



**Arbitration CAS 2020/A/7417 Arsenal FC v. Fédération Internationale de Football Association (FIFA), award of 18 June 2021**

Panel: Mr Lars Hilliger (Denmark), President; Prof. Ulrich Haas (Germany); Mr Benoît Pasquier (Switzerland)

*Football*

*Disciplinary dispute*

*Rationale of art. 18bis RSTP*

*Principle of contractual freedom and concept of autonomy of will*

*Method of interpretation of an article of the RSTP*

*Interpretation of the element of “influence” set forth in art. 18bis FIFA RSTP*

1. By prohibiting clubs from entering into a contract which enables any possible prohibited influence on another club, the main purpose of art. 18bis of the FIFA Regulations on the Status and Transfer of Players (RSTP) is to preserve the integrity of the competition as a whole by aiming at strengthening the autonomy of clubs in diverse aspects, including in relation to the transfer of players.
2. According to the legal principle of contractual freedom, the terms of a contract may be freely determined within the limits of the law. Freedom of contract is also linked to the concept of *autonomy of will*, where the concept of *will* must be understood as “independence”, *i.e.* the absence of any subordination of the autonomy to an external matter. With regard to the possibility of waiving this contractual freedom, Swiss law holds that no person may surrender his or her freedom or restrict the use of it to a degree which violates the law or public morals.
3. While interpreting art. 18bis of the FIFA RSTP, CAS panels must try to establish the true meaning of the provision pursuant to Swiss law, including the purpose sought and the legislator’s intention. Additionally, a restrictive interpretation must be made of a rule when it is of disciplinary or punitive nature.
4. Any unsubstantial possible influence on another club must not be considered as a violation of the prohibition set out in art. 18bis of the FIFA RSTP. For a potential influence to be covered by the prohibition set out in said article, first of all it has to concern an interest worth of protecting in order to safeguard the integrity of the competition as a whole. Moreover, there must be a threshold to pass for a potential influence to be in breach of the prohibition, *i.e.* the potential influence has to be material, which must be assessed on a case-to- case basis. Restrictions on the freedom of clubs, among others, to enter into fair and freely negotiated business transactions should not be limited by the rules and regulations of FIFA as long as such transactions are not in conflict with the principles set out in FIFA regulations worth of protecting.

## I. PARTIES

1. Arsenal FC (“Arsenal”, the “Appellant” or the “Club”) is a professional English football club playing in the FA Premier League (the “Premier League”) and affiliated with the English Football Association (the “FA”), which in turn is affiliated with the Fédération Internationale de Football Association.
2. The Fédération Internationale de Football Association (“FIFA” or the “Respondent”) is the world governing body of football, whose headquarters are located in Zurich, Switzerland.

## II. FACTUAL BACKGROUND

### A. Background facts

3. Below is a summary of the relevant facts and allegations as established by the Panel on the basis of the decision rendered by the FIFA Appeal Committee (the “Appeal Committee”) on 24 June 2020 (the “Appealed Decision”), the written and oral submissions of the Parties and evidence adduced. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Panel refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
4. On 2 August 2018, Arsenal signed an Agreement for transfer of registration (the “First Contract”) with the Greek professional football club FC PAOK Thessaloniki (“PAOK”) regarding the permanent transfer of the professional football player A. (“Player 1”) with immediate effect.
5. Clause 3.6 of the First Contract reads as follows:

*“Future transfer of the Player*

*3.6 If PAOK agrees to transfer, on a permanent basis, the registration of the Player to another football club (the “Future Transfer”), PAOK shall pay to Arsenal an amount in cash (the “Future Transfer Compensation”) equal to (a) in the event of a Future Transfer to a football club in the UK, 40% (forty per cent.), or (b) in the event of a Future Transfer to a football club outside the UK, 30% (thirty per cent.)”.*

6. When, on the same date, Arsenal uploaded the relevant transfer instructions in FIFA Transfer Matching System (“TMS”) in order to release Player 1 to PAOK, it indicated, among other things, that it *“has not entered into an agreement which enables the counter club/counter clubs and vice versa, or any third party to acquire the ability to influence its independence and policies in transfer-related matters”.*
7. On 15 August 2018, Arsenal signed another Agreement for transfer of registration (the “Second Contract”) with the Italian professional football club Frosinone Calcio S.R.L. (“Frosinone”)

regarding the permanent transfer of the professional football player B. (“Player 2”) with immediate effect.

8. Clause 3.5 of the Second Contract reads as follows:

*“Future transfer of the Player*

*3.5 If Frosinone agrees to transfer, on a permanent basis, the registration of the Player to another football club (the “Future Transfer”), Frosinone shall pay to Arsenal an amount in cash (the “Future Transfer Compensation”) equal to (a) in the event of a Future Transfer to a football club in the UK, 30% (thirty per cent.), or (b) in the event of a Future Transfer to a football club outside the UK, 25% (twenty-five per cent.)”.*

9. When, on 16 August 2018, Arsenal uploaded the relevant transfer instructions in TMS in order to release Player 2 to Frosinone, it indicated, as was the case in connection with the First Contract, that it *“has not entered into an agreement which enables the counter club/ counter clubs and vice versa, or any third party to acquire the ability to influence its independence and policies in transfer-related matters”.*
10. By letter of 28 January 2020 (the “Charge Letter”), and following an investigation conducted by FIFA’s TMS Compliance, Arsenal was informed about the opening of disciplinary proceedings against the club for a possible violation of article 18bis (1) of the Regulations on the Status and Transfer of Players (2018 edition) (the “Regulations”) and article 4 (3) of Annexe 3 of the same in connection with the transfer of Player 1 and Player 2 and specifically in relation to the sell-on fees payable under the relevant transfer agreements, given the circumstance that these provided for a higher percentage sell-on fee in the event that the Players were transferred to clubs in the UK. The TMS Case Transfer Report which was enclosed averred that this higher percentage may have financial implications for the new clubs and thus *“it appears that the Clubs would not enjoy full independence regarding transfer-related matters”.*
11. By letter of 7 February 2020, Arsenal provided its response to the Charge Letter and denied the allegations.
12. On 26 February 2020, the FIFA Disciplinary Committee issued its decision (the “DC Decision”), deciding as follows:

- “1. The FIFA Disciplinary Committee found the Arsenal Football Club responsible for the infringement of the relevant provisions of the Regulations related to third-party influence (art. 18bis par. 1) and the failure to declare mandatory information in TMS (art. 4 par. 3 of Annexe 3).*
- 2. The FIFA Disciplinary Committee orders the Arsenal Football Club to pay a fine to the amount of CHF 40,000.*
- 3. In application of art. 6 par. 1 lit. a) of the FIFA Disciplinary Code, the Arsenal Football Club is warned on its future conduct.*

4. *The above fine is to be paid within thirty (30) days of notification of the present decision”.*

The grounds of the DC Decision were notified to Arsenal on 29 April 2020.

