Arbitrations CAS 2013/A/3343 Olympique Lyonnais v. FC Porto (Lisandro López) & CAS 2013/A/3344 Olympique Lyonnais v. FC Porto (Aly Cissokho) & CAS 2013/A/3348 FC Porto v. Olympique Lyonnais (Lisandro López) & CAS 2013/A/3349 FC Porto v. Olympique Lyonnais (Aly Cissokho), award of 28 July 2014

Panel: Prof. Luigi Fumagalli (Italy), President; Mr François Klein (France); Mr Rui Botica Santos (Portugal)

Football
Transfer agreements
Admissibility of the appeal
Determination of the real intent of the parties
Consequences of the forfeit of a claim before the first instance
Starting date of interest

1. **In order for an appeal to be admissible it is necessary that the appellant has an interest in the setting aside of the challenged decision, and that the appellant is directly affected by that decision. In other words, it is necessary that the appellant has a claim against the decision issued by the sport-related entity, which did not grant what the appellant had requested from it. In this regard, a football club has an actual interest in the setting aside of the challenged decision, in order to obtain an award acknowledging that no modification of the initial claim had been made and/or identifying a different starting date for interests to accrue.**

2. **If no convincing evidence was brought demonstrating that a common actual intention of the parties was factually behind the provisions of a contract, the meaning that the parties could and should have given to their respective declarations must be sought in accordance with the rules of good faith. According to them, the contract is given the meaning that any reasonable person would give to the wording in question, taking into account all other relevant circumstances of the case.**

3. **If a party forfeited a request regarding an invoice in the course of the FIFA proceedings, it cannot raise a claim in its respect before the CAS. As a consequence, the party is only entitled to claim the payment of the amounts mentioned in the invoices not forfeited in the course of the FIFA proceedings.**

4. **According to Article 102.1 of the Swiss Code of Obligations, if no deadline for performance of the obligation has been agreed, the debtor is in default as soon as he receives a formal reminder from the creditor.**

1. BACKGROUND

1.1 The Parties

1. Olympique Lyonnais (hereinafter referred to as "OL") is a football club, with seat in Lyon, France. OL is affiliated to the French Football Federation, which is a member of the Fédération Internationale de Football Association (hereinafter referred to as "FIFA").

2. FC Porto (hereinafter referred to as "Porto") is a football club, with seat in Porto, Portugal. Porto is affiliated to the Portuguese Football Federation, which is also a member of FIFA.

1.2 The Dispute between the Parties

3. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written pleadings or in the evidence offered in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.

4. On 6 July 2009, Porto and OL entered into an agreement, under which the player Lisandro Lòpez (hereinafter referred to as "Lòpez") would be transferred from Porto to OL (hereinafter referred to as the "Lòpez Transfer Agreement").

5. The Lòpez Transfer Agreement contained *inter alia* the following provisions:

> *"1) FC PORTO hereby permanently transfers to LYON the registration of the professional football player LISANDRO LÓPEZ, as of the 06th July 2009.*
>
> *2) In consideration of such transfer of registration LYON agrees and shall pay FC PORTO the net amount of 24.000.000 (Twenty Four Million Euros), against presentation of the respective invoice, payable in three instalments as follows:*
>
> *a) 10.000.000 (ten million euros) no later than the 24 July 2009;*
>
> *b) 7.000.000 (seven million euros) on the 30 June 2010;*
>
> *c) 7.000.000 (seven million euros) on the 30 June 2011.*
>
> *§1: LYON obliges to deliver to FC PORTO until the 15th August 2009 two Bank guarantees on first demand in order to assure the payment of the second and third instalment (as referred in 2b) and c) above. The Bank guarantees shall be approved by the Portuguese Bank Banco Espirito Santo (BES) and LYON agrees to assume the responsibility of all the costs derived from the anticipated discount of such bank guarantees.*
>
> *§2: All Payments to FC PORTO, SAD are to be made to FC PORTO, SAD – Bank account with Banc BES, which details are to be indicated by FC PORTO in due course.*
>
> *7) The PARTIES hereby agree that this Agreement is governed by the FIFA Regulations and the Swiss Law, which shall be both applicable to it on an exclusive basis. Any and all disputes will be handled by the competent FIFA committee, with possibility of appeal before the Court of Arbitration for Sports*

(CAS) for final decision".

6. On 18 July 2009, Porto and OL entered into a second agreement, under which the player Aly Cissokho (hereinafter referred to as "Cissokho"; Cissokho and Lòpez are hereinafter jointly referred to as the "Players") would be transferred from Porto to OL (hereinafter referred to as the "Cissokho Transfer Agreement").

7. The Cissokho Transfer Agreement, in the same way as the Lòpez Transfer Agreement, contained the following provisions:

"1) FC PORTO hereby permanently transfers to LYON the registration of the professional football player ALY CISSOKHO, as of the 17th July 2009.

2) In consideration of such transfer of registration LYON agrees and shall pay FC PORTO the net amount of € 15.000.000 (Fifteen Million Euros), against presentation of the respective invoice, payable in three instalments as follows:

a) € 5.000.000 (five million euros) on the 25th July 2009;

b) € 5.000.000 (five million euros) on the 31st July 2010;

c) € 5.000.000 (five million euros) on the 31st July 2011.

§1: LYON obliges to deliver to FC PORTO until the 31th August 2009 two Bank guarantees on first demand in order to assure the payment of the second and third instalment (as referred in 2b) and c) above. The Bank guarantees shall be approved by the Portuguese Bank Banco Espirito Santo (BES) and Lyon agrees to assume the responsibility of all the costs derived from the anticipated discount of such bank guarantees.

§2: All Payments to FC PORTO, SAD are to be made to FC PORTO, SAD – Bank account as follows: …

7) The PARTIES hereby agree that this Agreement is governed by the FIFA Regulations and the Swiss Law, which shall be both applicable to it on an exclusive basis. Any and all disputes will be handled by the competent FIFA committee, with possibility of appeal before the Court of Arbitration for Sports (CAS) for final decision".

8. On the basis of the Lòpez Transfer Agreement and of the Cissokho Transfer Agreement (hereinafter jointly referred to as the "Transfer Agreements") the following guarantees (hereinafter referred to as the "Guarantees") were issued:

i. on 13 October 2009, Banco Espirito Santo (hereinafter referred to as "BES") issued at the request of HSBC France two guarantees, No. E00353995 and E00353996, valid through 31 July 2010 and 31 July 2011, each of them intended to guarantee the payment of EUR 4,800,000 to Porto for the transfer to OL of Cissokho;

ii. on 11 January 2010, Société Générale issued guarantee No 02302-1072244LYE, valid through 30 September 2011, with respect to the payment to Porto of the amount of EUR 6,650,000 for the transfer to OL of Lòpez;

iii. on 20 January 2010, Groupama Banque issued guarantee No. 2009-24, valid through 30 June 2010, with respect to the payment to Porto of the amount of EUR 6,650,000 for the transfer to OL of Lòpez.

9. On 23 November 2010, Porto issued invoice No. 2010FT11100008 to OL in the amount of EUR 503,399.99, for *"value concerning player Lisandro Lopez, namely Professional Football Player Registration Transfer Agreement: Clause 2, 1st paragraph (concerned period 20/07/2009 to 01/08/2010)"*, requesting payment by 23 December 2010. Attached to said invoice was a breakdown of the amounts referred to in the invoice and bank statements issued by BES on 31 October 2009, 28 February 2010, 31 May 2010 and 31 August 2010.

10. On the same 23 November 2010, Porto issued a second invoice, No. 2010FT11100009, in the amount of EUR 407,700.05 for *"value concerning player Aly Cissokho, namely Professional Football Player Registration Transfer Agreement: clause 2, 1st paragraph (concerned period 30/07/2009 to 01/08/2010)"*, requesting payment by 23 December 2010, and enclosing a breakdown of the amounts referred to in the invoice. Also this invoice had attached bank statements issued by BES on 31 October 2009, 28 February 2010, 31 May 2010 and 31 August 2010.

11. On 10 February 2011, the President of OL sent a letter to Porto as follows:

"Je t'écris aujourd'hui pour te faire part de mon incompréhension sur les factures que nous avons reçu, avec beaucoup de retard, de ton club pour des montants de 407 700 et 503 399 euros concernant des frais d'intérêts financiers relatifs aux financement des transferts d'Aly CĬSSOKO et Lisandro LOPEZ.

Tu as été, lors de ces négociations, intraitable et je n'ai pu que me soumettre à toutes tes demandes, en présenœ de notre lawyer, Joseph AGUERA, sur le prix de cession des joueurs. Tu m'as ensuite demandé des garanties sur les échéances de paiement et après ton refus d'accepter des garanties de mon groupe – ce qui m'a fortement vexé – je me suis engagé à te fournir des garanties bancaires à première demande, ce que nous avons fait depuis.

Il n'a jamais été question de prise en charge d'intérêts financiers sur les échéances de paiement contractuellement convenues puisque les garanties bancaires à première demande que nous vous avons fournies vous permettaient d'obtenir le financement correspondant. Tu te souviendras que nous avons même évoqué, lors de notre rencontre, que la garantie à première demande venait se substituer à des frais financiers et que nous avions opté pour un prix de transfert correspondent à ta demande, mais avec un délai de paiement plutôt que d'obtenir un prix minoré payable cash.

Je pense que tu pourras vérifier, auprès du Directeur Général, Fernando Gomez, parti à la Ligue Portugaise de Football, que cette facturation n'a pas lieu d'être et qu'elle n'est pas conforme ni au document contractuel signé entre nos deux sociétés, ni à l'esprit dans lequel nous avons discuté".

12. On 23 February 2011, Porto writing with reference to invoices No. 2010FT11100008 and No. 2010FT11100009 (hereinafter jointly referred to as the "2010 Invoices") replied as follows:

"with regards to the above numbered invoices … we do state that they were correctly issued.

In fact, by analysing the referred documents, and considering the view of our legal services, the invoiced amount is indeed due to be disbursed by Olympique Lyonnais".

13. On 25 February 2011, the CEO of Porto sent a letter to the President of OL confirming the request of payment of the 2010 Invoices and stating, *inter alia*, the following:

"As regards the invoicing timing, we wish to emphasize that FC Porto has issued and send those documents taking into account the recent information released from our Bank, related to Bank guarantees anticipation/discount.

As a matter of fact, the referred amount does not reflect the final sum, as the Bank shall send to FC Porto the final part of interest on July 2011.

I had the opportunity to contact Mr. Fernando Gomes, who assured me that it was agreed that FC Porto would be able, if necessary, to discount/anticipate those Bank guarantees, considering that Lyon would assume full responsibility for the payment of all costs derived from such discount.

Indeed, that is precisely what clause 2 from Transfer Agreements asserts.

In the light of the above, we deem that Lyon should pay us such amounts related to the costs inherent to the Bank Guarantee's discount and kindly request you to proceed to the respective payment".

14. On 3 March 2011, the counsel for OL sent the following letter to Porto:

"J'ai l'honneur d'être le Conseil de l'OLYMPIQUE LYONNAIS qui m'a transmis les factures que vous avez cru devoir émettre ensuite des transferts des joueurs Lisandro LOPEZ et Aly CISSOKHO.

J'ai également été rendu destinataire des courriers qui ont été échangés depuis lors.

Contrairement aux termes de votre courrier du 23 février, ces factures ne sont absolument pas fondées sur les termes du contrat de transfert qui n'ont absolument pas le sens que vous leur prêtez.

Au demeurant, et quoiqu'il en soit, c'est-à-dire y compris dans le cadre de l'analyse qui est la vôtre qui aurait alors nécessité une négociation et une détermination du taux d'intérêt, il est évident que l'OLYMPIQUE LYONNAIS ne saurait être considéré comme votre débiteur de quelques sommes que ce soit.

