



Arbitration CAS 2020/A/7252 BFC Daugavpils v. FC Kairat & Fédération Internationale de Football Association (FIFA), award of 31 May 2021

Panel: Mr Frans de Weger (The Netherlands), President; Prof. Ulrich Haas (Germany); Prof. Massimo Coccia (Italy)

Football

Training compensation

Conditions for the withdrawal of an appeal

Proposal as final and binding decision

Absence of complex factual or legal issues as precondition to issue a proposal

Failure to reject a proposal

Validity of communications via TMS

Duty to check the “Claims” tab in TMS

- 1. The question under which condition an appeal may be withdrawn before CAS is a procedural question within the meaning of Article 182 of Switzerland’s Private International Law Act (PILA). The CAS Code does not contain any provision on the withdrawal of an appeal or a claim before CAS. Accordingly, in line with Article 182(2) PILA, the CAS panel shall apply the appropriate provisions and principles either directly or by reference to a law or rules of arbitration. In principle, there is an important distinction when it comes to the withdrawal of a claim before an arbitral tribunal. A unilateral withdrawal of a claim in arbitration is possible until the claimant has filed its full statement of claim with the arbitral tribunal. Thereafter, a withdrawal of the claim is only possible with the consent of the opposing party. However, even if an appellant has not yet filed its Appeal Brief, but only an amended Statement of Appeal with the sole purpose of including a respondent as a party in the proceedings, demonstrating that it made a conscious choice to call that party as a respondent, it cannot simply withdraw its appeal against that respondent once the latter has taken an interest in the case and in the meantime has raised issues that need to be addressed by the CAS panel.**
- 2. In disputes relating to training compensation, Article 13 of the FIFA Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (FIFA Procedural Rules) provides that the FIFA administration may make written proposals, without prejudice, to the parties regarding the amounts owed in the case in question as well as the calculation of such amounts. The amount to be paid set forth in a proposal only becomes final and binding if such proposal is accepted by both parties or if no objection is raised against it within the stipulated time limit. However, the parties to which the proposal is issued do not necessarily know whether the opposing party accepted or rejected the proposal until this is confirmed by FIFA. Accordingly, a proposal itself cannot be considered a final and binding decision; only a “confirmation letter” is a decision that definitely affects the legal position of the parties involved.**

3. The assessment of whether or not there are complex factual or legal issues for a proposal to be formulated, is to be made on a *prima facie* basis and on the basis of the claim alone. The FIFA administration must be afforded ample discretion in determining whether or not it considers a case to be complex and, thus, whether or not to issue a proposal to the interested clubs, given that such discretionary power is wholly counterbalanced by the fact that each of those clubs has the right, at its sole discretion, to reject the FIFA proposal and ask for a reasoned decision (with a subsequent right of appeal to the CAS).
4. Article 13(2) FIFA Procedural Rules specifies that the proceedings are to be conducted in accordance with the FIFA Procedural Rules if a party requests a formal decision, i.e. if no party requests for a formal decision, the (other) FIFA Procedural Rules do not apply. With the expression “formal decision” of Article 13(2), FIFA is clearly referring to the same concept found in Article 13(1), i.e. a “*formal decision from the relevant body*” or, said otherwise, a decision with grounds by an adjudicatory body of FIFA. A formal decision, thus, will only be issued if a proposal is rejected. Accordingly, a failure to reject a proposal amounts to a waiver of the right to request for a formal decision with grounds.
5. Article 9bis of the FIFA Procedural Rules, explicitly states that the rules concerning communications with parties are set out “[a]s a general principle”, clearly leaving room for different rules for some specific situations. As it can be inferred from Article 1 of Annex 6 of the FIFA Regulations on the Status and Transfer of Players (RSTP) that Annex 6 FIFA RSTP prevails as a more specific rule over the default rules set forth by the FIFA Procedural Rules, in application of the principle *lex specialis derogat legi generali*, communication via the Transfer Matching System (TMS) must be deemed a legally permissible way of communication with regard to the procedure concerning disputes in training compensation and the solidarity mechanism. Indeed, Article 1(1) of Annex 6 FIFA RSTP provides that all claims related to training compensation and solidarity mechanism must be submitted and must be “*managed*” through TMS, with FIFA communications certainly being part of the claim management process.
6. Article 2(1) of Annex 6 FIFA RSTP not only requires clubs to regularly check the “Claims” tab in TMS, but it also indicates that a failure to do so is not a valid excuse for any procedural disadvantages that may arise. The duty to check the “Claims” tab at least every three days is not unreasonable.

I. PARTIES

1. BFC Daugavpils (the “Appellant” or “Daugavpils”) is a football club with its registered office in Daugavpils, Latvia. Daugavpils is affiliated to the Latvian Football Federation (the “LFF”), which in turn is affiliated to the *Fédération Internationale de Football Association*.

2. FC Kairat (the “First Respondent” or “Kairat”) is a football club with its registered office in Kalmaty, Kazakhstan. Kairat is affiliated to the Football Federation of Kazakhstan (the “FFK”), which in turn is also affiliated to the *Fédération Internationale de Football Association*.
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 world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.
4. Kairat and FIFA are hereinafter jointly referred to as the “Respondents” and together with Daugavpils as the “Parties”, where applicable.

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the Parties’ written submissions and the evidence examined in the course of the present appeals arbitration proceedings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal analysis.

A. Background Facts

6. On 9 March 2020, the Single Judge of FIFA’s Players’ Status Committee (the “FIFA PSC”) rendered a decision, authorising the LFF to provisionally register R. (the “Player”) for Daugavpils.
7. On 10 March 2020, the Player was registered for Daugavpils with the LFF in FIFA’s Transfer Matching System (“TMS”).
8. On 11 March 2020, the Player and Daugavpils lodged a joint claim against Kairat with FIFA’s Dispute Resolution Chamber (the “FIFA DRC”), claiming that the Player terminated his employment contract with Kairat with just cause.
9. On 1 April 2020, the secretariat to the FIFA DRC (the “FIFA DRC Secretariat”) informed the Player and Daugavpils as follows:

“According to art. 22 of the Regulations on the Status and Transfer of Players [the “FIFA RSTP”], without prejudice to the right of any player to seek redress before a civil court for employment related disputes, FIFA, specifically the [FIFA DRC], is competent to hear employment-related disputes between a player and a club of an international dimension (cf. art. 24 par. 1 in conjunction with art. 22 lit. b of the [FIFA RSTP]); emphasis added).

Consequently, we have to inform you that for a dispute opposing a Kazakhstani player to a Kazakhstani club FIFA is not competent due to the lack of an international dimension.

Furthermore, we have noted that the Latvian club, [Daugavpils], has not specified its petition against [Kairat] in accordance with art. 9 par. 1 of the [FIFA Procedural Rules].

Nonetheless, in the context of this specific matter, we wish to highlight that [Daugavpils] does not appear to be an interested party in the sense of art. 22 lit. a of the [FIFA RSTP]" (emphasis in original).

B. Proceedings before the FIFA Dispute Resolution Chamber

10. On 25 May 2020, Kairat submitted a claim against Daugavpils with the FIFA Dispute Resolution Chamber (the "FIFA DRC"), claiming [...] as outstanding training compensation.
11. On 29 May 2020, FIFA DRC secretariat (the "FIFA DRC Secretariat"), issued the following proposal (the "Proposal") to Kairat and Daugavpils:

"[...] [I]n accordance with Article 13 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, i.e. the Procedural Rules, and the FIFA Circular 1689, please find enclosed the proposal made by the FIFA secretariat in accordance with the above mentioned provision (Enclosure 1).

In sum, the proposed amount due by [Daugavpils] to [Kairat] is as follows:

[...] as training compensation, plus 5% interest p.a. as of the due date

In accordance with Article 13 of the Procedural Rules, it is informed that the parties have to either accept or reject the proposal **within the 15 days following this notification via TMS, i.e. until 18 June 2020**. In this regard, [Kairat] is limited only to accept or reject the proposal, excluding hereby any possibility to amend its original claim.

In case a proposal is accepted by all parties or the parties fail to provide an answer to the FIFA Player Status' Department within stipulated deadline, the proposal will become binding.

In case of rejection by [Daugavpils], the latter will have **five additional days, i.e. until 23 June 2020** to provide its position to the claim. Should [Daugavpils] wish to extend its deadline to file its position, it must request said extension before the expiration of the above mentioned date, in which case the deadline is automatically extended for **ten (10) additional days, i.e. until 3 July 2020** in accordance with Article 16 par. 11 of the Procedural Rules.

Please also be informed that in case of rejection of the proposal by one of the parties, a formal decision on this matter will be taken by the Single Judge of the sub-committee of Dispute Resolution Chamber in due course.

Equally, we wish to point out that the relevant proposal will always be without prejudice to any formal decision which could be passed by the competent deciding body in the matter at a later stage in case the proposal is rejected by one of the parties" (emphasis in original).

12. On 16 June 2020, Kairat informed the FIFA DRC Secretariat that it accepted the Proposal by writing as follows:

“We refer to your letter dated 29th May 2020 regarding the above-referenced proposal. To this end, [Kairat] hereby accepts the proposal of the FIFA Administration”.

13. Daugavpils did not reply to the Proposal within the time limit granted.
14. On 25 June 2020, the FIFA Players’ Status Department informed Kairat and Daugavpils as follows (the “Appealed Decision”):

“We refer to the above-mentioned matter and in particular to the proposal made by the FIFA secretariat in accordance with Article 13 of the Procedural Rules.

As mentioned in our previous communication, in case a proposal is accepted by all parties or the parties fail to provide an answer to the FIFA Player Status’ Department within the stipulated deadline, the proposal will become binding.

*Bearing the above in mind, we would like to inform the parties involved that the proposal has become binding. Consequently, [Daugavpils] has to pay to [Kairat], within 30 days as from the date of this notification, if not done yet, the amount of [...], **plus 5% interest p.a. as of 30 days of the due date of each instalment** until the date of effective payment.*

In the event that the aforementioned sum is not paid by [Daugavpils] within the stated time limit, the present matter shall be submitted, upon request, to FIFA’s Disciplinary Committee for consideration and a formal decision.

[Kairat] is directed to inform [Daugavpils] immediately and directly of the account number to which the remittance is to be made and to notify the FIFA Dispute Resolution Chamber of every payment received” (emphasis in original).

