



**Arbitration CAS 2018/A/5683 Juventus Football Club S.p.A. v. Envigado Football Club S.A. & Fédération Internationale de Football Association (FIFA), award of 4 December 2018**

Panel: Mr Sofoklis Pilavios (Greece), President; Mr Michele Bernasconi (Switzerland); Mr José Juan Pintó (Spain)

*Football*

*Disciplinary sanction (fine) imposed on a club for overdue payables (art. 12bis RSTP)*

*CAS power of review*

*Legal grounds for imposing a sanction for overdue payables*

*Scope of review of the CAS when asked to review sanctions enforced by an international federation*

*Factors to take into consideration when deciding on the sanction*

1. According to Article R57 of the CAS Code, a CAS panel has *“full power to review the facts and the law”*. A CAS arbitration procedure may entail a *de novo* review of the merits of the case, and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the panel to make an independent determination as to merits.
2. For FIFA to have the legal grounds for imposing a sanction on a club for overdue payables, the following conditions must be fulfilled: the club must have been found to have delayed a due payment to another club originating from (i) a transfer agreement (ii) for more than 30 days without a *prima facie* contractual basis, and (iii) the other club (creditor) must have put the club (debtor) in default in writing and have granted a deadline of at least ten days for the debtor to comply with its financial obligation.
3. Whereas a CAS panel would normally have a wide scope of review according to article R57 of the CAS Code, in cases where the panel is asked to review sanctions enforced by an international federation, the scope of review is narrower and more limited.
4. FIFA, as the first instance deciding authority, may take a number of various factors into consideration when deciding on the relevant sanction for overdue payables. These considerations will naturally include, but are not limited to, the actual overdue amount, but also the specific circumstances surrounding the particular case such as the behaviour of the club during the investigation, the amount awarded, the seriousness of the infringement, or whether the club has been previously sanctioned for having overdue payables.

## **I. PARTIES**

1. Juventus Football Club S.p.A. (the “Appellant” or “Juventus”) is a football club, with seat in Turin, Italy. Juventus is affiliated to the Italian Football Federation, which is a member of the Fédération Internationale de Football Association (FIFA).
2. Envigado Football Club S.A. (the “First Respondent” or “Envigado”) is a football club with seat in Envigado, Colombia. Envigado is affiliated to the Colombian Football Federation, which is a member of FIFA.
3. The Fédération Internationale de Football Association (the “Second Respondent” or “FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players worldwide.

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. 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, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 30 January 2015, Envigado and Juventus signed a loan agreement regarding the temporary transfer of the player Andrés Felipe Tello Muñoz (the “Player”) from Envigado to Juventus including an option for the definitive transfer of the Player to Juventus against payment of a transfer fee of EUR 1,400,000 to be exercised by Juventus until 31 May 2015 (the “Loan Agreement”).
6. On 29 May 2015, Juventus exercised the definitive transfer option and undertook to pay the transfer fee to Envigado as provided under the Loan Agreement, namely EUR 700,000 by 15 July 2015, EUR 350,000 by 31 December 2015 and EUR 350,000 by 15 July 2016.
7. On 2 June 2015, following a request by Envigado, the parties agreed in writing to postpone the payment schedule so that EUR 1,000,000 was to be paid on 31 December 2015 and EUR 400,000 on 15 July 2016.
8. On 1 March 2016, Envigado informed Juventus of its new bank details, according to which the transfer fee was to be paid to the bank account of Envigado’s counsel.

