSTP. The Panel is of the view that such provisions are inherent to a TPO agreement and are merely aimed at securing the investment made by Meriton in the Players and, thus, the stability of their employment relationship with Benfica.

b. Clauses related to the Appellant's obligation to provide Meriton with specific information and documents

92. The second group of clauses of the ERPAs analysed in the Appealed Decision (see *supra* under □) concerns Benfica's disclosure obligations towards Meriton.
93. The Appellant contends that the obligation to disclose information to a third party does not in itself entail that the latter has any influence on the Club. FIFA argues that a club cannot be considered truly independent if it has to disclose to third parties confidential information as to the content of transfer offers and documents related thereto.
94. In this respect, the Panel recalls that the prohibition enshrined in Article 18bis RSTP must be interpreted narrowly and it is triggered only if a third party, by receiving such information, can determine or impair the club's independence, policies and performance of its teams in employment or transfer-related matters.
95. Accordingly, the Panel finds that the obligation to disclose information to a commercial partner cannot *per se* amount to undue influence under Article 18bis RSTP. Quite the contrary, it is often perceived as a legitimate obligation that is inherent in other types of contractual duties

such as, for instance, the obligation to pay a sell-on fee (see e.g. CAS 2013/A/3054, para. 56) or the transparency obligations towards a financing or guaranteeing bank.

96. Therefore, in order for such obligation to fall within the prohibition established under Article 18bis RSTP, it should enable Meriton to somehow determine or impair the club's decision-making process in employment and transfer-related matters.
97. In the case at hand, the Panel notes the following:
- (i) Under Article 4.1 of the ERPA, Benfica has to disclose all information concerning the transfer offers it receives, as well as the decision made by both the Club and the Players as to whether or not to accept such offer. The rationale behind such provision is clear: Meriton shall be informed in case either or both of the Players, in whom it invested, might be transferred to different clubs. The Panel observes that the clause provides that Meriton shall be informed of "*whether the Club accepts or rejects the offer*". Consequently, the fact that such information shall be disclosed does not *per se* influence the Club's independent determinations as to whether or not to accept the offer; furthermore, such disclosure obligation is merely inherent in and instrumental to the triggering of the payment obligations subsequently described (at paras. 99 *et seq.*).
 - (ii) Article 5.3 of the ERPA in case CAS 2020/A/7008 (Article 5.4 of the ERPA in case CAS 2020/A/7009) allows Meriton to be informed of the details of the transfer of the Player(s) after it has been accepted and executed and thus, notably, after the relevant transfer fees related to the Player(s) have been determined and paid. Once again, the information is disclosed to Meriton only after Benfica has decided to transfer either or both of the Players and therefore, *per se*, it does not determine Benfica's decisions in that respect.
 - (iii) Article 6.2 of the ERPA follows the same rationale as the article analysed *sub* (ii), though with reference to possible loans of the Players. As mentioned above, there can be no influence on the club's independence and policies since Meriton is informed of the transaction only after the latter has already been negotiated and entered into.
98. In light of the above, the Panel concludes that this second group of clauses does not *per se* entail an undue influence under Article 18bis RSTP, since it merely provides for disclosure obligations that have no sufficient bearing on Benfica's independence and policies.

c. Clauses concerning a potential transfer or loan of the Players

99. The last group of clauses of the ERPA analysed in the Appealed Decisions (see *supra* under □) concerns the financial consequences to be borne by Benfica in favour of Meriton in case the Players are temporarily or permanently transferred to a third club.