15. On 26 June 2020, Kairat sent a letter to Daugavpils with reference to the Appealed Decision, requesting payment of an amount of [...].
16. According to Daugavpils, on 27 June 2020, Daugavpils’ TMS Manager, Mr Aleksandrs Isakovs, accessed TMS, allegedly for the first time since 10 March 2020 due to the COVID-19 pandemic, and downloaded both the Proposal and the Appealed Decision simultaneously.
17. On 30 June 2020, Kairat filed a claim for breach of contract by the Player with the FIFA DRC, claiming compensation from the Player and Daugavpils.
18. On 3 July 2020, Daugavpils requested the grounds of the Appealed Decision.
19. On 6 July 2020, the FIFA DRC Secretariat informed Daugavpils as follows:

[...] [W]e understand that you request the grounds of the alleged decision, allegedly communicated to the parties on 25 June 2020 in the dispute between the above-captioned parties.

In this regard, we must emphasize that in the matter at hand, no formal decision has been passed by the Dispute Resolution Chamber. In this respect, we refer to the proposal dated 29 May 2020, made by the FIFA

secretariat in accordance with article 13 of the Procedural Rules and the FIFA Circular 1689, which was not contested by any of the parties involved before the deadline of 18 June 2020.

As a result, on 2 June 2020, the FIFA Administration communicated that the proposal dated 29 May 2020 had become binding. In this respect, we also refer to the contents of article 13 of the Procedural Rules and the FIFA Circular 169, which amongst other stipulates that the parties have 15 days 'to either accept or reject the proposal and provide the reasons which could justify the rejection' and they can, within 15 days as from receipt of the proposal, request for a formal decision, however that 'failure to do so will result in the proposal being regarded as accepted by and binding on all parties.'

Moreover, in our correspondence dated 29 May 2020, the parties were explicitly informed that 'the parties fail to provide an answer to the FIFA Player Status' Department within stipulated deadline, the proposal will become binding.'

In view of the above, we would like to emphasize that [Daugavpils] did not contest the [Proposal], before the deadline of 18 June 2020.

As a result, and considering all of the above, particularly that the proposal has become binding, we regret having to inform you that we are not in a position to provide you with the motivation of the decision, as no formal decision has been passed''.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 9 July 2020, Daugavpils lodged a Statement of Appeal with the Court of Arbitration for Sport ("CAS"), pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2020) (the "CAS Code"), challenging the Appealed Decision, naming Kairat as the sole respondent and requesting a sole arbitrator to be appointed. Daugavpils also applied for a suspension of the proceedings pending the outcome of the employment-related dispute between the Player and Kairat. Daugavpils lodged the following requests for relief:

- "1. Set aside and annul the decision rendered by FIFA Players' Status Department in the form of a letter in case Ref. No. TMS 6081 on 25 June 2020.*
- 2. Order the Respondent to bear all costs incurred with the present procedure.*
- 3. Order the Respondent to pay the Appellant a contribution towards its legal and other costs in an amount to be determined at the discretion of the Sole Arbitrator''.*

21. On 16 July 2020, Daugavpils filed an amended Statement of Appeal with CAS, now also naming FIFA as respondent, lodging the following requests for relief:

- "1. Order the Second Respondent (FIFA) to issue the grounds of the decision rendered by the Head of the Players' Status on behalf of the FIFA Dispute Resolution Chamber in case Ref. No. TMS 6081 on 25 June 2020 (if the Sole Arbitrator deems it necessary).*

2. *Set aside and annul the decision rendered by the Head of the Players' Status on behalf of the FIFA Dispute Resolution Chamber in case Ref. No. TMS 6081 on 25 June 2020.*
3. *Order the Respondents to bear all costs incurred with the present procedure.*
4. *Order the Respondents to pay the Appellant a contribution towards its legal and other costs in an amount to be determined at the discretion of the Sole Arbitrator".*
22. On 17 and 20 July 2020 respectively, Kairat and FIFA objected to a suspension of the proceedings and requested that a Panel of three arbitrators be appointed.
23. On 20 July 2020, Daugavpils informed the CAS Court Office that Kairat had lodged another claim with the FIFA DRC against Daugavpils and the Player and that it intended to lodge a counterclaim and reiterated its request for a suspension of the proceedings.
24. On 22 July 2020, FIFA indicated that Daugavpils' letter dated 20 July 2020 did not change its view with respect to the requested suspension.
25. On 23 July 2020, Daugavpils filed an unsolicited letter with the CAS Court Office, responding to FIFA's letter dated 22 July 2020, following which the CAS Court Office requested the Parties to refrain from sending unsolicited letters and indicating that, unless the Panel would decide otherwise once appointed, Daugavpils' letter was not admitted into the file.
26. On 24 July 2020, Daugavpils reiterated its request for a sole arbitrator to be appointed.
27. On the same date, 24 July 2020, Kairat reiterated its objection to a suspension of the proceedings.
28. On 4 August 2020, the CAS Court Office informed the Parties that the Deputy Division President had decided to submit this matter to a three-member Panel and that the Panel would decide on Daugavpils' request for a suspension of the proceedings.
29. On 7 August 2020, Daugavpils nominated Mr Ulrich Haas, Professor of Law in Zurich, Switzerland, as arbitrator.
30. On 17 August 2020, Kairat and FIFA jointly nominated Mr Massimo Coccia, Professor and Attorney-at-Law in Rome, Italy, as arbitrator.
31. On 19 August 2020, Daugavpils filed an unsolicited letter with the CAS Court Office, referring to a letter dated 18 August 2020 from FIFA in an unrelated matter, where FIFA allegedly acted "*exactly the opposite*" as it did in the matter at hand, and on the basis of which Daugavpils reiterated its request for a suspension of the proceedings.
32. On 26 August 2020, Kairat objected to Daugavpils' unsolicited letter dated 19 August 2020 and added that it was in any event irrelevant for the proceedings in the matter at hand. Kairat also reiterated its objection to a suspension of the proceedings.

33. On the same date, 26 August 2020, FIFA reiterated its objection to a suspension of the proceedings, adding that the matter referred to by Daugavpils in its letter dated 19 August 2020 had not become final and binding.

34. On 23 October 2020, the CAS Court Office informed the Parties on behalf of the Deputy President of the Appeals Arbitration Division, pursuant to Article R54 CAS Code, that the Panel was constituted as follows:

President: Mr Frans de Weger, Attorney-at-Law in Zeist, The Netherlands
Arbitrators: Prof. Dr. Ulrich Haas, Law Professor in Zurich, Switzerland
Prof. Massimo Coccia, Professor and Attorney-at-Law in Rome, Italy

35. On 28 October 2020, the CAS Court Office informed the Parties that the Panel had decided to reject Daugavpils' request for a suspension of the proceedings.

36. On 10 November 2020, Daugavpils informed the CAS Court Office as follows:

"After thoroughly analyzing the case file in the above matter and the pertinent CAS jurisprudence (some of which was made available to the undersigned only recently), the Appellant deems that its request for production of the Appealed Decision's grounds directed at FIFA is moot, as nothing prevents the Appellant from appealing to CAS despite FIFA's unjustified denial to issue the Appealed Decision's grounds (cf. CAS 2017/A/5524).

Besides, the FIFA jurisdiction was not contested by the parties, the case at hand does not involve any disciplinary issues, and the subject matter of the dispute at stake is for training compensation (a "horizontal dispute"), for which FIFA has no standing to be sued if the Appellant is to drop the request for production of the Appealed Decision's grounds. After all, the dispute itself is in substance between the clubs who are party to this appeal (cf. CAS 2016/A/4823; CAS 2016/A/4585).

In light of the above, the Appellant, while reserving all rights and claims against FIFA, hereby withdraws (i) its request for relief directed at FIFA (Section VII point 1 of the rectified Statement of Appeal dated 16 July 2020) and (ii) its appeal directed at FIFA. Such withdrawal of the specific prayer and appeal against FIFA does not constitute and should not be interpreted as confession, acceptance, or acknowledgement of any of the allegations, claims, or requests made by FIFA.

For the sake of good order and clarity, the Appellant hereby maintains all of its other requests for relief against [Kairat]" (emphasis in original).

37. On 11 November 2020, the CAS Court Office, on behalf of the Panel, invited FIFA to provide its position on whether it agreed to be excluded as a party to this procedure.

38. On 13 November 2020, FIFA informed the CAS Court Office, *inter alia*, as follows:

"[...] Although FIFA understands that the Appellant is free to withdraw its appeal against any (or all) of the parties, FIFA is of the view that the consequences of such a withdrawal would nevertheless affect FIFA's rights and should lead to the entire appeal's dismissal by the Panel (without prejudice to FIFA's objection to the admissibility of the appeal and to CAS jurisdiction, as described further below).

In this regard, FIFA firstly notes that the Appellant has withdrawn its appeal against FIFA while at the same time is ‘reserving all rights and claims against FIFA’. Although such reservation is difficult to understand and completely baseless, FIFA is of the view that this is a contradiction that shall be interpreted in any case against the Appellant.

Secondly, FIFA also notes that the Appellant has withdrawn all the requests for relief directed at FIFA but ‘maintains all of its other requests for relief against [Kairat]’. [...]

As can be read from the Appellant’s requests for relief, aside from the (procedural and legal) costs, the primary relief sought was only directed against FIFA and not against [Kairat]. The Appellant’s sudden change by withdrawing the appeal against FIFA is even more relevant when taking into account that the FIFA letter of 25 June 2020 is not an appealable decision as the Appellant alleges. Under these circumstances, [Kairat] does not have any stake in the dispute and the Appellant cannot seek any relief against this club.

Therefore, by withdrawing the appeal against FIFA, the Panel must consider that the remedies are no longer sought by the Appellant, as there are no remaining substantive requests against [Kairat] to be resolved and, thus, the appeal must be considered as being dismissed and FIFA is deemed to have prevailed. Although FIFA is mindful that the Appellant may still amend its request for relief when filing its Appeal Brief, such amendment would in any case be moot in light of the withdrawal of substantive requests against FIFA and in the absence of an actual decision to appeal. This should therefore lead to the dismissal of the appeal on the merits (without prejudice to its inadmissibility).

If, for any reason the Panel considers that there are (even eventual) substantive requests against [Kairat] (quod non), FIFA believes that it should still be allowed to intervene in the proceedings, whether remaining a party or through the filing of an amicus curiae brief, which we hereby ask the Panel to grant if FIFA were to be excluded as a party due to the Appellant’s withdrawal of the appeal against it. In this respect, FIFA’s involvement in the proceedings (in either capacity) would be relevant insofar as the admissibility of the appeal is contested, as is the nature of the FIFA letter of 25 June 2020, which we submit is not (nor can it be considered) an appealable decision, in light of its mere informative nature.

In this regard, subject to the Panel’s decision on the Appellant’s withdrawal of the appeal against FIFA as well as on the subsidiary possibility of allowing FIFA to file an amicus curiae brief at a later stage, FIFA reserves all of its arguments on the admissibility of the appeal and CAS jurisdiction for the relevant stage of these proceedings.