On 30 April 2020, Arsenal informed the secretariat of the Appeal Committee of its intention to appeal the DC Decision and on 7 May 2020, the Club submitted its reasons for the appeal.

## **B. Proceedings before the FIFA Appeal Committee**

13. In its appeal before the Appeal Committee, Arsenal requested, *inter alia*, that the DC Decision be overturned on the grounds that the FIFA DC erred in deciding that the club breached article 18bis and/or article 4 (3) of Annexe 3 of the Regulations.
14. Arsenal’s position before the Appeal Committee was summarised, *inter alia*, as follows in the Appealed Decision:
- The sell-on clauses in the two contracts did not breach article 18bis of the Regulations because Arsenal never did acquire any “*real or effective ability*” to influence in employment and transfer-related matters the clubs’ independence, their policies or the performance of their teams.
  - The fact that a club has agreed to financial consequences that arise from certain actions does not necessarily equate to a restriction that would amount to influence for the purpose of article 18bis of the Regulations. Financial consequences do not, *per se*, undermine a club’s independence.
  - Arsenal held legitimate expectations that the sell-on clauses do not infringe article 18bis of the Regulations, which expectations were founded upon the Club’s experience, its understanding of the custom and practice in the industry and FIFA’s previous approach to such matters. Based on that, it would be unjust, unreasonable and unlawful for FIFA now to sanction Arsenal for having negotiated/agreed the sell-on clauses.
  - Moreover, the wording of article 18bis of the Regulations is not clear, especially as many other clubs have seemingly followed a similar approach to Arsenal.
  - Furthermore, the FIFA Disciplinary Committee failed to consider all the Club’s submissions in its decision, which constitute a violation of the right to be heard.
  - With regard to the alleged breach of article 4 (3) of Annexe 3 of the Regulations, this provision does not make any reference to a “*counter club*”, which is significant. Clubs are not third-parties for the purpose of the Regulations as the definition of third-party in the Regulations is “*a party other than the two clubs transferring a player from one to the other, or any previous club, with which the player has been registered*”.

15. With regard to the alleged breach of the right to be heard, the Appeal Committee initially highlighted the fact that the failure of the FIFA Disciplinary Committee to make reference to all points raised by the Club in the DC Decision does not purport that these points were not duly taken into consideration.
16. In the DC Decision, the FIFA Disciplinary Committee highlighted in a footnote, *inter alia*, that the summary of the Club's position "*does not purport to include every single contention put forth by the Club. However, the FIFA Disciplinary Committee has thoroughly considered in its discussion and deliberation any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion of the merits*".
17. In view of that, the Appeal Committee concluded that the right to be heard had been respected by the Disciplinary Committee.
18. With regard to the correct interpretation of the FIFA regulations in general, and of article 18bis of the Regulations in particular, the Appeal Committee stressed that it must find the true meaning of the provision, which is only possibly through the analysis of the purpose sought, of the interest protected as well as of the legislator's intent.
19. With regard to article 18bis of the Regulations, first of all, there is an active stance: clubs are prohibited from being able to actively influence other clubs in employment or transfer-related matters, which prohibition is addressed to both clubs, *i.e.* the influencing club and the influenced club. As such, the Appeal Committee stressed that Arsenal was undoubtedly responsible for ensuring that it does not exercise or find itself in a position where it can possibly exert any kind of influence on the counter club.
20. With reference to CAS jurisprudence, it was recalled that the prohibition in article 18bis of the Regulations applies whenever "*any other party to that contract or any third party*" is granted a real ability to affect, determine or impact the behavior or conduct of the concerned club in relation to employment and transfer-related matters in such a way as to restrict the club's independence or autonomy in such matters.
21. Thus, a club will be considered to be in breach of article 18bis of the Regulations every time it enters into an agreement that enables it to have a real ability to determine or impact the behavior or conduct of another club in employment and transfer-related matters or the performance of its team and, therefore, is in a position to influence the club's independence and policies in these matters.
22. Moreover, the Appeal Committee emphasised that the mere fact that such a clause is included in an agreement is an infringement *per se* and it is therefore irrelevant whether any influence has actually been exerted or not.
23. Based on the above, the Appeal Committee was fully satisfied with the FIFA Disciplinary Committee's analysis and interpretation of article 18bis of the Regulations.