9. On 4 December 2017, Envigado put Juventus in default of payment of the transfer fee (EUR 1,400,000) and set a deadline for payment until 15 December 2017.
10. On 3 January 2017, Envigado filed a claim with FIFA against Juventus requesting payment of the amount of EUR 1,400,000 corresponding to the transfer fee under the Loan Agreement plus interest of 5% on the amount of EUR 1,000,000 as of 2 March 2016 and 5% on the amount of EUR 400,000 as of 16 July 2016.
11. Juventus submitted its response to the FIFA Players' Status Committee (the "FIFA PSC") after the closure of the investigation claiming that it had not received any of the FIFA correspondence with regard to Envigado's claim due to an IT problem. Because of the delay, the response was not considered by the Single Judge of the FIFA PSC.
12. On 22 March 2018, the Single Judge of the FIFA PSC passed a decision upholding the claim of Envigado (the "Appealed Decision"). The operative part of the decision reads as follows:
  - “1. The claim of the Claimant, Envigado FC, is accepted.*
  - 2. The Respondent, Juventus FC, has to pay to the Claimant, within 30 days as from the date of notification of this decision, overdue payables in the amount of EUR 1,400,000, plus interest at the rate of 5% p.a. as follows:*
    - a. 5% p.a. on the amount of EUR 1,000,000 as from 2 March 2016 until the date of effective payment;*
    - b. 5% p.a. on the amount of EUR 400,000 as from 16 July 2016 until the date of effective payment.*
  - 3. If the aforementioned amount plus interest is not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee, for consideration and a formal decision.*
  - 4. The Respondent is ordered to pay a fine in the amount of CHF 30,000. The fine is to be paid within 30 days of notification of the present decision to FIFA to the following bank account (...).*
  - 5. The final amount of costs of the proceedings of CHF 25,000 is to be paid by the Respondent, within 30 days as from the notification of the present decision, as follows:*
    - a) The amount of CHF 5,000 by the Respondent to the Claimant.*
    - b) The amount of CHF 20,000 to FIFA (...).*

*(...).”*
13. On 27 March 2018, FIFA communicated to the parties the grounds of the Appealed Decision, which, *inter alia*, determined the following:

“(…)

12. (...) the Single Judge established that the Respondent failed to remit total amount of EUR 1,400,000 payable to the Claimant.

13. In addition, the Single Judge established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.

14. Consequently, the Single Judge decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant overdue payables in the total amount of EUR 1,400,000.

15. In addition, taking into account the Claimant's request, the Single Judge decided that the Respondent must pay to the Claimant interest of 5% p.a. on the amount of EUR 1,000,000 as from 2 March 2016 and on the amount of EUR 400,000 as of 16 July 2016 until the date of effective payment.

(…)

17. The Single Judge established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the Respondent. On account of the above and bearing in mind that the Respondent submitted its reply to the claim of the Claimant after notification of the closure of the investigation only, the Single Judge decided to impose a fine on the Respondent in accordance with art. 12bis par. 4 lit. c) of the Regulations. Furthermore, taking into consideration the amount due of EUR 1,400,000, the Single Judge regarded a fine amounting to CHF 30,000 as appropriate and hence decided to impose said fine on the Respondent.

(…)”.

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

14. On 16 April 2018, the Appellant filed a statement of appeal before the CAS against the Respondents and requested the appointment of a Sole Arbitrator to hear the appeal.

15. On 23 April 2018, the Second Respondent requested that the present matter be submitted to a Panel of three arbitrators.

16. On 24 April 2018, the Appellant filed its appeal brief in this matter requesting the CAS to:

“- declare the present appeal admissible and founded;\

- set aside and annul the Decision in its entirety and therefore:

(i) ascertain and declare that Juventus has fulfilled its obligations of payment under the Transfer Agreement;

(ii) declare that no interest is due by Juventus to Envigado;