Considering the foregoing position, FIFA asks the following from the Panel:

- *Should FIFA remain a party, to bifurcate these proceedings and allow the parties to file submissions on the admissibility of the appeal and CAS jurisdiction, and render a preliminary award on these issues in accordance with Articles R39 and R55 CAS Code.*
- *Should FIFA be excluded from the proceedings due to the Appellant’s withdrawal of the appeal, to be granted the opportunity to file an amicus curiae brief after the Appellant and [Kairat] have exchanged written submissions in this matter”.*

39. On 17 November 2020, following a request from Daugavpils to suspend the time limit to file its Appeal Brief pending the Panel's decisions on (i) Daugavpils' request for withdrawal of the appeal directed against FIFA; and (ii) FIFA's request for bifurcation of the present proceedings, the CAS Court Office informed the Parties that such request was granted.
40. On 19 November 2020, Daugavpils informed the CAS Court Office that it agreed with a bifurcation of the proceedings. Daugavpils also reiterated the "*withdrawal of its request for relief no. 1 directed solely at FIFA and the appeal against FIFA accordingly, while maintaining [Kairat] as the sole Respondent in this case [...]*" (emphasis in original).
41. On 20 November 2020, the CAS Court Office informed the Parties that the Panel had decided to grant the request for bifurcation of the proceedings, adding that "*the Panel wishes that the Parties deal with every possible issue with the exception of the merits of the underlying horizontal dispute between [Daugavpils] and [Kairat], including the issues of CAS jurisdiction, admissibility of the appeal and 'preclusion', in order for the Panel to decide on all these issues in the preliminary award*".
42. On 30 November 2020, the Respondents filed their written submissions with respect to the bifurcated issues.
43. On 1 December 2020, Daugavpils filed three reasoned requests for production of documents with the CAS Court Office.
44. On 4 December 2020, the Respondents filed reasoned submissions, requesting that Daugavpils' requests for production of documents dated 1 December 2020 be rejected. Kairat argued that Daugavpils' repeated unsolicited requests, coupled with the constant alteration of its position, were not allowing the proceedings to move forward in a rational manner and were making it impossible for Kairat to defend itself in a coherent fashion. Kairat requested that Daugavpils' conduct be taken into consideration by the Panel at the time of the allocation of costs.
45. On 5 December 2020, Daugavpils filed an unsolicited submission by means of which it responded to the Respondents' submissions dated 4 December 2020.
46. On the same date, 5 December 2020, Daugavpils referred to six FIFA decisions that it considered relevant for determining the legal nature of the Appealed Decision and submitted two new requests for production of documents.
47. On 7 December 2020, with respect to Daugavpils' requests for production of documents dated 1 December 2020, the CAS Court Office informed the Parties that the Panel had decided as follows:
 - "1) *The Appellant's request for production of documents is rejected. The reasons of this decision will be communicated in the final award.*
 - 2) *The Panel considers that [the Appellant's first correspondence dated 5 December 2020] is an unsolicited submission and therefore, it is not admitted into the file. The Appellant can further comment on it in the next submission that was directed by the Panel to the parties [...].*

3) *The Parties are requested to refrain from sending any further unsolicited submission*”.

48. On the same date, 7 December 2020, with respect to Daugavpils’ additional requests for production of documents dated 5 December 2020, the CAS Court Office informed the Parties as follows:

“On behalf of the Panel, the Appellant’s request for production of documents is rejected. The reasons of this decision will be communicated in the final award”.

49. On 11 December 2020, Daugavpils filed its written submission with respect to the bifurcated issues, reiterating that it had withdrawn its appeal against FIFA on 10 November 2020. Daugavpils maintained that the prerequisites of Article R41.4(1) CAS Code were not met and that FIFA could not be granted an intervening party’s status in these proceedings and that FIFA’s submission dated 30 November 2020 was therefore to be excluded from the case file and that also FIFA’s alternative request to submit an *amicus curiae* brief should be denied.

50. On 16 December 2020, the Parties were invited to inform the CAS Court Office whether they preferred a hearing to be held limited to every possible preliminary issue, including the issues of CAS jurisdiction, admissibility of the appeal and “preclusion”. On the same date, Daugavpils informed the CAS Court Office about its preference to issue a preliminary award based solely on the Parties’ written submissions, considering it reasonable from a financial and procedural point of view.

51. On 16 December 2020, Daugavpils filed an unsolicited submission, referring to the (then not yet entered into force) 1 January 2021 edition of the FIFA RSTP and the FIFA Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (the “FIFA Procedural Rules”) and FIFA Circular no. 1743, all published by FIFA on 14 December 2021, which it alleged were relevant and comprised exceptional circumstances under Article R56 CAS Code and should therefore be admitted on file. Daugavpils further indicated that the Panel could decide on the preliminary issues based on the Parties’ written submissions.

52. On 21 December 2020, FIFA did not object to the admissibility of the documents produced by Daugavpils on 16 December 2020, but requested the Panel for a second round of written submissions to address Daugavpils’ written submission dated 11 December 2020 and letter dated 16 December 2020. In this regard, FIFA informed the CAS Court Office that after this short second exchange of written submissions a hearing would not be necessary.

53. On the same date, 21 December 2020, Kairat informed the CAS Court Office that it did not consider it necessary for a hearing to be held, objected to the admissibility of the documents produced by Daugavpils on 16 December 2020 and indicated that further delays to the proceedings would be unwelcome.

54. On 5 January 2021, Daugavpils insisted on the Panel to decide on FIFA’s procedural status, arguing that since FIFA was not a party anymore, it was not entitled to request a second round of written submissions. Daugavpils in any event objected against FIFA’s request for a second

round of written submissions as FIFA already had the opportunity to address all issues and fully used such opportunity.

55. On 8 January 2021, Kairat informed the CAS Court Office that it left the decision on whether or not to allow for a second round of written submissions up to the Panel, emphasising that no Appeal Brief had been filed yet after almost six months into the proceedings and requesting for the proceedings to move as swiftly as possible.
56. On 11 January 2021, the CAS Court Office informed the Parties that the Panel had decided to invite the Respondents to comment on the new documents submitted by Daugavpils on 16 December 2020. The Parties were also informed that the Panel had decided to (i) reject Daugavpils' request for the withdrawal of its appeal against FIFA; and (ii) admit into the case file FIFA's submission of 30 November 2020, indicating that the reasons for such decisions would be communicated in the final award.
57. On 21 January 2021, both Respondents filed a written submission with respect to the new documents submitted by Daugavpils on 16 December 2020.
58. On 6 February 2021, Daugavpils filed its reply to the Respondents' submissions dated 21 January 2021, objecting against the Respondents' substantive comments in such submissions, arguing that they were only permitted by the Panel to comment on the admissibility of documents submitted by Daugavpils on 16 December 2020.
59. The Panel confirms that it carefully took into account in its decision all of the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES

A. Submissions on the bifurcated issues

60. Given that the Respondents raise an admissibility objection, the positions of the Respondents are set out first, before summarising Daugavpils' position.

a. The Second Respondent

61. FIFA's submission dated 30 November 2020 on the bifurcated issues may, in essence, be summarised as follows:
 - The legal framework for proposals such as the Proposal is to be found in the FIFA Procedural Rules, specifically Article 13 thereof. In short, i) the FIFA administration can make written proposals to the parties in limited matters (including training compensation); ii) the parties can either accept or reject the proposal within 15 days; and iii) the failure to answer will be deemed as an acceptance to the proposal and the latter will have binding effects.

- Since Kairat accepted the Proposal and Daugavpils failed to provide an answer within the granted deadline, in accordance with Article 13 FIFA Procedural Rules, the Proposal was accepted by Daugavpils and became final and binding on it.
- Admitting Daugavpils' appeal would contradict the very purpose of Article 13 FIFA Procedural Rules and would permit Daugavpils to “revive” an issue which was already settled by the Proposal which was accepted (either explicitly or tacitly) by the clubs.
- Article 13 FIFA Procedural Rules has the effect of settling a considerable number of training compensation and solidarity contribution disputes in a swift, efficient and pacific manner and had an immediate and impressive impact, i.e. over 70% of such disputes has been settled without an adjudication procedure. Allowing appeals against these proposals, especially when they have become final and binding, would render the system that FIFA implemented ineffective.
- Moreover, the system allows the relevant clubs to finally submit their dispute before the FIFA DRC and to obtain a decision from this body, if one of them does not want to accept the proposal. However, they must object the proposal within 15 days, otherwise, this right to object would preclude and the proposal would become final and binding.
- The present appeal is not only inadmissible (due to the preclusive effects of not having objected the Proposal in due time) but also goes against the principle of *venire contra factum proprium*. Daugavpils was estopped from appealing either the Appealed Decision or the Proposal (after 18 June 2020) because it led to the legitimate expectations that it had accepted the Proposal and that the dispute was already settled. Now, Daugavpils has changed its course of action to the detriment of Kairat and even FIFA and this aspect of the legal system.
- The Panel shall also find that Daugavpils is not acting in good faith by means of the present appeal. It shall be recalled that Daugavpils has challenged the Appealed Decision because it did not receive “grounds” of the Proposal and even initially requested the Panel to “order [FIFA] to issue the grounds of the decision [sic]”. Daugavpils did not contact FIFA within the time limit granted to either explicitly accept or object the Proposal or to even “request the grounds the decision”.
- Therefore, by submitting this appeal and alleging that there is an existing “horizontal” dispute with Kairat because the grounds of the “decision” were not communicated, it shall be concluded that Daugavpils did not respect the principle of good faith.
- The appeal is also inadmissible because the Appealed Decision cannot be considered to constitute a decision.
- The Appealed Decision does not contain any ruling; it did not resolve any issue in a final way and had a mere informative nature. Indeed, the Appealed Decision indicates that “we would like to **INFORM** the parties that the proposal **became** binding” (emphasis

added by FIFA). In contrast to the Appealed Decision, the Proposal did contain a (proposed) ruling, i.e. “*the proposed amount due by [Daugavpils] to [Kairat] is [...] as training compensation, plus 5% interest p.a. as of the due date*” which would become binding if the parties accepted it or if they failed to reject it within the regulatory deadline.