En effet, les documents émanant du BANCO ESPIRITO SANTO ne font pas référence à des frais liés à l'escompte de garanties bancaires, mais d'intérêts résultant d'un prêt contracté par le FC PORTO.

Il ne saurait d'ailleurs en être autrement, puisqu'au moment où vous avez contracté ce prêt, les garanties n'avaient pas été délivrées.

En conséquence, j'ai l'honneur de vous mettre en demeure de faire parvenir à mes clients des avoirs correspondant aux factures infondées que vous avez cru devoir émettre, et me permets d'attirer votre attention sur le fait qu'à défaut, je me verrai contraint de prendre les mesures qui s'imposeront alors".

15. On 27 April 2011, Porto confirmed to the counsel for OL that *"both invoices … concern to costs related to bank's financial operation regarding the Bank Guarantees defined on the … Transfer Agreements. Indeed, as clause 2 from Transfer Agreements asserts Lyon assumes full responsibility for those costs".* As a result, Porto invited OL *"to proceed with the payment of the referred costs".*

16. On 19 September 2011, Porto insisted in the request of payment of the 2010 Invoices or *"sadly, we will be forced to initiate the competent legal procedures".*

17. On 27 September 2011, the counsel of OL stated that *"pour les raisons factuelles et juridiques péremptoires dont j'ai déjà eu l'occasion de vous faire part, votre demande est particuliérment dénuée de la moindre pertinence. L'OLYMPIQUE LYONNAIS y apporte donc une ferme fin de non recevoir"*.

18. On 19 January 2012, Porto issued a new invoice, dated 30 December 2011, No. 402011060024 (hereinafter referred to as the "2011 Invoice") in the total amount of EUR 740,687.78, regarding the *"value concerning player Lisandro Lopez"* for EUR 405,739.05, and the *"value concerning player Aly Cissokho"* for EUR 334,948.73, in both cases requesting payment by 19 January 2012 and making reference to the *"concerned period 01/08/2010 to 18/08/2011"*. Attached to the 2011 Invoice was a breakdown of the amounts referred to therein and bank statements issued by BES on 30 November 2010, 28 February 2011, 31 May 2011 and 31 August 2011.

19. On 29 June 2012, Porto lodged a claim with FIFA, requesting it to order OL to pay the amount of EUR 909,139.04 under the Lòpez Transfer Agreement and the amount of EUR 742,648.78 under the Cissokho Transfer Agreement, as well as interest at 5% p.a. on those amounts.

20. In the subsequent submissions before FIFA:

    i. on 27 March 2013, OL answered the claim lodged by Porto, asking FIFA to dismiss it;

    ii. on 19 April 2013, Porto replied to OL and, making reference to *"our claim dated 29th June 2012 and all evidence presented by the parties to the file"*, requested that OL be ordered to pay the amounts of EUR 503,399.99 and EUR 407,700.05, corresponding to the amounts indicated in the 2010 Invoices. No mention was made in that context of the 2011 Invoice;

    ii. on 7 May 2013, OL, in a subsequent brief, noted *inter alia* that Porto had modified its claim.

21. On 29 July 2013, the Single Judge of the FIFA Players' Status Committee (hereinafter referred to as the "Single Judge") rendered the following decisions (hereinafter jointly referred to as the "Decisions"):

    i. with respect to the dispute concerning the Lòpez Transfer Agreement (hereinafter referred to as the "Lòpez Decision"):

        "1. The claim of the Claimant, FC Porto, is accepted.

        2. The Respondent, Olympique Lyonnais, has to pay to the Claimant, FC Porto, within 30 days as from the date of notification of this decision, the amount of EUR 503,399, plus default interest at a rate of 5% p.a. on said amount as of 29 June 2012 until the date of effective payment.

        3. If the aforementioned sum plus interest is not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee, for consideration and a formal decision.

        4. The final costs of the proceedings in the amount of CHF 20,000 are to be paid by the Respondent, Olympique Lyonnais, within 30 days as from the notification of the present decision, as follows:

        4.1 The amount of CHF 15,000 to FIFA to the following bank account with reference to

case nr. 12-01503/mba: …

4.2 The amount of CHF 5,000 directly to the Claimant, FC Porto.

5. The Claimant, FC Porto, is directed to inform the Respondent, Olympique Lyonnais, immediately and directly of the account number to which the remittance under point 2 is to be made and to notify the Single Judge of the Players' Status Committee of every payment received";

ii. with respect to the dispute concerning the Cissokho Transfer Agreement (hereinafter referred to as the "Cissokho Decision"):

"1. The claim of the Claimant, FC Porto, is accepted.

2. The Respondent, Olympique Lyonnais, has to pay to the Claimant, FC Porto, within 30 days as from the date of notification of this decision, the amount of EUR 407,700, plus default interest at a rate of 5% p.a. on said amount as of 29 June 2012 until the date of effective payment.

3. If the aforementioned sum plus interest is not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee, for consideration and a formal decision.

4. The final costs of the proceedings in the amount of CHF 15,000 are to be paid by the Respondent, Olympique Lyonnais, within 30 days as from the notification of the present decision to FIFA to the following bank account with reference to case nr. 12-01503/mba: …

5. The Claimant, FC Porto, is directed to inform the Respondent, Olympique Lyonnais, immediately and directly of the account number to which the remittance under point 2 is to be made and to notify the Single Judge of the Players' Status Committee of every payment received".

22. In support of his Decisions, the Single Judge preliminarily noted that the 2010 edition of the Regulations on the Status and Transfer of Players (hereinafter referred to as the "RSTP") was applicable to the merits of the dispute. Then, turning to the substance, after asserting that on 19 April 2013 Porto had amended its claim, considered the following:

i. in the Lòpez Decision:

"12. In view of the parties' divergent arguments, the Single Judge underlined that the underlying issues of the present dispute was to decide whether the Claimant was entitled to receive any monies in accordance with the transfer agreement in particular pertaining to the bank guarantees which had been issued in connection with the transfer of the player.

13. In addition, the Single Judge firstly recalled the general legal principle of art. 12 per. 3 of the Procedural Rules which states that any party claiming a right on the basis of an alleged fact shall carry the burden of proof.

14. In this respect, the Single Judge started analysing all documents on file. In particular, he recalled that according to clause 2 par. 1 of the agreement, "(…) Lyon agrees to assume the responsibility of <u>all costs</u> [emphasis added] from the anticipated discount of such bank guarantees".

15. In this respect, the Single Judge noted that the Respondent referred to a letter which was sent by its president to the president of the Claimant on 10 February 2011 and which stipulates that « tu te souviendras que nous avons meme évoqué, lors de notre rencontre, que la garantie à première

demande venait se substituer à des frais financiers et que nous avions opté pour un prix de transfert correspondant à ta demande, mais avec un délai de paiement plutôt que d'obtenir un prix minoré payable cash », (NB : in English) « you will remember that we even raised the point at the occasion of our meeting, that the guarantee at first demand should be compensated by the financial fees and we even decided on a transfer fee in accordance with your demands, but with a deadline for the payment instead of obtaining a lower price in cash ». In other words, the Respondent *argues that the parties had verbally agreed that the interests on the second and third instalments for the transfer should already be included in the transfer amount.*

16. *Furthermore, the Single Judge observed that, apart from the above-mentioned letter, the* Respondent *did not provide any evidence in support of its assertion that the parties had verbally agreed that the costs for the bank guarantees should already be included in the transfer amount (cf. art. 12 par. 3 of the Procedural* Rules*).*

17. *Consequently and in accordance with art. 12 par. 3 of the Procedural* Rules*, the Single Judge held that the letter dated 10 February 2011 had no evidential value and could therefore not be regarded as sufficient proof that such verbal agreement had actually been concluded, and that the Claimant would have agreed to the above-mentioned circumstances.*

18. *Furthermore, taking into consideration all the surrounding circumstances of this specific matter as well as the documentation presented during the proceedings, the Single Judge took into account the invoices which have been sent by the Claimant to the* Respondent*. In particular, the Single Judge analysed the invoices provided by the Claimant to the* Respondent *dated 23 November 2010 and 19 January 2012 as well as the correspondences exchanged between the parties in connection with such invoices and reminders dated 10 February 2011, 23 February 2011, 25 February 2011, 3 March 2011, 19 September 2011, 27 September 2011 and 19 January 2012. After a thorough analysis of said documentation, the Single Judge concluded that the amounts stipulated in said invoices could be linked to the above-mentioned bank guarantees.*

19. *In this respect, the Single Judge recalled the* Respondent*'s argument that the legal and financial terms used on the invoice sent by the Claimant would not correspond with the terms which are usually used in the context of bank guarantees. In this respect, the Single Judge noted that the* Respondent *did not make reference to any specific legal or financial terms of the invoices of the bank nor did it provide any documentary evidence in this regard (cf. art. 12 par. 3 of the Procedural* Rules*). Equally, the Single Judge held that the* Respondent *never objected to the amounts stipulated on the respective invoices per se, since it only challenged its general obligation to pay any amounts to the Claimant.*

20. *In view of all of the above, the Single Judge concluded that the transfer agreement signed between the Claimant and the* Respondent *obligated the latter to bear all the expenses in relation to such bank guarantee as claimed by the Claimant, in particular in accordance with clause 2 of said agreement.*

21. *As a result of all of the above, the Single Judge decided to accept the Claimant's claim and to award him the amount of* EUR *503.399 plus 5% interest p.a. on said amounts as of 29 June 2012 until the date of effective payment.*

22. *Lastly, the Single Judge referred to art. 25 par. 2 of the* Regulations *in combination with art. 18 par. 1 of the Procedural* Rules*, according to which, in proceedings before the Players' Status*

Committee including its Single Judge, costs in the maximum amount of CHF 25,000 are levied. The relevant provision further states that the costs are to be borne in consideration of the parties' degree of success in the proceedings (cf. art. 18 par. 1 of the Procedural Rules).

23. *In respect of the above, and taking into account that the claim of the Claimant has been accepted, the Single Judge concluded that the procedural costs are to be borne by the Respondent.*

24. *According to Annex A of the Procedural Rules, the costs of the proceedings are to be levied on the basis of the amount in dispute.*

25. *On that basis, the Single Judge held that the amount to be taken into consideration in the present proceedings is EUR 503,399.99 related to the claim of the Claimant. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000 (cf. table in Annex A).*

26. *Considering that the case at hand and taking into account that the claim of the Claimant has been accepted as well as the complexity of the case, the Single Judge determined the costs of the current proceedings to the amount of CHF 20,000.*

27. *In view of all of the above, the Single Judge concluded that thereof the amount of CHF 15,000 has to be paid by the Respondent to FIFA to cover the costs of the present proceedings. In addition to that, the Respondent has to pay the amount of CHF 5,000 directly to the Claimant"*;

ii. in the Cissokho Decision:

"12. In view of the parties' divergent arguments, the Single Judge underlined that the underlying issues of the present dispute was to decide whether the Claimant was entitled to receive any monies in accordance with the transfer agreement in particular pertaining to the bank guarantees which had been issued in connection with the transfer of the player.

