



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
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Arbitration CAS 2023/A/9501 Dansk Boldspil-Union, FC Nordsjaelland & Batuhan Zidan Sertdemir v. Fédération Internationale de Football Association (FIFA), award of 5 September 2023 (operative part of 15 May 2023)

Panel: Mrs Anna Bordiugova (Ukraine), Sole Arbitrator

Football

Request for an exemption of the validation exception in respect of the transfer of a minor player

Admissibility of the appeal and criteria of a decision

Standing to sue

Duty of FIFA to notify its regulations and responsibility of FIFA's stakeholders in this respect

Hierarchy of norms and requirement imposed on clubs to confirm a player's registration

Grounds for FIFA to grant an exemption from the validation exception

Excessive formalism

1. The appeal arbitration procedure according to Article R47 *et seq.* of the CAS Code is only available for disputes whose subject matter concerns an appeal against a “decision”. Based on the criteria required to qualify a *decision*, a FIFA letter that produced legal effects, affecting the legal situation of the appellants qualifies as a decision.
2. Under Swiss law, the question of standing to sue or be sued must be reviewed *ex officio*. The question of who has standing to sue is a question of the merits implying that if the appellant's standing to sue is denied, then the appeal, albeit admissible, must be dismissed. In this respect, even if the standing to sue of the appellants might appear questionable, the fact that the respondent did not object to the appellants' standing to sue, and, in view of the provisions of Article 57 of the FIFA Statutes, which does not specifically indicate/limit the individuals/entities which are entitled to lodge an appeal to CAS and does not limit the circle of individuals/entities entitled to appeal to CAS, there is no need to tackle this issue.
3. Pursuant to FIFA Statutes (Articles 8(3), 11(4) and 15(1)(a)), national associations, their affiliated clubs, independently one from the other, by their participation in organized football undertake to abide by FIFA Statutes and its regulations and to keep themselves constantly informed on all updates of those documents. For FIFA to demand fulfillment of the above obligations, the new rules only take effect once they have been communicated and the associations and their members had a chance to obtain knowledge of the contents of the new rules i.e. when the new rules entered in the association's sphere of control. In this respect, notification of documents and regulations, adopted by FIFA, via general email and simultaneous publication on its website is a very longstanding practice and an appropriate mean of communication. What is more, the Transfer Matching System (TMS) Help Center created by FIFA that

is accessible to all TMS users and contains “Document Library” and “FAQ” sections is a specific tailored instrument of obtaining TMS related knowledge. It is aimed at giving fast and direct access to all updates needed to TMS users to perform their duties of curiosity as per article 6(2)(h) of the Annex 3 of the FIFA Regulations on the Status and Transfer of Players (RSTP) and operate TMS diligently.

4. In light of the principle of the hierarchy of the laws, a circular letter i.e. not a mandatory document, that contradicts the wording of the RSTP adopted later should not be relied on. Notably, the applicable August 2021 or October 2022 version of the RSTP requires the transfer instruction to be confirmed by a club before the registration period ends, whereas there was no such strict demand in the previous versions. Without confirmation, the transfer cannot be processed because it is not brought to the attention of FIFA. Non-confirmation means that the national association cannot proceed with the ITC request. Annexe 3 RSTP does not make any difference between the transfer of an adult or a minor player.
5. Pursuant to the RSTP, the Validation Exception *“is an issue relating to an international transfer in TMS that prevents it from proceeding to the next status, thus requiring FIFA’s intervention”*. The exceptions foreseen by Article 14 of the Annexe 3 RSTP are: *a) The player is less than 18 years old and the corresponding minor application has not yet been accepted; b) The new club is serving a ban on registering new players; c) The new club and/or the former club has exceeded the loan limitations; d) The date of the ITC request is outside the new association’s registration period, and no exception under art. 6 par. 1 of these regulations applies; or e) The ITC request has been rejected by the former association and the rejection has been disputed by the new association*. The non-confirmation of the transfer instruction by a club is not an exception foreseen by RSTP. The association’s own negligence leading to the club’s lack of proper knowledge necessary to operate in TMS cannot be accepted as an excuse and considered exceptional.
6. The confirmation of the transfer instruction is not a mere administrative formality *“to tick a box”*, but indeed a condition for the validity of the transfer request. This principle makes it possible to rule out the reproach of excessive formalism. Especially so in view of the fact that Articles 7(d) and 10.7, 10.8 of the Annexe 3 RSTP clearly state that the transfer instruction shall be confirmed. The confirmation of the transfer instruction is not made dependent on the approval of the transfer of a minor player by FIFA by any provision of Annexe 3 RSTP.

I. PARTIES

1. The Dansk Boldspil-Union, (the “First Appellant” or the “DBU”) is an association with its registered offices in Brøndby, Denmark, which supervises and is responsible for the sport of football in Denmark. The DBU is affiliated to the *Fédération Internationale de Football Association* (the “FIFA”).
2. FC Nordsjælland A/S (the “Second Appellant”, “FCN” or the “Club”) is a football club with its registered office in Farum, Denmark. FCN is registered with the Dansk Boldspil-Union.
3. Mr. Batuhan Zidan Sertdemir (the “Third Appellant” or the “Player”) is a Danish professional football player currently employed by FCN.
4. The *Fédération Internationale de Football Association* (“FIFA” or the “Respondent”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings. This background information is given 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.
6. On 13 June 2017 FIFA issued Circular Letter # 1587 “International transfers of professional minor players” (hereunder “2017 Circular”), which reads as follows:

“We refer to the administrative procedure governing the international transfers of minor players to be registered at an association for a club as professionals.

With the purpose of avoiding any possible future misunderstandings concerning this matter, we would like to clarify the interpretation of the applicable provisions of the Regulations on the Status and Transfer of Players (hereinafter: the Regulations).

As you are certainly aware, the approval of the sub-committee of the Players' Status Committee (hereinafter: the sub-committee) is a compulsory requirement for any international transfer of a minor player and must be obtained prior to any request for an International Transfer Certificate (ITC; cf. art. 19 par. 4 of the Regulations).

In this regard, we wish to point out that art. 19 par. 4 of the Regulations does not affect the contents and applicability of the rules relating to the obligation of a club wishing to register a minor player as a professional

to enter all compulsory data and upload all mandatory documents to support the information entered in the Transfer Matching System (TMS) during one of the relevant registration periods when creating the pertinent transfer instruction. In other words, the provisions pertaining to the registration periods apply to the registration of any player, regardless of whether the player is a minor or not.

In particular, we wish to draw your attention to art. 8.2 par. 1 of Annexe 3 in combination with art. 4 paras 2 and 3 of Annexe 3 of the Regulations, which stipulate, inter alia, that all data relating to the transfer instruction allowing the new association to request an ITC including for a professional minor player, shall be entered into the TMS by the club wishing to register the (minor) player during one of the registration periods established by that association. When entering the relevant data, the new club shall, depending on the selected instruction type, upload all mandatory documents prior to the end of the relevant registration period. The required application to the sub-committee does not relieve the new club from the aforementioned obligations and from respecting such time limits.

Furthermore, in consideration of the aforementioned provisions of the Regulations, we would like to emphasise that the club wishing to register a minor player as a professional must immediately confirm and match the relevant data in the TMS as soon as the sub-committee's decision, whereby the sub-committee accepts the pertinent application for approval, is notified to the association concerned via the TMS. Please note that it is the responsibility of the association in question to immediately forward decisions of the sub-committee notified to them via the TMS to their affiliated clubs concerned (cf. art. 2 of Annexe 2 of the Regulations).

Nevertheless, since art. 19 par. 4 of the Regulations makes it compulsory to receive the approval of the sub-committee prior to any ITC request for a minor player, the time needed to handle the relevant minor application leading to the decision of the sub-committee could possibly justify the ITC request being made by the association concerned after the end of the relevant registration period, if applicable.

If the relevant decision of the sub-committee is passed and notified to the association concerned during the registration period in question, resulting in the new club having not only to enter but also confirm and match the relevant data in the TMS before the end of that registration period in order to allow the new association to request the ITC for the minor player in the TMS on time, i.e. prior to the end of the relevant registration period (cf. art. 4 par. 5 of Annexe 3 and art. 8.1 par. 2 of Annexe 3 of the Regulations), the new association is not entitled to request the ITC for the minor player outside the relevant registration period.

If the relevant decision of the sub-committee is, however, passed and notified to the association concerned after the end of the registration period in question, the new club may confirm and match the relevant data in the TMS after the end of that registration period and the new association, for its part, may be entitled to request the ITC outside the registration period in question.

In view of the above, and in order to prevent any potential issues related to the application of the pertinent articles of the Regulations and respective registration proceedings, we kindly ask you to take due note of these clarifications and inform your affiliated clubs, in particular those intending to sign new minor players as professionals, accordingly.

Please do not hesitate to contact the Players' Status Department of FIFA if you have any questions in connection with any of the above”.

7. The Player joined the FCN academy some time in 2017, at the age of 12. In 2020, at age of 15, he was promoted to the FCN U-19 team.
8. On 1 July 2021, FIFA issued Circular Letter # 1763 “Regulations on the Status and Transfer of Players – categorisation of clubs, registration periods, and international transfers of minor players” (hereafter “2021 Circular” or “Circular Letter 1763”) which, inter alia, stated:

“3. Administrative procedure for the international transfer of minor players

We would like to clarify certain aspects of the administrative procedure governing the international transfer of minor players.