- The Appealed Decision did not produce legal effects. Daugavpils may argue that the Appealed Decision intended to produce legal effects as it i) set a starting period to pay the amounts of the Proposal; and ii) warned that if the payment was not done in this period, the matter would be submitted to the FIFA Disciplinary Committee. Even when these mere procedural issues are mentioned in the Appealed Decision, they do not modify the informative character of the communication. In any event, Daugavpils is not appealing against the specific issues addressed in the Appealed Decision.
- The Appealed Decision does not have *animus decidendi*. Contrary to the Proposal, which indeed had the intention to solve the training compensation matter between Daugavpils and Kairat, the Appealed Decision was a mere communication with simple information which did not aim to solve any issue. The matter was decided in terms of the Proposal, since 18 June 2020. If Daugavpils wanted to challenge the Proposal, it should have done so within the 15-day deadline, failing which the Proposal became final and binding.
- The above points are corroborated by CAS jurisprudence, confirming that a mere letter which simply reminded about a past, final, binding and immutable Proposal, cannot be considered a decision in itself.
- The decisions of the FIFA Disciplinary Committee referred to by Daugavpils do not bind FIFA in any way vis-à-vis the legal consideration that is under scrutiny, especially because those decisions were rendered by the FIFA Disciplinary Committee, which is not bound by nor applies or interprets the FIFA Procedural Rules (these are only applicable to proceedings before the DRC and PSC). Moreover, the motivation of decisions from FIFA’s bodies are always made in consideration of the specific circumstances of each case. Therefore, it would be hard to follow how these decisions led to legitimate expectations for Daugavpils in terms of the present procedure. In any case, those decisions only confirmed the informative character of the FIFA communications and that the legal effects (if any) were limited to the imposition of a 30-day grace period, failing which the matter could be submitted to the FIFA Disciplinary Committee.

b. The First Respondent

62. Kairat’s submission dated 30 November 2020 on the bifurcated issues may, in essence, be summarised as follows:

- FIFA Circular no. 1689 stipulates, *inter alia*, that parties have 15 days “*to either accept or reject the proposal and provide the reasons which could justify the rejection*” and that they can,

within 15 days of receipt of the proposal, request a formal decision. However, *“failure to do so will result in the proposal being regarded as accepted by and binding on all parties”*.

- These principles are also enshrined in Article 13(1) FIFA Procedural Rules.
- With this regulatory framework in mind, it is highly questionable whether the Appealed Decision has the features of an appealable decision. FIFA, as the issuer of the letter, in its correspondence to CAS dated 13 November 2020, expressly stated that such letter does not constitute an appealable decision, being only of an informative nature.
- A final and binding decision in this matter was indeed issued by FIFA: however, the relevant decision is not the Appealed Decision sent by FIFA on 25 June 2020, but the Proposal dated 29 May 2020.
- The crucial feature is whether such document has a binding effect in respect of both the issuing authority and the party receiving it.
- The letter issued by the FIFA administration on 25 June 2020 does not contain any *animus decidendi*. On the contrary, it only informed the party that the Proposal issued on 29 May 2020 had become final and binding.
- As a result of Daugavpils failing to provide an answer to FIFA within 15 days of the notification, the Proposal became final and binding. Possibly due to a typographical error, the 15-day limit was set by FIFA at 18 June 2020 instead of 13 June 2020. In any event, as a result of the above it must be understood that on 18 June 2020, the Proposal sent by FIFA on 29 May 2020 changed its nature, from proposal to final and binding decision.
- Once Kairat confirmed that it agreed with the Proposal on 17 June 2020, there could be no doubt whatsoever for Daugavpils that the only way to avoid the Proposal becoming final and binding was to reject it and request a formal decision.
- As the Proposal became final and binding on 18 June 2020, any possible appeal with CAS had to be lodged by Daugavpils by 9 July 2020, against the Proposal dated 29 May 2020.
- Article 2(1) of Annexe 6 FIFA RSTP establishes an obligation for all TMS users to *“check the Claims tab in TMS at regular intervals of at least every three days and pay particular attention to any petitions or requests for statements”*, whereas Article 3(2) of Annexe 3 FIFA RSTP goes as far as requiring all TMS users to *“check TMS at regular intervals on a daily basis and pay particular attention to any enquiries or requests for statements”*.
- Only eight days after being informed that the Proposal had become final and binding did Daugavpils engage, in any form, by means of a request for the grounds of the decision from FIFA.

- Daugavpils' conduct during the present proceedings, i.e. three requests for suspension of the proceedings and subsequent withdrawals of such requests, two requests for extension of its deadline to pay its share of the advance of costs, a request for suspension of the deadline to file its Appeal Brief, and its withdrawal of the appeal against FIFA, demonstrate a desire to use any procedural manoeuvre it is able to, in order to delay its obligations to make payment to Kairat.

c. *The Appellant*

63. Daugavpils' submission dated 11 December 2020 on the bifurcated issues, in essence, may be summarised as follows:

- Proposals made in accordance with Article 13 FIFA Procedural Rules have to be sent by FIFA in accordance with one of the regulatory methods of communications mentioned in Article 9bis(1) FIFA Procedural Rules. A written proposal issued by the FIFA Players' Status Department does not constitute a formal decision as it is not a FIFA judicial body. Also, there is no express regulatory right or obligation of the parties to – explicitly or implicitly – accept or reject a written proposal.
- The content of FIFA Circular no. 1689 provides for a “*procedure governing proposals*” materially different from the one under Article 13 in conjunction with Article 9bis FIFA Procedural Rules. The prerequisite whether the FIFA DRC has clear established jurisprudence on the subject matter is dropped, the prerequisite that “*prima facie, all the regulatory requirements for being entitled to receive training compensation [...] have been fulfilled*” is added, it substitutes the parties' regulatory right to request for a decision with a new obligation to either accept or reject the proposal, it introduces a new method of interaction via TMS, it replaces the notion of “receipt” with the concept of “notification”, and it imposes a duty on the parties to check the “Claims tab” in TMS at regular intervals of at least every three days.
- These amendments and expansions, and an impermissible hodgepodge of the rules made by the FIFA Deputy Secretary General, were not endorsed by the FIFA Council. FIFA Circulars are administrative measures hierarchically subordinated to the FIFA regulations. Although FIFA Circulars usefully and legitimately serve the purposes of implementing, detailing, and interpreting the FIFA regulations, they may not amend or expand them. If a provision contained in a FIFA Circular is incompatible with a provision contained in the FIFA regulations, the former should yield to the latter. Transposing this analysis to the present case, the obvious modifications, expansion, and hodgepodge of the relevant rules and procedures made by the FIFA Deputy Secretary General in FIFA Circular no. 1689, are insusceptible of being followed by the Panel.
- The Proposal was submitted to the parties via TMS, the regulatory deadline of 15 days set in Article 13 FIFA Procedural Rules was extended with 5 days (there are 20 days between 29 May and 18 June 2020), which is expressly prohibited by Article 16.9 FIFA

Procedural Rules, the potential automatic extension to reply until 3 July 2020 is not provided for in Article 13.1 FIFA Procedural Rules, FIFA Circular no. 1689 or Annex 6 FIFA RSTP and is manifestly illegal, the cover letter was signed but not the Proposal itself, and the Head of Players' Status is not permitted to issue the Appealed Decision on behalf of the FIFA DRC upon concluding the "*procedure governing proposals*".

- It is plain from the above analysis that FIFA followed neither the "*procedure governing proposals*" nor the "*procedure governing claims*". The relevant procedures differ in their purposes, are regulated by distinct sets of procedural rules, provide for different regulatory time limits that cannot be merged, end with dissimilar types of legal acts, and are thus self-excluding, and, as such, cannot be set up simultaneously by FIFA.
- The only option for the FIFA Players' Status Department to bifurcate the "*procedure governing claims*" and implement the "*procedure governing proposals*" is before notifying the claim for training compensation to the respondent.
- The FIFA Disciplinary Committee has already enforced six similar concluding letters as formal decisions under Article 15 FIFA Disciplinary Code. This makes Daugavpils believe that the Appealed Decision's delivery on behalf of the FIFA DRC was not for merely informative purposes but to fill a gap in the rules and produce a decision "*by a body, committee, or instance of FIFA*" in the sense of Article 15 FIFA Disciplinary Code.
- As to the nature of the letter issued by FIFA on 25 June 2020, it is striking that when it suits it, FIFA takes the position that the relevant letter issued by or on behalf of a FIFA body "*was a mere informative communication which lacks animus decidendi*". Luckily, FIFA generally fails to convince CAS. However, a FIFA letter suddenly becomes a final and binding decision when it serves FIFA's interests.
- In general, according to well-established CAS jurisprudence, a communication is qualified as a decision if it contains a ruling either intending or capable of affecting the legal situation of the addressee, entailing the creation or suppression of a right by the authority in question. In the present case, the Appealed Decision constitutes a formal decision, regardless of its form and FIFA's *animus decidendi*. It adversely affected Daugavpils' legal situation, as it was ordered to pay a certain sum of money to Kairat, plus interest. It is noteworthy that the sentence regarding "purely informative nature" of a FIFA letter, which FIFA usually includes when a letter is intended to be informative, is missing in the present case.
- Moreover, the fact that the Appealed Decision is not motivated cannot affect being a decision.
- On these grounds, the first and main objection to the appeal's admissibility should inevitably fail, being groundless and raised contrary to the legal principles of *bona fide* and *venire contra factum proprium*.

- As to the argument of estoppel, Kairat submits that the Proposal was “notified” to Daugavpils via TMS on 29 May 2020. That is irrelevant, for Daugavpils “*received in its sphere of control*” the Proposal only on 26 June 2020, when Kairat sent it a letter. As the Proposal was not submitted by email, as required by Article 9bis(1) FIFA Procedural Rules, Kairat cannot make a valid argument of Daugavpils’ non-access to TMS from 11 March through 26 June 2020.
- Further, Kairat submits that the Proposal is final and binding since 18 June 2020. That is legally flawed, since the Proposal had to be sent by email, with a time limit for a reply of “*15 days from receipt*” (emphasis added by Daugavpils), which requirement was not met by FIFA, and that it had to be “written”, i.e. “*to bear the signature of the parties (including FIFA) to bind them*”.
- Whatever the Appealed Decision’s legal nature, Kairat is free to try and enforce the Proposal immediately if it genuinely believes that it is a “final and binding decision”. However, Kairat has not dared to “test the water” already for six months. Daugavpils fails to see any practical or personal interest for Kairat in receiving an award that would render the Appealed Decision an “informative letter”.
- Conversely, considering Kairat’s noticeable procedural bad faith, it is precluded by the principle of *nemo auditur propriam turpitudinem allegans* from invoking an argument based on estoppel. In particular, Kairat reserved the filing of a claim for alleged breach of contract against the Player and Daugavpils for immediately after the FIFA DRC rendered a decision on the claim for training compensation in an obvious attempt to circumvent Article 2.2(i) Annex 4 FIFA RSTP and mislead the FIFA DRC. Notably, Kairat filed its claim for alleged breach of contract just 5 days after receiving the Appealed Decision. If the claim were filed before the Appealed Decision, FIFA would have put the proceedings regarding the claim for training compensation “on hold”.
- Furthermore, as the Appealed Decision is an appealable FIFA decision, the argument that Daugavpils did not challenge the Proposal is moot for obvious reasons.
- As to the arguments advanced by FIFA, the appeal has nothing to do with the “*procedure governing proposals*” under Article 13 FIFA Procedural Rules, which FIFA has never set up, at least not correctly, in the case at hand. That does not prevent Daugavpils from challenging the Appealed Decision, which was manifestly not issued on behalf of the FIFA DRC in the application of Article 13 FIFA Procedural Rules, contrary to what FIFA submits.
- All the analyses of the applicable rules and procedures above, and the fact that Daugavpils is not appealing against the Proposal, whether its right to object to the Proposal was precluded on 18 June 2020 is immaterial and should be left moot.
- Daugavpils fails to see how it could tacitly accept the Proposal when it had to be “written”, meaning that it had to bear the parties’ signatures. Moreover, the Proposal does not amount to a final FIFA decision that could have been appealed to CAS in

the meaning of Article 58(1) FIFA Statutes. If FIFA is so certain that the Proposal could have been appealed to CAS as a decision, why does the FIFA Disciplinary Committee enforce only the concluding letters and never the proposals in the form of unsigned Excel sheets?