13. *In addition, the Single Judge firstly recalled the general legal principle of art. 12 par. 2 of the Procedural Rules which states that any party claiming a right on the basis of an alleged fact shall carry the burden of proof.*

14. *In this respect, the Single Judge started analysing all documents on file. In particular, he recalled that according to clause 2 par. 1 of the agreement, "(…) Lyon agrees to assume the responsibility of <u>all costs</u> [emphasis added] from the anticipated discount of such bank guarantees".*

15. *In this respect, the Single Judge noted that the Respondent referred to a letter which was sent by its president to the president of the Claimant on 10 February 2011 and which stipulates that « tu te souviendras que nous avons meme évoqué, lors de notre rencontre, que la garantie à première demande venait se substituer à des frais financiers et que nous avions opté pour un prix de transfert correspondant à ta demande, mais avec un délai de paiement plutôt que d'obtenir un prix minoré payable cash » (NB : in English) « you will remember that we even raised the point at the occasion of our meeting, that the guarantee at first demand should be compensated by the financial fees and we even decided on a transfer fee in accordance with your demands, but with a deadline for the payment instead of obtaining a lower price in cash ». In other words, the Respondent argues that the parties had verbally agreed that the interests on the second and third instalments for the transfer should already be included in the transfer amount.*

16. *Furthermore, the Single Judge observed that, apart from the above-mentioned letter, the Respondent*

did not provide any evidence in support of its assertion that the parties had verbally agreed that the costs for the bank guarantees should already be included in the transfer amount (cf. art. 12 par. 3 of the Procedural Rules).

17. *Consequently and in accordance with art. 12 par. 3 of the Procedural Rules, the Single Judge held that the letter dated 10 February 2011 had no evidential value and could therefore not be regarded as sufficient proof that such verbal agreement had actually been concluded, and that the Claimant would have agreed to the above-mentioned circumstances.*

18. *Furthermore, taking into consideration all the surrounding circumstances of this specific matter as well as the documentation presented during the proceedings, the Single Judge took into account the invoices which have been sent by the Claimant to the Respondent. In particular, the Single Judge analysed the invoices provided by the Claimant to the Respondent dated 23 November 2010 and 19 January 2012 as well as the correspondences exchanged between the parties in connection with such invoices and reminders dated 10 February 2011, 23 February 2011, 25 February 2011, 3 March 2011, 19 September 2011, 27 September 2011 and 19 January 2012. After a thorough analysis of said documentation, the Single Judge concluded that the amounts stipulated in said invoices could be linked to the above-mentioned bank guarantees.*

19. *In this respect, the Single Judge recalled the Respondent's argument that the legal and financial terms used on the invoice sent by the Claimant would not correspond with the terms which are usually used in the context of bank guarantees. In this respect, the Single Judge noted that the Respondent did not make reference to any specific legal or financials terms of the invoices of the bank nor did it provide any documentary evidence in this regard (cf. art. 12 par. 3 of the Procedural Rules). Equally, the Single Judge held that the Respondent never objected to the amounts stipulated on the respective invoices per se, since it only challenged its general obligation to pay any amounts to the Claimant.*

20. *In view of all of the above, the Single Judge concluded that the transfer agreement signed between the Claimant and the Respondent obligated the latter to bear all the expenses in relation to such bank guarantee as claimed by the Claimant, in particular in accordance with clause 2 of said agreement.*

21. *As a result of all the above, the Single Judge decided to accept the Claimant's claim and to award him the amount of EUR 407,700 plus 5% interest p.a. on said amount as of 29 June 2012 until the date of effective payment.*

22. *Lastly, the Single Judge referred to art. 25 par. 2 of the Regulations in combination with art. 18 par. 1 of the Procedural Rules, according to which, in proceedings before the Players' Status Committee including its Single Judge, costs in the maximum amount of CHF 25,000 are levied. The relevant provision further states that the costs are to be borne in consideration of the parties' degree of success in the proceedings (cf. art. 18 par. 1 of the Procedural Rules).*

23. *In respect of the above, and taking into account that the claim of the Claimant has been accepted, the Single Judge concluded that the procedural costs are to be borne by the Respondent.*

24. *According to Annex A of the Procedural Rule, the costs of the proceedings are to be levied on the basis of the amount in dispute.*

25. *On that basis, the Single Judge held that the amount to be taken into consideration in the present*

proceedings is EUR 407,700 related to the claim of the Claimant. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000 (cf. table in Annex A).

26. Considering that the case at hand and taking into account that the claim of the Claimant has been accepted as well as the complexity of the case, the Single Judge determined the costs of the current proceedings to the amount of CHF 15,000.

27. In view of all of the above, the Single Judge concluded that the amount of CHF 15,000 has to be paid by the Respondent to FIFA to cover the costs of the present proceedings".

23. The Decisions with their supporting grounds were notified to the parties on 20 September 2013.

2. THE ARBITRAL PROCEEDINGS

2.1 The CAS Proceedings

24. On 7 October 2013, OL filed a statement of appeal with the Court of Arbitration for Sport (hereinafter referred to as the "CAS"), pursuant to Article R48 of the Code of Sports-related Arbitration and Mediation (hereinafter referred to as the "Code"), to challenge the Lòpez Decision. In the statement of appeal, drafted in French, OL, *inter alia*, named Porto and FIFA as respondents and designated Mr François Klein as an arbitrator; at the same time, OL requested the stay of the Lòpez Decision. The proceedings so started were registered by the CAS Court Office as CAS 2013/A/3343, *Olympique Lyonnais v. FC Porto & FIFA (Lisandro López)*.

25. On the same 7 October 2013, OL filed a second statement of appeal with the CAS, pursuant to Article R48 of the Code, to challenge the Cissokho Decision. Also in this statement of appeal, drafted in French, OL named Porto and FIFA as respondents, designated Mr François Klein as an arbitrator; at the same time, OL requested the stay of the Cissokho Decision. The proceedings so started were registered by the CAS Court Office as CAS 2013/A/3344, *Olympique Lyonnais v. FC Porto & FIFA (Aly Cissokho)*.

26. On 11 October 2013, also Porto filed a statement of appeal with the CAS, pursuant to Article R48 of the Code, to challenge the Lòpez Decision. In this statement of appeal, drafted in English, Porto named OL and FIFA as respondents, designated Mr Rui Botica Santos as an arbitrator and requested that the arbitration be conducted in an expedited manner. The proceedings so started were registered by the CAS Court Office as CAS 2013/A/3348, *FC Porto v. FIFA & Olympique Lyonnais (Lisandro López)*.

27. On the same 11 October 2013, Porto filed a second statement of appeal with the CAS, pursuant to Article R48 of the Code, to challenge the Cissokho Decision. Also in this statement of appeal, drafted in English, the Appellant named OL and FIFA as respondents, designated Mr Rui Botica Santos as an arbitrator and requested that the arbitration be conducted in an expedited manner. The proceedings so started were registered by the CAS Court Office as CAS

2013/A/3349, *FC Porto v. FIFA & Olympique Lyonnais (Aly Cissokho)*.

28. In a letter of 14 October 2013, OL informed the CAS Court Office that it no longer intended to pursue its requests to stay the Decisions and that it wished the CAS proceedings it had started (CAS 2013/A/3343 and CAS 2013/A/3344) to be joined.

29. In four separate letters (two in French and two in English) of 16 October 2013, one for each of the appeal proceedings started against either of the Decisions, FIFA informed the CAS Court Office that it had noted that it had been named as a respondent in a dispute concerning contracts for the transfer of players, and that such dispute did not concern FIFA. In particular, FIFA stressed that *"the Single Judge of the Players' Status Committee acted in the matter at stake in his role as the competent deciding body of the first instance"*, that FIFA, therefore, was not a party to the dispute, that the challenged decisions were not of a disciplinary nature, and that no request against FIFA had been filed in the CAS proceedings. As a result, FIFA requested to *"be excluded from the procedure at stake"*.

30. In a letter dated 16 October 2013, OL indicated it did not wish to keep FIFA in the proceedings it had started (CAS 2013/A/3343 and CAS 2013/A/3344).

31. On 17 October 2013, OL filed its appeal brief in CAS 2013/A/3343 and CAS 2013/A/3344, in accordance with Article R51 of the Code, together with 35 exhibits.

32. On 17 October 2013, Porto informed the CAS Court Office that it wished the proceedings CAS 2013/A/3343 and CAS 2013/A/3344 to be conducted in the English language.

33. On 18 October 2013, the CAS Court Office acknowledged receipt of the letter of OL dated 16 October 20132, and informed the parties that FIFA was no longer to be considered a party to the proceedings CAS 2013/A/3343 and CAS 2013/A/3344.

34. On 18 October 2013, Porto expressed its consent to the consolidation of the proceedings, subject to the use of the English language and the appointment of a sole arbitrator.

35. In a letter of 21 October 2013, the CAS Court Office confirmed *inter alia* that the parties had agreed to the consolidation of the four procedures CAS 2013/A/3343, CAS 2013/A/3344, CAS 2013/A/3348 and CAS 2013/A/3349, and failing an agreement on the appointment of a sole arbitrator or of a Panel of three arbitrators, a decision on the point would be taken by the President of the CAS Appeals Arbitration Division. In the same way, a decision by the President of the CAS Appeals Arbitration Division would be taken, failing an agreement between the parties, as to the language of the procedure. At the same time, the parties were advised that expedited procedures would not be implemented.

36. On 21 October 2013, Porto filed its appeal briefs in CAS 2013/A/3348 and CAS 2013/A/3349, in accordance with Article R51 of the Code, together with 1 exhibit.

37. In a separate letter of 21 October 2013, then Porto designated Mr Rui Botica Santos as member

of the Panel also in CAS 2013/A/3343 and CAS 2013/A/3344, in the event no agreement could be reached for the appointment of a sole arbitrator.

38. On 21 October 2013, Porto informed the CAS Court Office that it wished to maintain FIFA as a respondent FIFA in the proceedings it had started (CAS 2013/A/3348 and CAS 2013/A/3349).

39. On 22 October 2013, OL indicated that it agreed that the arbitration be conducted in French by OL and in English by Porto, and that the four proceedings be submitted to a single Panel.

40. On 24 October 2013, Porto advised the CAS Court Office that it agreed to the exclusion of FIFA from the proceedings, that the four proceedings be heard by the same Panel or sole arbitrator, and that OL be entitled to proceed in French and Porto in English, with the communications from CAS and the hearing, if any, in English.

41. In a letter of 24 October 2013, the CAS Court Office advised the parties, *inter alia*, of the following:

"I note that FC Porto does not object that Olympique Lyonnais and FC Porto submit their submissions respectively in French and in English. However, I note that FC Porto requests that the procedure, i.e. the CAS correspondence, the hearing and the award, be in English. In view of the CAS constant jurisprudence on the language according to which (i) the language of the parties' counsels is not relevant for the choice of the language of the arbitration, and (ii) the language of the appealed decision is one of the main criteria for the choice of the language of the arbitration, the CAS has decided that its correspondence shall be drafted in English. If Olympique Lyonnais needs any assistance with respect to the content of the CAS letters, I remain at its disposal for assistance. Please be informed that it will be for the Panel or the Sole Arbitrator to issue directions with respect to the language of the hearing and of the award.

Furthermore, I note that the Appellant finally agrees to withdraw FIFA as a Respondent in the procedures CAS 2013/A/3348 and CAS 2013/A/3349 …. Therefore, … such procedures shall only concern FC Porto and Olympique Lyonnais".

42. On 25 October 2013, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division had decided that a Panel of three arbitrators would be appointed to hear the four consolidated procedures.

43. On 7 November 2013, OL filed its *"Mémoire"* in the consolidated proceedings, together with 36 exhibits, intended to be its answer pursuant to Article R55 of the Code.

44. In a letter dated 12 November 2013, Porto raised some procedural issues regarding the constitution of the Panel and the parties' right to be treated equally. More specifically, Porto indicated, as to the language of the procedure, that it could accept that OL filed its submissions in French only subject to some conditions, whose satisfaction had not been confirmed. It therefore requested a final decision that English would be the language of the proceedings. In addition, and *inter alia*, Porto requested that the arbitrator appointed by OL be asked to provide

some information regarding his statement of independence.

45. On 13 November 2013, the CAS Court Office indicated to the parties that the President of the CAS Appeals Arbitration Decision had decided that English would be the language of the hearing and of the award. At the same time, it confirmed that the questions asked by Porto had been forwarded to Mr Klein for an answer.