- (iii) *declare that no fine can be imposed on Juventus and consequently declare that the fine of the amount of CHF 30,000 is not due to FIFA;*
- (iv) *identify and declare on which bank account Juventus will have to transfer the Transfer Fee deposited in an escrow account of Lega Serie A;*
- *establish that the costs of the present arbitration procedure as well as the costs of the proceedings before the Players' Status Committee shall be borne by Envigado and condemn Envigado to the payment in favour of the Appellant of the legal expenses incurred".*
17. On 27 April 2018, the First Respondent stated its preference for a Panel of three arbitrators to hear the matter at hand.
18. On 8 May 2018, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division had decided that the present matter shall be submitted to a three-member Panel.
19. On 14 May 2018, the Appellant nominated Mr. Michele A.R. Bernasconi, attorney-at-law, Zurich, Switzerland, as arbitrator.
20. On 15 May 2018, the Respondents nominated jointly Mr. José J. Pintó, attorney-at-law, Barcelona, Spain, as arbitrator.
21. On 18 June 2018, the CAS Court Office informed the parties that the Panel was constituted as follows:
- President: Mr. Sofoklis P. Pilavios, attorney-at-law, Athens, Greece  
Arbitrators: Mr. Michele A.R. Bernasconi, attorney-at-law, Zurich, Switzerland  
                  Mr. José J. Pintó, attorney-at-law, Barcelona, Spain.
22. On 9 July 2018, the Second Respondent filed its answer requesting *"that the CAS rejects the present appeal and confirms the decision passed by the Single Judge of the Players' Status Committee on 22 March 2018 in its entirety. Finally, we ask that the CAS orders the Appellant to bear all the costs incurred with the present procedure and to cover all legal expenses of FIFA related to the proceedings at hand"*.
23. On 30 July 2018, the First Respondent filed its answer in the matter at hand requesting the CAS *"to reject the appeal put forward by the Appellant and to confirm the decision rendered by the Single Judge of the Players' Status Committee"*.
24. On 2 August 2018, the First Respondent stated that it did not deem a hearing necessary in this procedure.
25. On 3 August 2018, the Second Respondent stated that, in view of the detailed submissions of the parties, the holding of a hearing was not necessary.
26. On 7 August 2018, the Appellant requested the Panel to hold a hearing in this matter.

27. On 10 August 2018, the CAS Court Office informed the parties that the Panel had decided to hold a hearing in this arbitration.
28. On 17 August 2018, the CAS Court Office sent to the parties a copy of the Order of Procedure in this matter, which was signed and returned by the First Respondent on 3 September 2018, by the Second Respondent on 4 September 2018 and by the Appellant on 7 September 2018.
29. On 31 October 2018, a hearing took place at the CAS headquarters in Lausanne, Switzerland for the present case.
30. The Panel sat in the following composition:  
  
President: Mr. Sofoklis P. Pilavios, attorney-at-law, Athens, Greece  
Arbitrators: Mr. Michele A.R. Bernasconi, attorney-at-law, Zurich, Switzerland  
Mr. José J. Pintó, attorney-at-law, Barcelona, Spain.
31. The Panel was assisted by Mr. William Sternheimer, CAS Deputy Secretary General.
32. At the outset of the hearing, the parties confirmed that they did not have any objection as to the constitution and composition of the Panel.
33. The following persons attended the hearing:
  - The Appellant was represented by Mr. Cesare Gabasio, counsel ;
  - The First Respondent was represented by Ms. Melanie Schärer, counsel;
  - The Second Respondent was represented by Mr. Ludovic Deléchat, Deputy Head of FIFA Players' Status Department.
34. Mr. Maurizio Lombardo, the Appellant's General Secretary, was also present to give evidence as witness for the Appellant.
35. The parties were invited by the Panel to discuss the possibility to settle this matter amicably. Following deliberations between the parties, a settlement was reached only with respect to the contractual dispute between the Appellant and the First Respondent. The matter of the fine which was imposed on the Appellant by the Appealed Decision was not settled by the parties due to the Second Respondent's objection to that regard.
36. The Appellant and the First Respondent signed and exchanged copies of the settlement agreement (hereinafter referred to as the "Settlement Agreement") and submitted signed copies to the CAS.
37. The parties asked the Panel to ratify the following Settlement Agreement and incorporate it into the award to be rendered by the Panel in this matter:

**“SETTLEMENT AGREEMENT”**

*Entered between:*

***Juventus Football Club S.p.A., Italy***

*Duly represented by Mr Cesare Gabaso, Tosetto, Weigmann e Associati, Torino, Italy*

*and*

***Envigado Football Club S.A., Colombia***

*Duly represented by Ms Melanie Schärer, MS International Law, Schindellegi, Switzerland*

*and*

***Fédération Internationale de Football Association (FIFA), Switzerland***

*Duly represented by Mr Ludovic Deléchat, Deputy Head of Players' Status*

1. *Juventus Football Club S.p.A., without recognizing any wrongdoing, hereby agrees to pay a total amount of EUR 1,460,000 to Envigado Football Club S.A.*