100. The Appellant contends that such clauses are typical to TPO agreements and, in any case, do not allow Meriton to “instruct” Benfica as to whether or not to accept a transfer offer. Notably, the Appellant points out that the articles at hand merely assign conditional financial obligations on Benfica when the latter receives an offer to transfer the Players.
101. On the contrary, FIFA argues that through such clauses Meriton could influence Benfica’s decision as to whether or not to accept a transfer offer, since the financial consequences on Benfica are structured in order to be so prejudicial that the latter will never decide against Meriton’s interest.
102. The Panel notes that the contractual clauses at hand provide no direct decisional power on Meriton as to whether or not to accept a transfer offer. Indeed, under the clauses described above (at paras. 92 *et seq.*), Benfica has the obligation to inform Meriton of whether it “*accepts or rejects the offer*” (Article 4.1 ERPAs) and thus only *after* having made such decision.
103. Therefore, the Panel must analyse the bearing of the financial consequences in favour of Meriton on the Club’s independence and policies in its transfer-related decisions. In other words, the Panel must establish whether such conditional obligations are structured in a way that their financial impact can significantly influence Benfica when deciding whether or not to accept a transfer offer, aside from the autonomous sporting or economic convenience of the Club.
104. In this respect, the Panel observes that, under such clauses, Benfica’s financial obligations towards Meriton are triggered based on the latter’s alternative decisions, as follows:
- (a) If Meriton accepts a transfer offer (Article 4.5 of the ERPAs): Benfica shall, within 7 calendar days of the request, pay Meriton 100% of the transfer fee contained in the offer¹; such payment obligation is triggered “*whether or not the transfer proceeds*”;
 - (b) If Meriton rejects a transfer offer and Benfica proceeds with the transfer (Articles 4.3 and 5.1 of the ERPAs): Benfica shall, within 7 calendar days of its reception of the transfer fee, pay Meriton the higher amount between Meriton’s Interest (*i.e.* the transfer fee²) and Meriton’s Grant Fee (*i.e.* EUR 15 million as to the ERPA in case 7008 and at least EUR 30 million as to the ERPA in case 7009).
105. Differently, under Article 6.1 of the ERPAs, there is no mechanism related to Meriton’s decision and, if the Players are transferred on loan, Meriton is always entitled to 100% of any loan fee within 7 calendar days after the Club receives such amount.
106. In this respect, it is important to analyse the financial impact of Meriton’s decision on Benfica and, thus, to ascertain whether such decision-making power has a real potential to determine

¹ As to the ERPA in case 7008, Meriton is entitled to the transfer fee minus the so-called Benfica’s Interest *i.e.* in case the transfer fee is higher than € 15million, 25% of the amount over € 15million.

² Minus Benfica’s Interest, if applicable as to the ERPA in case 7008.

the Club's policies or impair the Club's independence when accepting or rejecting a transfer offer.

107. In case 7008, Meriton's Grant Fee for the economic rights of André Filipe Tavares Gomes amounts to EUR 15 million. Therefore, it is fair to assume that Meriton, in order to profit from its investment or at least not to lose money, would be inclined to accept a transfer offer for the Player that is greater than or equal to such amount. Accordingly, Benfica, when receiving an offer for such Player, would have to consider the following scenarios:
- (i) If Benfica accepted a transfer offer higher than or equal to EUR 15 million, 100% of the same amount would be transferred to Meriton which, most likely, would accept the offer (Article 4.5 of the ERPAs); therefore, Benfica would pay the same amount it has received;
 - (ii) If Benfica accepted a transfer offer lower than EUR 15 million (which Meriton would most likely reject), Benfica would in any case be liable to pay EUR 15 million to Meriton (since it would be the "*higher*" amount between Meriton's Interest and Meriton's Grant Fee, under Article 5.1 of the ERPAs); therefore, Benfica would have to pay more than the amount received for the transfer;
 - (iii) If Benfica rejected a transfer offer higher than or equal to EUR 15 million (which Meriton would most likely accept), 100% of the same amount would be transferred to Meriton (Article 4.5 of the ERPAs); therefore, Benfica would have to pay within 7 days a considerable amount to Meriton – at least equal to EUR 15 million – while not receiving any (the "Third Scenario").
108. The aforementioned reasoning equally applies to the ERPA in case 7009 and the player Rodrigo Moreno Machado, although with a different Meriton's Grant Fee.
109. The Panel finds that the abovementioned situations and, in particular, the Third Scenario – *supra* at para. 107(iii) – may be prejudicial to Benfica's financial stability and thus have a bearing and a real ability to influence its decision as to whether or not to accept the offer. Indeed, although Meriton does not *per se* have the power to decide whether or not to accept an offer on behalf of Benfica, it can significantly influence the latter when deciding whether or not to accept a transfer offer. Indeed, it *de facto* forces the Club, when receiving an offer, to consider its economic solvency and whether it will be able to abide by its payment obligations towards Meriton based on its decision, especially in case it rejects an offer accepted by Meriton (Third Scenario).
110. The Panel also considers that the following circumstances are decisive to establish a violation of Article 18bis RSTP with reference to the last group of clauses:
- (i) Although it may be doubtful that a single ERPA, even with these kinds of clauses, could effectively impact Benfica's independence and policies, the case at hand involves two parallel TPO agreements with almost identical terms in favour of the same investor; such

element undoubtedly strengthens Meriton's position of influence and enhances its significance under Article 18bis RSTP.