24. With regard to the sell-on clauses (the “Sell-on Clauses”) included in the First and the Second Contracts, the Appeal Committee shared the view of the DC Decision that the clauses are deemed to have an influence on the respective clubs’ freedom to decide to which club to transfer their respective players as they are not fully independent in case one of the offers received for the transfer of the players comes from a club from the UK, given that the percentage of the profit the respective club would have to pay to Arsenal in accepting an offer from a club from the UK is considerably higher compared with accepting an offer from any other club. Consequently, it would be more inclined to accept the offer from a club from outside the UK.
25. Moreover, the Appeal Committee confirmed that in order to establish a breach of article 18bis of the Regulations, it is irrelevant if any influence was actually exerted or not by Arsenal, but the breach occurs whenever a real possibility to affect the other club’s decision-making process is agreed upon.
26. Furthermore, it was considered irrelevant to establishing a breach of article 18bis of the Regulations that the influence was only limited to certain clubs or to a specific geographical area.
27. Based on that, the Appeal Committee concurred with the DC Decision that the sell-on clauses in the two contracts contravene article 18bis of the Regulations.
28. With regard to the breach of article 4 (3) of Annexe 3 of the Regulations, the Appeal Committee notes that even though Arsenal uploaded the relevant contracts in TMS, it was moreover a mandatory obligation to declare the influence on the counter clubs, even more so when the FIFA Disciplinary Committee considered that the said contracts breached the provisions of article 18bis of the Regulations, which the Appeal Committee already confirmed to be the case.
29. Based on that, the Appeal Committee also adhered to the conclusion reached in the DC Decision that Arsenal was in breach of art. 4 para. 3 of Annexe 3 of the Regulations, given that the club failed to declare the third-party influence in TMS.
30. With regard to the sanction imposed on Arsenal, the Appeal Committee recalled the jurisprudence of CAS, according to which a decision-making body fixing the level of pecuniary sanctions should take into consideration the following elements, among others: (a) the nature of the offence; (b) the seriousness of the loss or the 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.
31. Based on the above, and making reference, *inter alia*, to the objectives set out in art. 2 (g) of the FIFA Statutes, which was intended to be protected by article 18bis of the Regulations, and the fact that failure to enter correct information in TMS is also a serious violation of the Regulations, the Appeal Committee decided that the sanction imposed on Arsenal in the DC Decision is not disproportionate, keeping in mind the deterrent effect that the sanction must have on the reprehensible behavior to avoid similar unacceptable conduct in the future.

32. Taking into account all the circumstances of the case, the Appeal Committee moreover concurred with the DC Decision, as it considered the imposed sanction adequate and proportionate to the offence committed by Arsenal.
33. Following its deliberations, on 24 June 2020, the Appeal Committee rendered the Appealed Decision and decided that:
- “1. The FIFA Appeal Committee found the Arsenal Football Club responsible for the infringement of the relevant provisions of the Regulations on the Status and Transfers of Players related to third/party influence on clubs (art. 18bis) and to the obligations of clubs with respect to the TMS (art. 4 par. 3 of Annexe 3).*
  - 2. The appeal lodged by the Arsenal Football Club is rejected and the decision of the FIFA Disciplinary Committee passed on 26 February 2020 is confirmed in its entirety.*
  - 3. The costs and expenses of the proceedings amounting to CHF 1,000 are to be borne by the Arsenal Football Club. This amount is set off against the appeal fee of CHF 1,000 already paid by the Arsenal Football Club.*
  - 4. The fine is to be paid within thirty (30) days of notification of the present decision”.*
34. On 7 September 2020, the grounds of the Appealed Decision were communicated to the Appellant.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

35. On 28 September 2020, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the “CAS Code”) against the Appealed Decision.
36. On 19 October 2020, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.
37. By letter of 19 November 2020, and in accordance with Article R54 of the CAS Code, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows:
- President: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark.
- Arbitrators: Prof. Ulrich Haas, Professor of Law in Zurich, Switzerland;
- Mr Benoît Pasquier, Attorney-at-Law in Zurich, Switzerland.
38. Also on 19 November 2020, and following a granted extension of the time limit, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.

39. By letter of 4 December 2020 from the CAS Court Office, and in line with the preference of the Appellant, the Parties were informed that the Panel had decided to hold a hearing in this matter.
40. By letter of 11 December 2020, the Appellant requested that the report by the European Club Association (the “ECA”) “*Article 18bis FIFA RSTP & Third-Party Influence – Note for Discussion*” (the “ECA Report”) be admitted to the file.
41. On 14 December 2020, the Respondent informed the CAS Court Office that it did not object to the admission of the said report, but expressly reserved its right to further comment hereon at the hearing, following which on 15 December 2020, the Parties were informed that the ECA Report was admitted to the file of the proceedings.
42. By letter of 15 January 2021, the Parties were informed that the hearing, due to the current travel restrictions, would be held by video conference.
43. Both Parties duly signed and returned the Order of Procedure, confirming, *inter alia*, the jurisdiction of the CAS to hear this dispute.
44. On 16 March 2021, a hearing was conducted by videoconference.
45. In addition to the Panel and Mr Giovanni Maria Fares, Counsel to the CAS, the following persons attended the hearing:
  - For the Appellant:
    - Mr Stuart Baird, Counsel;
    - Mr Anthony Downey, Arsenal, Observer.
  - For the Respondent:
    - Mr Miguel Liétard Fernández-Palacios, Director of Litigation;
    - Mr Jaime Cambreleng, Head of Litigation;
    - Mr Alexander Jacobs, Senior Legal Counsel;
    - Mrs Sandra Reuter, Senior TMS Compliance Legal Counsel;
    - Mr Olajide Ojuawo, TMS Compliance Legal Counsel;
    - Mrs Erika Urbina, Counsel.

46. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel.
47. The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
48. After the Parties' final submissions, the Panel closed the hearing and reserved its final award. The Panel took into account in its subsequent deliberations all the evidence and arguments presented by the Parties although they may not have been expressly summarised in the present Award.
49. Upon the closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

#### IV. SUBMISSIONS OF THE PARTIES

##### A. The Appellant

50. In its Appeal Brief, the Appellant requested the CAS to decide that:

- I. the Appeal is admissible and well-founded; and*
- II. the Appealed Decision is replaced in the sense that: Arsenal is not guilty of infringing Article 18bis (third-party influence on clubs) or Article 4 par. 3 of Annexe 3 (obligations of clubs with respect of the TMS) of the Regulations, and is therefore, released of any sanction;*
- III. alternatively to II., the Appealed Decision is replaced in the sense that: even if there is a finding that Arsenal is guilty of infringing Article 18bis (third-party influence on clubs), Arsenal is not guilty of infringing Article 4 par. 3 of Annexe 3 (obligations of clubs with respect of the TMS) of the Regulations and, therefore, the fine is reduced accordingly;*
- IV. alternatively to II. and III., the Appealed Decision is replaced in the sense that: the fine is disproportionate and is reduced; and*
- V. FIFA shall pay in full, or in the alternative, a contribution towards the costs and expenses pertaining to these appeal proceedings before the CAS, including Arsenal's legal costs and expenses".*

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

- The rule of article 18bis of the Regulations was introduced by FIFA as a direct result of situations coming to light where investors were acquiring ownership of players' economic rights and were imposing contractual entitlements which allowed them to have control over the activities of the club at stake.