*Such payment also includes all legal costs and fees incurred by Envigado Football Club S.A. in the context of the FIFA and CAS proceedings.*

2. *The amount referred to in point 1. above shall be paid on or before 15 November 2018.*
3. *The amount referred to in point 1. above shall be paid on the following bank account: [...]*
4. *FIFA hereby expressly agrees that such payment is made in accordance with its regulations.*
5. *In case of non-compliance of the present agreement by Juventus Football Club S.p.A., or in the event Envigado Football Club S.A. challenges the payment made by Juventus Football Club S.p.A. on Ms Schärer's bank account, the proceedings in the matter CAS 2018/A/5683 shall resume and the Panel shall render an award on the merits of the dispute between Juventus Football Club S.p.A. and Envigado Football Club S.A.*
6. *In the event that Juventus Football Club S.p.A. fully complies with its obligations above, the Panel in the matter CAS 2018/A/5683 will render a partial consent award concerning the dispute between Juventus Football Club S.p.A. and Envigado Football Club S.A. and the arbitration costs in this respect, to be fixed and communicated at a later stage by the CAS Court Office, shall be fully borne by Juventus Football Club S.p.A.*

*Done in Lausanne in four (4) original copies on 31 October 2018.*

*Juventus Football Club S.p.A.*

*Envigado Football Club S.A.*

*FIFA”.*

38. Following the conclusion of the Settlement Agreement, the hearing resumed. Counsel to the First Respondent declared not to see any need to attend the continuation of the hearing. In lack of any objection by the Appellant and Second Respondent, counsel to First Respondent was excused and the hearing continued in the presence of the Appellant and Second Respondent only, in order for the parties to be heard by the Panel on the matter of the fine which was imposed on the Appellant by the Appealed Decision.
39. At the conclusion of the hearing, the parties confirmed that their right to be heard and to be treated equally in the present proceedings before the Panel had been fully respected, following which the Panel closed the hearing.
40. On 18 November 2018, the CAS Court Office received a confirmation in writing by the First Respondent's counsel that stated that "(...) *Juventus Football Club S.p.A. paid to my client the amount of EUR 1,460,000 in accordance with the aforementioned agreement*".

#### **IV. SUBMISSIONS OF THE PARTIES**

41. In view of the Settlement Agreement concluded by the Appellant and First Respondent, and having acknowledged that the Appellant has paid indeed the amount agreed to the First respondent, the Panel does not deem necessary to go through the submissions of the parties relating, in essence, to the contractual dispute between the Appellant and First Respondent. Accordingly, the focus shall be on the fine imposed by FIFA on the Appellant.
42. The Appellant's submissions as far as the remaining matter to be decided is concerned, may be summarised as follows:
  - Following receipt of emails appearing to originate from a FIFA email account in September 2017, which contained a malware fishing code and for security reasons, the Appellant's IT Department activated a higher protection wall that filtered incoming email traffic to avoid dangerous emails. As a result, all emails received by FIFA since then were automatically stored in the "unwanted box". Therefore, the Appellant was not aware of the FIFA proceedings that were initiated following the claim of the First Respondent and it was thus impossible to take part in it. The Appellant was eventually informed and attempted to file its position with FIFA after the closure of the investigation-phase to no avail.
  - Juventus has acted in good faith, never refused to pay the transfer fee and was willing to fulfil its financial obligations in accordance with the FIFA Regulations in place. Already in April 2016 Juventus had informed Envigado that the transfer fee was to be paid in the bank account indicated by Envigado in the FIFA TMS as soon as Envigado provided Juventus with the relevant invoice. However, it was Envigado that at first requested to postpone the payments and then insisted ever since to receive payment to its lawyer's bank account, which runs counter to the FIFA Regulations.