- (ii) The payment to Meriton shall be fulfilled within 7 calendar days from either (a) Meriton's demand (Article 4.5 of the ERPAs) or (b) the Club's receipt of the transfer fee (Articles 5.1 of the ERPAs); a seven-day deadline to pay such high amounts is burdensome, even more so in case the Club has to pay such amounts without receiving any sum from another club (Third Scenario).
 - (iii) Article 5.2 of the ERPA in case 7008 (Article 5.3 of the ERPA in case 7009) provides for payment of the amounts due to Meriton "*on a pro rata temporis basis as the Club effectively receives the transfer fee*". The latter clause, evidently, only finds application if Benfica receives a transfer fee, whereas in case the Club rejects an offer accepted by Meriton (Third Scenario) it has to pay 100% of the Transfer Fee without instalments, *i.e.* Meriton is entitled to receive the entire amount in one settlement.
 - (iv) This third group of clauses secures Meriton's investment without any loss on its part; indeed, in each possible scenario, Meriton can, through its acceptance or rejection, ensure that it will receive, at a minimum, the amount of Meriton's Grant Fee in a very short period of time; in this respect, the Panel concurs with FIFA's position that, although a TPO agreement should somehow secure the investment made by the third party, not all clauses are essential to achieve such purpose; rather, providing such excessive guarantees to the investor most likely entails that the latter is entitled to exert an undue influence over the club (a similar reasoning was stated in TAS 2017/A/5463, at para. 103);
 - (v) While it is not necessary that the influence be actually exercised for a club to be in violation of Article 18bis RSTP, it is worth noting that in both cases at hand the Players were transferred to the Spanish club Valencia FC – whose owner is the same as Meriton's – and, coincidentally, for the same amounts provided in the ERPAs as Meriton's Grant Fees.
111. Furthermore, the relevance of such clauses for the Appellant is corroborated by its financial data. Indeed, the financial statements that Benfica filed with the CAS show that, in the 2013-2014 and 2014-2015 sporting seasons, Benfica earned, respectively, EUR 100,800,000 and EUR 101,214,000 through sales of athletes' rights and spent, respectively, EUR 40,476,000 and EUR 49,565,000 in acquisitions. In this respect, the Panel is of the view that the possibility, provided in the Third Scenario, that Benfica has to pay EUR 15,000,000 and/or EUR 30,000,000 (and so potentially a total amount of EUR 45 million) in seven calendar days without receiving any amount would definitely have a substantial impact on the Club's financial situation and operations, and decisions related thereto.
112. Article 6.1 of the ERPAs, on the other hand, does not seem to trigger an undue influence on Meriton's part, since Benfica can independently determine whether or not to temporarily transfer either or both of the Players on loan and for which amount, knowing from the

beginning that, regardless of its choice, it will have to pay to Meriton 100% of any amount it received by the loanee club(s) for the loan of the Players. Of course, in some situations, depending on the composition of a club's team roster, this type of commitment could bear some influence on a club's transfer strategy (for example, if a club has too many midfielders and wishes to loan one away to both help manage its wage bill and receive a loan fee, it might be influenced by such a contractual clause in choosing which player to transfer on loan), but in the Panel's view even such kind of situation, given the temporary and reversible nature of loan transfers, would not reach the level of impact required to be considered as undue influence under Article 18bis RSTP.

113. Therefore, the Panel concludes that Articles, 4.4, 4.5 and 5.1 of the ERPA's enable Meriton to influence Benfica's independence and policies in transfer-related matter through burdensome financial consequences granted in favour of the investor, in violation of Article 18bis RSTP.