As you may know, where an international transfer of a minor player is due to take place, two separate procedures must be conducted in TMS:

- *The relevant association must submit a minor application (cf. art. 19 par. 4 of the Regulations).*
- *A transfer instruction must be processed in accordance with Annexe 3 to the Regulations.*

Following a technical update to TMS (release 10.2), transfer instructions related to the international transfer of a minor player may be confirmed by the clubs concerned at any time. Doing so no longer depends on the status of the relevant minor application (thus revoking the procedure described in FIFA circular no. 1587 of 13 June 2017).

Regardless of the above, the new association’s ability to request an International Transfer Certificate (ITC) for a minor player remains dependent on the status of the associated minor application.

Therefore, a club intending to register a minor player must comply with all its obligations prior to the end of the applicable registration period (subject to the exceptions under art. 6 par. 1 of the Regulations), as per the applicable provisions of Annexe 3 to the Regulations.

Independently from the relevant minor application, in accordance with art. 19 par. 4 (a) of the Regulations, a club intending to register a minor player shall undertake the following actions prior to the end of the applicable registration period:

- (i) enter a transfer instruction (cf. art. 4 par. 2 read with art. 8.2 par. 1 of Annexe 3 to the Regulations);*
- (ii) provide all compulsory data (cf. art. 4 par. 3 read with art. 8.2 par. 1 of Annexe 3 to the Regulations);*
- (iii) upload all mandatory documents to support the information entered (cf. art. 4 par. 4 read with art. 8.2 par. 1 of Annexe 3 to the Regulations);*

(iv) confirm the relevant transfer instruction (cf. art. 4 par. 4 read with art. 8.2 par. 1 of Annexe 3 to the Regulations); and

(v) where applicable, resolve any matching exceptions (cf. art. 4 par. 5 read with art. 8.2 par. 1 of Annexe 3 to the Regulations).

For clubs that are not registered in TMS, these actions must be completed by their association, if the minor player will be registered as an amateur (cf. art. 1 par. 6 of Annexe 3 to the Regulations).

Associations remain responsible for requesting an ITC in a timely manner (cf. art. 8.1 par. 2 of Annexe 3 to the Regulations) upon notification of a decision approving a minor application. Where an approval decision is notified to an association after the end of the applicable registration period, the association may be entitled to request the ITC outside that registration period.

We kindly ask that your affiliated clubs ensure that all transfer instructions related to minor players are completed (i.e. entered, confirmed and matched) in a timely manner.

Please do not hesitate to contact the Players' Status Department at psdfifa@fifa.org if you have any questions in connection with any of the above".

9. In July 2021, the Player was transferred to Bayer 04 Leverkusen Fußball GmbH ("Bayer").
10. The Player was listed as a substitute in the match team sheet for the first team of Bayer already in mid-October 2017. In the 2021 - 2022 season, the Player was fielded in the Bundesliga matches three times and was listed in match team sheets on five further occasions (four in the Bundesliga and one in the DFB-Pokal (i.e. German Cup competition), before suffering a season-ending groin injury in February 2022.
11. The Player returned from injury for the 2022 - 2023 season, he was listed in the team sheet in six matches, however, was never fielded prior to the season brake in winter 2023.
12. On 30 January 2023, FCN and Bayer concluded a transfer agreement for the permanent transfer of the Player's registration to FCN. FCN agreed to pay Bayer "a Fixed Transfer Fee in the amount of EUR 1.550.000 net".
13. On the same day, the Player signed a termination agreement with Bayer.
14. On 31 January 2023, the Player and FCN entered into an employment contract valid as of the same day until 31 December 2025. The Employment Contract stated, *inter alia*, that "football is the Player's full- time job", "the Player is not entitled to take on other employment without the prior approval of the Club", "The Player must take part in training, training camps and matches in accordance with the Club's directions", and further that "The Player is entitled and obligated to train with the training group and play matches for the team/ training group directed by the Club...".
15. On that day the Player was still a minor (aged 17 and 361 days), therefore, FCN entered a transfer instruction in the FIFA Transfer Matching System ("TMS") and uploaded all the

relevant documents. The DBU created a “minor case” and submitted the application for approval of the FIFA Players’ Status Chamber (the “PSC”).

16. On 4 February 2023, the Player turned 18 years old.
17. On 5 February 2023, the minor application submitted by DBU was automatically cancelled.
18. On 7 February 2023, FCN confirmed the transfer instruction.
19. On 16 February 2023, the DBU requested the International Transfer Certificate (“ITC”) for the Player from the Deutscher Fußball-Bund (“DFB”).
20. On the same date, the DBU’s TMS manager submitted a correspondence to FIFA requesting the approval of and intervention enabling ITC request for the Player, namely a special exemption from the “*validation exception*” in TMS, i.e. FIFA’s intervention giving the possibility to proceed with requesting the ITC for the Player. In its letter, the DBU mentioned twice that the transfer instruction was created and confirmed by FCN before the registration period ended.
21. On 17 February 2023, FIFA informed the DBU that it “[...] *is not in a position to grant [the] request for the special exemption from the “validation exception” in TMS*”, because “*Art. 10 par. 7 of Annexe 3 to the RSTP [...] stipulates, inter alia, that all data relating to the transfer instruction allowing the new association to request an ITC shall be entered and confirmed into the TMS by the club wishing to register the player during one of the registration periods established by that association*”; and because the transfer instruction was confirmed by FCN “*only after the end of [the DBU’s] latest registration period*”.
22. On 20 February 2023, a DBU representative contacted the FIFA PSC by phone, during which FIFA emphasized that based on 2021 Circular, as of 1 July 2021, all transfer instructions in TMS shall be “confirmed” (and not just “created” and remain pending) before the end of the registration period, even if such transfer instructions were pertinent to a minor player, subject to the FIFA PSC approval.
23. On 21 February 2023, the DBU submitted another correspondence to FIFA reiterating its previous request, however this time admitted that the transfer instruction was indeed created and remained pending without confirmation. The DBU mentioned that it was not aware of 2021 Circular Letter before the conversation of the DBU and the FIFA representatives on 20 February 2023, however underlined that refusal to allow the Player’s registration based on a procedural error will have major consequences for the Club and the Player.
24. FIFA replied on the same day and informed DBU that “[...] *we unfortunately have no option but to adhere to our position previously communicated to your association [...]*”.
25. On 28 February 2023, FCN requested FIFA for the matter to be referred to the PSC for a formal decision to be rendered in accordance with Article 14(2) of Annexe 3 of the RSTP.

Among other, FCN pointed that it was instructed by DBU not to “confirm” the transfer instruction in TMS attaching relevant message exchange between DBU and FCN.

26. On 1 March 2023, the DBU submitted another correspondence to FIFA where the DBU highlighted, having conducted an internal investigation, that the 2021 Circular was sent by FIFA only to the DBU’s general email box, but that this email was not forwarded to the DBU’s TMS department, thus it remained unaware of the new administrative procedure, introduced by the said 2021 Circular. DBU once again requested FIFA to reconsider its position and grant a special exemption related to the registration of the Player.
27. On 3 March 2023, FIFA replied, reiterating its previous positions of 17 and 21 February 2023 and stated that “*after a careful analysis of the documentation and information on file, the Chairperson of the [PSC] confirmed that the provisions of Annexe 3 to the RSTP regarding the obligation to enter and confirm the relevant transfer instruction in TMS within the relevant registration period were not respected [...]*” and that “*the present decision is final and subject to the legal remedies foreseen by article 57 of the Statutes*” (the “Appealed Decision”).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 16 March 2023, the Appellants filed a joint Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against the Appealed Decision, in accordance with Articles R47 and R48 of the 2023 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”). In this submission, the Appellants named FIFA as the Respondent. In their Statement of Appeal, the Appellants requested an expedited procedure in accordance with Article R52 of the Code, with a decision prior to 15 June 2023.
29. In their Statement of Appeal, the Appellants requested that the case be submitted to a Sole Arbitrator.
30. On 20 March 2023, FIFA informed the CAS Court Office that it agreed the matter to be referred to a Sole Arbitrator, however objected to the implementation of an expedited procedure.
31. On 23 March 2023, the CAS Court Office informed the Parties that no expedited procedure will be implemented and that the deadlines provided for in Articles R51(1) and R55(1) would apply to the matter.
32. On 28 March 2023, in accordance with Article R51 CAS Code, the Appellants filed their Appeal Brief.
33. On 28 April 2023, based upon an agreed extension, the Respondent filed its Answer.
34. On the same day, in accordance with Article R54 CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the

Parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

➤ Sole Arbitrator: Dr. Anna Bordiugova, attorney-at-law in Kyiv, Ukraine.

35. Upon being invited to express their opinion in this respect, the Parties informed that they preferred the case to be resolved based solely on the Parties' written submissions.
36. On 4 May 2023, the Parties were informed that in view of their positions and pursuant to Article R57 of the CAS Code, the Sole Arbitrator had determined that no hearing would be held in this matter. The CAS Court Office also forwarded to the Parties a copy of the Order of Procedure which was returned by them in duly signed copies on 4 May 2023 by the Respondent and on 5 May 2023 by the Appellants.
37. By signing the Order of Procedure, the Parties confirmed the CAS' jurisdiction to hear this matter and that their right to be heard had been respected during these proceedings.
38. The Sole Arbitrator confirms that in her decision she had carefully considered all the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarized or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Appellants

39. The Appellants submitted the following arguments in their Appeal Brief:

This case concerns an exceptional set of circumstances that relate to the overly formalistic application of a rule (relating to the international transfer of the Player on FIFA's TMS) that was questionably introduced, inconclusively amended and formalistically applied to the detriment of each of the Appellants; in particular:

The 2021 Circular was not properly communicated to the DBU (and as a result, FCN)

- The 2021 Circular was sent to a general DBU email address, rather than to the TMS department at the DBU (and FCN/all clubs concerned, given that the administrative change was directed at clubs). The DBU cannot be expected to monitor rule changes – particularly where they are of an administrative nature – via email, especially where Article 6(2) (f) of Annexe 3 of the RSTP explicitly requires clubs and associations to “*check TMS at regular intervals to ensure they are in a position to comply with their obligations at all time*”.
- DBU had a legitimate expectation *vis-à-vis* FIFA to expect communication via TMS, which has been violated; as a result, FCN, who in turn had a legitimate expectation to receive updates from FIFA via the DBU, did not receive the 2021 Circular;

- FCN explicitly asked DBU whether it should confirm the transfer instruction on 31 January 2023, in response to which the DBU instructed FCN to wait for the PSC approval before doing so. Relying on DBU, FCN failed to confirm the transfer instruction due to no fault of its own;
- The 2021 Circular letter was entitled “*Regulations on the Status and Transfer of Players – categorisation of clubs, registration periods and international transfers of minor players*”, and related primarily to FIFA’s annual categorisation of clubs for training compensation purposes. The section dealing with the proposed changes was shoehorned into the same document, at the end. This was purely an administrative change, not one that was reflected in the RSTP. Whereas the 2017 Circular letter was published as a standalone circular entitled “*International transfer of professional minor players*”, clearly detailing the procedural changes in relation to the international transfer of minor players.