- Envigado never provided any explanation other than that the “*account does not exist because of our situation*”, but Juventus further asserts that it managed to find out that Envigado was sanctioned pursuant to the Narcotics Sanctions Program of the U.S. Treasury Department, which allegedly means that a ban is imposed on transactions by U.S. persons or involving the U.S.A. Although Juventus does not fall within the scope of the ban, Envigado never indicated to Juventus its own bank account, or alleged that it was not opening a new bank account since “*it will take some time*” and indicated its lawyer’s bank account instead.
- Juventus notes that the use of TMS is mandatory for clubs involved in international transfers of players and the clubs are required to upload their own banking details and further claims that FIFA rules on Financial Fair Play and TMS require that the beneficiary of a payment is the transferor and a different beneficiary cannot be accepted. As a result, Juventus was not able to make the payment into a bank account which is not in the name of Envigado and, by depositing the transfer fee to an escrow account of the Italian Football Federation after it was authorized to do so by the latter, Juventus has fulfilled its financial obligations towards Envigado under the Loan Agreement. Moreover, as Envigado expressly prohibited Juventus to proceed with the payment of the transfer fee into the bank account that was indicated in the TMS, Juventus cannot be held accountable for violating Article 12bis of the FIFA Regulations.
- In view of Juventus’ good faith and the fact that FIFA has expressly recognized that Juventus “*is willing to pay the amount in dispute*” and that the payment was not made “*due to a bank account related issue*”, CAS shall consider that Juventus has paid the transfer fee since March 2016 and, therefore, the fine should not have been imposed.

43. In consideration of the above, the Appellant is requesting the CAS to:

“- *declare the present appeal admissible and founded;*\

- *set aside and annul the Decision in its entirety and therefore:*

(...)

*(iii) declare that no fine can be imposed on Juventus and consequently declare that the fine of the amount of CHF 30,000 is not due to FIFA;*

(...).”

44. In turn, the Second Respondent’s submissions with respect to the matter of the fine, may be summarised as follows:

- The Second Respondent points out that according to Swiss law, receipt of a declaration between absentees implies that the declaration enters into the sphere of influence of the addressee and, therefore, the notification of the pertinent documentation to the correct electronic address of the Appellant enters into its sphere of influence and is therefore considered received by it. In this context, FIFA cannot be considered responsible for the alleged “IT issue” the Appellant seemed to have faced. Moreover, the FIFA PSC correctly

did not consider the late answer of Juventus filed on 20 March 2018 as the investigation-phase was closed by 15 March 2018. As a result, the FIFA PSC proceedings were conducted in accordance with the regulatory provisions governing them.

- As to the matter of the fine imposed on the Appellant, FIFA points out that at the time the Appealed Decision was rendered, the Single Judge was comforted with the documentary evidence presented by the First Respondent which clearly demonstrated that the requested payment had been due for more than 30 days, the Appellant was put in default and granted at least 10 days to remedy the default, and the Appellant had at no moment prior to the decision being taken argued having paid the overdue amount to the First Respondent. As to the substance of the Appellant's argument, the deposit of an outstanding amount in an escrow account does not discharge one party from its contractual obligations, in particular as the First Respondent always insisted in having the amount paid into his lawyer's bank account.
- With respect to the proportionality of the fine in question, FIFA refers to a CAS award in case CAS 2016/A/4387 that provides a non-exhaustive list of FIFA decisions imposing fines on the basis of Article 12bis ranging between 7% and 41% of the outstanding amount and submits that the fine of CHF 30,000 imposed in the matter at hand corresponds to only 2,14% of the overdue amount.

45. In view of the above, the Second Respondent requests *“that the CAS rejects the present appeal and confirms the decision passed by the Single Judge of the Players' Status Committee on 22 March 2018 in its entirety. Finally, we ask that the CAS orders the Appellant to bear all the costs incurred with the present procedure and to cover all legal expenses of FIFA related to the proceedings at hand”*.

## V. JURISDICTION

46. Article R47(1) of the Code provides as follows:

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

47. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) of the FIFA Statutes (2016 edition) that provides as follows:

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

48. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties. It therefore, follows that CAS has jurisdiction to decide on the present dispute.

**VI. ADMISSIBILITY**

49. The appeal was filed within the 21 days set by Article 58(1) of the FIFA Statutes as the reasoned Appealed Decision was communicated to the Appellant by the Respondent on 27 March 2018 and the Appellant filed its statement of appeal with CAS on 16 April 2018.
50. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.
51. It follows that the appeal is admissible.