C. The proportionality of the sanction

114. The Appellant contends that the sanction is not proportionate to the infringement and must be reduced. In particular, Benfica points out that FIFA, when determining the applicable fine, could not take into account the fact that the Club had already been sanctioned twice in the past, since Benfica, when signing the ERPA's, had not yet been notified of the grounds of the decisions imposing such sanctions. Furthermore, it argues that the sanction is unequal and disproportionate to other previous cases such as that of FC Porto, which was sanctioned with a CHF 50,000 fine notwithstanding the fact that there were two different breaches. Lastly, it points out that, even though the ERPA in case 7009 provided for an investment that doubled the amount of the ERPA in case 7008, FIFA imposed the same sanction in both cases.
115. FIFA, on the other hand, contends that the sanction is proportionate and, in any case, it can only be amended by CAS if it is grossly disproportionate to the offense or if the relevant FIFA judicial body has exceeded its margin of discretion. In addition, it points out that Benfica, while not being notified of the previous disciplinary decisions, was aware of the disciplinary investigations opened against it and thus could and should have been more cautious when entering into the ERPA's. Lastly, it adds that the amount of the financial sanctions imposed on the Appellant is proportionate to other sanctions imposed by FIFA disciplinary bodies for a violation of Article 18bis RSTP. Notably, the previous cases in which clubs were sanctioned with a CHF 50,000 fine are cases in which clubs had not been previously investigated and/or sanctioned for the same conduct.
116. In order to determine the appropriate sanctions in the cases at hand, the Panel observes that under Article 10 FDC (2017 edition, entered into force on 1 January 2018, applied to the cases at hand by the FIFA disciplinary bodies), legal persons (*i.e.* including clubs) are punishable with the following sanctions: warning; reprimand; fine; return of awards. Notably, Article 15 FDC specifies that a fine "*shall not be less than CHF 300 [...] and not more than CHF 1,000,000*".

117. In addition, under Article 39 FDC, the competent disciplinary body “*shall take account of all relevant factors in the case and the degree of the offender’s guilt when imposing the sanction*”.
118. With this legal framework in mind, the Panel also observes that, as pointed out in the Appealed Decisions and confirmed by CAS jurisprudence, a decision making body should, when determining the level of a pecuniary sanction, take into account: “*(a) the nature of the offence; (b) the seriousness of the loss or damage caused; (c) the level of culpability; (d) the offender’s previous and subsequent conduct in terms of rectifying and/or preventing similar situations; (f) the applicable case law and (g) other relevant circumstances*” (para. 77 of the Appealed Decisions, quoting CAS 2014/A/3813 para. 288).
119. In the cases at hand, both Appealed Decisions have confirmed the sanctions imposed by the FIFA Disciplinary Committee for the violation of Article 18bis RSTP, inflicting in both cases a fine amounting to CHF 75,000 and a warning.
120. Notably, the FIFA Disciplinary Committee imposed such sanctions based on the following considerations:
- (i) Benfica is a professional club with high reputation in Portugal and should thus be aware of the FIFA’s legal context; non-compliance with Article 18bis shows negligence and recklessness on its part;
 - (ii) The Club was already sanctioned twice in the past for the same violation, *i.e.* entering into a contract against Article 18bis RSTP;
 - (iii) Although the Club was cooperative during the proceedings, it did not show any remorse or admit to the violation;
 - (iv) The ERPAs allowed Benfica to receive from Meriton, respectively, EUR 15 million (case 7008) and EUR 30 million (case 7009).
121. The Panel has confirmed that the Appellant incurred in a violation of Article 18bis RSTP, since some clauses of the ERPAs enabled Meriton to influence Benfica’s independence and policies in transfer-related matters.
122. However, the legal reasoning and the findings of the Panel partially differ from those of the Appealed Decisions and, accordingly, the Panel must determine whether, notwithstanding such differences, the sanctions imposed on the Appellant are proportionate.
123. To that aim, the Panel recalls that, while it should not easily tamper with the sanctions imposed by the Appealed Decisions, its *de novo* power of review allows it to find that the sanctions are disproportionate and to determine more appropriate sanctions (see CAS 2018/A/5977 at para. 178, with references to CAS 2017/A/5003 and CAS 2015/A/4338).