In any event, the FIFA RSTP and the 2021 Circular are not conclusive proof of a change in procedure

- FIFA primarily relies upon the following to assert the fact that FCN ought to have “confirmed” rather than simply “created” the transfer instruction before the close of the registration period: the 2021 Circular, Article 10(7) of Annexe 3 of the RSTP (October 2022 edition). However, neither of these documents are conclusive proof of any alleged change in the administrative procedure. The Appellants contend that the circular was poorly drafted, causing ambiguity and therefore lacked legal certainty as to the correct administrative procedure. FIFA’s contention that there was a requirement to “confirm” the transfer instruction pursuant to the October 2022 version RSTP, is misleading;
- When comparing versions of the RSTP in force before and after the 2021 Circular one would not be able to differentiate that an administrative procedural change requiring “confirmation” of the transfer instruction before the closure of the registration period had taken place.

As a result, the 2021 Circular did not constitute a “mandatory procedure”, that was binding

- Given that neither the 2021 Circular nor the FIFA RSTP were conclusive evidence of a change in procedure, it follows that this procedure was not “mandatory”, and could not bind the DBU or FCN;
- For the 2021 Circular to constitute a mandatory procedure, it must serve to enable the international transfer of minors to be organised in an efficient, orderly, safe and fair manner. None of these criteria are satisfied by the introduction of the ambiguously drafted 2021 Circular. The requirement to check a “confirm” box on TMS is a technical update and serves no purpose to (a) make the international transfer of minors more efficient or orderly; or (b) safeguard minors any more or less than the previous system

did; or (c) ensure fairness, particularly in this case, where FCN were explicitly instructed not to take the relevant step;

- If FIFA did consider the 2021 Circular and accompanying procedures to be material and mandatory, the Appellants submit that it ought to have ensured that the Minor Application Guide – a valuable resource for all clubs and federations involved with the international transfers of minors – was updated to reflect the latest practice; instead it includes – as part of the “reference materials”, the 2017 Circular – that FIFA claims had been revoked by the 2021 Circular. The fact that the Minor Application Guide, FIFA’s key subject specific reference material on the international transfer of minors, still refers to the 2017 Circular is wholly misleading. This is a further illustration that FIFA did not consider the 2021 Circular material enough to include in a document that was published for the benefit of, and is widely relied upon, by clubs across the world.

The Appealed Decision is disproportionate and represents excessive formalism by FIFA

- The [Appellants] understand the importance of the FIFA rules on registration to be consistently applied across the board. However, such objective, even if legitimate, cannot prevail in circumstances where the misrepresentations given by a national association, which act as de facto agents of FIFA in each jurisdiction, would directly cause a violation to fundamental rights of parties, such as the Players’ right to work;
- It is a situation where rules are enforced for the sake of enforcement, but without consideration for the wider circumstances of the facts at hand. The rationale for requiring the prior approval of the PSC for all international minor transfers is to protect minors from abuse, mistreatment and trafficking. However, a mere failure to check a “confirm” box in TMS, having complied with all other formalities, is in no way contrary to these objectives.

The Appealed Decision has caused and continues to cause serious and irreparable harm to the Player

- The entire situation causes irreparable harm to the Player - an injury causing him to miss five months of football in early 2022 was a major setback and hampered his development. He explained in his personal statement the impact that this incident has had and continues to have on his physical and mental health;
- If the Player is only able to register with FCN in June 2023, he will miss crucial games for FCN. Having already missed five league matches since 1 February 2023, he stands to miss 10 more before the end of the season. FCN currently sit atop the Danish Superliga, and need the Player’s contribution if they are to face the competition. Crucially, he will have to reintegrate himself with the squad, with FCN possibly reassessing his place in the squad, if his performance following a long time away has deteriorated;

- Elite football is extremely competitive, and the Player and FCN are both concerned that time away from competitive football when he is fit and available could have damaging effects on the Player's career in the long-term perspective, causing irreparable harm, for which the Player could never receive any tangible, monetary compensation;
- Whilst secondary to the irreparable harm caused to the Player, the irreparable harm to FCN cannot be understated. FCN has not only paid a significant transfer fee for the Player – the second highest in the club's history – but is also unable to field the Player in a number of competitive matches. This may ultimately affect its title prospects, which have significant sporting and financial consequences, particularly where only the winner of the Danish Superliga has the opportunity to qualify for the UEFA Champions League.

In any event, by cancelling the minor application on 4 February 2023, the FIFA PSC de facto approved the “regular” transfer of the Player

- Whilst this case initially concerned the international transfer of a minor, that ceased to be the case on 4 February 2023, when the Player turned 18. This was acknowledged by FIFA, when they cancelled the DBU's minor application on 4 February 2023. The only reason that FCN did not confirm the transfer instruction was because the Player was a minor, and that his transfer was subject to further approval. FIFA's subsequent cancellation of the minor application means that the Player was being transferred to FCN as a “normal” (i.e. not minor) player;
- FIFA's cancellation of the minor application amounted to a tacit “confirmation” of the transfer instruction, as if the Player was transferring under the normal route, there would be no reason for FCN to create the transfer instruction without confirming it;
- FCN/DBU took this step in the interests of transparency and on the basis that they were following what they believed was the correct procedure. In theory, the Player had terminated his contract with Bayer on 30 January 2023, before signing his Employment Contract on 31 January 2023. He was therefore “out of contract” briefly, meaning that the FCN/DBU could have facilitated his registration as a “normal” player after 4 February 2023, when he was no longer a minor.

40. On this basis, the Player submits the following prayers for relief:

1. *To uphold its appeal and set aside the decision taken by the FIFA General Secretariat dated 3 March 2023;*

Primarily,

2. *To grant the DBU's request for an exemption of the validation exception in respect of the transfer of the Player from Leverkusen to FCN;*

Subsidiarily,

3. *To order FIFA to grant the DBU's request for an exemption of the validation exception in respect of the transfer of the Player from Leverkusen to FCN;*

In any event,

4. *To order that the Player be registered and eligible to play for FCN with immediate effect;*
5. *To order FIFA to bear the entire costs of these arbitration proceedings;*
6. *To order FIFA to pay a contribution towards the Appellants' legal fees and other expenses incurred in connection with these arbitration proceedings, in the amount of GBP 20,000.*

B. The Respondent

41. FIFA submitted the following arguments in its Answer:

- DBU's request for a special exemption from the "*validation exception*" in TMS was rejected, because of FCN's failure to confirm the relevant transfer instruction (for the Player's transfer) in TMS before the end of the registration period as required by Article 10(7) Annexe 3 RSTP and in accordance with 2021 Circular;
- The Appellants contest the Appealed Decision on the basis of a wide range of arguments, alleging that (a) the 2021 Circular was "*not properly communicated*" to the DBU, (b) the RSTP and 2021 Circular are "*not conclusive proof of change in procedure*", (c) the 2021 Circular did not constitute a "*mandatory procedure*" that was binding, (d) that the Appealed Decision is "*disproportionate*" and "*excessive formalism*", (e) that "*irreparable harm*" is caused to the Player and FCN, and (f) that the FIFA PSD "*de facto approved the regular transfer*";
- The essence of the matter is simply that the Appellants failed to comply with the TMS instructions (confirm the transfer instruction) during the time limit (prior to the end of the registration period) resulting in the Player's failed transfer. The DBU – as per its own admission – wrongly advised its affiliated club FCN resulting in the latter's failure to timely comply with 2021 Circular which had been duly notified on 1 July 2021;
- The international transfer of players and TMS is primarily governed by Annexe 3 of the RSTP, containing all the relevant provisions on TMS's functioning and the relevant processes. TMS being mandatory for associations and clubs to use for the international transfer of professional and amateur players in eleven-a-side football cf. Article 2(2) Annexe 3 RSTP;
- The functioning of TMS is straightforward and its process governed by Title IV of Annexe 3 RSTP. For the international transfers of minor players, two separate procedures must be conducted in TMS:

- (1) A transfer instruction must be processed (cf. Annexe 3 RSTP);
 - (2) The relevant association must submit a minor application (cf. Article 19(4) RSTP).
- Article 10(8) Annexe 3 RSTP stipulates that for international transfers with a transfer agreement, both clubs shall (a) independently enter and confirm the transfer instruction, (b) ensure that the required information matches; and (c) collaborate to resolve any matching exceptions. If the transfer instruction is not confirmed, the transfer will not be processed;
 - The second step in the process (subject to the successful outcome of the first step) involves the respective associations, with the new association being able to request in TMS that the former association deliver the ITC cf. Article 11(1)b) Annexe 3 RSTP.
 - Additionally, for the international transfer of minors, an ITC may only be requested if the minor application has been approved cf. Article 14(1) d) Annexe 3 RSTP. When the relevant transfer instruction is not confirmed within the applicable registration period, the TMS process can never reach the phase where the new association is able to request the ITC.
 - Article 11(1) c) Annexe 3 RSTP stipulates that the ITC shall be requested on the last day of the new association's registration period for the transfer to occur during that registration period. An ITC requested *after* the close of the relevant registration period of the new association will go into validation exception status cf. Article 14(1) c) Annexe 3 RSTP. Depending on the situation, a valid exception may be triggered, *e.g.* when a minor application has not yet been accepted (Article 14(1) a) Annexe 3 RSTP) or when the date of the ITC request is outside the new association's registration period and no exception applies (Article 14(1) d) Annexe 3 RSTP);
 - FCN failed to comply with the mandatory administrative steps in TMS prior to the closure of the DBU registration period. FCN failed to "*confirm the transfer in TMS without delay and before the end of the new association's registration period*", since it was only confirmed on 7 February 2023 and outside the registration period. The inevitable consequence of such failure was simply that the DBU was not able to request the ITC for the Player from the DFB on 16 February 2023 (since this date is outside of the registration period) in accordance with Article 11(1) c) Annexe 3 RSTP. As a result, the DBU's request for a special exemption from the validation exception could not be granted;
 - By means of 2021 Circular, *inter alia*, the member associations were informed of the clarification of the administrative procedure governing the transfer of minor players. More specifically, and following a "*technical update to TMS*", it was clarified that the transfer instructions in relation to the international transfer of a minor player may be confirmed by the clubs at any time (during the registration period) and independently from the status of the minor application "[...] *thus revoking the procedure described in FIFA circular no. 1587 of 13 June 2017*". The new association's ability to request the ITC remained dependent on

the status of the minor application. It was repeated that a club must “[...] *comply with all its obligations prior to the end of the applicable registration period*”. It was further requested that “[...] *your affiliated clubs ensure that all transfer instructions related to minor players are completed (i.e. entered, confirmed and matched) in a timely manner*”. According to the Circular Letter ... the transfer instruction needs to be confirmed in TMS, independently of the minor application, and prior to the end of the registration period:

*“Independently from the relevant minor application, in accordance with art. 19 par. 4 (a) of the Regulations, a club intending to register a minor player shall undertake the following actions prior to the end of the applicable registration period: [...] (iv) **confirm** the relevant transfer instruction [...]”;*

- FIFA uses its Circular Letters to officially correspond with its member associations, they are addressed *“to the Member Associations of FIFA”*. Evidently, FIFA does not only issue Circular Letters regarding TMS, but on a wide range of topics. Whenever a circular letter is issued, this is sent to all FIFA’s Member Associations’ general email addresses;
- The DBU itself has not only confirmed that it (1) effectively received the relevant email that was sent to its *“main mailbox”* but also (2) that is *“regrettably never got transferred”* internally. That same mailbox is indicated on the official DBU webpage, in TMS and in FIFA’s Integrated Football and Event System “IFES”;
- The FIFA TMS Help Centre (accessible to all TMS users) contains a *“Document Library”* which provides FIFA regulations, document guidelines, templates and circular letters. All the circulars are chronologically published in the Document Library, only containing the circulars that are relevant for TMS. Both DBU and NFC could have retrieved the Circular Letter 1763;
- FIFA circular letters or other important correspondence are communicated to the FIFA member associations via email. The obligation referred to in Article 6(2) f) Annexe 3 RSTP clearly only relates to the TMS specific obligations, and do not relate to administrative/system update changes in TMS. This becomes even more evident when considering *“specific obligations”* for associations contained in Article 8 Annexe 3 RSTP;
- If the DBU never received the 2021 Circular, or never became aware of its content until the *“telephone conversation on 20 February 2023”*, it would inevitably mean that the DBU was not able to (1) classify its affiliated clubs by 15 July 2021 and (2) set the two registration periods for the next calendar year (*i.e.* for 2022) by 15 July 2021. For example, failure to comply with the request to set the registration periods would have resulted in the DBU being unable to register players;
- The Appellants refer to the procedure set out in Circular 1587 and address the *“wording”* of the 2021 Circular by *“highlighting three issues”* concluding that the *“Appellants cannot be punished for FIFA’s ambiguous wording”*. There is no apparent ambiguity when considering the paragraph cited by the Appellants in the context of the *entire* circular. It is unambiguously stated that all obligations *“must”* be complied with *“prior to the end of the*

registration period”, it is further specified which actions “*shall*” be undertaken “*prior to the end of the registration period*” and it is reiterated again at the end that all transfer instructions “*are*” to be “*completed*” in a “*timely manner*”; even if there were any perceived ambiguity – *quod non* - the DBU was entitled to contact the FIFA PSD, as indicated at the end of Circular 1763, in case it would have any questions;

- There was no material change to the RSTP, confirmation of the transfer instruction was always required. The applicable October 2022 RSTP even explicitly states in Article 10(7) Annexe 3 RSTP that the “[...] *club shall confirm the transfer in TMS without delay and before the end of the new association’s registration period*” as opposed to the February 2021 edition which does not explicitly reiterate such requirement in Article 4(4) Annexe 3 RSTP besides “[...] *provide confirmation of the relevant instruction*”. Solely based on the applicable RSTP, the Appellants should have been aware of the applicable administrative requirements, regardless of any circular. The only variable to the confirmation of the transfer instruction was the timing: 2017 Circular provided the possibility, when a decision on the minor application was rendered after the end of the registration period, to confirm and match the data in TMS after the end of the registration period (and the new association was entitled to request the ITC outside the registration period). This possibility was revoked by Circular 1763, following a technical update. The technical update now requires that the transfer instruction is confirmed during the registration period and independently from the minor application. Put simply: the administrative amendment introduced by 2017 Circular, was revoked by 2021 Circular, while the RSTP remained unchanged;
- TMS contains the TMS Help Centre with answers to frequently asked questions – containing a specific section for “Minors” including the question: “*If the minor application is accepted after my registration period closes, can I still request the ITC for the player?*”. All TMS users have access to the Help Centre;
- The TMS Help Centre, in response to such frequently asked question, clearly clarifies that: “*It may be that you are unable to request the ITC for a minor player during the relevant registration period because the corresponding minor application has not yet been accepted. However, please note that, subject to the exceptions listed in art. 6 par. 3 of the Regulations, the transfer instruction must be entered and confirmed by the club (or the association where applicable) before the relevant registration period has closed and with all mandatory information and documents completed correctly. The transfer may then be left in “Awaiting ITC request” status until there is a decision on the minor application*”;
- TMS is and remains a web-based data information system – requiring constant updates – by means of which international transfers are administered. At the same time, there are clear regulations (and circulars) that govern the use of such system so that international transfers can be administered. Even if the Appellants were to disagree with such “*technical update*” or its “*purpose*”, their disagreement or objection to the technical update would result in the impossibility for them to process any transfer in the TMS system. If the Appellants would have duly complied with all their obligations in a timely manner, there would have been no need for the strict application of the time limits. The technical update is not the reason for the Appellants’ failure to duly process the transfer in TMS, it is the

Appellants failure to comply with a circular that has been in force since 1 July 2021 (for 19 months or more than one year and a half). *Ignorantia juris non excusat*;

- The Appellants' criticism of the "*contradictory Minor Application Guide*" where it finds that the fact that "*it still refers to the 2017 Circular is wholly misleading*" and that the Appellants are "*the victims of the lack of uniformity across FIFA's various documents*" is ungrounded. The document referred to concerns the "*September 2020 Edition*" as evidenced by the front page of the document. It is rather obvious that the September 2020 edition still refers to the 2017 Circular, since the 2021 Circular was only notified on 1 July 2021 and *after* publication of the Minor Application Guide. It appears that the Appellants have misled themselves. There is also no lack of uniformity;
- The problem for the Appellants, and the problem for most of their arguments, is simply that the 2021 Circular has been in force since 1 July 2021 or for 19 months (!). During such time, there have been three (3) registration periods in Denmark (summer 2021, winter and summer 2022). There was more than enough time for the Appellants to familiarize themselves with the existing TMS processes. There could be some understanding if the matter at stake had occurred during the 2021 summer window (which opened on 15 June and closed on 31 August 2021) during which time the 2021 Circular was notified. In that case, there *may* have been some credibility to the "*common practice*" argument (with circumstances like those addressed in CAS 2017/A/5063). But there can be no understanding when such error occurs more than 19 months later, when the existing "*common practice*" is for the transfer instruction to be confirmed during the registration period. For all these reasons, the Appellants' reliance on CAS 2017/A/5063 is irrelevant;
- There is consistent CAS jurisprudence dismissing any arguments of "*excessive formalism*" by FIFA in TMS related disputes;
- There is no irreparable harm suffered either by FCN or the Player: the Appellants never filed any request for provisional measures whereas in most cases that concern registration disputes, provisional measures are requested; the Appellants failed to demonstrate or prove that any harm they would suffer would be of an irreparable nature should their appeal not be accepted and did not provide any tangible or effective supporting evidence;
- As to the Player allegedly suffering an irreparable harm - the Appellants only provide general considerations without providing any supporting evidence (besides the Player's statement); while understanding the Player's discomfort caused by not playing official matches, this kind of situation cannot be qualified as harm, let alone one of irreparable nature - the Player can still play official matches for his former club Bayer Leverkusen; the Appellants failed to establish that the Player was deprived from playing football since 1 February 2023 - it cannot be undoubtedly determined that the Player would have played any of the crucial for FCN matches or will have to re-integrate or that his performance would have deteriorated when he is finally registered; the Player's current situation only causes him to miss official matches with FCN.