46. In the letter of 19 November 2013, OL invited the CAS Court Office to submit to the arbitrator appointed by Porto a list of questions. Mr Botica Santos answered those questions in an e-mail of the same 19 November 2013.

47. In an e-mail of 21 November 2013 Mr Klein provided his answers to the questions asked by Porto in the letter of 12 November 2013.

48. On 27 November 2013, Porto submitted its answers pursuant to Article R55 of the Code, together with 33 exhibits. Such exhibits included:

    i. the texts of two *"loans"* (*"Financiamento n° EC0106660/09"* for EUR 10,000,000 and *"Financiamento n° EC0106659/09"* for EUR 14,000,000) between BES and Porto dated 30 July 2013 (hereinafter referred to as the "Credit Facility Agreements"); and

    ii. the text of three assignment contracts dated 17 November 2009, 22 January 2010 and 28 January 2010 between Porto and BES (hereinafter referred to as the "Assignment Contracts").

49. On 29 November 2013, the CAS Court office forwarded to the parties the answers filed by OL on 7 November 2013 and the answer filed by Porto on 27 November 2013.

50. In a letter of 3 December 2013, OL indicated, *inter alia*, that Porto, in its answer, had raised issues never discussed before the FIFA. It therefore requested to be allowed to file an additional written submission.

51. On 6 December 2013, Porto requested that the OL's application regarding the authorization to lodge an additional written submission be dismissed.

52. By communication dated 9 December 2013, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; Mr François Klein and Mr Rui Botica Santos, arbitrators.

53. On 13 December 2013, OL insisted in its request to be authorized to lodge new written submissions.

54. On 17 December 2013, the CAS Court Office, writing on behalf of the Panel, informed the parties that the OL's request for a further round of submission had been accepted: therefore,

OL was allowed to lodge a reply to the Porto's answer of 27 November 2013; Porto was then granted a subsequent deadline to answer the reply of OL.

55. On 2 January 2014, OL filed its *"Mémoire recapitulative n. 2"*, with 8 additional exhibits.

56. On 7 February 2014, Porto filed its *"Final Submission"* together with 2 new exhibits and an updated version of another one. In filing this *"Final Submission"*, Porto indicated that it contained its complete submissions for the four consolidated arbitrations.

57. On 11 March 2014, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (hereinafter referred to as the "Order of Procedure"), which was accepted and countersigned by the parties.

58. In letters of 17 March 2014, OL and Porto indicated the names of the persons who would attend the hearing as their representatives, witnesses and counsel.

59. On 24 April 2014, Porto indicated that one of the witnesses indicated in the letter of 17 March 2014 was no longer available. As a result, it requested the Panel to be authorized to replace him with another witness, to testify on the same circumstances.

60. On 29 April 2014, the Panel granted such application, noting that the new witness was called to render declarations on the same issues as the replaced one.

61. A hearing was held on 30 April 2014 on the basis of the notice given to the parties in the letter of the CAS Court Office dated 10 March 2014. The Panel was assisted at the hearing by Mr Fabien Cagneux, Counsel to CAS. The following persons attended the hearing:

    i. for OL: Mr Jean Michel Aulas, President, Ms Emmanuelle Sarrabay, *Directrice Générale Adjointe – Finance*, Mr Vincent Ponsot, *Directeur Général Adjoint*, and Mr Joseph Aguera, counsel;

    ii. for Porto: Mr Daniel Lorenz, Legal Director, Mr Karim Piguet and Mr David Casserly, counsel.

62. At the hearing, the Panel indicated that Mr Aulas and Mr Lorenz would be treated as parties' representatives with respect to any declaration they would render. The Panel then heard the depositions of:

    i. Mr Hugo Alves, who declared that he joined Porto as an accountant in July 2010, after the "discount" operation with BES had been arranged, and explained the meaning a "bank discount" transaction has in his opinion;

    ii. Mr Miguel Oliveira, commercial director at BES in the city of Porto, who explained the financing agreements entered into between BES and Porto in connection with the Transfer Agreements, with specific reference to their nature and content. In that connection, Mr Oliveira confirmed that BES had advanced to Porto a sum corresponding

to the fees that Porto was to receive under those Transfer Agreements, and that such transactions had the nature of a "credit discount": the circumstance that the interest is calculated and paid at maturity, when the bank is to be reimbursed, and is not immediately deducted from the amount advanced, does not change the nature of that operation;

iii. Mr Fernando Gomes, current President of the Portuguese Football Federation, who, at the time that the Transfer Agreements were signed, was a member of the board of directors of Porto, involved in the negotiations with OL in their connection. Mr Gomes answered questions to what was agreed between the parties in relation to such Transfer Agreements, and indicated that there was no objection raised with respect to their Article 2.1, even after the signature of the Lòpez Transfer Agreement and before the subsequent signature of the Cissokho Transfer Agreement;

iv. Mr Marino Faccioli, *Directeur Général Adjoint* of OL until 2010 (and currently *Directeur Administratif* of the French national football team), who participated in the negotiations of the Transfer Agreements with Porto. Mr Faccioli denied that any discussion had taken place with respect to the payment of interest on the amounts agreed: OL, indeed, had understood that under Article 2.1 of the Transfer Agreements only the costs for the issuance of the bank guarantees therein mentioned had to be borne by OL. During the negotiation regarding Lòpez the transfer fee was agreed in the amount of EUR 24,000,000 only because Porto so requested, and was not determined taking into account that payment had to be in subsequent instalments.

63. At the same time, Porto waived its request that also Mr Antonio Manuel Martins Amaral, available to testify on the phone, be also heard. Such waiver followed the Panel's indication that the deposition of Mr Martins Amaral, on the same circumstances covered by the deposition of Mr Oliveira, was not necessary. The parties, then, made submissions in support of their respective cases. In addition, and in such context, Mr Aulas, President of OL, *inter alia*, declared that at the time the Lòpez Transfer Agreement was negotiated, and finally signed, OL probably misunderstood its Article 2.1, as it had accepted only to bear the costs of the issuance of the bank guarantee to be discounted by Porto.

64. At the conclusion of the hearing, the parties expressly stated that they did not have any objection in respect of their right to be heard and to be treated equally in these arbitration proceedings.

65. After the hearing, OL submitted copy of the correspondence with FIFA relating to the filing of its submissions before the single judge.

66. On 21 May 2014, Porto indicated that it had received copy of the OL's final submission before FIFA, but that on 3 July 2013 it had been informed that no further documentation could be admitted into the file. Therefore, *"despite FC Porto finding the claims in Lyon's submission to be unfounded, it could not respond to them"*.

67. On 27 May 2014, OL replied to Porto's letter of 21 May 2014. On the same day, the CAS Court Office invited the parties to refrain from filing unsolicited briefs.

2.2 The Position of the Parties

68. The following outline of the parties' positions is illustrative only and does not necessarily comprise every contention put forward by the parties. The Panel, indeed, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

a. The Position of OL

69. In its prayers for relief in CAS 2013/A/3343 and in CAS 2013/A/3344, as indicated in the respective statements of appeal and confirmed in the appeal briefs, OL requested the Panel the following:

"Réformer en toutes leurs dispositions les deux décisions rendues le 29 juillet 2013 par le Juge unique de la Commission du Statut du Joueur de la FIFA.

Statuant à nouveau,

À TITRE PRINCIPAL,

Dire et juger irrecevable la requête du FC PORTO en date du 29 juin 2012 à défaut d'exposé des faits et motifs de la demande et, en conséquence et en tant que de besoin, le débouter de l'ensemble des ses fins, moyens et prétentions dont les premiers juges n'avaient pas été valablement saisis.

À TITRE SUBSIDIAIRE,

Dire et juger que le FC PORTO n'apporte pas la preuve dont la charge lui incombe et, en conséquence, le débouter de l'ensemble de ses fins, moyens et prétentions.

À TITRE PLUS SUBSIDIAIRE,

Dire et juger que les intérêts et coûts, objet des prétentions du FC PORTO, ne se rapportent pas à l'escompte de garanties bancaires, mais à des prêts.

Dire et juger qu'au travers des conventions de mutation en dates 6 et 17 juillet 2009, l'OLYMPIQUE LYONNAIS n'a pas pris l'engagement de payer au FC PORTO des intérêts et coûts d'emprunts et, en conséquence, le débouter de l'ensemble de ses fins, moyens et prétentions.

EN TOUT ETAT DE CAUSE,

Condamner le FC PORTO à supporter et à payer la totalité des frais de l'arbitrage.

Condamner le FC PORTO à contribuer aux frais d'avocats engagés par l'OLYMPIQUE LYONNAIS à concurrence de 20.000 €".

70. In the prayers for relief in CAS 2013/A/3343 and in CAS 2013/A/3344, as set out in the answers to the appeals brought by Porto, OL requested the CAS to:

"Réformer en toutes leurs dispositions les deux décisions rendues le 29 juillet 2013 par le Juge unique de la Commission du Statut du Joueur de la FIFA.

Statuant à nouveau,

À TITRE PRINCIPAL,

Dire et juger irrecevable la requête du FC PORTO en date du 29 juin 2012 à défaut d'exposé des faits et motifs de la demande et, en conséquence et en tant que de besoin, le débouter de l'ensemble des ses fins, moyens et prétentions dont les premiers juges n'avaient pas été valablement saisis.

À TITRE SUBSIDIAIRE,

Dire et juger irrecevables les prétentions nouvelles que le FC PORTO tire da sa facture en date du 31 décembre 2011 (… 405 739,05 € pour Lisandro LOPEZ et 334 948,73 € pour Aly CISSOKHO).

Dire et juger que le FC PORTO n'apporte pas la preuve dont la charge lui incombe et, en conséquence, le débouter de l'ensemble de ses fins, moyens et prétentions.

À TITRE PLUS SUBSIDIAIRE,

Dire et juger que les intérêts et coûts, objet des prétentions du FC PORTO, ne se rapportent pas à l'escompte de garanties bancaires, mais à des prêts.

Dire et juger qu'au travers des conventions de mutation en dates 6 et 17 juillet 2009, l'OLYMPIQUE LYONNAIS n'a pas pris l'engagement de payer au FC PORTO des intérêts et coûts d'emprunts et, en conséquence, le débouter de l'ensemble de ses fins, moyens et prétentions.

EN TOUT ETAT DE CAUSE,

Condamner le FC PORTO à supporter et à payer la totalité des frais de l'arbitrage.

Condamner le FC PORTO à contribuer aux frais d'avocats engagés par l'OLYMPIQUE LYONNAIS à concurrence de 20.000 €".

71. Such prayers for relief have been finally summarized by OL in its *"Mémoire recapitulatif n° 2"* relating to the 4 consolidated CAS proceedings, as follows:

"l'OLYMPIQUE LYONNAIS conclut à ce qu'il plaise au Tribunal Arbitral du Sport, …

Réformer en toutes leurs dispositions les deux décisions rendues le 29 juillet 2013 par le Juge unique de la Commission du Statut du Joueur de la FIFA.

Statuant à nouveau,

Dire et juger irrecevable les prétentions nouvelles que le FC PORTO tire de sa facture en date du 31 décembre 2011 (… 405 739,05 € pour Lisandro LOPEZ et 334 948,73 € pour Aly CISSOKHO).

Débouter le FC PORTO de l'ensemble de ses fins, moyens et prétentions.

Condamner le FC PORTO à supporter et à payer la totalité des frais de l'arbitrage.

Condamner le FC PORTO à contribuer aux frais d'avocats engagés par l'OLYMPIQUE LYONNAIS à concurrence de 60.000 € (30.000 € par procédure d'arbitrage.