- This aim of article 18bis of the Regulations is to preclude arrangements which give a third party a “*voice and vote*” on club’s decisions and, thus, to protect the integrity of competition, sports ethics and unlawful influence.
- While the scope of the provision includes any and all counter-parties to the contract concerned, it is widely understood that article 18bis of the Regulations is mainly designed to protect the integrity of the football family against third parties, and agreements between two clubs are therefore likely to be subject to a more lenient application of the rule.
- The test to be applied when considering the scope and application of article 18bis of the Regulations is, *inter alia*, whether there exists an ability to produce effect or exercise predominance, which is only the case if the contract in question confers to a third party a real ability to produce an effect on, determine or affect the behavior or conduct of a club in employment and/or transfer-related matters in such a way that the club’s independence or autonomy is restricted.
- Moreover, and taking into consideration the contractual freedom of the clubs, the prohibition only applies in situations in which a real and effective possibility of influence has actually been conferred on a third party, and thus not merely hypothetically or theoretically.
- The FA in its own rules also interpreted article 18bis of the Regulations as meaning “*material influence*”, and the UEFA in its provisions refers to “*decisive influence*”.
- Furthermore, in its own Manual on TPI and TPO in football agreements issued in 2020 (the “TPI/TPO Manual”), FIFA itself acknowledged that article 18bis of the Regulations seeks to prevent the interests of other parties (including other clubs) from influencing the operations or sporting policy of football clubs and, ultimately, to avoid conflicts of interests that could affect the integrity of the game.
- However, and even if maintained by FIFA that the provision is broad in order to encompass all types of influence, it goes on to accept that the proper test to be applied when assessing whether a club has complied with the said article is whether there is “*real influence*”.
- Thus, article 18bis of the Regulations is not intended to prohibit clubs from agreeing commercial terms at arm’s length, pursuant to which neither party has the ability to directly or materially influence the other’s independence in employment or transfer-related matters. The test to be applied is whether the influence is “*real*” or “*decisive*” which involved a party exercising “*predominance*” or “*undue influence*” over the other.
- The general validity of sell-on clauses is not disputed by FIFA.

- The sell-on clauses included in the First Contract and in the Second Contract do not restrict the Players' new clubs (the "Clubs") from transferring the Players to any third party club if they so wish.
- And if the Clubs decide to transfer the Players, there is nothing in the Sell-on Clauses which enables Arsenal to interfere in any way with such decisions, and the Clubs remain autonomous and free to make any decision they deem appropriate in relation to their sporting needs.
- Paying an increased sell-on percentage depending on the territory of the future buying club does not have the effect of undermining the Clubs' independence or in any way allow for Arsenal to influence such decision-making at all.
- The acceptance to pay a higher sell-on fee in certain pre-determined circumstances does not constitute the exertion of undue influence or a threat to the integrity of the game, which article 18bis of the Regulations seeks to prevent.
- Moreover, the Sell-on Clauses are not so-called "*anti-rival clauses*" with the aim of preventing the Players to transfer to any of Arsenal's "*rivals*" with the Premier League. In any case, the Sell-on Clauses mention transfers to the UK, and not to England or to the Premier League, which would have been the case for an "*anti-rival clause*".
- As Arsenal has not acquired any real or effective ability to influence the Players' new clubs, the Sell-on Clauses do not infringe article 18bis of the Regulations, and both the FA and the FA Premier League (the "FAPL") approved the content of the First Contract and of the Second Contract, thus confirming that there was no actual or potential breach of the Domestic TPI rules, *i.e.* no material influence.
- Whether or not the Players' new Clubs would be more inclined to accept an offer from a club that is not from the UK is not the same as Arsenal being able to exert undue influence over the said Clubs' decision-making, which is a condition for a situation to qualify as an infringement of article 18bis of the Regulations.
- Moreover, the fact that a club has agreed to financial consequences that arise from certain actions or events does not necessarily equate to a restriction that would amount to "*influence*" for the purpose of article 18bis of the Regulations.
- Financial consequences do not, *per se*, undermine a club's independence, as is the case with, *inter alia*, performance-related bonuses which are not considered against the spirit of the said article. The same goes for buy-back options.
- In the Appealed Decision, the Appeal Committee failed to consider whether any perceived influence was demonstrable, real or decisive and whether Arsenal could have exerted undue influence, which is not the case.

- Notwithstanding that the meaning and effect of the Sell-on Clauses is such that they do not infringe article 18bis of the Regulations, Arsenal also held legitimate expectations when entering into the First and Second Contracts that it would not be sanctioned for agreeing on the Sell-on Clauses.
- Such legitimate expectations will be breached if the Appealed Decision is upheld.
- Arsenal's legitimate expectations were founded upon a) its own experiences and previously accepted dealings, *i.e.* that similar sell-on clauses have been agreed on before without any sanctions or comments from FIFA, b) its understanding of the custom and practice in the industry, *inter alia*, that other clubs have also used similar sell-on clauses without being sanctioned by FIFA, and c) its understanding that there did not exist any FIFA circular guidance note or jurisprudence which confirmed or suggested that these types of commercial terms would breach article 18bis of the Regulations.
- It is undisputed that, prior to August 2018, the FIFA administration accepted or did not challenge the use of various sell-on clauses and Arsenal was therefore entitled to rely on this longstanding FIFA practice (customary law) in its understanding and interpretation of the rule.
- The existence of this longstanding FIFA practice is supported by the content of both the ECA Report and FIFA's own TPI/TPO Manual.
- In case FIFA was seeking to deviate from this practice and start to sanction clubs for commercial provisions which were previously accepted or at least unchallenged, it is not sufficient to just end the common and binding practice without any notice or communication to the relevant stakeholders.
- As FIFA failed to forward any notice to the relevant stakeholders, including Arsenal and other professional football clubs, it would be unfair and contrary to customary law for FIFA to sanction Arsenal in respect of the Sell-on Clauses and also against the principle of legality. In other words, FIFA is estopped from sanctioning Arsenal in this case.
- With regard to the alleged breach of article 4 of Annexe 3 of the Regulations, and even if Arsenal is considered to have breached article 18bis of the same Regulations, no consequences should follow in respect of article 4 (3) of Annexe 3.
- Article 4 (2) of Annexe 3 of the Regulations concerns "*third-party payments and influence*" and it follows from the Regulations' definition that a third party is "*a party other than the two clubs transferring a player from one to the other, or any previous club, with which the player has been registered*". Thus, Arsenal is not a third party for the purposes of the Regulations in relation to the First and Second Contracts.
- In any case, Arsenal completed the mandatory declaration genuinely believing at that time that no such influence existed.