- The Appealed Decision does not prevent the Player from training and playing “friendly” or “unofficial” matches with FCN or as explained above, from playing “official” matches with Bayer Leverkusen; he still can train with his team and maintain his sporting skills, participate in friendly matches;
- Training with FCN will allow the Player to become familiar with the team’s tactics and his teammates, irrespective of whether he participates in official matches. It can be reasonably argued that this will allow the Player to adapt to his new team and environment, without the added pressure – especially for a young player – of making an immediate impact in official matches;
- In what concerns the alleged “irreparable harm” caused to FCN, the Appellants describe paying a “significant transfer fee” while “unable to field the player in a number of competitive matches” which “may ultimately affect its title prospects” which has “significant sporting and financial consequences”. As a first point in that regard, and specifically concerning the reference to FCN’s “title prospects” or the “sporting consequences” for FCN, which essentially concerns “sporting success”, CAS has generally and recently confirmed that “[...] the ambiguous phrase of “sporting success” of a team depends on various factors that are difficult to determine. In other words, the uncertainty and unpredictability that characterizes sporting events, such as football matches, makes it impossible to affirm that the fact the new players may not be registered to play for a club would directly jeopardize the sporting success in an irreparable manner” (CAS 2022/A/9231). Evidently, the citation relates to a case where a registration ban was imposed on a club, but the concept is the same: a club invokes the inability to register a player as an argument to substantiate an alleged irreparable harm to its “sporting success”;
- CAS has also addressed the ability of one player (e.g. Mr Batuhan Zidan Sertdemir) to affect a club’s sporting performance by confirming that “[...] the results of a football club cannot exclusively depend on the performance of a player, regardless how extraordinary such player may be. In this sense, the Deputy President must emphasize that football is a team sport and, therefore, even if a team cannot field its best player, it is impossible to say that the result of a match depends on the performance of a single player [...]” (CAS 2021/A/7650);
- FIFA’s interest as the governing body of football, as well as that of all participants in national and international football, prevail over any individual interest that the Appellants may have. Adherence to registration periods is necessary to preserve the fundamental objectives of sporting integrity and equal treatment, which is also linked to the paramount importance of safeguarding contractual stability;
- The automatic cancellation of a minor application upon reaching adulthood cannot be construed as a “tacit confirmation of the Transfer Instruction, as if the Player was transferring under the normal route”. The Appellants were required to timely comply with all formalities applicable at that moment;

- FIFA has clearly demonstrated that FCN's failure to comply with the TMS instructions (confirm the transfer instruction) during the time limit (prior to the end of the registration period) which resulted in the Player's failed transfer, is incurable.
- Despite 2021 Circular being properly communicated to all FIFA's member associations, FCN – at the direction of the DBU – failed to comply with a mandatory administrative process that is clear and has been clear for more than 19 months. FIFA's refusal to cure FCN and the DBU's failure cannot be construed as excessive formalism or as causing irreparable harm. Adherence to registration periods is necessary to preserve the fundamental objectives of sporting integrity, equal treatment, and contractual stability. FIFA seeks to guarantee that these principles, safeguarded by strict compliance with registration periods, are respected. To effectively preserve these objectives and principles, TMS operates in a clearly defined and equal manner for all the football stakeholders. FIFA cannot tolerate non-conform instructions and/or non-compliance with time-limits. Doing so, to accommodate one player, would render the entire transfer system obsolete. That is a scenario which is simply unacceptable.

42. On this basis, FIFA submits the following prayers for relief:

“(a) reject the requests for relief sought by the Appellants;

(b) confirm the Appealed Decision;

(c) order the Appellants to bear the full costs of these arbitration proceedings”.

V. JURISDICTION

43. Article R47 of the CAS Code provides as follows:

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

44. The jurisdiction of CAS derives from Article 57(1) FIFA Statutes, as it determines 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”.*

45. The jurisdiction of CAS is not contested by the Parties and is further confirmed by the Order of Procedure duly signed by them.

46. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

47. The appeal arbitration procedure according to Article R47 *et seq.* of the Code is only available for disputes whose subject matter concerns an appeal against a “decision”. This follows from Article R47 of the Code quoted above.
48. There is abundant CAS jurisprudence in relation to what constitutes a *decision* within the meaning of Article R47 of the Code (CAS 2004/A/659; CAS 2004/A/748; CAS 2005/A/899; CAS 2008/A/1633; CAS 2013/A/3148; CAS 2014/A/3744 & 3766). According thereto the characteristic features of a *decision* may be described as follows:
- a. the term “decision” must be construed in a large sense;
 - b. the form of the communication in question is irrelevant for its qualification;
 - c. in principle, for a communication to be qualified as a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties;
 - d. a decision is a unilateral act, sent to one or more determined recipients that is intended to produce or produces legal effects.
49. In view of the above criteria and in the absence of disagreement between the Parties as to whether the FIFA letter of 3 March 2023 constitutes a decision, the Sole Arbitrator finds that such letter indeed qualifies as a *decision* within the above meaning, since the latter produced legal effects, affecting the legal situation of the Appellants.
50. Article R49 of the Code provides as follows:
- “In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*
51. The appeal was filed on 16 March 2023, i.e. within the deadline of 21 days set by Article 57(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.
52. It follows that the appeal is admissible.

VII. APPLICABLE LAW

53. Article R58 CAS Code provides as follows:

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

54. Article 56(2) FIFA Statutes provides the following:

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

55. In light of the above provisions, the Sole Arbitrator concludes that the FIFA regulations, primarily FIFA Regulations on the Status and Transfer of players, edition October 2022, are applicable and additionally, Swiss law.

VIII. MERITS

A. Standing to sue of the Appellants

56. Under Swiss law, the question of standing to sue or be sued must be reviewed *ex officio*. The SFT has held that the question of who has standing to sue is a question of the merits implying that if the appellant’s standing to sue is denied, then the appeal, albeit admissible, must be dismissed (cf. ATF 128 II 50, 55; ATF 126 III 59 c. 1a; ATF 123 III 60c 3a. See for an analysis DE LA ROCHEFOUCAULD E., “*Standing to be sued, a procedural issue before the CAS*”, in CAS Bulletin 1/2010, p. 51 *et seq.*).
57. The Sole Arbitrator notes that the Appellants in their Appeal Brief raised and analysed the issue of whether the Appellants have standing to sue in this case.
58. Therefore, before getting into the analysis of the case, the Sole Arbitrator, in principle, would have to analyse this threshold issue, namely - whether the Appellants, each of them, have standing to sue (notion also known as “standing to appeal”). Indeed, the standing to sue of the Club and the Player might appear questionable in view of the prayers for relief as put before the Sole Arbitrator, namely – “*To grant the DBU’s request for an exemption of the validation exception in respect of the transfer of the Player from Bayer Leverkusen to FCN*”.
59. However, the Sole Arbitrator observes that the Respondent did not object to the Appellants’ standing to sue, and, in view of the provisions of Article 57 of the FIFA Statutes, which does not specifically indicate/limit the individuals/entities which are entitled to lodge an appeal to CAS and does not limit the circle of individuals/entities entitled to appeal to CAS, and keeping in mind that the sole arbitrator in a similar case CAS 2017/A/5063 came to the same conclusion, the Sole Arbitrator concludes that there is no need to tackle this issue at the matter at hand.

B. Main Issues

60. Having carefully considered written submissions of the Parties, the Sole Arbitrator concludes that she is called to answer only one question – whether there are legal grounds for FIFA to grant the DBU’s request for an exemption of the validation exception and allow the registration of the Player. In order to answer this question, all issues raised by the Appellants in their Appeal Brief shall be addressed.

61. However, before addressing each of them, the Sole Arbitrator shall start from analysing the legal framework, applicable to the relationship, which arose between the Parties in connection with the Player’s transfer.

a) FIFA Statutes

62. As starting point, the Sole Arbitrator notes that in accordance with the definitions provided in the FIFA Statutes, a “*stakeholder is a person, entity or organisation which is not a member association and/or body of FIFA but has an interest or concern in FIFA’s activities, which may affect or be affected by FIFA’s actions, objectives and policies, in particular clubs, players, coaches and professional leagues*”.

63. Further, the Sole Arbitrator observes that, in accordance with Article 8(3) FIFA Statutes “*Every person and organisation involved in the game of football is obliged to observe the Statutes and regulations of FIFA ...*”.

64. Additionally, in accordance with Article 11 (4) of the FIFA Statutes, every member association shall include in its statutes the obligation to “*always comply with the Statutes, regulations and decisions of FIFA...*”.

65. More importantly, in accordance with Article 15 (1) (a) of the Statutes, member associations have the following obligations:

“(a) to comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time ...;

...

(d) to cause their own members to comply with the Statutes, regulations, directives and decisions of FIFA bodies;

(j) to comply fully with all other duties arising from these Statutes and other regulations...” [emphasis added by the Sole Arbitrator].

66. The status and transfer of football players is regulated by the RSTP, initially introduced in 2001 and amended by FIFA from time to time. Each and every new edition of the RSTP is accompanied by a circular letter, introducing such edition and its main changes.

67. In 2010, FIFA introduced the Transfer Matching System (TMS). In accordance with the definition given in RSTP, is a web-based data information system with the primary objective

of simplifying the process of international player transfers as well as improving transparency and the flow of information. TMS is owned and operated by FIFA, who gives access to it to purportedly trained individuals - TMS users, in order to process international transfers of players.