- Finally, given the irrefutable fact that the Appealed Decision dated 25 June 2020 was issued after the Proposal dated 29 May 2020, the Proposal, even if deemed a formal decision (*quod non*), is obsolete.
- FIFA's objection based on *venire contra factum proprium* is a remarkable manifestation of FIFA's procedural bad faith and a poor attempt to mask its own turpitude, which behaviour is prohibited. Nothing in the behaviour of Kairat and FIFA allows them to legitimately rely on the Proposal to be binding on Daugavpils, effecting somehow the admissibility of the appeal. Conversely, FIFA's reproachful behaviour deserves further attention.
- First, there is no evidence that the FIFA Players' Status Department has assessed, even on a *prima facie* basis, whether the dispute raises complex legal or factual issues or whether there is clear and established FIFA DRC jurisprudence in favour of Kairat. In fact, the existence of the PSC Single Judge's decision on the Player's provisional registration dated 9 March 2020 should have prompted FIFA to verify whether the Player and/or Daugavpils had lodged a claim for breach of contract against Kairat, which they did on 11 March 2020. FIFA's informative letter of 1 April 2020 did not end the proceedings instigated, which are still pending. Hence, the mandatory prerequisites for the FIFA Players' Status Department to issue a written proposal under Article 13 FIFA Procedural Rules were not met.

B. Submissions with respect to the new documents submitted by Daugavpils on 16 December 2020

a. *The First Respondent*

64. Kairat's submission on the new documents presented by Daugavpils on 16 December 2020, in essence, may be summarised as follows:

- The 2021 editions of the FIFA RSTP and the FIFA Procedural Rules are not applicable to the present proceedings and, even if they would apply, Daugavpils attempts to subvert the meaning of the amendments to try and support its meritless arguments.
- Although Article 13(3) FIFA Procedural Rules (2021 edition) provides that "*the confirmation letter shall be considered a final and binding decision pursuant to the [FIFA RSTP]*", only the content of such letters would be appealable. The content of the relevant proposal (issued by FIFA prior to the confirmation letter) would not be appealable, given that the parties would have already accepted/not rejected the proposal and

therefore it would have become final and binding, as would be explained in the relevant confirmation letter.

- Therefore, the scope of such an appeal against a confirmation letter would be limited to the consequences of failing to pay the final and binding amount.
- However, the actual amount of compensation stated in the preceding proposal issued by the FIFA administration would be outside the scope of the appeal, given that the parties already had an opportunity to reject the proposal, but obviously did not do so if a subsequent confirmation letter is issued that confirms the final and binding nature of the proposal.

b. *The Second Respondent (omitting the submissions that were considered by the Panel to be out of scope)*

65. FIFA's submission on the new documents presented by Daugavpils on 16 December 2020, in essence, may be summarised as follows:

- The documents submitted by Daugavpils are not applicable to the matter at hand.
- The "confirmation letter" referred to in the 2021 editions of the regulations is different from the Appealed Decision in the matter at hand. How can Daugavpils affirm that there was no regulatory basis to issue a "confirmation letter" but, at the same time, challenge the Appealed Decision and affirm that it is a decision? By admitting that there was no regulatory basis until 1 January 2021 to issue a "confirmation letter", which is a final and binding decision, Daugavpils is admitting that the Appealed Decision is not a decision.
- The Appealed Decision was not intended to be a "confirmation letter", *inter alia*, because a "confirmation letter" has a broader purpose and greater legal effects than the Appealed Decision. While the Appealed Decision and a "confirmation letter" both only inform/confirm that the proposed amounts became binding, the former does not provide for the disciplinary consequences of failing to pay within the granted grace period (leaving it up to the FIFA Disciplinary Committee to impose sanctions), whereas the latter does.

c. *The Appellant*

66. Daugavpils' submission on the new documents presented by it on 16 December 2020, in essence, may be summarised as follows:

- Daugavpils never suggested, let alone claim, that the 2021 FIFA RSTP and FIFA Procedural Rules would be applicable to this case. Kairat claimed that the system is very clear and understandable. If this is true, why would FIFA amend its rules?

- The 2021 rules confirm that until that moment there was no regulatory basis for FIFA to overlap the relevant regulatory time limits under Article 13(1) FIFA Procedural Rules and Article 7(1) of Annex 6 FIFA RSTP. It now became clear that FIFA intended to issue the Appealed Decision as a “*final and binding decision pursuant to the RSTP*”, which renders the Appealed Decision an appealable decision and corroborates the position that there was no need for Daugavpils to appeal against the Proposal, which is not an enforceable decision.
- The concept of a “confirmation letter” was only introduced on 1 January 2021, yet FIFA applied this concept already in the present case without a legal basis.

V. JURISDICTION

67. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) FIFA Statutes (2019 edition), providing that “[*a*]ppeals 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 receipt of the decision in question” and Article R47 CAS Code.
68. It follows that CAS has jurisdiction to decide on the present dispute.

VI. PRELIMINARY ISSUES

A. The Appellant’s request for production of documents dated 1 December 2020

69. On 1 December 2020, Daugavpils filed the following reasoned requests for production of documents:
- *All working documents concerning the implementation of Article 13 in the edition 2018 of the FIFA Procedural Rules {e.g., minutes of the relevant FIFA committee(s) meeting(s) and/or the FIFA Congress, internal correspondence/memos, and the various documents distributed by FIFA to its members at the relevant time [e.g., circular(s)]};*
 - *All working documents concerning the issue of Circular 1689 and the relevant procedures mentioned therein [e.g., minutes of the relevant FIFA committee(s) meeting(s) and/or the FIFA Congress, and internal correspondence/memos]. [...]*
 - *All internal documents and correspondence/memos used in the analysis of the “factual and legal issues” arising in this case and the “DRC established jurisprudence” in relation to the “factual and legal issues” arising in this case that the Players’ Status Department/the Dispute Resolution Chamber (because the Proposal was signed “on behalf of the Dispute Resolution Chamber”) performed before deciding to apply Article 13 of the FIFA Procedural Rules. If “DRC established jurisprudence” was considered, FIFA should be ordered to produce copies of the relevant decisions. [...]*

- Evidence of “notification” of the letter dated 19 May 2020 to [Daugavpils] via TMS – i.e., that the Proposal was made accessible/visible in the “Claims” tab of [Daugavpils] TMS account (as it is often not the case when FIFA forgets to make certain documents accessible to the parties);¹
 - Evidence of “receipt” of the letter dated 29 May 2020 by [Daugavpils] – i.e., the exact date on which the Proposal entered within the sphere of control of [Daugavpils];
 - [Daugavpils] full TMS user activity log (IT audit log) from 10 March through 27 June 2020” (emphasis in original).
70. On 4 December 2020, the Respondents filed reasoned submissions, requesting that Daugavpils’ requests for production of documents dated 1 December 2020 be rejected.
71. On 5 December 2020, Daugavpils withdrew the first two requests for production of documents and drew inferences from FIFA’s refusal to produce the documentation sought, but maintained its third request.
72. On 7 December 2020, the CAS Court Office informed the Parties that the Panel had decided as follows with respect to Daugavpils’ requests for production of documents dated 1 December 2020:
- “The Appellant’s request for production of documents is rejected. The reasons of this decision will be communicated in the final award”.*
73. In light of Daugavpils’ withdrawal of the first two requests for production of documents, these requests were considered moot by the Panel, although the Panel will assess Daugavpils’ request to draw adverse inferences from FIFA’s refusal to produce the documents sought, if deemed relevant.
74. With respect to the third request for production of documents, the Panel finds that Daugavpils failed to produce any evidence suggesting that FIFA’s letter dated 29 May 2020, setting out its Proposal to the concerned clubs, may not have been properly uploaded on TMS and thus may not have been put at the disposal of both clubs. In the Panel’s view, the fact that Kairat was able to retrieve the Proposal from TMS and timely answer to it on 16 June 2020 (see *supra* at para. 12) definitely proves that FIFA had in fact previously uploaded the letter on TMS. In other words, there is very strong evidence comfortably satisfying the Panel that, through TMS, FIFA properly notified its Proposal to both clubs concerned. By seeking evidence from FIFA with respect to the notification of its letter dated 29 May 2020 without providing a shred of evidence that there may have been an issue with the notification, Daugavpils is putting the cart before the horse by improperly trying to reverse the burden of proof.
75. Based on this reason, the Panel considered it appropriate to reject Daugavpils’ third request for production of documents filed on 1 December 2020.

¹ Daugavpils’ reference to 19 May 2020 is considered to be a typo, as the Proposal was allegedly notified to it on 29 May 2020.

76. Although not a consideration in rejecting Daugavpils' request for production of documents, because this information only became available after it had already decided on the issue, the Panel feels itself reassured in its conclusion by the witness statement of Mr Aleksandrs Isakovs, Daugavpils' TMS Manager, enclosed to Daugavpils' submission dated 11 December 2020, stating that he "*had no access to the office and the club's TMS account from 13 March through 9 June 2020*". The Panel finds that this establishes, be it retrospectively, that Daugavpils' third request for production of documents was only a phishing expedition, i.e. hoping to discover a problem with the notification, while it was clear that Daugavpils would in any event have been able to access the Proposal notified to it by FIFA through TMS as of 10 June 2020, i.e. having at its disposal still 8 days to reject the Proposal before the deadline of 18 June 2020.

B. The Appellant's request for production of documents dated 5 December 2020

77. On 7 December 2020, the CAS Court Office informed the Parties as follows with respect to Daugavpils' additional requests for production of documents dated 5 December 2020:

"On behalf of the Panel, the Appellant's request for production of documents is rejected. The reasons of this decision will be communicated in the final award".