Condamner le FC PORTO à contribuer aux frais d'interprète engagés par l'OLYMPIQUE LYONNAIS à concurrence de 6.000 € ainsi, le cas échéant, qu'aux frais de témoins à concurrence de 6.000 € ".

72. In other words, OL requests this Panel to dismiss all the Porto's claims, as submitted before FIFA and granted in the Decisions (to be set aside), and/or brought in this arbitration.

73. In support of this position, OL invokes a number of reasons, relating to the Decisions or directly referred to the claims advanced by Porto.

74. Preliminarily, however, OL challenges the admissibility of the Porto's appeals against the Decisions. In the OL's opinion, in fact, Porto was entirely successful in the FIFA proceedings. As a result, Porto, having prevailed, cannot challenge the Decisions, which accepted its claims in their entirety, following their reduction. Such modification, indeed, was not the result of a clerical mistake (or *lapsus calami*) committed by Porto, nor was it an error of interpretation, to be imputed to the Single Judge, who, on the contrary, correctly assessed the requests submitted by Porto and their evolution during the proceedings: it was a choice of Porto.

75. Contrary to such conclusion, in the opinion of OL, it is not possible to invoke Article R57 of the Code, and the *de novo* nature of the CAS proceedings. Under such provision, in fact, CAS can only *"exercer son pouvoir de cognition complet en connaissance des prétentions qui avaient été soumises en premier instance et tranchées par les premiers juges"*.

76. OL, then, criticizes the Decisions, to the extent they granted the Porto's claims, and maintains that the Single Judge failed to properly consider (and actually misunderstood) the line of reasoning developed by OL in its submissions before him. In other words, the Single Judge dismissed some arguments that were never raised, and did not examine those that had been properly submitted. In essence, the position of OL was (and still is) that the claims brought by Porto refer to interests on loans it had obtained from BES, and not to the discount of bank guarantees, and that OL never agreed to reimburse interests relating to financing agreements entered into by Porto.

77. Such position is developed by OL in a number of directions, intended to show that the Porto's claims are devoid of any merits, relating *inter alia* to the identification of the nature of the transactions entered into by Porto with BES, and to the interpretation of the provision of the Transfer Agreements on which the Porto's claims are based.

78. With respect to the transactions entered into by Porto with BES, OL (i) first identifies the elements of banking "discount" operations, and (ii) then denies that those elements are present in the actual transactions between Porto and BES. In that connection, OL:

    i. underlines that:

        - discount rates are not the same as interest rates on credits on bank accounts, since the structure of discount operations and loan transactions is different;
        - credit discount implies the transfer (assignment) of a credit by the client to the bank and the anticipated deduction of interest. As a result, under such operation, the client would receive an amount corresponding to the assigned credit, less the amount of interest, to be calculated for the period between the date on which the

anticipation is made and the date of maturity of the assigned credit; the bank, then, would receive the reimbursement from the debtor of the assigned credit, and not by its client; and

ii. notes that:

- the Credit Facility Agreements:
  - bear a date (30 July 2009) before the date bank guarantees had to be issued according to the Transfer Agreements, and before the date in which the Guarantees were actually issued;
  - are standard loan contracts, intended to offer cash flow support;
  - provide for repayment to be guaranteed by promissory notes issued by Porto;
  - mention the Transfer Agreements only incidentally, in the *"Other Provisions"* section; and therefore:
  - do not qualify as providing for a "credit discount", as *inter alia*
    - ✓ they do not refer to an assignment to BES of the credit Porto had towards OL,
    - ✓ the interest was not deducted in advance from the amount lent by BES to Porto,
    - ✓ the interest rate applied does not differ from ordinary rates for credit facilities on current account, and
    - ✓ their nature as credit facilities on current account was indicated as such by Porto in its financial statements;
- the Assignment Contracts cannot be established as valid, since the Guarantees were not transferable and, in any case, BES could not be assigned the guarantee it had issued. In addition, they could not lead to the characterization of the Credit Facility Agreements as operations for "credit discount", since the loans were not connected to the Guarantees, and interest rates under the Credit Facility Agreements were not reduced after the Guarantees were issued (as they should have, since secured loans bear lower rates than the unsecured ones);
- it is suspicious that Porto, having failed to do so before FIFA, filed only in these CAS proceedings the texts of the agreements (the Credit Facility Agreements and the Assignment Contracts) it had entered into with BES, which is an entity strictly related to Porto (BES was the owner of the premises where the Lòpez Transfer Agreement was negotiated and is one of the main sponsors of Porto). Therefore, *"il existe … une forte communauté d'intérêts entre … Porto et cette banque, communauté à propos de laquelle l'on est fondé à se demander si elle serait suffisante pour les inciter à régulariser entre eux et pour les besoins de la cause ces conventions versées si tardivement"*;
- there is no evidence that the amounts corresponding to the interests on such loans, the reimbursement of which is claimed from OL, were actually paid;
- the examination of the Credit Facility Agreements and of the bank statements

transmitted to OL together with the Invoices does not allow a verification of the calculations – and possibly leads to absurd results.

79. With respect to the interpretation of the provision (Article 2.1 of the Transfer Agreements) on which the Porto's claims are based, OL makes reference to the rules on interpretation of contracts under Swiss law (Article 18 of the Swiss Code of Obligations – hereinafter referred to as the "CO"), to show that Porto's claims are untenable and should be dismissed. More exactly, OL submits that:

i. under a "literal" interpretation of Article 2.1, the only conclusion that could be drawn is that OL accepted to bear the costs of the discount of bank guarantees – which never occurred;

ii. under a "subjective" interpretation, the common intention of the parties should be established. However, it was never the intention of OL to support financing operations to be entered into by Porto, by agreeing to reimburse the interests to be paid in respect of them, as evidenced by the history of the negotiations and by the position immediately taken by OL upon receipt of the Invoices. On the other hand, the long time taken by Porto to invoice OL for the interests it had allegedly to reimburse shows that Porto was aware that it was not entitled to such reimbursement; the same conclusion could be reached by observing the evolution of the position of Porto, when it eventually came to raise such claim, variously describing the nature of the financing operations it had entered into with BES;

iii. under an "objective" interpretation, the presumed intention of the parties should be determined, in light of the good faith principle. Under it, it is not possible to hold that OL had accepted to bear all costs relating to the discount of the payments due under the Transfer Agreements, since in the negotiations and in Article 2.1 of the Transfer Agreements no reference was made to any financing operations: OL simply obtained to pay in several instalments, to be secured by bank guarantees, with the costs of issuance of them to be reimbursed by OL;

iv. under the *"contra proferentem"* rule, the meaning of Article 2.1 of the Transfer Agreements should be held against Porto, which drafted it;

v. in any case, the conclusion that pursuant to Article 2.1 of the Transfer Agreements OL had accepted to bear all costs relating to the discount of the payments due under the Transfer Agreements would not help Porto, since the Credit Facility Agreements, as mentioned, do not provide for a credit discount.

b. The Position of Porto

80. In its prayers for relief, as indicated in the statements of appeal it had filed and confirmed in its appeal briefs, Porto requested the CAS:

i. in CAS 2013/A/3348:

"a) To correct the amount mentioned on the decision appealed to EUR 909.139,04 plus 5% (five per cent) of interests per annum until effective payment is made, and consequently obligate the RESPONDENT, Olympique Lyonnais, to immediately make the aforesaid payment to the APPELLANT in the amount of EUR 909.139,04 plus 5% (fine per cent) of interests per annum until effective payment is made;

b) To confirm the decision of the Single Judge of the Player's Status Committee of FIFA, in what refers to the acceptance of FC Porto claim and to rectify the amount to EUR 909.139,04 plus 5% (five per cent);

c) That all the costs of this arbitration procedure have to be paid by the RESPONDENT;

d) That as compensation for the legal costs assumed by the APPELLANT, the RESPONDENT has to pay an amount not minor that EUR 30.000 (thirty thousand euros)";

ii. in CAS 2013/A/3349:

"a) To correct the amount mentioned on the decision appealed to EUR 742.648,78 plus 5% (five per cent) of interests per annum until effective payment is made, and consequently obligate the RESPONDENT, Olympique Lyonnais, to immediately make the aforesaid payment to the APPELLANT in the amount of EUR EUR 742.648,78 plus 5% (fine per cent) of interests per annum until effective payment is made;

b) To confirm the decision of the Single Judge of the Player's Status Committee of FIFA, in what refers to the acceptance of FC Porto claim and to rectify the amount to 742.648,78 plus 5% (fine per cent);

c) That all the costs of this arbitration procedure have to be paid by the RESPONDENT;

d) That as compensation for the legal costs assumed by the APPELLANT, the RESPONDENT has to pay an amount not minor that EUR 30.000 (thirty thousand euros)".

81. In the prayers for relief set out in the answers to the appeals brought by OL, Porto requested the CAS to:

i. in CAS 2013/A/3343

"(i) Amend the terms of the decision of the Single Judge of the FIFA Player's Status Committee dated 29 July 2013 regarding the transfer of Mr Lisandro Lopez, to order Olympique Lyonnais to pay FC Porto an amount of EUR 909,139.04, plus 5% (five per cent) interest per annum until effective payment is made;

(ii) Confirm the decision of the Single Judge of the FIFA Player's Status Committee to order Olympique Lyonnais to pay the costs of the proceedings before FIFA in the amount of CHF 20,000, including an amount of CHF 5,000 to be paid to FC Porto directly;

(iii) Order Olympique Lyonnais to pay the full amount of the CAS arbitration costs;

(iv) Order Olympique Lyonnais to pay a significant contribution towards the legal costs and other related expenses to FC Porto, at least in the amount of € 30,000";

ii. in CAS 2013/A/3344

"(i) Amend the terms of the decision of the Single Judge of the FIFA Player's Status Committee dated 29 July 2013 regarding the transfer of Mr Aly Cissokho, to order Olympique Lyonnais to pay FC Porto an amount of EUR 742,648.78, plus 5% (five per cent) interest per annum until effective payment is made;

(ii) Confirm the decision of the Single Judge of the FIFA Player's Status Committee to order Olympique Lyonnais to pay the costs of the proceedings before FIFA in the amount of CHF 15,000;

(iii) Order Olympique Lyonnais to pay the full amount of the CAS arbitration costs;

(iv) Order Olympique Lyonnais to pay a significant contribution towards the legal costs and other related expenses to FC Porto, at least in the amount of € 30,000".

82. In other words, Porto requests this Panel to set aside the Decisions and order OL to pay amounts larger than those awarded by the Single Judge. Such requests have been finally confirmed in the submission of 7 February 2014, which contains *"Porto's complete submissions for the four consolidated arbitrations"*.

83. Preliminarily, however, Porto confirms its standing to challenge the Decisions.

84. In that respect, Porto contends that following the appeals filed by OL, the Single Judge's findings regarding the liability of OL towards Porto is properly before CAS. As a consequence, the Porto's standing to appeal is a moot point, as Porto may file submissions on that issue due to its role as respondent to those appeals.

85. In addition, Porto submits that it has a concrete interest to challenge the Decisions, since the Single Judge did not grant the full relief that Porto had sought: in fact, it was awarded lower amounts than those it had requested in its initial claims. Porto submits indeed that, notwithstanding the confusion that the submission before the Single Judge of 19 April 2013 may have created, *"not only did it not expressly or implicitly amend its claim, but such interpretation by the Single Judge was in direct contradiction with … Porto's submission and the evidence it provided"*: the brief of 19 April 2013, in fact, contained a reference to the initial claims and to the evidence, which supported them in their entirety. In any case, Porto has standing to challenge the points of the Decisions referring to the reduction of the claimed amounts.