68. The RSTP defines those individuals as follows: *“TMS User: an individual trained and authorised to access TMS on behalf of a club or association. All TMS users have their own unique login credentials”*. The main TMS user and point of contact for a club or association with access to TMS is called *“TMS Manager”*. The use of TMS is mandatory for all member associations as outlined in RSTP.
69. The Sole Arbitrator observes that Annexe 3 of the RSTP October 2022, applicable to the matter at hand, is a standing alone annexe to RSTP dedicated to operating TMS by its member associations and their affiliated clubs and stipulates relevant administrative procedures. It picks up on the FIFA Statutes provisions, quoted above and stipulates, among others, specific obligations of all TMS users related to its use.
70. Thus, in accordance with Article 6 *“General obligations: clubs and associations”* of the Annexe 3 RSTP:
1. *Clubs and associations are responsible for all actions undertaken by their respective appointed TMS users.*
 2. *Clubs and associations shall always:*
 - ...
 - b) abide by the FIFA Statutes and all FIFA regulations;*
 - f) check TMS at regular intervals to ensure they are in a position to comply with their obligations at all time;*
 - g) perform pending actions in TMS without delay;*
 - b) ensure that they have all of the necessary equipment, training and know-how to fulfil their obligations; ...”*.
71. Having quoted the above provisions from the FIFA Statutes and FIFA RSTP, the Sole Arbitrator concludes, that national associations, their affiliated clubs, independently one from the other, by their participation in organized football undertake to abide by FIFA Statutes and its regulations and to keep themselves constantly informed on all updates of those documents.
72. It is obvious to the Sole Arbitrator that for FIFA to demand fulfillment of the above obligations put on its member associations and FIFA stakeholders, in particular football clubs affiliated to its member associations, FIFA must properly communicate its vital decisions and newly enacted or amended regulations and all other important procedural updates to those entities.

73. Here the Sole Arbitrator entirely concurs with the Sole Arbitrator in a similar case CAS 2017/A/5063, brought to her attention by the Appellants, who stated as follows: “*For a change of rules to become binding upon the association’s members it does not suffice that the competent (legislative) body within the association adopts the amendments. Instead, the new rules only take effect once the members of the association had a chance to obtain knowledge of the contents of the new rules. The question, thus, is not only whether the change in practice was adopted by the competent body of the association, but whether – in addition – the termination of the past practice was properly communicated to the relevant stakeholders*” [emphasis added by the Sole Arbitrator].

74. Therefore, the Sole Arbitrator, based on the above quoted legal framework, shall analyse whether DBU and FCN had a chance to obtain knowledge of the contents of the new rules.

b) *Communication by FIFA of its regulations and other documents*

75. The Parties dispute the correctness and appropriateness of the way in which FIFA informed its member associations of the Circular Letter 1763, which clarified certain aspects of the administrative procedure governing the international transfer of minor players.

76. Whereas the Appellants argue that this Circular Letter was improperly communicated only to DBU to its general email and was not also separately emailed to the DBU’s TMS manager personal email, FIFA argues that the general email of an association is a proper mean of communication and that, in addition, the said circular letter was also published in TMS Help Center, accessible to all TMS users, where it should have been retrieved by DBU TMS manager.

77. In this regard the Sole Arbitrator observes that notification of documents and regulations, adopted by FIFA, via general email to its member associations is a very longstanding practice and the email is an appropriate mean of communication. It is actually a first mean of communication between FIFA and its member associations.

78. It is not disputed by DBU that the Circular Letter 1763 dated 1 July 2021 was sent and delivered to its general email, thus it entered in its sphere of control on the same day, DBU had a chance to obtain knowledge of its contents. However, as DBU admitted, it has never done so, the email in question has never been forwarded internally to the DBU TMS department, and as a result to its clubs. The DBU, however, did not mention any valid reason for this failure nor any existing obstacle that prevented it from familiarizing itself with the said email and the circular letter attached thereto and forwarding it to its TMS department and further to its clubs. Thus, the Sole Arbitrator concludes that DBU acted negligently. In case FCN is unhappy with this situation – it shall obviously bring its claims against DBU, but not against FIFA.

79. The Sole Arbitrator, however, further observes that this statement of DBU indeed appears questionable, because, as rightly pointed by FIFA, DBU informed FIFA of its two registering periods as requested by this Circular Letter and of the categories assigned to its clubs in time back in 2021. However, the Sole Arbitrator is of the opinion that the issue whether the 2021

Circular Letter was forwarded or not by the DBU to its TMS Department and further to the Danish football clubs can be left opened, because it is not relevant for the outcome of this case as will be explained below.

80. In accordance with Article 6(2) (h) of the Annexe 3 RSTP, quoted above, independently from that email sent by FIFA to DBU, containing 2021 Circular Letter, TMS users of DBU themselves and TMS users of each of its affiliated clubs have a separate obligation to be knowledgeable of all FIFA documents, pertinent to their performance in TMS. This obligation does not appear to have been fulfilled by DBU and FCN TMS users.
81. In this regard, the Sole Arbitrator observes that, as mentioned above, it is longstanding practice of FIFA to communicate its vital decisions to its member associations via email, using addresses provided by the member associations to FIFA for this same purpose. This applies to all FIFA Regulations, Circular Letters and, of course, its Statutes. Additionally, and it is a common knowledge, FIFA publishes all its regulations and circular letters on its website, which is accessible to the interested persons (even those outside organized football) worldwide at all times and for free. Therefore, all interested persons could have easily retrieve the circular letter 1763 from FIFA website at any time after 1 July 2021, including DBU and FCN TMS users. Notwithstanding this, here the Appellants are right in claiming that a member association cannot be expected to monitor each and every new publication made by FIFA in order to retrieve the documents of its interest, in this case pertinent to TMS.
82. In this regard, the Sole Arbitrator observes that, additionally to sending all its documents to its member associations by email and simultaneously publishing them on its website, FIFA has specifically created TMS Help Centre, accessible to all TMS users, i.e. those of associations and those of their affiliated clubs, which contains “Document library” and “FAQ” sections, specifically intended only for the documents and questions pertinent to the issues relevant for TMS – its administration and operation, transfer of players, transfer of minor players, technical aspects of using TMS, etc.
83. This specifically tailored instrument of obtaining TMS related knowledge is aimed at giving fast and direct access to all updates needed to TMS users to perform their duties and operate TMS diligently – “Document Library” contains regulations, circular letters, explanatory notes etc. TMS Help Center is allowing to TMS users to fulfil their obligations under Article 6(2)(h) of Annexe 3 RSTP without unnecessary additional efforts.
84. Since each association and each club have their own TMS users, each of them independently has access to these specific TMS related documents in TMS and can get acquaint with them at any time, given that those are checked at regular basis, thus avoiding wasting time for the search of the same on FIFA webpage amongst dozens or hundreds of other, non-related to TMS and transfers of players, FIFA regulations and circular letters, instructions etc.
85. Naturally, each new version of RSTP and of each pertinent circular letter is published in Document Library in real time, i.e. simultaneously with FIFA sending them to its member associations via email and publishing them on its website. The Circular Letter 1763 was

uploaded in TMS Help Center on 1 July 2021 and, therefore, could have been easily retrieved by TMS users of the DBU and the Club had they duly exercised their “duty of curiosity” as per Article 6(2) (h) of the Annexe 3 RSTP before processing the transfer of a minor player.

86. The Sole Arbitrator observes that the Circular Letter 1763 was issued on 1 July 2021, the transfer instruction for the Player was created on 31 January 2023, i.e. 19 months later. In these 19 months there was more than enough time for FCN and DBU to fulfill their obligation to keep their know-how constantly updated, they should have been perfectly aware of all relevant administrative amendments made.
87. This case, therefore, differs from CAS 2017/A/5063, quoted by the Appellants, here DBU and FCN had 19 months to familiarize themselves with the new administrative procedure. Unlike in that case, here TMS users of both entities did not perform any research for the information in FAQ section of TMS or searched for documents in TMS Help Center.
88. As stated above, DBU and FCN could have easily found the Circular Letter 1763 themselves in the TMS Help Center had they duly exercised their duties under Annexe 3 of the RSTP to keep themselves at all times updated in order to be capable of performing their duties as TMS users.
89. Thus, in view of the above, it appears that FIFA gives all the possibilities to its member associations and their affiliated clubs to get immediate knowledge of all its documents. It would be a nonsense to expect FIFA to notify each TMS manager of every member association by a separate message in TMS of all its regulations and circular letters, as claimed by the Appellants. In fact, the Appellants’ statement that Circular Letter 1763 was never communicated to the DBU via TMS fails, because it actually was made available to it, it was published in the “Document Library” and through that library became available also to all TMS users worldwide.
90. To use the analogy following the Appellants’ argument, it would be a non-sense to hold an athlete not responsible for ingesting a prohibited substance because such athlete was not aware of the amendments to the Prohibited List, not notified to him/her by WADA through personal message in ADAMS. As the best example – see CAS 2016/A/4643. Final responsibility in performing a duty lies on the person envisaged with such a duty by applicable regulations.
91. The Sole Arbitrator is also comfortable in concluding that all Appellants’ arguments as regard to the alleged unclarity of the text of the Circular Letter 1763 ultimately fail. Had they obtained knowledge of the said circular in time, they would have had enough time to contact FIFA for clarifying any uncertainty they may have had in its interpretation. FIFA called all interested parties to do so in the text of the circular. If FCN efficiently contacted FIFA PCS via TMS regarding the matter at stake, why it could not then contact FIFA for the 2021 Circular Letter clarification via TMS, chat option in TMS or a separate email.