124. In the cases at stake, the Panel is of the view that, although the violation of Article 18bis RSTP for both ERPAs was confirmed, the following considerations allow the Panel to determine that the sanctions at hand are disproportionate and must be reduced:
- (i) Benfica promptly and adequately cooperated with the disciplinary bodies;
 - (ii) Article 18bis RSTP was not enforced by FIFA for several years and Benfica, when entering into the ERPAs, had no sufficient guidance as to its correct interpretation and application; in this respect, the Panel notes that there has been no official FIFA commentary on the prohibition of third-party influence until 2020, *i.e.* twelve years after its entry into force;
 - (iii) FIFA imposed no disciplinary sanctions for violations of Article 18bis RSTP between the entry into force of such provision in 2008 and the date on which Benfica entered into the ERPAs;
 - (iv) Some of the clauses analysed in the Appealed Decisions are actually acceptable and do not constitute any disciplinary violation; rather, they are merely aimed at securing Meriton's investment in a TPO agreement that was still allowed in January 2014 (*i.e.* before the entry into force of Article 18ter RSTP); in this regard, the Panel emphasises that, in both cases, the clauses found in breach of Article 18bis RSTP have been reduced from thirteen to three (Articles 4.4, 4.5, 5.1 of both ERPAs);
 - (v) In the case at hand, it is crucial to note that Benfica entered into two almost identical ERPAs with the same investor, and that is the factor that has been decisive in ascertaining the existence of a position of undue influence;
 - (vi) When Benfica signed the ERPAs, while being aware of the disciplinary investigations opened against it for potential violations of Article 18bis RSTP, it still could not know that they would have resulted in disciplinary decisions against it (the decisions were directly notified with the grounds only on 30 March 2015 *i.e.* more than one year later); therefore, it is incorrect to consider such awareness as a ground for recidivism on Benfica's part or as an aggravating circumstance.
125. Furthermore, the Panel notes that, as per the FIFA jurisprudence exhibited by the parties in this arbitration, the FIFA Disciplinary Committee has, in the past, exceeded a CHF 50,000 fine only in cases in which the club was found in violation of Article 18bis RSTP along with other provisions of the RSTP.
126. In light of all of the above, and considering primarily that the Panel found that the Appellant breached Article 18bis RSTP only in reference to one group of contractual clauses out of three groups (see *supra* at paras. 85 *et seq.*, 92 *et seq.* and 99 *et seq.*), the Panel concludes that the sanctions inflicted on Benfica by the Appealed Decisions are manifestly disproportionate and, thus, deems it appropriate to reduce both fines from CHF 75,000 to CHF 25,000. As usual with pecuniary

sanctions imposed by FIFA, these fines will have to be paid to FIFA within 30 (thirty) days after receipt of this arbitral award.

127. In addition, the Panel confirms the warning imposed on Benfica as to its future conduct under Articles 10 and 13 FDC. The Panel considers, in particular, the aim pursued by Article 18bis RSTP and the fact that, with the cases at hand, the Appellant totals four violations of Article 18bis RSTP.

D. Further or different motions

128. All further or different motions or requests of the Parties are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeals filed on 27 April 2020 by Sport Lisboa e Benfica SAD against the decisions rendered by the FIFA Appeal Committee on 12 April 2019 in cases 180009 and 180010 are partially upheld.
2. The decisions of the FIFA Appeal Committee of 12 April 2019 are overruled as follows:
 - A) As to the FIFA Appeal Committee's decision in case 180009:
 - i) the club Sport Lisboa e Benfica SAD is liable for the violation of art. 18bis of the Regulations on the Status and Transfer of Players and is ordered to pay a fine to FIFA in the amount of CHF 25,000, to be paid within 30 (thirty) days after receipt of this arbitral award;
 - ii) the club Benfica Sport Lisboa e Benfica SAD is warned on its future conduct;
 - iii) the decision as to costs and expenses of the FIFA proceedings is confirmed.
 - B) As to the FIFA Appeal Committee's decision in case 180010:
 - i) the club Sport Lisboa e Benfica SAD is liable for the violation of art. 18bis of the Regulations on the Status and Transfer of Players and is ordered to pay a fine to

FIFA in the amount of CHF 25,000, to be paid within 30 (thirty) days after receipt of this arbitral award;

- ii) the club Benfica Sport Lisboa e Benfica SAD is warned on its future conduct;
 - iii) the decision as to costs and expenses of the FIFA proceedings is confirmed.
3. (...).
 4. (...).
 5. All further or different motions or prayers for relief are dismissed.