78. On 5 December 2020, Daugavpils referred to six decisions that it considered relevant for determining the legal nature of the Appealed Decision. Daugavpils further filed two new requests for production of documents, as follows:

- *a copy of the full case file in the above procedures, in which "proposals" and "informative letters" were issued and only the latter letters were deemed "decisions" and executed by the FIFA Disciplinary Committee under Article 15 of the FIFA Disciplinary Code (FDC) (cf. CAS 2016/A/4633, para. 59);*

or

- *a copy only of the alleged "proposals" and "informative letters" issued by FIFA in those cases. Should the Panel find this evidence relevant after examining it, the Appellant should be granted access to this evidence and allowed to address it in its Response to the Respondents' objections to the appeal's admissibility that is due on 11 December 2020" (emphasis in original).*

79. The Panel considered that the two requests for production of documents were to be dismissed because, already having the six decisions considered relevant by Daugavpils on file, the Panel did not see the relevance of being provided with the underlying case files and/or the "proposals" and "informative letters" in such cases.

80. Based on this reason, the Panel considered it appropriate to reject Daugavpils' requests for production of documents filed on 5 December 2020.

C. The Appellant's request to withdraw its appeal and requests for relief against FIFA, to exclude FIFA from the proceedings and FIFA's submission dated 30 November 2020 from the case file

81. On 11 January 2021, the CAS Court Office informed the Parties that the Panel had decided to reject Daugavpils' request for the withdrawal of its appeal against FIFA, indicating that the reasons for such decision would be communicated in the final award.
82. In its letter of 13 November 2020, FIFA informed the CAS Court Office that if, for any reason, the Panel considers that there are substantive requests against Kairat, FIFA believes that it should still be allowed to intervene in the proceedings, whether remaining a party or through the filing of an *amicus curiae* brief. In other words, the Panel took note that FIFA did not unconditionally agree with the request for withdrawal. To the contrary, FIFA only agreed with the request for withdrawal under conditions.
83. As the Panel finds that there are also substantive requests against Kairat, which was also argued by Daugavpils, the Panel will also have to decide on this procedural issue.
84. In this regard, the Panel considers the question under which condition an appeal may be withdrawn before CAS is a procedural question within the meaning of Article 182 of Switzerland's Private International Law Act (the "PILA"), which provides as follows:
1. *The parties may, directly or by reference to rules of arbitration, determine the arbitral procedure; they may also submit the arbitral procedure to a procedural law of their choice.*
 2. *If the parties have not determined the procedure, the arbitral tribunal shall determine it to the extent necessary, either directly or by reference to a statute or to rules of arbitration.*
 3. *Regardless of the procedure chosen, the arbitral tribunal shall ensure equal treatment of the parties and the right of the parties to be heard in adversarial proceedings".*
85. The CAS Code does not contain any provision on the withdrawal of an appeal or a claim before CAS. Accordingly, in line with Article 182(2) PILA, the Panel shall apply the appropriate provisions and principles either directly or by reference to a law or rules of arbitration.
86. If and to what extent a respondent must consent to a withdrawal of a matter in dispute by the appellant is disputed. Daugavpils relies on Swiss legal literature which, in principle, draws an important distinction when it comes to the withdrawal of a claim before an arbitral tribunal. According thereto a unilateral withdrawal of a claim in arbitration is only possible until the claimant has filed its full statement of claim with the arbitral tribunal (BERGER/KELLERHALS, *International and Domestic Arbitration in Switzerland*, 3rd ed., 2015, no. 1559). Thereafter, a withdrawal of the claim is only possible with the consent of the opposing party (WIRTH/MAGLIANA in: GROLIMUND/LOACKER/SCHNYDER (Eds.), *Basler Kommentar – Internationales Privatrecht*, 4th ed. 2020, Art 189, no. 62).
87. While Daugavpils had not filed its Appeal Brief at the time it withdrew its appeal against FIFA, FIFA had already indicated in its letter to the CAS Court Office dated 26 August 2020 that it

considered that the Proposal had become final and binding as of 18 June 2020 and that the Appealed Decision was purely of informative nature and could not be subject to any appeal.

88. The Panel finds that FIFA, being called as a respondent by Daugavpils, was a party to the proceedings and therefore entitled to raise this procedural issue. The Panel finds that FIFA had a legitimate interest to raise this issue, in particular also because it had not yet been raised by Kairat. The Panel finds that FIFA's argument is to be addressed and cannot be bypassed by Daugavpils simply by withdrawing its appeal against FIFA.
89. The Panel also finds that Daugavpils' inconsistent procedural behaviour in the present appeal arbitration proceedings does not warrant protection. Daugavpils initially only called Kairat as a respondent, but later filed an amended Statement of Appeal with the sole purpose of including FIFA in the proceedings as a party, demonstrating that it made a conscious choice to call FIFA as a respondent, only to subsequently try and exclude FIFA from the proceedings again.
90. Notwithstanding its request to exclude FIFA from the proceedings as a party, Daugavpils subsequently filed extensive requests for production of documents vis-à-vis FIFA, which were adequately addressed by FIFA, only for Daugavpils to subsequently reiterate its request again to exclude FIFA from the proceedings after the requests for production of documents had been dealt with.
91. Indeed, the Panel finds that Daugavpils could not simply withdraw its appeal against FIFA once FIFA had taken an interest in the case and raising the aforementioned procedural issue. Daugavpils had called FIFA as a respondent and maintained its second request for relief (i.e. "*Set aside and annul the decision rendered by FIFA Players' Status Department in the form of a letter in case Ref. No. TMS 6081 on 25 June 2020*"), with the consequence that FIFA was and is entitled to defend the Appealed Decision.
92. The Panel, in addition, considers it problematic that Daugavpils did not unconditionally withdraw its appeal against FIFA, but that it only did so "*while reserving all rights and claims against FIFA*" and that such withdrawal did not "*constitute and should not be interpreted as confession, acceptance, or acknowledgement of any of the allegations, claims, or requests made by FIFA*". The Panel finds that Daugavpils cannot have its proverbial cake and eat it too. Under such circumstances, and following an objection from Kairat against Daugavpils' request that FIFA be excluded as a party and FIFA's request – should the Panel decide that it be excluded from the proceedings as a party – that it be permitted the right to file an *amicus curiae* brief, the Panel did not consider it appropriate to allow Daugavpils to withdraw its appeal against FIFA. On a side note the Panel clarifies that even if the withdrawal of the appeal was accepted, the matter in dispute would not change and the outcome of this proceeding would not have been any different.
93. As a consequence, the Appellant's request to exclude FIFA as a respondent is rejected and FIFA's submission of 30 November 2020 was admitted to the file.

D. The Appellant's request to declare the Respondents' substantive comments dated 21 January 2021 inadmissible

94. On 11 January 2021, the CAS Court Office informed the Parties as follows:

“On behalf of the Panel, the Respondents are invited to comment on the new documents submitted by the Appellant within ten (10) days from receipt of this letter. Such comments shall be limited to 10 pages each. Upon receipt of the Respondents' comments on the new documents, the Panel will grant an identical deadline to the Appellant to file its reply to such comments (also limited to 10 pages)”.

95. First of all, having reviewed the Parties' submissions, the Panel finds that the documents submitted by Daugavpils on 16 December 2020 have a certain bearing on the proceedings with respect to understanding the nature of a “confirmation letter” and that the exceptional circumstances required under Article R56 CAS Code lie in the fact that these documents were only published by FIFA on 14 December 2020, thereby preventing Daugavpils from producing these documents before. Accordingly, the new documents filed by Daugavpils on 16 December 2020 are admitted on file.

96. Insofar as Daugavpils suggests that the scope of the Parties' submissions was limited to the admissibility of the new documents submitted by it on 16 December 2020, it is mistaken. The scope was limited to “comment on the new documents”. Any comments related to the substance of the new documents and their potential bearing on the proceedings in the matter at hand are therefore admitted on file.

97. Insofar as FIFA and Kairat understood that they were free to file a full-fledged second written submission and could comment on any aspect that came up during the proceedings, also they are mistaken. The scope of the submissions was limited to “comment on the new documents”. Any comments of FIFA and Kairat in their submissions filed on 21 January 2021 not related to the new documents submitted by Daugavpils on 16 December 2020 and their potential bearing on the proceedings in the matter at hand are not admitted on file.

98. FIFA's request for a second round of written submissions is rejected as the Panel considers itself sufficiently well-informed.

VII. APPLICABLE LAW

99. Daugavpils submits that the Statutes and regulations of FIFA, including the FIFA RSTP and the FIFA Procedural Rules govern the present dispute and that Swiss law shall apply subsidiarily. Since the Appealed Decision was issued on 25 June 2020, the Panel should apply the June 2020 editions (implemented on 10 June 2020) of the FIFA RSTP and the FIFA Procedural Rules to the procedural matters arising in the case at hand.

100. Without making any specific submissions in this regard, Kairat also relies on the June 2020 editions of the FIFA Statutes, the FIFA Procedural Rules and the March 2020 edition of the FIFA RSTP.

101. FIFA submits that, pursuant to Article 57(2) FIFA Statutes, the provisions of the CAS Code shall apply to the proceedings and that CAS shall primarily apply the various regulations of FIFA – namely the FIFA RSTP – and, additionally, Swiss law.
102. Article R58 CAS Code provides the following:
“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”.
103. Article 57(2) FIFA Statutes stipulates 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”.
104. The Panel notes that there is no March 2020 edition of the FIFA RSTP as argued by Kairat, but only January and June 2020 editions. For the proceedings in the matter at hand, there is no material difference between the January and June 2020 editions of the FIFA RSTP.
105. Procedural matters are governed by the regulation in force at the time of the procedural act in question. Since Kairat’s claim for training compensation was filed with FIFA on 25 May 2020, the June 2020 edition of the FIFA Procedural Rules had not yet entered into force. Accordingly, the November 2019 edition of the FIFA Procedural Rules applies. The mere fact that the June 2020 edition entered into force before the issuance of the Appealed Decision does not make this any different.
106. The same applies with respect to the FIFA RSTP, as a consequence of which the January 2020 edition of the FIFA RSTP applies.
107. The Panel finds that primarily the various regulations of FIFA are applicable, in particular the FIFA RSTP (edition January 2020) and the FIFA Procedural Rules (edition November 2019), and additionally Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. ADMISSIBILITY OF THE APPEAL

108. Article 58.1 of the FIFA Statutes states as follows:
“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 receipt of the decision in question”.
109. This time limit was duly complied with by Daugavpils (with both its first and its second Statement of Appeal) and the Panel finds that all requirements of Article R48 CAS Code were complied with.