**VII. APPLICABLE LAW**

52. Article R58 of the 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

53. The Panel notes that Article 57(2) of the FIFA Statutes provides 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”.*

54. The Panel therefore finds that the relevant FIFA rules and regulations, and more specifically the FIFA Regulations on the Status and Transfer of Players, as in force at the relevant time of the dispute (2016 edition), shall be applied primarily (the “FIFA Regulations”), and Swiss law shall be applied subsidiarily.

**VIII. MERITS**

55. According to Article R57 of the Code, the Panel has “full power to review the facts and the law”. As is long-established in the jurisprudence of the CAS, by reference to this provision, a CAS arbitration procedure may entail a *de novo* review of the merits of the case, and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the Panel to make an independent determination as to merits (see CAS 2007/A/1394, par. 21).
56. In light of the facts of the case, the arguments of the parties and the aforementioned Settlement Agreement, which was signed by the parties and ratified by the Panel during the hearing and essentially settled the dispute between the Appellant and First Respondent, the Panel observes that the sole matter that remains to be decided is the issue of the fine which was imposed on the Appellant by the Appealed Decision.

57. Therefore, the Panel must now examine whether the conditions for imposing said fine under Article 12bis of the FIFA Regulations were met in the present case and, if yes, then the Panel shall examine whether the Appellant's argument as included in its appeal brief and advanced during the hearing, according to which the Appellant bears no fault for its non-participation in the FIFA proceedings that resulted in the Appealed Decision, has merit under Article 12bis of the FIFA Regulations.
58. As to the first question, the Panel initially notes that the Appellant argues in its appeal brief that no fine should be imposed considering that the Appellant was not at fault for not participating in the FIFA proceedings, that it never refused to pay the transfer fee and was willing to fulfil its financial obligations in accordance with the FIFA Regulations and that, by depositing the transfer fee to an escrow account of the Italian Football Federation after it was authorized to do so by the latter, the Appellant has fulfilled its financial obligations towards Envigado under the Loan Agreement.
59. The starting point for the Panel's analysis is Article 12bis of the FIFA Regulations regarding overdue payables, which stipulates that:
- “1. Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements.*
  - 2. Any club found to have delayed a due payment for more than 30 days without a prima facie contractual basis may be sanctioned in accordance with paragraph 4 below.*
  - 3. In order for a club to be considered to have overdue payables in the sense of the present article, the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s).*
  - 4. Within the scope of their respective jurisdiction (cf. article 22 in conjunction with articles 23 and 24), the Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge may impose the following sanctions: a) a warning; b) a reprimand; c) a fine; d) a ban from registering any new players, either nationally or internationally, for one or two entire and consecutive registration periods.*
  - 5. The sanctions provided for in paragraph 4 above may be applied cumulatively.*
  - 6. A repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty.*
  - 7. The execution of the registration ban in accordance with paragraph 4 d) above may be suspended. By suspending the execution of a registration ban, the deciding body subjects the sanctioned club to a probationary period ranging from six months to two years.*
  - 8. If the club benefiting from a suspended registration ban commits another infringement during the probationary period, the suspension is automatically revoked and the registration ban executed; it is added to the sanction pronounced for the new infringement.*
  - 9. The terms of the present article are without prejudice to the application of further measures in accordance with article 17 in the event of unilateral termination of the contractual relationship” (emphasis added).*