86. In support of its substantive claims, Porto:

i. explains the reasoning behind Article 2.1 of the Transfer Agreements, and contends that during the negotiations for the transfer of the Players, Porto communicated very clearly that, for cash flow purposes, it wished to receive the amount corresponding to the agreed transfer fees. Porto informed OL, therefore, that only one of two options would be acceptable regarding the terms of payment: either (a) OL would pay the full amounts upfront. or (b) Porto would enter into a bank discount agreement in order to anticipate the corresponding amounts, but OL would have to assume all costs involved. OL then

accepted to assume all costs involved in the bank discount agreements entered into by Porto in order to benefit from the possibility to pay the transfer fees in instalments over a two-year period. This agreement is reflected in Article 2.1 of the Transfer Agreement, under which *"OL agrees the responsibility of all the costs derived from the anticipated discount of such bank guarantees"*;

ii. indicates its interpretation of Article 2.1 of the Transfer Agreements, which is, in Porto's opinion, the only issue in dispute in this arbitration: in fact, it cannot be contested that Porto actually paid to BES the amounts it is now claiming from OL, since the bank statements attached to the Invoices are themselves a confirmation of the payment to BES. According to Porto, pursuant to Article 2.1 of the Transfer Agreements, OL was to bear all costs related to the advance of funds that Porto would need to obtain in order to meet its liquidity needs. The contrary contentions of OL are untenable. In fact:

- Article 2.1 of the Transfer Agreements did not have the purpose of allocating the costs of the issuance of the Guarantees. Its wording, in fact, does not refer to the costs of the issuance, but to the anticipated discount of the Guarantees. In addition, such costs would, have, in any case, to be borne by OL, being the party requesting its bank to issue the Guarantees;
- the transactions concluded between Porto and BES fall within the scope and purpose of Article 2.1 of the Transfer Agreements, as Porto finances itself by means of a bank discount. Such conclusion is based on a proper assessment of:
  - ✓ the legal and financing aspects of a bank discount. In Swiss law (and in banking practice), a bank discount agreement is a bilateral contract between a bank and a client, which allows a seller (the creditor, client of a bank) to anticipate, for a price, the receipt of a given amount of money which it would otherwise only receive upon the expiry of the deadline that was granted to the buyer (the debtor) for the relevant payment. Under it, and for such purpose: the amounts under the credits held by the seller against the buyer are assigned to its bank; against the assignment of these amounts the bank undertakes to advance a given amount in cash; the client undertakes to pay interest and commission to the bank on the amount advanced; the seller undertakes to reimburse all amounts due to the bank in case of non-fulfilment by the debtor;
  - ✓ the legal and financing aspects of a bank guarantee on first demand, which provides for the commitment of the bank to honour the payment obligations of a debtor even if the underlying obligation is extinguished for any reason, and therefore puts the creditor in a very strong legal position;
  - ✓ the relationship between a bank discount and a guarantee, as the latter satisfies the bank that the underlying debtor would in any case be honoured, thus allowing the bank to recover the amount it has advanced to its client, with a direct impact on the conditions charged by the bank to the discount. It is for that reason that, in day to day finance transactions, parties have become used to referring to the *"discount of bank guarantees"*. Although this

phrase has become commonplace, it is technically inaccurate, as what is actually being discounted is the credit assigned to the bank in exchange for the cash advance, rather than the bank guarantee which serves the purpose of ensuring that the credit will be paid by the debtor upon maturity;

- ✓ the transactions between Porto (the creditor) and BES (its bank), as also described in Porto annual financial statements, under which Porto undertook to transfer to BES the credits for the all amounts payable by OL, BES made available a credit facility, Porto undertook to pay interest and commission, and to reimburse to BES all amounts due. A key element in that context was offered by the Guarantees: they were not mentioned in the Credit Facility Agreements, as at the time these were signed, the Guarantees had not been issued yet. However, BES satisfied itself that they would be issued and, upon their receipt, Porto would transfer its rights under them to BES. Which is what actually happened;
- ✓ the transfer of rights under the Guarantees. Indeed, Porto did not transfer the Guarantees: it simply assigned the rights under them to BES, including under those of the Guarantees issued at the request of HSBC France;
- ✓ the timing of the issuance of the Guarantees. The object of the bank discount was the credit held by Porto over OL arising from the Transfer Agreements. Therefore, the fact that the Guarantees had not yet been issued when the Credit Facility Agreements were entered into does not affect the nature of the transaction at stake. In addition, the fact that the Guarantees were issued later in time does not affect their relevance to the transaction, as said relevance had already been attributed to them by BES when it analyzed the Transfer Agreements and confirmed that there was an unreserved commitment by OL to providing them. Evidence of this is the fact that Porto did indeed transmit the rights arising from the Guarantees to BES upon receiving them;
- ✓ the assignment of the credits, as, *inter alia*, pursuant to Swiss law, OL did not have to be notified of the assignment to BES of the Porto's credits. In addition, under the Credit Facility Agreements, Porto undertook to transfer to BES all the amounts it would receive under the Transfer Agreements;
- ✓ the difference between the amounts made available by BES and the amounts to be paid by OL. The fact that the amounts advanced pursuant to the Credit Facility Agreements do not exactly correspond to the amount of credit held by Porto under the Transfer Agreements does not affect the nature of the transaction, as a bank discount is a credit facility and the credits assigned were simply a way of discharging the repayment obligation. In fact, the credits assigned by the client to its bank in exchange for the credit made available are assigned in order to satisfy that credit made available, but the client shall remain responsible towards the bank for any amounts not covered by the payments made by the debtor of the credit. In other words, if all amounts

which were paid by OL under the Transfer Agreement would not be sufficient to cover the credit made available to Porto, then Porto would be responsible for providing the difference to BES, pursuant to BES' right of recourse;

- ✓ the fact that interest was not deducted in advance, since there is no rule in this respect and in many bank discount transactions the discount is invoiced and paid later. In addition, no specific agreement existed between Porto and OL regarding how the discount was to be executed.
- ✓ the bank discount is a financial transaction and a type of credit transaction, *i.e.* a type of loan;
- ✓ the interest rate applicable to bank discounts, as there is no rule, in Switzerland on Portugal, that the interest rates negotiated in the context of a bank discount would have to be lower than the interest rate applicable to any "classic" loan;
- ✓ the late sending of the invoices, since OL did not formulate any claim in relation to its argument that Porto was late in submitting the Invoices for payment. In any case, Porto had not committed to submit said Invoices at any particular time, and no time bar applies;

• the interpretation under Swiss law. For the purposes of literal interpretation, it is to be noted that Article 2.1 of the Transfer Agreements clearly states that OL would be responsible for supporting all costs incurred with a bank discount of the credits held by Porto under the Transfer Agreements. If, however, it is considered that the clause is ambiguous, then, according to Swiss law, said clause is to be interpreted according to the real intention of the Parties (subjective interpretation). Porto always communicated clearly that it wished to receive the full amount of the transfer fees upon the transfer of the Players (either directly from OL, or through financing with a bank). There can be no doubt that the Parties wanted to allocate the responsibility for the aforementioned costs to OL. This is further made clear by the fact that OL adopted inconsistent positions on this issue since the beginning of the dispute and by the fact that OL did not raise any objection for three months after receiving the first invoice. Furthermore, OL has never provided any alternative explanation of what obligation it committed to by agreeing to Article 2.1, if it was not that which is affirmed by Porto. If, for any reason, the Panel considers that the real intention of the Parties is not ascertainable, then Porto submits that, in accordance with the objective test prescribed under Swiss law, Porto could not, for the aforementioned reasons, have interpreted OL's commitment under Article 2.1 any differently. In addition, the interpretation offered by OL would be contrary to the principle of effectiveness (*"ut res magis valeat quam pereat"*), since it would devoid a portion of Article 2.1 of any meaning. On the other hand, the *"contra proferentem"* rule is not relevant, since the Transfer Agreements were prepared and extensively negotiated by both parties.

87. Finally, Porto challenges the portions of the Decisions, which awarded it interest starting from the date on which its claims with FIFA were filed. In Porto's opinion, in fact, according to Articles 102.1 and 104.1 CO, interest should be paid from the date on which Lyon defaulted its payment obligations.

3. LEGAL ANALYSIS

3.1 Jurisdiction

88. CAS has jurisdiction to decide the dispute between the parties object of these proceedings. In fact, the jurisdiction of CAS is not disputed by the parties and has been confirmed by the Order of Procedure.

89. In any case, the CAS jurisdiction is contemplated by the Statutes of FIFA (edition 2013, in force at the time the appeal to CAS was filed) as follows:

Article 66

"1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players' agents.

2. 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".

Article 67

"1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.

2. Recourse may only be made to CAS after all other internal channels have been exhausted.

3. CAS, however, does not deal with appeals arising from:

(a) violations of the Laws of the Game;

(b) suspensions of up to four matches or up to three months (with the exception of doping decisions);

(c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made.

4. The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect. […]".

90. In addition, the CAS jurisdiction had been agreed upon by the parties, as Article 7 of the Transfer Agreements provides that:

"Any and all disputes will be handled by the competent FIFA committee, with possibility of appeal before the Court of Arbitration for Sports (CAS) for final decision".

3.2 Appeal Proceedings

91. As these proceedings involve appeals against decisions rendered by FIFA, brought on the basis of rules providing for an appeal to the CAS, in matters relating to contracts, they are considered and treated as appeal arbitration proceedings in non-disciplinary cases, in the meaning and for the purposes of the Code.

3.3 Admissibility

92. The statements of appeal were filed by OL (CAS 2013/A/3343 and CAS 2013/A/3344) and by Porto (CAS2013/A/3348 and CAS 2013/A/3349) within the deadline set in Article 67.1 of the FIFA Statutes. No further internal recourse against the Decisions is available to OL and Porto within the structure of FIFA.

93. The admissibility of the appeals filed by OL is not challenged by Porto. It is therefore confirmed.

94. On the other hand, the admissibility of the appeals filed by Porto is disputed by OL. In essence, OL submits that Porto obtained from the Single Judge the relief it had sought, and therefore cannot now criticize the Decisions, which correspond to its claims.

95. The Panel agrees with OL that in order for an appeal to be admissible it is necessary that the appellant has an interest in the setting aside of the challenged decision, and that the appellant is directly affected by that decision. In other words, it is necessary that the appellant has a claim against the decision issued by the sport-related entity, which did not grant what the appellant had requested from it. Indeed, if such decision had entirely granted the relief sought, no "appeal" could be conceived: in that situation the very existence of a "dispute" that the appellant could identify as a basis for the arbitration could be dubious.

96. The Panel, however, notes that Porto contends, in the CAS arbitration proceedings it has started, that the Single Judge did not award it the entirety of the requests it had lodged with FIFA. In its petition of 29 June 2012 (see § 19 above), in fact, Porto requested FIFA to order OL to pay the amount of EUR 909,139.04 under the Lòpez Transfer Agreement and the amount of EUR 742,648.78 under the Cissokho Transfer Agreement, as well as interest at 5% p.a. on those amounts. The Decisions, in the end, only granted the amounts corresponding to the 2010 Invoices (EUR 503,399 under the Lòpez Transfer Agreement and EUR 407,700 under the Cissokho Transfer Agreement), with interest accruing from the date of the petition to FIFA, as the Single Judge found that the initial claim had been modified in the course of the proceedings. Such reasoning is challenged by Porto, which submits that the claim was never modified – and in any case that interest had to be applied with a different starting date.

97. As a result, the Panel finds that Porto has an actual interest in the setting aside of the Decisions, in order to obtain an award acknowledging that no modification of the initial claim had been made and/or identifying a different starting date for interests to accrue. In other words, in that

respect, there is an actual dispute concerning the Decisions.