110. The Respondents nonetheless dispute the admissibility of Daugavpils' appeal. They maintain that, in the absence of any objection being raised by Daugavpils and/or Kairat by 18 June 2020, the Proposal had already entered into force and that the Appealed Decision of 25 June 2020 could therefore not be considered an appealable decision, but that it was merely a letter of informative nature. They argue that if Daugavpils wanted to challenge being required to pay [...] to Kairat, it should have objected to or appealed the Proposal.
111. The Proposal of the FIFA DRC Secretariat provides, *inter alia*, as follows:
"In case a proposal is accepted by all parties or the parties fail to provide an answer to the FIFA Player Status' Department within stipulated deadline, the proposal will become binding".
112. The Panel notes that the FIFA Players' Status Department confirmed in the Appealed Decision that the content of the Proposal had entered into force, determining, *inter alia*, as follows:
*"[Daugavpils] has to pay to [Kairat], within 30 days as from the date of this notification, **if not done yet, the amount of [...], plus 5% interest p.a. as of 30 days of the due date of each instalment until the date of effective payment.***
In the event that the aforementioned sum is not paid by [Daugavpils] within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision" (emphasis in original).
113. Whereas the Appealed Decision confirmed that an amount of [...] was to be paid by Daugavpils to Kairat, as proposed by FIFA in the Proposal, the Panel finds that the Appealed Decision contains a number of aspects that were not yet addressed in the Proposal, but that were only imposed on Daugavpils in a final and binding manner by means of the Appealed Decision: the Appealed Decision (i) confirmed that proposal was binding either in case it was accepted by all parties or if the parties failed to provide an answer; (ii) confirmed that the Proposal had become binding; (iii) confirmed that Daugavpils had to pay an amount of [...] to Kairat, whereas the Proposal only refers to this amount as a proposal that could still be objected to; (iv) provided for a grace period of 30 days; (v) determined that interest at a rate of 5% *per annum* would have to be paid over the due amount as soon as the 30 day grace period lapsed; and (vi) determined that the matter would be referred to the FIFA Disciplinary Committee if Daugavpils would not pay the due amount to Kairat within 30 days.
114. The amount to be paid set forth in a proposal only becomes final and binding if such proposal is accepted by both parties or if no objection is raised against it within the stipulated time limit. However, the parties to which the proposal is issued do not necessarily know whether the opposing party accepted or rejected the proposal until this is confirmed by FIFA. Accordingly, the Panel finds that a proposal itself cannot be considered a final and binding decision, but that the elements mentioned above lead to the conclusion that only a "confirmation letter" such as the Appealed Decision is a decision that definitely affects the legal position of the parties involved.

115. The Panel notes that this indeed appears to have been the standing practice of FIFA, as demonstrated by the 6 decisions of the FIFA Disciplinary Committee submitted into evidence by Daugavpils on 5 December 2020. These decisions consistently consider that letters very similar to the Appealed Decision in the matter at hand have to *“be regarded as a decision since it materially and definitely affected the legal position of the Debtor and the Creditor, and was therefore enforceable before the competent authority”*.
116. The Panel finds that this view is reinforced by Article 13(3) FIFA Procedural Rules (2021 edition), determining that *“[t]he confirmation letter shall be considered a final and binding decision pursuant to the FIFA Regulations on the Transfer and Status of Players”*. Even though this provision is not directly applicable to the proceedings in the matter at hand as it was only implemented during the present proceedings before CAS, it does appear to codify FIFA’s standing practice.
117. The Panel also finds that the situation in the matter at hand is different from the situations in the jurisprudence relied on by FIFA (i.e. CAS 2020/A/6732 and CAS 2019/A/6406). In such cases, CAS held that the letters issued by FIFA confirming the consequences of a failure to comply with a certain order as already set out in the underlying disciplinary decision were not appealable decisions.
118. First of all, the underlying decision in CAS 2020/A/6732 specifies that if no payment would be made by the debtor, and the creditor would request for the relegation of the debtor, *“the relegation will be automatic, without the FIFA Disciplinary Committee having to make a formal decision”*. The situation in CAS 2019/A/6406 is comparable. Conversely, the Proposal does not indicate that no formal decision would follow but, rather, it indicates that the Proposal would become final and binding, which is different as will be set forth in more detail below.
119. Second, the debtors in CAS 2020/A/6732 and CAS 2019/A/6406 can escape the implementation of the disciplinary measures referred to in the disciplinary decision without any assistance being required from the creditors, i.e. if they would pay the due amount no sanctions would be imposed. It can therefore also be expected from them to file an appeal against the disciplinary decision in question if they disagree with the sanctions set forth therein and not wait until FIFA informs it that the sanctions are indeed implemented. This is different in the matter at hand, because the consent of both Kairat and Daugavpils – be it explicit or implicit – was required before the Proposal could be implemented. Without the step of issuing a “confirmation letter” such as the Appealed Decision, the Proposal itself is not enforceable.
120. For these reasons, the Panel finds that the jurisprudence relied on by FIFA is not applicable to the matter at hand and does not stand in the way of considering the Appealed Decision as an appealable decision.
121. An important part of Daugavpils’ submissions was devoted to the alleged unequal treatment in FIFA’s practice and the admissibility of its appeal against the Appealed Decision. The Panel finds that the 6 decisions referred to *supra* and the recent codification of such practice demonstrate that Daugavpils in this respect has been essentially correct and that FIFA has erred in considering the present appeal inadmissible.

122. Whether Daugavpils can still challenge the amount awarded to Kairat by means of the Appealed Decision, notwithstanding Daugavpils' implicit acceptance of the Proposal, or whether it is precluded to do so, is a different issue altogether and will be addressed in detail below.
123. Hence, the Panel finds that Daugavpils' appeal against the Appealed Decision is admissible.

IX. PRECLUSION

124. Notwithstanding the above conclusions with respect to the jurisdiction of CAS and the admissibility of Daugavpils' appeal, the Panel finds that it may nonetheless be precluded from addressing the merits of Daugavpils' appeal, because of the latter's failure to object against the content of the Proposal by 18 June 2020.
125. In order to determine whether or not this is the case, the Panel is required to verify whether the Proposal was correctly notified to Daugavpils, as this is disputed. The Panel is also required to address Daugavpils' argument that FIFA did not comply with the regulatory requirements for issuing a proposal.

A. FIFA's entitlement to issue the Proposal

126. Article 13 FIFA Procedural Rules provides as follows:
- "1. In disputes relating to training compensation and the solidarity mechanism without complex factual or legal issues, or in cases in which the DRC already has clear, established jurisprudence, the FIFA administration (i.e. the Players' Status Department) may make written proposals, without prejudice, to the parties regarding the amounts owed in the case in question as well as the calculation of such amounts. At the same time, the parties shall be informed that they have 15 days from receipt of FIFA's proposals to request, in writing, a formal decision from the relevant body, and that failure to do so will result in the proposal being regarded as accepted by and binding on all parties.*
- 2. If a party requests a formal decision, the proceedings will be conducted according to the provisions laid down in these rules".*
127. The Panel finds that the above-cited provision, in principle, provides a regulatory basis for the FIFA administration to issue a proposal in disputes related to training compensation, but that this authority is subject to certain preconditions that need to be complied with.
128. The requirement that the dispute must concern training compensation or the solidarity mechanism is undisputedly complied with in the case at hand.
129. As to the second precondition, the Panel finds that the reference in Article 13(1) FIFA Procedural Rules to disputes *"without complex factual or legal issues"* is somewhat unfortunate, as this determination can actually only be made if and when all parties involved have communicated their views, a situation Article 13 FIFA Procedural Rules in fact aims to avoid

for reasons of efficiency. Rather, the Panel derives from this provision that the assessment of whether or not there are complex factual or legal issues is to be made on a *prima facie* basis and on the basis of the claim alone. The Panel also finds that the FIFA administration must be afforded ample discretion in determining whether or not it considers a case to be complex and, thus, whether or not to issue a proposal to the interested clubs, given that such discretionary power is wholly counterbalanced by the fact that each of those clubs has the right, at its sole discretion, to reject the FIFA proposal and ask for a reasoned decision (with a subsequent right of appeal to the CAS).

130. The Panel agrees with FIFA's assessment that the claim for training compensation submitted by Kairat on 25 May 2020 did not seem *prima facie* to raise any complex factual or legal issues, thus permitting the FIFA administration to issue the Proposal. The mere fact that the Player had filed a claim for breach of contract against Kairat on 11 March 2020 does not make this any different. In any event, the Panel finds that FIFA did not arbitrarily or unreasonably exert its above-mentioned ample margin of discretion in qualifying this matter as "simple" and considering that Kairat's claim did not raise complex factual or legal issues.
131. It should be borne in mind that the issuance of the Proposal in no way prejudiced the position of Daugavpils, as it was by no means required to accept the Proposal.
132. For these reasons, the Panel finds that FIFA was entitled to notify the Proposal to the Parties on 29 May 2020.

B. Equating a failure to respond to acceptance

133. Article 13 FIFA Procedural Rules is further considered relevant by the Panel because of the legal basis for the FIFA administration to understand that a failure to respond within 15 days is deemed as an acceptance.
134. This policy not only derives from Article 13(1) FIFA Procedural Rules, but was reiterated by means of FIFA Circular no. 1689, determining that "[t]his proposal will become final and binding after 15 days following its notification if it is accepted by all parties or the parties fail to provide an answer within the deadline", "[o]nce the proposal of the PSD has been notified to the parties via TMS [...]" and "[s]hould none of the parties reject the proposal of the PSD **within the 15 days following its notification via TMS**, the proposal will become binding on them" (emphasis in original).
135. The Panel considers this to be a sufficient regulatory basis to qualify a failure to respond as an acceptance of the Proposal.

C. Notification of the Proposal via TMS

136. The Panel finds that "silence" by Daugavpils can only be qualified as an acceptance, if Daugavpils was properly notified of the Proposal. Daugavpils thus must have had the possibility to make a choice within the established time limit of 18 June 2020.