60. It follows that in order for FIFA to have the legal grounds for imposing a sanction on the Appellant, the following conditions must be fulfilled: the Appellant must have been found to have delayed a due payment to the First Respondent originating from (i) a transfer agreement (ii) for more than 30 days without a *prima facie* contractual basis, and (iii) the First Respondent must have put the Appellant in default in writing and have granted a deadline of at least ten days for the Appellant to comply with its financial obligation (see CAS 2016/A/4705, para. 8.15).
61. The Panel notes that all the above mentioned conditions are met in the matter at hand: during the CAS hearing in this matter, the Appellant agreed to settle the dispute and pay the outstanding amounts of CHF 1,460,000 to the First Respondent on or before 15 November 2018, which is more than 30 days after the due date set out in the Loan Agreement, whereas the First Respondent had already put the Appellant in default on 4 December 2017 granting him a deadline of 10 days to pay.
62. Therefore, the Panel finds that the Appealed Decision was correct to impose a sanction to the Appellant under Article 12bis of the FIFA Regulations.
63. As to the second question, the Panel notes that, according to the well-established jurisprudence of CAS, and whereas a CAS panel would normally have a wide scope of review according to article R57 of the Code, in cases where the Panel is asked to review sanctions enforced by an international federation like FIFA, the scope of review is narrower and more limited, which has been acknowledged in a number of CAS awards (see for instance CAS 2015/A/4291, para. 53 and 54, confirmed in CAS 2016/A/4719). However, the same CAS Panel in CAS 2016/A/4719 acknowledged also that FIFA, as the first instance deciding authority, “*may take a number of various factors into consideration when deciding on the relevant sanction pursuant to article 12bis, par. 4. These considerations will naturally include, but are not limited to, the actual overdue amount, but also the specific circumstances surrounding the particular case such as the behaviour of the club during the investigation, the amount awarded, the seriousness of the infringement, or whether the club has been previously sanctioned for having overdue payables may be taken into consideration*” (CAS 2016/A/4719, para. 89, 90).
64. In this respect, the Panel notes that the Second Respondent expressly acknowledged during the hearing that the fact that the Appellant did not take part in the FIFA proceedings was one of the factors taken into account to determine the amount of the fine.
65. In addition, the Panel, in view of the parties’ arguments and evidence given during the hearing, finds that the Appellant cannot be held responsible for its non-participation in the first instance proceedings. For the sake of clarity, the Panel notes that such finding by no means doubts the correctness of the Appealed Decision to not take into account the Appellant’s late submission before the FIFA PSC. The Single Judge of the FIFA PSC was perfectly justified to decide that the Appellant’s late answer was not to be considered, and the Panel certainly concurs with the Appealed Decision’s and the Second Respondent’s position that FIFA procedural rules were not violated by the Single Judge of the FIFA PSC who decided to ignore the Appellant’s response which was submitted after the closure of the PSC investigation. However, the Panel cannot ignore the fact that the Appellant demonstrated that it was, in fact,

unaware of the existence of the FIFA proceedings against itself. This is further supported by the fact that the Appellant attempted to participate in the FIFA PSC proceedings, although late.

66. In this context, the Panel refers to the considerations of the CAS panel in CAS 2016/A/4719 and points out that the amount of the fine imposed under Article 12bis of the FIFA Regulations may be linked with several factors, including *inter alia* “the specific circumstances surrounding the particular case such as the behaviour of the club during the investigation”.
67. Based on the above considerations and arguments and submissions of the parties during the hearing, and particularly in view of the finding that the Appellant has demonstrated that it was, in fact, unaware of the existence of the FIFA proceedings against it, whereas one of the factors for the calculation of the fine imposed against it was precisely its non-participation in the FIFA proceedings, the Panel finds it appropriate (i) to confirm that FIFA was correct to impose a sanction to the Appellant under Article 12bis of the FIFA Regulations, (ii) however such fine imposed by the Appealed Decision shall be reduced by CHF 10,000, *i.e.* the Panel is satisfied that it is appropriate and proportionate to impose a fine on Juventus in the amount of CHF 20,000 under Article 12bis of the FIFA Regulations.
68. Any other and further claims or requests for relief are dismissed.

## ON THESE GROUNDS

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

1. The Panel, with the consent of Juventus Football Club S.p.A., Envigado Football Club S.A. and FIFA hereby ratifies the Settlement Agreement signed by the parties on 31 October 2018 as far as the contractual dispute between the Juventus Football Club S.p.A. and Envigado Football Club S.A. is concerned and incorporates its terms into this Award.
2. As to the remaining matters to be decided, the appeal filed by Juventus Football Club S.p.A. on 16 April 2018 is partially upheld.
3. The decision issued on 22 March 2018 by the Single Judge of the FIFA Players’ Status Committee is amended as follows:

Juventus Football Club S.p.A. is ordered to pay a fine in the amount of CHF 20,000 within 30 days of notification of the present decision to the bank account stipulated in the decision issued on 22 March 2018 by the Single Judge of the FIFA Players' Status Committee.

4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.