- Based on the above, no sanction should be imposed on Arsenal in respect on the inclusion of the Sell-on Clauses in the First and the Second Contracts.
- In the alternative, the sanction should be limited to a warning, and in the further alternative, any fine imposed on Arsenal should be reduced.
- Moreover, there should be no additional sanction for any breach of article 4 of Annexe 3 of the Regulations, since any breach of the said article is already covered by article 18bis of the Regulations, and it does not seem logical that Arsenal is sanctioned again for the same conduct under a more general/technical provision.

## **B. The Respondent**

52. In its Answer, the Respondent requested the CAS to:

- a. reject the Appellant's appeal in its entirety;*
- b. confirm the decision 200145 APC rendered by the FIFA Appeal Committee on 7 September 2020;*
- c. order the Appellant to bear all costs incurred with the present procedure,*
- d. order the Appellant to make a contribution to FIFA's legal costs".*

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

- Art. 18bis of the Regulations establishes a prohibition on clubs from acquiring the capacity to influence another club and, simultaneously, from enabling other parties (or another club) from acquiring the possibility to influence it in employment and transfer-related matters.
- The said article establishes a prohibition addressed exclusively to clubs and, consequently, clubs like Arsenal are responsible for ensuring that this provision is respected and that no clauses are imposed or agreed enabling one party to acquire the ability to influence their counterparty in the aspects stipulated by the article.
- As such, any situation where an entity acquires the ability to influence a club's independence, its policies or the performance of its team, directly or indirectly, in employment and transfer-related matters is absolutely forbidden. The forbidden influence, however, is not only limited to the integrity of the competitions, but must be interpreted in a wider manner in order to secure "*a level-playing field*".
- The provision itself does not leave any room for interpretation and, furthermore, under Swiss law, the rules of a sports organisation must be interpreted to show their true meaning.

- The violation of article 18bis of the Regulations does not depend on the materialisation of the influence, and the mere power or capacity to cause effect in indirect or intangible ways is prohibited pursuant to the said article.
- Art. 18bis of the Regulations does not distinguish between direct or indirect influence nor between material or immaterial, and it is entirely irrelevant whether or not any influence was effectively exerted or exercised.
- The infringement materialises at the moment of an agreement in which the ability to influence is foreseen.
- The Appellant's reference to the regulation of the FA, FAPL and UEFA is not relevant since article 18bis of the Regulations is binding and must be included in the national association's statutes without modifications pursuant to the Regulations and moreover, the UEFA regulations referred to concern the UEFA club competitions, which are not relevant in this matter.
- With regard to the Appellant's reference to the FIFA TPI/TPO Manual, the Appellant's perceived requirement of a "*material*", "*real*", "*decisive*" or "*undue*" influence is misguided, since it follows from the same manual that any possible situation where somebody acquires the ability to influence a club's independence, its policies or the performance of its teams, whether directly or indirectly, in employment and transfer-related matters cannot be tolerated and is absolutely forbidden.
- With regard to the present case, it is clear that the Sell-on Clauses amount to nothing less than a clear breach by Arsenal of article 18bis of the Regulations by virtue of signing the First and the Second Contracts.
- It is correct that sell-on clauses as such or by their nature are generally not prohibited.
- However, it is clear that when an additional obligation is included in the form of a disguised financial penalty, then this type of provisions may contravene article 18bis of the Regulations.
- In the present case, the Sell-on Clauses not only have a negative influence on the independence of the Players' new clubs, but the said influence is achieved from the onset by Arsenal.
- The Sell-on Clauses establish different percentages depending on the Players' destination in case of a transfer, being either to a new club in the UK (40% and 30% respectively, in favour of Arsenal) or to any other club outside of the UK (30% and 25% respectively, in favour of Arsenal).

- It is evident that the Sell-on Clauses are intended to significantly obstruct potential future transfers of the Players to another club in the UK, *i.e.* to obstruct the future transfer of the Players to any of its rivals at domestic level, thus in fact being anti-rival clauses, or if such transfers are carried out nonetheless, to ensure that it receives a substantial amount of the capital gain at the expense of the respective club. Such clauses are not common at all.
- Even if Arsenal cannot directly intervene in the possible future transfers of the Players, it has already influenced the Players' clubs by imposing harsher financial conditions on them, depending on the geographical location on the destiny clubs. The Players' clubs would certainly be influenced by these harsher financial conditions when deciding to accept or reject an offer.
- Moreover, the Sell-on Clauses affect the Players by jeopardising a possible transfer to the UK, should any club from the UK become aware of the content of the Sell-on Clauses.
- The fact that performance bonuses are not in general considered to be in breach of article 18bis of the Regulations does not imply that the Sell-on Clauses are not in breach of the said article.
- The same goes for buy-back clauses since the provisions of such clauses are predetermined in advance by the clubs in question and since such clauses do not influence the other club's decision-making process, as it was already agreed between the two clubs.
- All in all, the Sell-on Clauses clearly violate article 18bis of the Regulations.
- With regard to the alleged legitimate expectations, first of all it must be stressed that Arsenal's own experiences and previously accepted dealings can never contribute to its own legitimate expectations. In addition, it must be noted that in a recent similar case, another Premier League club sanctioned by FIFA for breach of article 18bis of the Regulations did not appeal against the FIFA decision and did not submit any argumentation regarding legitimate expectations.
- Moreover, the submission that Arsenal allegedly agreed on similar clauses, which were never identified or sanctioned by FIFA, remains unsubstantiated, even if the burden of proof lies with Arsenal in accordance with the general principles. And even if the submission was correct, this does not exonerate it from liability.
- It is also unsubstantiated that such sell-on clauses are commonly used in the industry, and the fact that other clubs have not been sanctioned for entering into such clauses naturally does not justify or validate Arsenal's breach.
- The ECA Report was drafted by the ECA as a stakeholder, being a club organisation, and must be read in that light.