98. The extent of such interest, however, marks a limit to the admissibility of the Porto's appeals, and to its request to be granted the relief it had initially requested from FIFA. In fact, should the Panel find that, contrary to its submissions, Porto had actually modified its claims in the course of the FIFA proceedings, no possibility could be found for it to raise anew the claim it had partially forfeited. In fact, in that situation, the Single Judge would be held to have granted in their entirety the remaining claims, with no possibility for Porto to challenge the Decisions beyond the issue of the starting date of interests.

99. Such conclusion remains unaffected by the fact that Porto is a respondent in the appeals brought by OL. Indeed, failing a counterclaim (by way of separate independent appeals), any petition of Porto going beyond the confirmation of the challenged Decisions could not be entertained.

100. In the measure clarified above, therefore, the appeals filed by Porto are admissible.

3.4 Scope of the Panel's Review

101. According to Article R57 of the Code,

"the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. …".

3.5 Applicable Law

102. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code.

103. Pursuant to Article R58 of the Code, the Panel is required to decide the dispute

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

104. In the present case the *"applicable regulations"* for the purposes of Article R58 of the Code are, indisputably, the FIFA's regulations, because the appeal is directed against a decision issued by FIFA, which was passed applying FIFA's rules and regulations. More precisely, the Panel agrees with the DRC that the regulations concerned – apart from the FIFA Statutes – are particularly the RSTP 2010, in force since 1 October 2010, as the petition to FIFA was received on 29 June 2012, before after the entry into force of the subsequent edition of the RSTP.

105. At the same time, the Panel notes that:

i. in accordance with Article 7 of the Lòpez Transfer Agreement and Article 7 of the Cissokho Transfer Agreement:

"The PARTIES hereby agree that this Agreement is governed by the FIFA Regulations and the Swiss Law, which shall be both applicable to it on an exclusive basis";

ii. pursuant to Article 66.2 of the FIFA Statutes:

"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".

106. As a result, in addition to the FIFA's regulations, Swiss law applies to the merits of the dispute.

3.6 The Dispute

107. The object of these consolidated proceedings are the Decisions, which ordered OL to pay to Porto the amounts indicated in the 2010 Invoices pursuant to Article 2.1 of the Lòpez Transfer Agreement and of the Cissokho Transfer Agreement. OL disputes these findings, and submits that no payment had to be ordered. On the other hand, Porto contends that OL should be ordered to pay not only the amounts mentioned in the 2010 Invoices, but also the amount indicated in the 2011 Invoice, as Porto had initially requested from FIFA; and in any case that the payments to be made by OL should bear interests having a starting date other than that decided by the Single Judge. Porto claims that all such amounts are due under Article 2.1 of the Transfer Agreements; on the other hand, OL maintains that it never agreed to reimburse Porto for the cost of the financing of its activity under the Credit Facility Agreements.

108. In light of the foregoing, the dispute between the parties focuses on the proper interpretation of Article 2.1 of the Transfer Agreements, as well on the nature of the transactions entered into by Porto with BES, in order to verify whether the latter fall within the scope of the former.

109. Article 2.1 of both the Lòpez Transfer Agreement and the Cissokho Transfer Agreement reads as follows:

"LYON obliges to deliver to FC PORTO until the 15th August 2009 two Bank guarantees on first demand in order to assure the payment of the second and third instalment …. The Bank guarantees shall be approved by the Portuguese Bank Banco Espirito Santo (BES) and LYON agrees to assume the responsibility of all the costs derived from the anticipated discount of such bank guarantees".

110. More specifically, the dispute between the parties concerns the final portion of that provision, and chiefly the scope of the "agreement" of OL *"to assume the responsibility of all the costs derived from the anticipated discount"* of the first demand bank guarantees to be issued in order *"to assure the payment of the second and third instalment"* due by OL. The questions identified above (§ 108), therefore, could be specified as follows: what are the *"costs derived from the anticipated discount"* of bank guarantees? Are the costs (for commissions and interests) incurred by Porto under the Credit Facility Agreements *"costs derived from the anticipated discount"* of the Guarantees? And if so, all of them as mentioned in the Invoices, or only those referred to in the 2010 Invoices?

111. The Arbitral Tribunal preliminarily underlines that the meaning of the expression *"costs derived from the anticipated discount of such bank guarantees"* must be derived by applying the rules of interpretation enshrined in Article 18.1 CO, which so provides:

"When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement".

112. The various steps foreseen in Article 18.1 CO for the interpretation of contracts are best described in the following decision by the Swiss Federal Tribunal (ATF 127 III 444 E. 1b), which states – *inter alia* – as follows:

"Pour déterminer s'il y a eu effectivement accord entre parties, il y a lieu de rechercher, tout d'abord, leur réelle et commune intention (art. 18 al. 1 CO). Il incombe donc au juge d'établir, dans un premier temps, la volonté réelle des parties, le cas échéant empiriquement, sur la base d'indices. S'il ne parvient pas à déterminer cette volonté réelle, ou s'il constate qu'une partie n'a pas compris la volonté réelle manifestée par l'autre, le juge recherchera quel sens les parties pouvaient et devaient donner, selon les règles de la bonne foi, à leurs manifestations de volonté réciproques (application du principe de la confiance). A cet égard, la jurisprudence récente a nuancé le principe selon lequel il y aurait lieu de recourir à des règles d'interprétation uniquement si les termes de l'accord passé entre parties laissent planer un doute ou sont peu clairs. On ne peut ériger en principe qu'en présence d'un "texte clair", on doit exclure d'emblée le recours à d'autres moyens d'interprétation. Il ressort de l'art. 18 al. 1 CO que le sens d'un texte, même clair, n'est pas forcément déterminant et que l'interprétation purement littérale est au contraire prohibée. Même si la teneur d'une clause contractuelle paraît claire à première vue, il peut résulter d'autres conditions du contrat, du but poursuivi par les parties ou d'autres circonstances que le texte de ladite clause ne restitue pas exactement le sens de l'accord conclu".

113. As a result, this Panel should first seek to establish empirically the true and common intention of the parties, as the case may be also on the basis of the circumstances, and of the evidence offered by the parties.

114. In that regard, the Panel notes that the Parties are giving diverging explanations of the intention they had, and wanted to express through Article 2.1 of the Transfer Agreements:

i. Porto contends that, when the parties agreed that OL would support all costs associated with the discount of the bank guarantees, they were referring to the discount of the credit rights held by Porto over OL, as secured by the Guarantees;

ii. OL, while not giving a clearly defined explanation of what it exactly meant through Article 2.1 of the Transfer Agreements, maintains, if the case, that it was only available to accept to bear the costs of the issuance of the bank guarantees to be discounted by Porto (see the declaration of Mr Faccioli and Mr Aulas at the hearing: §§ 62 and 63 above). In any case, OL excludes that it had the intention to financially support Porto by reimbursing the interests that Porto had to pay to BES.

115. In light of the foregoing, and failing concurring indications by the parties as to their true and

common intention, as expressed by Article 2.1 of the Transfer Agreements, the Panel remarks that it was for each of them, basing their respective claims on a specific interpretation of Article 2.1 of the Transfer Agreement, to give evidence that the true and common intention supports such claims. Under Article 8 of the Swiss Civil Code, in fact, *"Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu'elle allègue pour en déduire son droit"*. As a result, 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.

116. That notwithstanding, the Panel notes that no sufficient evidence was given by Porto to prove that during the negotiations, and chiefly when the Lòpez Transfer Agreement was signed, the true common intention of the parties had the content suggested by Porto. When heard at the hearing, Mr Gomes and Mr Faccioli gave contradictory indications.

117. The same, it is to be noted, holds true also for the submissions of OL: no evidence was offered in this arbitration by OL to prove that the common intention of the parties was to impose on OL only the obligation to reimburse Porto for the costs of the issuance of the guarantees.

118. In other words, the Panel finds that no evidence was brought to convince it that a common actual intention of the parties was factually behind Article 2.1 of the Transfer Agreements: at best, each party did not understand the true will expressed by the other party. As a result, the common actual intention of the parties cannot be established in this arbitration.

119. In light of the foregoing, the Panel must seek the meaning that the parties could and should have given to their respective declarations in accordance with the rules of good faith (ATF 129 III 118 E. 2.5; ATF 128 III 265 E. 3a). According to them, the contract is given the meaning that any reasonable person would give to the wording in question, taking into account all other relevant circumstances of the case (ATF 129 III 118 E. 2.5; ATF 128 III 265 E. 3a).

120. On such basis, the Panel comes to the conclusion that Article 2.1 of the Transfer Agreements has to be interpreted as imposing on OL the obligation to bear (*i.e.*, the *"responsibility"* for) all the costs derived from banking anticipations to Porto of the credits it had under the Transfer Agreements, as secured by the Guarantees.

121. The Panel is led to this conclusion by a plurality of reasons:

- the payments under the Transfer Agreements were agreed to be made in subsequent installments and the amount was not determined to include in the differed payments a measure of interests (see § 62, declaration of Mr Faccioli); in addition, no interests to be paid by OL were specifically indicated in the text of the Transfer Agreements. In economic terms, such transaction would have meant that Porto was granting a credit facility to OL, "interest-free", at least for the period until the full payment would be made. However, Article 2.1 was inserted in the Transfer Agreements. In that framework, its provision can be considered to have the effect of shifting back to OL the financial cost

of the postponement of payments, as Porto would be entitled to obtain immediately from a bank the transfer fee not immediately paid by OL: such bank anticipation would bear a cost, but this would be charged to OL. This conclusion corresponds to a good faith interpretation of an overall transaction providing for payments in installments: in its respect, it is reasonable to hold that the subject having the benefit of postponed payments pays interest on the amounts due;

- the reference to the word "discount" contained in Article 2.1 of the Transfer Agreements implies an objective allusion to an anticipation of funds, which is the only typical feature of "bank discounts" on which both parties agree: cost of discount is therefore cost of anticipation;
- the mention of the bank guarantees in the context of Article 2.1 of the Transfer Agreements can only be understood in good faith as an indication of the instruments which, rendering certain a payment due in the future, make it "liquid", and therefore suitable of "easy" anticipation;
- Article 2.1 of the Transfer Agreements does not appear to have any other possible objective meaning: the reference to "cost of discount" excludes that it could be in good faith interpreted as meaning "cost of issuance" – which is a completely different item. And the Panel is not available to adopt interpretations, contrary to the principle of effectiveness, which would devoid the provision of any meaning;
- anticipation of accounts receivable appears to be a constant practice in the world of football, as it allows the prompt availability of cash funds. As a result, OL could in good faith objectively understand that Porto was going to request its bank (BES) to be advance funds on the basis of the expected future payments to be received pursuant to the Transfer Agreements; and
- Article 2.1 was inserted not only in the Lòpez Transfer Agreement, which was apparently signed under some time pressure, but also in the Cissokho Transfer Agreement, signed twelve days after: in that period, Lyon had sufficient time to request additional explanations.

122. In light of the foregoing, then, the question is whether the transactions entered into by Porto with BES fall within the scope of Article 2.1 of the Transfer Agreements, as defined above.

123. The Panel holds that through the Credit Facility Agreements Porto "discounted" with BES the credit rights held over OL, which were secured by the Guarantees. As a result, the transactions entered into by Porto with BES fall within the scope of Article 2.1 of the Transfer Agreements.

124. First, the Panel notes that the Credit Facility Agreements are linked to the Transfer Agreements. As mentioned in their *"Other Provisions"* section, in fact, Porto agreed to transfer to BES the funds paid by OL and the deadlines for, and amounts of, repayment match those stipulated in the Transfer Agreements. In fact, with respect to *"Financiamento n° EC 010660/09"*, the reimbursement of EUR 5,000,000 by 15 August 2010 matches the payment schedule contemplated in the Cissokho Transfer Agreement, under which EUR 5,000,000 had to be paid

by OL by 31 July 2010; and with respect to *"Financiamento n° EC 0160659/09"*, the reimbursement of EUR 7,000,000 by 15 July 2010 matches the payment schedule contemplated in the Lòpez Transfer Agreement, under which EUR 7,000,000 had to be paid by OL by 30 June 2010.