92. The above observation also brings the Sole Arbitrator to the conclusion that FCN erred in consulting only DBU with regard as to the transfer instruction confirmation. It should have done so first and foremost within TMS. As rightly pointed by FIFA, the question at the center of the dispute is listed in “FAQ” section. Any reasonable person would have made a reasonable research on the issue of transferring a minor player after a long brake, as it is the case with FCN, who claims not to have had a chance of transferring minor players since long time. Notably, the necessity to “confirm” the transfer instruction appears in all documents and answers to relevant questions in TMS FAQ section.

93. The Sole Arbitrator, therefore, concludes that FIFA has duly notified DBU and FCN of the Circular Letter 1763 by sending it via email, publishing it on its website and uploading it to TMS Help Center Library.

c) *FIFA RSTP and Circular letters*

94. Having concluded that independently one from the other, FCN and DBU TMS users had to have been aware of the Circular Letter 1763 and the administrative procedures introduced therein, the Sole Arbitrator observes that there is abundant CAS jurisprudence regarding the force of FIFA Circular Letters – *“FIFA’s Circular Letters are not regulations in a strict legal sense. However, they reflect the understanding of FIFA and the general practice of the federations and associations belonging thereto. Thus, these Circular Letters are relevant for the interpretation of the FIFA Regulations. However, FIFA’s Circular Letters cannot be allowed to take precedence over the clear and specific wording of FIFA’s regulations and a Circular cannot amend, override, change or contradict the FIFA Regulations (see CAS 2020/A/7144, 2016/A/4448).*

95. If the intention of a sport association is that of introducing the rule enshrined in the circular, this has to be done by means of a modification in the wording of the provision of the regulation, this cannot be achieved by means of a simple circular.

96. Here the Sole Arbitrator concurs with the Appellants, in that the circular letters are not mandatory documents. The pertinent regulations, however, are. In light of the principle of the hierarchy of the laws, the Appellants should not be allowed to rely on a circular letter of 2017 which contradicts the wording of the regulation, RSTP, adopted later, in 2022, of content of which FCN and DBU are obliged to be aware of.

97. Notably, the RSTP be it its version of August 2021 or of October 2022, applicable to the matter at stake, requires the transfer instruction to be confirmed, whereas there was no such strict demand in RSTP edition February 2021, i.e. before 2021 Circular. Without confirmation by the clubs, the transfer instruction cannot go to the next stage of processing, i.e. is not notified to FIFA and therefore cannot culminate into the procedure to be followed by the national federations (new and former) in order to generate an ITC.

98. This is precisely the case here. FIFA made amendments to its Annexe 3 RSTP in August 2021, immediately after the new demand was introduced by 2021. In fact, in its Answer to the Appeal Brief of the Appellants, FIFA stated that if the transfer of the Player occurred within some

short period of time after July 2021, there could have possibly been some understanding in the Club's misunderstanding of the administrative procedure to follow in TMS. However, 19 months have passed since the Circular Letter was issued and there is no more possibility to cure the Appellants' ignorance.

99. With regards to the text of the RSTP - initially the Sole Arbitrator observes that Article 6 (1) RSTP provides that players may only be registered during one of the two annual registration periods fixed by the relevant association. This can be done, obviously, only through TMS. Paragraph 3 of the same article further specifies that "*Players may only be registered – subject to the exception and temporary exception provided for in article 6 paragraph 1 – upon submission through the electronic player registration system of a valid application from the club to the relevant association during a registration period*".

100. What is a "valid" application is explained in Annexe 3 to RSTP, relevant articles of which stipulate as follows:

"Article 7. Specific obligations: clubs

Clubs with access to TMS shall: ... (d) enter and confirm transfer instructions and (where applicable) ensure that the required information matches.

...

Article 10. Creating transfer instructions:

...

7. Once all of the relevant information has been entered and the mandatory documents have been uploaded, the club(s) shall confirm the transfer in TMS without delay and before the end of the new association's registration period (subject to the exceptions in art. 6 par. 1 of these regulations)

8. For international transfers with a transfer agreement (whether permanent or on loan), both clubs shall: a) independently of each other, enter and confirm the transfer instruction as soon as the agreement has been concluded; ..." [emphasis added by the Sole Arbitrator].

101. It is not disputed between the Parties that there were no exceptions, foreseen in Article 6(1) RSTP. Therefore, FCN was obliged to enter and confirm the transfer instruction within the registration period, i.e. by midnight of 31 January 2023.

102. Article 11 of the Annexe 3 to RSTP "*Associations: ITC procedure and player registration*" further specifies that the procedure to be handled by the national associations (new and former) can start only after the transfer instruction has been created in accordance with Article 10, which, as quoted above, requires its confirmation for the latter to be valid and proceed.

103. Notably, Annexe 3 RSTP does not make any difference between the transfer of an adult or a minor player – all transfer instructions by default shall be confirmed before the registration period ends.
104. From these quoted above Articles of Annexe 3 RSTP it is unambiguously clear to the Sole Arbitrator, that there are two separate procedures to follow by different entities, by two clubs (former and new one) and by the national associations (former and the new one). Those two procedures are different and do not depend one on the other. Approval of the transfer of a minor by FIFA has nothing to do with the clubs' obligation to properly create and confirm the transfer instruction. If the transfer instruction is not confirmed – it cannot be processed by FIFA, because it is actually not submitted at all. The approval of the transfer of minor is relevant only for the issuance of an ITC and has nothing to do with the transfer instruction. However, the issuance of an ITC is dependent on successful submission of the transfer instruction.
105. Thus, all the arguments put forward by the Appellants with regards to the FIFA Circular Letters of 2017 and 2021 fail, because only based on the wording of the FIFA RSTP Annexe 3 in force the Appellants should have had clear understanding of what they have to do in order to submit a valid application, i.e. a valid transfer instruction – upload documents and confirm the transfer instruction without delay before the end of the registration period, thus actually sending it to FIFA for further processing. Without confirmation the transfer cannot be processed because it is not brought to the attention of FIFA. Non-confirmation of the transfer instruction by a club means that the national association cannot proceed with the ITC request.

d) *FIFA Guide to submitting a Minor Application*

106. With regards to the Appellants' arguments on contradictory text of the "Guide to submitting the Minor Application" dated September 2020, published on FIFA webpage, which refers to the FIFA Circular Letter 1587 dated 13 June 2017 – the Appellants contend that its text also wrongly directed the Appellants to the outdated procedure and that FIFA is at fault here because it did not ensure the consistency and clarify among its own rules.
107. In this regard, the Sole Arbitrator observes that the Guide is just a manual to consult, it is not an obligatory document, it contains guidelines, not requirements. This guide provides an overview and outlines the lists of the relevant documents to be included in the application for the transfer of a minor depending on the various individual circumstance surrounding the international move of a minor player and legal basis on which he/she is allowed to be transferred internationally, based on Article 19 RSTP.
108. Notably, it is stated in the Guide that "*is meant merely to serve as a guideline for the administrative application process*". Even if it is obvious to any reasonable person that in September 2020 this Guide could contain reference only to the Circular Letter 1587 dated 13 June 2017, the document would be of no avail to the Appellants even if updated and containing the reference to the Circular Letter 1763 dated 1 July 2021, because the Guide refers to the Circular Letter

1587 in different perspective - the text of the Guide does not contain a word on the process of creating and validating (i.e. confirming) a transfer instruction.

109. Since the Guide is obviously outdated to September 2020, in the opinion of the Sole Arbitrator any reasonable person should have asked himself in 2023 whether it is still correct to refer to it. Again, to make such a verification was easy, a tool tailored for this purpose was immediately available to FCN and DBU – the “Document Library” and FAQ section in TMS.
110. Based on the above the Sole Arbitrator concludes that the arguments of the Appellants with regards to the Guide are of no avail to the Appellants for the outcome of the dispute at stake.

e) *Validation Exception*

111. Having concluded that the DBU and FCN should have been well aware of the 2021 Circular, but, nonetheless should have understood from the applicable RSTP that a transfer instruction shall be confirmed before the end of the registration period, the Sole Arbitrator proceeds with analysing whether there were grounds for FIFA to grant an exemption from the validation exception, as requested by DBU.
112. The RSTP gives the following definition of the Validation Exception - “*is an issue relating to an international transfer in TMS that prevents it from proceeding to the next status, thus requiring FIFA’s intervention*”. The Sole Arbitrator, therefore, has to determine whether in the matter at stake, there was an issue, that prevented the transfer of the Player from proceeding to the next status, namely to ITC request.
113. Article 14 of the Annexe 3 RSTP lists cases when a validation exception may be triggered: “*A validation exception may be triggered in the following cases:*
- a) The player is less than 18 years old and the corresponding minor application has not yet been accepted;*
 - b) The new club is serving a ban on registering new players;*
 - c) The new club and/or the former club has exceeded the loan limitations (cf. art. 10 of these regulations);*
 - d) The date of the ITC request is outside the new association’s registration period, and no exception under art. 6 par. 1 of these regulations applies; or*
 - e) The ITC request has been rejected by the former association and the rejection has been disputed by the new association”.*
114. The Appellants, in their submissions, do not mention on which of the above listed basis the exemption from validation exception was requested by DBU from FIFA. In the Sole Arbitrator’s understanding, paragraph a) could have been understood as those potentially to be recalled in this case. However, as already mentioned twice above in this award, for the

minor application of a national association to be accepted, a valid transfer instruction shall be created by the club, which is not the case here.