- Moreover, it is disputed that FIFA is now seeking to introduce new practice when sanctioning clubs for breaching article 18bis of the Regulations, and even if there was an absence of sanctioning for a certain period of time, this does not amount to acceptance. The same goes for the alleged lack of circulars, guidance or jurisprudence.
- With regard to the submission on legal certainty and predictability, it must be stressed that in order to meet the predictability test, it is not necessary that the defaulting party is able to foresee the specific measure and the exact sanction that will be imposed in case of violation, and the principle is satisfied whenever the disciplinary rules have been properly adopted, describe the infringement and provide, directly or by reference, for the relevant sanction. Article 18bis of the Regulations fully complies with such principles of predictability and legality.
- As such, the arguments of Arsenal on its alleged legitimate expectations are groundless and must therefore be rejected in full.
- With regard to the infringement of article 4 (2) of Annexe 3 of the Regulations, it is relevant to recall that the purpose of the creation of TMS is to safeguard the FIFA values and improve the creditability and transparency of the transfer system.
- As the First Contract and the Second Contract clearly violates article 18bis of the Regulations, Arsenal should have declared such influence in TMS and failed to do so.
- By not doing so, Arsenal violated article 4 (2) of Annexe 3 of the Regulations.
- Based on the circumstances of the case, the sanction imposed on Arsenal is just and proportionate.
- The present violation has its origin in unnecessary and intentional behaviour by means of which Arsenal sought to have its own interests prevail.
- However, the fact that the influence in this specific matter was limited to a very specific geographical area was considered as a mitigating factor, which is why the imposed fine on Arsenal was below CHF 50,000, which is the most common sanction for such offences.
- There are no other elements to mitigate the sanction.

## V. JURISDICTION

54. 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 the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific*

*arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.*

55. With respect to the Appealed Decision, the jurisdiction of the CAS derives from art. 58 para. 1 of the FIFA Statutes. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, and both Parties confirmed the CAS jurisdiction when signing the Order of Procedure.
56. It follows that the CAS has jurisdiction to decide on the appeal of the Appealed Decision.

## **VI. ADMISSIBILITY**

57. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*

58. It follows from article 58 of the FIFA Statutes that *“appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, members or leagues shall be lodged with CAS within 21 days of receipt of the decision in question”.*
59. The grounds of the Appealed Decision were notified to the Appellant on 7 September 2020, and the Appellant’s Statement of Appeal was lodged on 28 September 2020, *i.e.* within the statutory time limit of 21 days set forth in Article R49 of the CAS Code and in article 58 of the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.
60. It follows that the appeal is admissible.

## **VII. APPLICABLE LAW**

61. Article R58 of the CAS Code provides as follows:

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

62. Article 57 para. 2 of the FIFA Statutes determines the following:

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

63. Based on the above, and with reference to the filed submissions, the Panel is satisfied that the various regulations of FIFA are primarily applicable and, subsidiarily, Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

### VIII. MERITS

64. Initially, the Panel notes that the factual circumstances pertaining to this dispute are undisputed by the Parties.

65. In rendering its award, the Panel has therefore taken into account the following non-exhaustive list of factors and considerations:

- On 2 August 2018, Arsenal entered into the First Contract with PAOK regarding the permanent transfer of Player 1, which contract stated, *inter alia*, as follows:

*“Future transfer of the Player*

*3.6 If PAOK agrees to transfer, on a permanent basis, the registration of the Player to another football club (the “Future Transfer”), PAOK shall pay to Arsenal an amount in cash (the “Future Transfer Compensation”) equal to (a) in the event of a Future Transfer to a football club in the UK, 40% (forty per cent.), or (b) in the event of a Future Transfer to a football club outside the UK, 30% (thirty per cent.)”.*

- On 15 August 2018, Arsenal entered into the Second Contract with Frosinone regarding the permanent transfer of Player 2, which contract stated, *inter alia*, as follows:

*“Future transfer of the Player*

*3.5 If Frosinone agrees to transfer, on a permanent basis, the registration of the Player to another football club (the “Future Transfer”), Frosinone shall pay to Arsenal an amount in cash (the “Future Transfer Compensation”) equal to (a) in the event of a Future Transfer to a football club in the UK, 30% (thirty per cent.), or (b) in the event of a Future Transfer to a football club outside the UK, 25% (thirty per cent.)”.*

- When uploading the relevant transfer instructions in TMS in order to enable the release of the two players to their respective new clubs, Arsenal “ticked the box” to indicate that it had *“not entered into an agreement which enables the counter club/ counter clubs and vice versa, or any third party to acquire the ability to influence its independence and policies in transfer-related matters”.*

66. Based in the above, and following an investigation conducted by FIFA’ TMS Compliance, on 26 February 2020, the FIFA Disciplinary Committee issued the DC Decision, deciding as follows:

- “1. The FIFA Disciplinary Committee found the Arsenal Football Club responsible for the infringement of the relevant provisions of the Regulations related to third-party influence (art. 18bis par. 1) and the failure to declare mandatory information in TMS (art. 4 par. 3 of Annexe 3).
  2. The FIFA Disciplinary Committee orders the Arsenal Football Club to pay a fine to the amount of CHF 40,000.
  3. In application of art. 6 par. 1 lit. a) of the FIFA Disciplinary Code, the Arsenal Football Club is warned on its future conduct.
  4. The above fine is to be paid within thirty (30) days of notification of the present decision”.
67. Finally, on 24 June 2020, and following Arsenal’s appeal of the DC Decision, the Appeal Committee rendered the Appealed Decision, which decided as follows:
- “1. The FIFA Appeal Committee found the Arsenal Football Club responsible for the infringement of the relevant provisions of the Regulations on the Status and Transfers of Players related to third-party influence on clubs (art. 18bis) and to the obligations of clubs with respect to the TMS (art. 4 par. 3 of Annexe 3).
  2. The appeal lodged by the Arsenal Football Club is rejected and the decision of the FIFA Disciplinary Committee passed on 26 February 2020 is confirmed in its entirety.
  3. The costs and expenses of the proceedings amounting to CHF 1,000 are to be borne by the Arsenal Football Club. This amount is set off against the appeal fee of CHF 1,000 already paid by the Arsenal Football Club.
  4. The fine is to be paid within thirty (30) days of notification of the present decision”.
68. The Appellant submits, *inter alia*, that the “influence” set out in article 18bis of the Regulations must be demonstrable/real/decisive/material and that the “influencer” would in fact have to acquire the ability to exert “undue influence” over another in order to be in breach of the said article, which is not the case with regard to the Sell-on Clauses. As such, the Appeal Committee erred in the Appealed Decision, since, *inter alia*, the new Clubs had absolute discretion and full control over whether to transfer the two players, to whom and on what terms. Moreover, and in any event, Arsenal should not be sanctioned since it acted in good faith and had legitimate expectations that it would not be the subject of disciplinary actions based on FIFA’s approach and practice since the introduction of the rule.
69. Based on that, the main issue to be resolved initially by the Panel is whether Arsenal did breach the provision set out in article 18bis of the Regulations when entering into the First and Second Contracts, thus agreeing on the Sell-on Clauses.

70. Moreover, and if this initial question is answered in the affirmative, the Panel will have to deal with whether or not Arsenal is also in breach of article 4 of the Annexe 3 of the Regulations, and whether or not Arsenal should be sanctioned and to what extent for such possible violations of the Regulations.

**A. Article 18bis of the Regulations.**

71. Initially, the Panel notes that article 18bis of the Regulations states as follows:

*“Third-party influence on clubs*

1. *No club shall enter into a contract which enables the counter club/counter clubs and vice versa, 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”.*

72. Moreover, it is noted that one of FIFA’s objectives, according to art. 2 (g) of the FIFA Statutes, is *“to promote integrity, ethics and fair play with a view to preventing all methods or practices, such as corruption, doping or match manipulation, which might jeopardise the integrity of matches competitions, players, officials and member associations or give rise to abuse of association football”.*

73. Furthermore, it is worth noticing that article 18bis of the Regulations was added to the Regulations in 2008 and amended in 2015 in order to achieve this objective.

74. With reference to this, the TPI/TPO Manual states, *inter alia*, that:

*“Article 18bis prohibits all scenarios whereby any person or entity acquires the ability to influence in employment and transfer-related matters a club’s independence, its policies or the performance of its teams, including the club’s capacity to independently determine conditions and policies concerning purely sporting issues as the composition and performance of its team.*

*The prohibition is directed exclusively at clubs and, therefore clubs are responsible for ensuring that no party acquires the ability to influence them, and that they do not acquire such an ability in the areas stipulated”.*

75. As such, it seems clear to the Panel that the main purpose of article 18bis of the Regulations is to preserve the integrity of the competition as a whole by aiming at strengthening the autonomy of clubs in diverse aspects, including in relation to the transfer of players.

76. Moreover, it seems clear to the Panel, as confirmed by the Appellant during these proceedings, that the rule in question prohibits clubs from entering into a contract which enables any possible prohibited influence on another club, even if such prohibited influence never materialises.

77. It is furthermore clear to the Panel that the responsibility for not entering into such contracts lies with the club or clubs entering into such agreement, which is not disputed by Arsenal.

**B. Contractual freedom under Swiss law and article 18bis of the Regulations**

78. In continuation of the above, the Panel now notes that the present case is of a disciplinary nature and, accordingly, has to do with the obligation of a club by virtue of its affiliation with FIFA to observe the regulations put forward by FIFA to govern their relationship.

79. As correctly explained by the Panel in CAS 2020/A/7158, freedom of contract is linked to the concept of *autonomy of will*, where the concept of *will* must be understood as “independence”, *i.e.* the absence of any subordination of the autonomy to an external matter.

80. Contractual freedom as a legal principle is found, *inter alia*, in article 19 of the Swiss Code of Obligation, which states: “*The terms of a contract may be freely determined within the limits of the law*”.

81. Furthermore, and with regard to the limitation of the possibility of waiving this contractual freedom, article 27(2) of the Swiss Civil Code (“SCC”) has the following wording: “*No person may surrender his or her freedom or restrict the use of it to a degree which violates the law or public morals*”.

82. The CAS has furthermore confirmed the application of the principle of contractual freedom to football contracts, including excessive self-commitment as being contrary to this principle (CAS 2015/A/4042).

83. As such, and in general, when negotiating, *e.g.* a transfer agreement governed by Swiss law, the two clubs are allowed to freely set the essential conditions, the nature and the non-essential elements of the contract they wish to enter into, without being subject to any limitations or conditions, except against entering into an unlawful contract (*i.e.* one that is against the law, good moral or customary practice).

84. However, it also follows, *inter alia*, from article 60(2) SCC, that a private association legally established under Swiss law, like FIFA, has the power to self-govern and to lay down its own rules in articles, which must be done in writing and indicate the objects of the association, its resources and its organisation.

85. As such, FIFA is entitled to lay down its own rules and regulations, but these are subject to and must observe Swiss law.

86. As mentioned above, article 18bis of the Regulations aims, *inter alia*, at prohibiting clubs from entering into a contract which enables any possible prohibited influence on another club.

87. Such prohibition must be understood and interpreted as an exception to the principle of contractual freedom.

88. The Panel supports the objective of protecting the integrity of the competition as set out in the FIFA Statutes as a whole, however, and even if it is possible for FIFA to set limits on the contractual freedom of clubs that are subject to FIFA rules and regulations, thus prohibiting the conclusion of agreements that may jeopardise the integrity of the completion and/or the independence of clubs, such restrictions must be balanced with the principle of contractual freedom in accordance with Swiss law.