125. Such reference makes it clear to the Panel that Porto, through the Credit Facility Agreements, obtained from BES a financial support to its cash flow needs, by obtaining funds immediately available, which correspond to those to be paid in instalments by OL, with an undertaking to return to BES the anticipated funds upon receipt of the OL's payments. In economic (and practical) terms, this operation equates an anticipation of funds, immediately made available towards credits to be cashed in the future.

126. Second, the Panel notes that Porto and BES entered into the Assignment Contracts. Such Assignment Contracts *inter alia*:

    i. refer to the Credit Facility Agreements and the anticipation of funds by BES with regard to the future payments to be received by Porto on the basis of the Transfer Agreements;

    ii. refer to the Guarantees, securing such payments, as ultimately due by OL; and

    iii. provide for the transfer to BES of all Porto's rights under the Guarantees, so that BES would become their *"sole and exclusive holder and beneficiary"*, entitled to receive payment of the secured amounts.

127. In other words, Porto and BES "completed" the anticipation of funds, by securing their reimbursement on the basis of the Guarantees. As a result, and in practical terms, Porto, having "discounted" a credit, secured by the Guarantees, "discounted the Guarantees".

128. The Panel remarks that OL raised in this arbitration some doubts as to the "genuinity" of such Assignment Contracts, as "conveniently" filed only in the course of this arbitration by two closely related entities, sharing common interests. Such doubts, however, appear to the Panel to be pure speculation, raised against entities of prime standing, unsupported by any objective element, and indeed contradicted by a notarization appearing at the end of each of the Assignment Contracts. Therefore, the Panel has no reason to put in question the authenticity of the Assignment Contracts, as filed in this arbitration.

129. In addition, and contrary to such conclusion, it cannot be held that BES could not be transferred the rights under those of the Guarantees that it had issued (§ 8(i) above): indeed, in this respect it is to be noted that such Guarantees were issued at the request of HSBC France, which remained ultimately liable to make the payments of the secured amounts. As a result, BES could be assigned the right to receive and retain as its own any payment to be made by HSBC France.

130. Third, the Panel finds that the following circumstances, mentioned by OL to be contrary to the conclusion that the transactions entered into by Porto with BES fall within the scope of Article 2.1 of the Transfer Agreements, appear irrelevant. In that regard, OL indicates that:

- the Credit Facility Agreements do not provide for the immediate deduction by BES from the sums made available to Porto of the interests to be charged for the anticipation. However, the fact that interests were charged by BES quarterly (*i.e.*, every 90 days) is not inconsistent with the circumstance that under the Credit Facility Agreements Porto received anticipations of the credits it had under the Transfer Agreements. In other words, the way in which BES was to be remunerated (for commissions and interests) does not affect the "economic" content and meaning of the Credit Facility Agreements;
- the interest rate charged by BES does not differ from ordinary interest rates for credits on current account. However, no rule appears to impose such distinction, and no indication as to the level of the "costs" for which OL assumed the responsibility is contained in the Transfer Agreements;
- the date of the Credit Facility Agreements precedes the date of the Guarantees. However, a clear link between Credit Facility Agreements and the Transfer Agreements can be established (§ 124 above). In addition, the Assignment Contracts were entered into as soon as the Guarantees were issued, and confirm the connection between the anticipation of funds and the guarantee of their reimbursement;
- the Credit Facility Agreements were not indicated as "discount" agreements in the Porto's financial statements. Contrary to that, it can be noted that, as evidenced in these proceedings, in the financial reports of Porto for the years 2009-2010 and 2010-2011 indications are contained to show the link between the Credit Facility Agreements and the payments to be made to Porto by OL. The absence of the word "discount" in the financial statements does not affect the meaning of the transactions entered into by Porto with BES.

131. In conclusion, the Panel holds that OL has the responsibility to bear all costs (for commissions and interests) derived from the anticipation of funds made by BES to Porto under the Credit Facility Agreements.

132. The Panel, however, has to determine the measure of such "responsibility", *i.e.* of the amount to be reimbursed by OL. More specifically, the question in front of the Panel is whether OL has to reimburse all the amounts claimed by Porto, as evidenced by the Invoices, or only the amounts indicated in the 2010 Invoices.

133. In that respect, the Panel preliminarily notes that it is not convinced by the OL's contention relating to the alleged lack of evidence of actual payment by Porto to BES of the amounts claimed from OL in this arbitration: the bank statements filed by Porto, and transmitted to OL together with the Invoices, are in themselves evidence that the costs (for commissions and interests) related to the Credit Facility Agreements were actually debited to the Porto's bank account. In the same way, failing more specific evidence, the Panel is not persuaded by the OL's claims that such bank statements do not allow a verification of the calculations therein contained, whose accuracy was confirmed by Mr Oliveira at the hearing.

134. The Panel, however, finds that Porto is only entitled to claim in this arbitration the payment of

the amounts mentioned in the 2010 Invoices. Porto, in fact, forfeited a request regarding the 2011 Invoice in the course of the FIFA proceedings and cannot now raise a claim in their respect (§ 98 above).

135. The Panel, in fact, notes that:

i. on 29 June 2012 Porto requested FIFA to order OL to pay the amount of EUR 909,139.04 under the Lòpez Transfer Agreement and the amount of EUR 742,648.78 under the Cissokho Transfer Agreement, as well as interest at 5% p.a. on those amounts;

ii. on 27 March 2013, OL asked FIFA to dismiss the claims submitted by Porto;

iii. on 19 April 2013, Porto replied to OL and, making reference to *"our claim dated 29th June 2012 and all evidence presented by the parties to the file"*, requested that OL be ordered to pay the amounts of EUR 503,399.99 and EUR 407,700.05, corresponding to the amounts indicated in the 2010 Invoices. No mention was made in that context of the 2011 Invoice;

iv. on 7 May 2013, OL filed a rebuttal denying again the Porto's claims. In such submission, OL expressly noted that Porto on 19 April 2013 had modified its claims;

v. Porto did not react in any way to such observation.

136. On this basis, the Panel holds that any misunderstanding caused by, or mistake contained in, the submission of 19 April 2013, was accepted by Porto: it was in a position to react, but decided not to do that. It is indeed true that in principle no further submission before the Single Judge was allowed: but Porto had in any case the burden to immediately raise the issue and confirm that it had not forfeited its claims under the 2011 Invoice. Having failed to do that, Porto has now to bear the consequences of its actions.

137. In any case, Porto cannot now maintain that the reduction of the claim was a clerical error or even that no reduction was made. Indeed, the content of the submission of 19 April 2013 is clear and leaves no room for interpretation.

138. In light of the foregoing, it can be concluded that OL has to reimburse to Porto, pursuant to Article 2.1 of the Transfer Agreements, the amount of EUR 503,399.99, for *"value concerning player Lisandro Lopez … (concerned period 20/07/2009 to 01/08/2010)"* (invoice No. 2010FT11100008 of 23 November 2010), and the amount of EUR 407,700.05 for *"value concerning player Aly Cissokho … (concerned period 30/07/2009 to 01/08/2010)"* (No. 2010FT11100009 of 23 November 2010), for a total, therefore, of EUR 911,100.04[1]. No claim by Porto with respect to the amounts mentioned in the 2011 Invoice can be admitted in this arbitration.

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1 In this respect, the Panel notes that in the operative part of the Decisions the Single Judge rounded the amounts awarded to the next lower Euro, so that EUR 503,399.99 became EUR 503,399.99 and EUR 407,700.05 became EUR 407,700. No legal basis was offered for such reduction, however limited. As a result, the amounts to be awarded to Porto are to be corrected to include also the Eurocents.

139. A final issue, relating to default interests, has to be examined by the Panel. Porto, in fact, claims in its appeals that the Single Judge was wrong in setting the starting date of interests at the date on which the petition with FIFA was filed: in the opinion of Porto, in fact, such date should be the date on which OL defaulted its payment obligations towards Porto. Such portion of the Porto's claims is admissible as it refers to an issue that was contained in the initial claims before FIFA and was not modified (§ 98 above).

140. According to Article 104.1 of the CO, a debtor in default on payment of a pecuniary debt must pay default interest of 5% per annum (even where a lower rate of interest was stipulated by contract). Article 102.2 of the CO provides that where a deadline for performance of the obligation has been set by agreement of the parties the obligor is automatically in default on expiry of the deadline. If no deadline has been agreed, the debtor is in default as soon as he receives a formal reminder from the creditor (Article 102.1 of the CO)

141. In the case at hand the Parties have not agreed upon a deadline for the performance of the OL's obligation under Article 2.1 of the Transfer Agreements. Therefore, OL could be held to be in default of its payment obligations only following the formal request of Porto. Such request was contained – with respect to the 2010 Invoices – in the letter of 23 November 2010, requesting payment by 23 December 2010. Therefore, OL has to be considered in default as of 24 December 2010 included.

142. As a result of the foregoing, OL must pay default interest of 5% per annum starting from 24 December 2010 to the date of final payment on the sum of EUR 911,100.04. The Decisions which held otherwise have on this limited point to be modified.

3.7 Conclusion

143. In light of the foregoing, the Panel holds that the appeals brought by OL are to be dismissed; and that the appeals brought by Porto are to be partially granted, chiefly with respect to the starting date of the interests on the amounts granted in the Decisions, which are therefore to be modified very partially.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 7 October 2013 by Olympique Lyonnais against the decision taken by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (FIFA) on 29 July 2013 in the matter relating to the transfer of the player Lisandro

Lòpez (CAS 2013/A/3343, *Olympique Lyonnais v. FC Porto*) is dismissed.

2. The appeal filed on 7 October 2013 by Olympique Lyonnais against the decision taken by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (FIFA) on 29 July 2013 in the matter relating to the transfer of the player Aly Cissokho (CAS 2013/A/3344, *Olympique Lyonnais v. FC Porto*), is dismissed.

3. The appeal filed on 11 October 2013 by FC Porto against the decision taken by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (FIFA) on 29 July 2013 in the matter relating to the transfer of the player Lisandro Lòpez (CAS 2013/A/3348, *FC Porto v. Olympique Lyonnais*) is partially granted.

4. The decision taken by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (FIFA) on 29 July 2013 in the matter relating to the transfer of the player Lisandro Lòpez is partially modified as follows:

   "2. Olympique Lyonnais is ordered to pay FC Porto the amount of EUR 503,399.99 (five hundred three thousand three hundred ninety-nine/99 Euro), plus interest at 5% (five percent) per annum from 24 December 2010 to the date of final payment".

5. The other points of the decision taken by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (FIFA) on 29 July 2013 in the matter relating to the transfer of the player Lisandro Lòpez are confirmed.

6. The appeal filed on 11 October 2013 by FC Porto against the decision taken by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (FIFA) on 29 July 2013 in the matter relating to the transfer of the player Aly Cissokho (CAS 2013/A/3349, *FC Porto v. Olympique Lyonnais*) is partially granted.

7. The decision taken by Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (FIFA) on 29 July 2013 in the matter relating to the transfer of the player Aly Cissokho is modified as follows:

   "2. Olympique Lyonnais is ordered to pay FC Porto the amount of EUR 407,700.05, (four hundred seven thousand seven hundred/05 Euro), plus interest at 5% (five percent) per annum from 24 December 2010 to the date of final payment".

8. The other points of the decision taken by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (FIFA) on 29 July 2013 in the matter relating to the transfer of the player Aly Cissokho are confirmed.

9. (…).

10. (…).

11. All other motions or prayers for relief are dismissed.