137. The Panel finds that the Proposal was notified to Daugavpils via TMS on 29 May 2020 because, as already held above at para. 74, the fact that Kairat was able to retrieve the Proposal from TMS and timely answer to it on 16 June 2020, stating that it accepted the Proposal made by FIFA on 29 May 2020 (see *supra* at para. 12), proves that FIFA had in fact uploaded the Proposal on TMS on 29 May 2020, thus putting it at the disposal of the interested clubs as of that date. In other words, there is very strong evidence comfortably satisfying the Panel that, through TMS, FIFA properly notified its Proposal to both clubs concerned. Moreover, as acknowledged by Daugavpils' TMS manager (Mr Isakovs), as of 10 June 2020, he had full access to his club's offices and TMS account and was thus perfectly able to download the Proposal with still a comfortable interval of 8 days to reject the Proposal if Daugavpils so wished (and several more days to provide the reasons for such rejection).
138. However, Daugavpils maintains that this means of notification had no regulatory basis and that FIFA should have notified it by way of the means of communication set forth in Article 9bis(1) FIFA Procedural Rules.
139. Daugavpils maintains that the "*procedure governing proposals*", set forth by Article 13 FIFA Procedural Rules and FIFA Circular no. 1689, is different from the "*procedure governing claims*", set forth by Annexe 6 FIFA RSTP, but that the FIFA administration impermissibly mixed both procedures.
140. Daugavpils maintains that notification of proposals in the "*procedure governing proposals*" through TMS was introduced by means of FIFA Circular no. 1689, which would allegedly be inadmissible because of the lack of a proper regulatory basis. FIFA Circular no. 1689 provides as follows:
- "If both conditions described above are met, the PSD will make the claim available to the respondent and, at the same time, will provide the parties with a written proposal via TMS [...]".*
141. Commencing with its analysis, the Panel finds that Daugavpils is correct in saying that Article 9bis(1) FIFA Procedural Rules does not refer to communication via TMS. This provision reads as follows:
- "As a general principle, all communication with the parties in the proceedings shall be conducted by email. Electronic notification by email is considered a valid means of communication and will be deemed sufficient to establish time limits and their observance. Alternatively, submissions may also be transmitted by regular mail or courier. By contrast, submissions transmitted by fax shall have no legal effect".*
142. Article 13(1) FIFA Procedural Rules does not provide for the means of notification to be used by the FIFA administration. However, Article 13(2) FIFA Procedural Rules specifies that the proceedings are to be conducted in accordance with the FIFA Procedural Rules if a party requests a formal decision, i.e. if no party requests for a formal decision, the (other) FIFA Procedural Rules do not apply.
143. Daugavpils argues that Article 13(2) FIFA Procedural Rules applies only when a formal decision is requested, but not when a proposal is rejected. The Panel does not follow this

reasoning. With the expression “formal decision” of Article 13(2) FIFA is clearly referring to the same concept found in Article 13(1), i.e. a “*formal decision from the relevant body*” or, said otherwise, a decision with grounds by an adjudicatory body of FIFA. A formal decision, thus, will only be issued if a proposal is rejected. Accordingly, the Panel finds that a failure to reject a proposal amounts to a waiver of the right to request for a formal decision with grounds. In any event, Daugavpils did not request for a formal decision, as a consequence of which the application of the FIFA Procedural Rules is not triggered.

144. Because the procedure concerning disputes in training compensation and the solidarity mechanism are generally governed by Annex 6 FIFA RSTP, the Panel finds that one would have to resort to this Annex to verify whether communication via TMS is a legally permissible way of communication.
145. This is confirmed by Article 1 of Annex 6 FIFA RSTP, which provides as follows:
- “1. *All claims related to training compensation according to article 20 and to the solidarity mechanism according to article 21 must be submitted and managed through TMS. The claims shall be entered in TMS by the club holding a TMS account or, in the case of a club without a TMS account, by the association concerned.*
 2. *Unless otherwise specified in the provisions below, the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber shall be applied to the claim procedure, subject to any slight deviations that may result from the computer-based process”.*
146. Although one could envisage a more clearly worded delineation, the Panel finds that it can be inferred from this provision that Annex 6 FIFA RSTP prevails as a more specific rule over the default rules set forth by the FIFA Procedural Rules, in application of the widely accepted interpretive principle *lex specialis derogat legi generali*, often applied in CAS jurisprudence (see for example CAS 2013/A/3274 at para. 78, TAS 2016/A/4474 at para. 323, and CAS 2017/A/5003 at paras. 199, 235, 273 and 278). In this respect, Article 1(1) of Annex 6 FIFA RSTP provides that, in deviation from what is provided in the FIFA Procedural Rules, all claims related to training compensation and solidarity mechanism must be submitted and must be “*managed*” through TMS (and certainly the FIFA communications in this case are part of the claim management process). The Panel is also comforted from the fact that Article 9bis of the FIFA Procedural Rules, explicitly states that the rules concerning communications with parties are set out “[a]s a general principle”, clearly leaving room for different rules for some specific situations, as is the case here.
147. The Panel finds Daugavpils’ distinction between “*procedure governing proposals*” and the “*procedure governing claims*” artificial. The understanding that also proposals are to be notified through TMS is only fortified by the explanation set forth by FIFA in FIFA Circular no. 1689, but such Circular does not create and does not purport to create in and by itself a legal basis to communicate proposals via TMS. Rather, it simply confirms a legal basis that can already be found in Annex 6 FIFA RSTP.

148. Accordingly, the Panel finds that Daugavpils was properly notified of the Proposal via TMS on 29 May 2020.

D. Daugavpils' duty to regularly check the "Claims" tab in TMS

149. Even if, as it claims, Daugavpils only took note of the Proposal and the Appealed Decision at the same time on 27 June 2020, the Panel finds this to be wholly irrelevant.

150. Indeed, the Panel finds that the mere fact that Daugavpils did not take note of the Proposal until after the time limit to object against it had expired is of no avail to it, as Daugavpils was required to regularly access TMS, a requirement Daugavpils uncontestedly failed to fulfil.

151. Indeed, Article 2 of Annex 6 FIFA RSTP provides as follows:

"1. All clubs and all member associations shall check the "Claims" tab in TMS at regular intervals of at least every three days and pay particular attention to any petitions or requests for statements.

2. Professional clubs and member associations will be fully responsible for any procedural disadvantages that may arise due to a failure to respect paragraph 1 above".

152. FIFA Circular no. 1689 further provides as follows:

"Finally, we kindly remind you that according to art. 2 par. 1 of Annexe 6 of the RSTP, all clubs and all members associations shall check the "Claims" tab in TMS at regular intervals of at least every three days" (emphasis in original).

153. In this respect, Article 2(1) of Annex 6 FIFA RSTP not only requires clubs to regularly check the "Claims" tab in TMS, but it also indicates that a failure to do so is not a valid excuse for any procedural disadvantages that may arise.

154. The Panel does not consider the duty to check the "Claims" tab at least every three days to be unreasonable and finds that Daugavpils should bear the consequences of its failure to do so, particularly also considering that Daugavpils' first team played a league fixture on 15 June 2020, which shows that the Daugavpils' staff was active prior to the expiry of the deadline of 18 June 2020 imposed by FIFA.

155. In addition, Daugavpils does not explain in any detail why the Covid-19 pandemic would have prevented it from timely accessing TMS, given that its TMS manager admitted in his witness statement that he was prevented from accessing the office and the TMS platform only until 9 June 2020, with the consequence that as of 10 June 2020, Daugavpils was able to check said "Claims" tab. Therefore, even if one were to believe that Daugavpils' staff could truly not access TMS from home (something that the Panel finds implausible given that TMS is accessible from any device with an internet connection), this did not prevent Daugavpils' employees from eventually accessing TMS well before the deadline of 18 June 2020. If they did not do it, it was a serious negligence, of which Daugavpils must now bear all detrimental consequences, as warned beforehand by Article 2 of Annex 6 FIFA RSTP.

156. Finally, the Panel does not want to leave unmentioned that if Daugavpils truly did not have access to TMS, for whatever reason, it could have informed FIFA accordingly, or authority could have been given to someone with good internet access, at an early stage in order to avoid the situation that time limits would not be complied with.
157. Consequently, the Panel finds that Daugavpils' failure to regularly check the "Claims" tab, as a consequence of which it only took note of the Proposal when the time limit to object thereto had already expired, is of no avail to it.

E. The consequences of Daugavpils' failure to timely object against the Proposal

158. The Panel finds that the regulatory framework implemented by FIFA precludes Daugavpils from disputing the content of the Proposal after 18 June 2020.
159. Since silence is deemed acceptance under the pertinent FIFA rules, Daugavpils is legally deemed to have accepted the content of the Proposal and, by the same token, to have waived its right to reject the Proposal by the elapsing of the deadline of 18 June 2020.
160. Although the amount to be paid to Kairat was only formally confirmed by means of the Appealed Decision issued on 25 June 2020, Daugavpils was already precluded from challenging the amount of [...] to be paid to Kairat by 19 June 2020.
161. Allowing Daugavpils to do so would also amount to a violation of the principle of *venire contra factum proprium* (the doctrine, recognized by Swiss law, providing that where the conduct of one party has induced legitimate expectations in another party, the first party is estopped from changing its course of action to the detriment of the second party (CAS 2008/O/1455, para. 16)), i.e. by failing to object against the Proposal within the time limit granted, Daugavpils induced legitimate expectations on Kairat and FIFA that it accepted the Proposal.
162. The Panel finds that Kairat is not precluded from invoking the argument of estoppel. The contractual dispute between the Player, Kairat and Daugavpils does not have any bearing on the present proceedings, as the Panel finds that it is precluded from assessing the amount awarded to Kairat. In any event, even if Kairat were barred from raising the argument, FIFA would not be barred, as a consequence of which the outcome would be the same. FIFA is not barred from raising the argument of estoppel because the Panel does not find that FIFA engaged in "*reproachful procedural conduct*", as argued by Daugavpils.
163. The Panel finds that the implicit acceptance of the Proposal by Daugavpils is akin to concluding a settlement agreement, i.e. once concluded, a party to the settlement cannot withdraw its consent from the settlement agreement at will, but it is, in principle, legally bound by it.
164. Consequently, the Panel concludes that Daugavpils is precluded from revisiting the Appealed Decision insofar as it concerns the amount due to Kairat by Daugavpils.

165. The Panel considers Daugavpils' argument with respect to the fact that the Excel sheet annexed to the Proposal was not signed irrelevant, as the content of the Proposal was later formally confirmed by means of the Appealed Decision. The Panel sees no reason why the FIFA Head of Players' Status would not be permitted to issue the Appealed Decision following the Parties' agreement on accepting the Proposal, i.e. no formal decision in the context of Article 13(2) FIFA Procedural Rules was required to be issued because of Daugavpils' implicit acceptance of the Proposal. As a consequence of this, the Panel finds that FIFA was also not required to issue the grounds of the Appealed Decision.
166. The mere fact that the FIFA administration in fact granted Daugavpils a deadline of 20 days to respond to the Proposal, instead of the 15 days set forth by Article 13 FIFA Procedural Rules is also irrelevant, as Daugavpils did not suffer any prejudice in this respect. In fact, it was granted a more favourable time limit than it was entitled to.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by BFC Daugavpils on 9 July 2020 against the decision issued on 25 June 2020 by the Players' Status Department of the *Fédération Internationale de Football Association* is admissible.
2. The appeal filed by BFC Daugavpils on 9 July 2020 against the decision issued on 25 June 2020 by the Players' Status Department of the *Fédération Internationale de Football Association* is rejected.
3. The decision issued on 25 June 2020 by the Players' Status Department of the *Fédération Internationale de Football Association* is confirmed.
4. (...).
5. (...).
6. (...).
7. All other and further motions or prayers for relief are dismissed.