**C. Interpretation of article 18bis of the Regulations – the concept of influence under this article.**

89. In its TPI/TPO Manual, FIFA itself recognises that *“the concept of influence is a difficult one to establish and pin down, being undetermined and undefined, thus leaving room for interpretations”*.

90. When interpreting an article like article 18bis of the Regulations, the Panel must try to establish the true meaning of the provision pursuant to Swiss law, including the purpose sought and the intention of the legislator, *i.e.* FIFA.

91. As already mentioned above, and as described, *inter alia*, in the TPI/TPO Manual, the provision was included in the Regulations in order to try to safeguard the integrity of the competition as a whole, which is why the Panel will use that purpose and intention as the basis for its interpretation.

92. First of all, it is undisputed that the prohibited influence to be acquired, but not necessarily materialised, in order to constitute a breach of the said rule can both be direct and indirect.

93. However, for the Panel the essential question to be answered is what is to be understood as *“influence”* in order to be in breach of article 18bis of the Regulations, including whether such influence needs to potentially produce a limitation, and whether such possible limitation must threaten the integrity of the competition as a whole.

94. In this regard, the Panel concurs with the panel in CAS 2020/A/7158 (para. 112) that *“a restrictive interpretation must be made of the rule, the nature of which is disciplinary or punitive”*.

95. This also follows from the fact that the provision is actually seeking to limit the contractual freedom under Swiss law for football club subject to FIFA’s rules and regulations (see also CAS 2016/A/4518 para. 91).

96. In light of the above, and with reference to the purpose and intention behind article 18bis of the Regulations, the Panel wishes to stress that any unsubstantial possible influence on another club must not be considered as a violation of the prohibition set out in the said rule.

97. In the Panel’s view, in order for a potential influence to be covered by the prohibition set out in article 18bis of the Regulation, first of all it has to concern an interest worth of protecting in order to safeguard the integrity of the competition as a whole.

98. For example, and in line with the jurisprudence of FIFA's deciding legal bodies, in general the Panel does not find that a standard sell-on clause imposes prohibited influence on a player's new club, even if the said clause does in fact, to some extent, restrict the financial freedom of the new club.
99. Moreover, in the Panel's opinion, there must be a threshold to pass for a potential influence to be in breach of the prohibition, in other words: the potential influence has to be material, which must be assessed on a case-to- case basis.
100. As such, a mere financial provision in a transfer contract freely negotiated between two clubs does not, *per se*, constitute an influence prohibited under article 18bis of the Regulations, even if the said contractual provision to some extent restricts the financial freedom of the new club, as long as the influence in question is below a certain threshold based on the circumstances of each particular case.
101. In the Panel's view, restrictions on the freedom of clubs, among others, to enter into fair and freely negotiated business transactions should not be limited by the rules and regulations of FIFA as long as such transactions are not in conflict with the principles set out in art. 2 (g) of the FIFA Statutes or in other rules or regulations of FIFA worth of protecting.

#### **D. The Sell-on Clauses**

102. With regard to the Sell-on Clauses in this particular case, the Panel first of all notes that pursuant to these clauses, Arsenal would be entitled to receive 10 or 5 percent more, respectively, of the transfer fee paid for the possible transfer of Player 1 and/or Player 2, if such a transfer was made to a club in the UK.
103. During these proceedings, the true background for inserting these clauses in the First and Second Contracts could not finally be determined by the Panel, however, the Parties both agreed that transfer sums paid in connection with transfers to the UK are generally higher compared to other territories.
104. The Panel notes the submission made by FIFA that the Sell-on Clauses clearly are to be considered as "*anti-rival*" clauses, with the aim of reducing the risk of a future transfer to one of Arsenal's rival clubs in the Premier League, thus limiting the independence of the Clubs and having an undue influence on the competition, as well as setting a limitation on the two players' possible return to clubs in the UK.
105. However, the Panel does not find a sufficient basis for considering the Sell-on Clauses as "*anti-rival*" clauses causing the alleged influence.
106. First of all, the Sell-on Clauses refer to the "*UK*" and not to the Premier League or English leagues, and, besides, FIFA did not substantiate its submission any further.

107. Furthermore, the Panel finds that the “additional” percentage to be paid to Arsenal in case of a transfer to a club within the UK is in fact very modest (10 or 5 percent more, respectively) and, in the Panel’s opinion, of a very limited preventive strength, not least taking into consideration that especially Premier League clubs in general are willing to pay higher transfer fees for the right to register a player.
108. Moreover, it should be recalled that, in any case, the players also have a say in deciding the destiny of a future transfer. In particular in cases where the percentages to be paid (according to the geographical regions) differ only little, the say of the player in the transfer bargain should not be underestimated.
109. All in all, and based on the wording of the Sell-on Clauses and the circumstances of these particular transfers, the Panel on a balance of probabilities is not convinced that Arsenal, when entering into Contract 1 and/or Contract 2, acquired the ability to materially influence the other Clubs in employment and transfer-related matters, their policies or the performance of their teams.
110. Moreover, and even if such influence was to be considered acquired when signing the respective contracts, *quod non*, the Panel finds, in these two transfers, that such influence did not reach the required threshold to potentially unduly limit the independence of the Clubs.
111. For the sake of good order, the Panel notes that, according to the information received during the hearing, the player 2 was in fact transferred to a club in the English Championship, which only supports the view of the Panel that no material limiting influence was ever acquired by Arsenal.
112. Based on the above, the Panel finds that the Sell-on Clauses in the First Contract and in the Second Contract do not violate the prohibition set out in article 18bis of the Regulations.
113. As such, the Appealed Decision should, therefore, be set aside and the sanctions imposed on Arsenal lifted as a consequence hereof.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed on 28 September 2020 by Arsenal FC against the decision rendered by the FIFA Appeal Committee on 24 June 2020 is upheld.
2. The decision rendered by the FIFA Appeal Committee on 24 June 2020 is set aside.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.