115. Notably, by its letter to FIFA dated 16 February 2023 DBU was actually requesting a “special exemption” from validation exception, allegedly based on exceptional circumstances, without mentioning any such circumstance.
116. The Sole Arbitrator notes that this letter was even misleading stating that FCN has “confirmed” the transfer instruction on 31 January 2023, which obviously was not the case. If to carefully read that letter of DBU, it is unclear why would the DBU contact FIFA if FCN had “confirmed” the transfer instruction on 31 January 2023, i.e. precisely in time before the transfer window was closed at midnight.
117. It is only in the second letter, after having received FIFA refusal dated 17 February 2023 to grant the requested exception that DBU mentioned that the transfer instruction was actually not confirmed, but only saved as pending, admitting that both DBU and FCN were not aware of the change of procedure as of the last minor transfer processed in January 2021, i.e. for two years none of the TMS users of both entities checked for any procedural update whereas two of the instruments were made available by FIFA to the Club (website and TMS dedicated Help Center) and three for the DBU (website and TMS dedicated Help Center additionally to a personal email notification that DBU failed to make itself equitant with) to do so. It is just a matter of luck that previous transfers were all processed by FCN well before the registration period ended, and not on its last day as in case with the Player’s transfer.
118. The above quoted Article 14 does not foresee such an exception as non-confirmation of the transfer instruction by a club. Moreover, no valid issue that prevented FCN from confirmation, beside its own negligence, was brought to the attention of FIFA by DBU. Own negligence of FCN and DBU leading to lack of proper knowledge necessary to operate in TMS cannot be accepted as an excuse and considered exceptional.
119. Therefore, FIFA was right in concluding that it cannot grant the DBU’s request for a special exemption from the “validation exception” and allow the registration of the Player outside the registration period.

f) Excessive formalism

120. The Sole Arbitrator further notes that the Appellants claim that FIFA’s refusal to register the Player is an act of excessive formalism, because only “one box was not ticked” in TMS, i.e. “confirm” box.
121. The Sole Arbitrator, however, is convinced that this is not the case of excessive formalism for the following reasons.

122. The Swiss Federal Tribunal made the following comments: *“excessive formalism takes place when strictly applying the rules is justified by no interest worthy of protection, becomes an end in itself and complicates in an untenable way the application of material law”* (4A_600/2008).
123. As explained above, due to their own fault DBU and FCN failed in following properly the registration process as prescribed by the Annexe 3 of the RSTP and clarified in details by the Circular Letter 1763 dated 1 July 2021, which both DBU and FCN should have been aware of well before proceeding with the transfer of the Player. Both had 19 months to do so.
124. The transfer instruction was not “confirmed” in time, i.e. within the registration period. It was confirmed on 7 February 2023, whereas the registration period ended on 31 January 2023. A seven-day delay cannot be viewed as purely formalistic minor mistake. By not confirming the transfer instruction FCN has actually never sent/notified it to FIFA.
125. Moreover, the Appellants do not give any explanation why the confirmation of the transfer instruction was made only on 7 February 2023 and not on any other day before, i.e. without delay as the RSTP requests. The Sole Arbitrator finds no logic in the statement made in the Appeal Brief: *“Article 19(5) of the FIFA RSTP provides that the approval of the FIFA PSC “is required prior to any request for an ITC”. Therefore, on 7 February 2023 FCM proceeded to “confirm” the transfer instruction”*. However, obviously, no such approval was received between 1 February and 7 February 2023.
126. The Sole Arbitrator is of the firm opinion that the confirmation of the transfer instruction is not a mere administrative formality “to tick a box”, but indeed a condition for the validity of the transfer request. This principle makes it possible to rule out the reproach of excessive formalism. Especially so in view of the fact that Articles 7(d) and 10.7, 10.8 of the Annexe 3 RSTP clearly state that the transfer instruction shall be confirmed. The confirmation of the transfer instruction is not made dependent on the approval of the transfer of a minor player by FIFA by any provision of Annexe 3 RSTP.
127. The Sole Arbitrator is satisfied that the procedure of registration through TMS enables – and is indeed necessary – for the FIFA administration to efficiently proceed all transfers equally and within the stipulated limited time frames, i.e. within the registration period, in order to guarantee smooth running of all international official football competitions.
128. The Sole Arbitrator finds that all the above is an indication that the Club made a mistake in not confirming the transfer instruction before the registration period closed, i.e. before midnight of 31 January 2023 and that it is merely seeking to find a legally sound justification for such mistake, rather than that it conducted a thorough investigation of the relevant regulations, FIFA Circular letter no. 1563 and the general practice of clubs regarding the transfer of players in TMS Help Center at the relevant time.
129. Against this background, the Sole Arbitrator finds that FIFA’s requirement to confirm the transfer instruction within the registration period and its refusal to grant to DBU an exemption from validation exception is no excessive formalism and that the Club’s violation of this

requirement – although regrettable for the Club and the Player – constitutes an infringement of the RSTP and makes it impossible the transfer to proceed and any exemption of the validation exception to be granted.

g) Irreparable harm

130. Regarding the allegation of the Club that it suffers financial and/or sportive harm caused by FIFA's refusal to proceed with the Player's registration – the Sole Arbitrator initially notes that this allegation is not proven by any mean, e. g. – the players' list where one can see that the Club lacks (for whatever reason) players playing on the position of Mr. Sertdemir, or that the Club has sold another player in order to buy/hire Mr. Sertdemir and there is nobody to fill his position etc.
131. On the opposite, the Sole Arbitrator observes that the Club states that it leads the national championship, without participation of the Player in its official matches, which statement the Sole Arbitrator finds contradictory to the claim of alleged irreparable harm in playing matches without participation and valuable input of the Player, who also confirms in his personal written statement that the Club is on top of the league table and on the verge of qualifying for the Danish cup semi-final.
132. Moreover, indeed, as underlined by FIFA, it is difficult to imagine that in a team sport the success of the entire team would somehow depend on performance of one player, even if of exceptional talent.
133. The Sole Arbitrator is of the opinion that whatever harm FCN allegedly suffers – it is entirely its own fault as described in previous paragraphs on this award.
134. Regarding the alleged irreparable harm caused to the Player by his non-registration with FCN, claimed violation of his right to work, to play football or to exercise his profession - again, beside own statement of the Player, which shall be accessed with certain level of doubt and not only because it was written in perfect English, which is not the native language of the Player, no other piece of evidence confirms any deterioration of the Player's situation either psychologically or sport wise.
135. The Player, although a victim of negligence of the DBU and his own club, is employed and is paid, he can attend training sessions and training camps with any of the club's teams of his age and elder (because the employment contract of the Player, available to the Sole Arbitrator in the case file, does not state to which team exactly he is assigned); he can also play friendly matches with any of those teams without being registered and he can play friendly and official matches as a member of the national team for the DBU of his age an elder. Therefore, the Player is integrated into the Club's teams and his sportive shape is kept high, he is not prevented from playing football.
136. From the opened sources the Sole Arbitrator found out that the Player is actually actively playing for his national team – he was fielded in three UEFA EURO U-19 qualifying matches

in March 2023 and in May 2023 played at least one friendly match Denmark v Germany U-19, spending on the field of play the entire match for his senior national team.

137. It is indeed self-speaking that, as pointed by FIFA, alleging irreparable harm, neither the Club, nor the Player applied for provisional measures to be applied in these proceedings as soon as the statement of appeal was brought before CAS.
138. Therefore, the Sole Arbitrator concludes that the Player is not prevented from playing football, his playing qualities are not lowering, he is not prevented from integrating into the team(s) of FCN. The Sole Arbitrator is, therefore, comforted to find that the claimed violation of the Player's rights does not exist, as well as any other type of irreparable harm is not caused to the Player or FCN if the Appealed Decision stands.

h) Conclusion

139. According to the principle established by CAS jurisprudence on the basis of Swiss law, namely Article 8 of the Swiss Civil Code, *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (...). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (see CAS 2003/A/506, paragraph 54; CAS 2009/A/1810&1811, paragraph 18 and CAS 2009/A/1975, paragraph 23).
140. The Sole Arbitrator, having analysed all the arguments put forward by the Appellants, concludes, that the Appellants failed to substantiate their allegations against FIFA.
141. In the Sole Arbitrator's view, it is incumbent on a professional club, especially of such a level as FCN, and more so on a national association, to make reasonable enquiries as to how proceed with a transfer of a minor player.
142. In the case at hand both the DBU and FCN have a responsibility to familiarize themselves with all FIFA regulations and circular letters pertinent to processing the transfer, including the transfer of a minor, in TMS, readily available to them in the same TMS.
143. The Appellants failed to establish that the registration of the Player failed because FCN was in any way prevented to comply with the applicable regulations and deadlines because of no fault of its own, thus there are no circumstances, less so exceptional ones, justifying granting an exemption from the validation exception. It is crystal clear to the Sole Arbitrator that own negligence of FCN and DBU led to the absence of necessary knowledge to effectuate the transfer of the Player correctly and, therefore, successfully.
144. In the Sole Arbitrator's view, FCN should have studied carefully all pertinent documents, published in TMS, before processing the Player's transfer, in particular – creating the transfer instruction. It appears that by asking advice from DBU how to proceed, FCN has clearly

demonstrated that it was unfamiliar with those regulations and new procedural demands contained therein. Unluckily for FCN, DBU TMS Manager was not aware of them too.

145. In the end, the Sole Arbitrator concludes that both DBU and FCN failed to fulfill their duties what led to the non-registration of the Player, who is just a victim of the negligence of his club and his national association, which failure can be cured only in the next registration period.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Dansk Boldspil-Union, FC Nordsjælland and Batuhan Zidan on 16 March 2023 against the decision of the Chairperson of the FIFA Players' Status Chamber of the Football Tribunal rendered on 3 March 2023 is dismissed.
2. The decision rendered by the Chairperson of the FIFA Players' Status Chamber of the Football Tribunal rendered on 3 March 2023 is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.