

Training compensation / Solidarity contribution

Solidarity mechanism in light of the FIFA Clearing House Regulations and the recent jurisprudence of the FIFA DRC and the CAS



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In this article, the author will discuss the FIFA solidarity mechanism based on the published solidarity contribution decisions of the Dispute Resolution Chamber of the FIFA Football Tribunal (FIFA DRC) and Court of Arbitration for Sport (CAS) as from 2020 and the newly introduced FIFA Clearing House Regulations.

Introduction

If a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his former club, *i.e.* solidarity contribution.² The solidarity mechanism is based on the principle of solidarity in football.³ The solidarity mechanism is meant to redistribute the value of the training given to the players. It promotes the formation of young players by financially rewarding the clubs (particularly grassroots clubs) that invest in their training and education. The clubs that formed the player benefit from the compensation paid by new clubs to whom the player is transferred.⁴

Unlike training compensation,⁵ which is payable only once, and in relation to a specific player, if the solidarity mechanism applies, it will apply to all the clubs that have trained and educated the individual player concerned. The key feature of the solidarity contribution is that, in principle, it is payable in connection with every (inter)national transfer involving transfer compensation over the course of a player's career and is not linked to a specific age limit.⁶ Clubs that trained the player will be entitled to a solidarity contribution provided all the associated conditions are met.⁷

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² Art. 21 RSTP.

³ It must be mentioned that the provisions on the solidarity mechanism do not apply to the transfer of players to and from futsal clubs. See Art. 10 Annexe 6 FIFA RSTP.

⁴ [CAS 2019/A/6196 Sport Club Corinthians Paulista v. Clube de Regatas do Flamengo](#), par. 47, award of 23 September 2019, referring to [CAS 2012/A/2929 Skeid Fotball v. Toulouse FC](#), award of 11 April 2013 and [CAS 2012/A/2944 Genoa Cricket and Football Club S.p.A. v. Club Bella Vista](#), award of 3 April 2013.

⁵ See for a similar article as this one in relation to training compensation: [A.L. AL, 'Training Compensation in light of the Recent Jurisprudence of FIFA DRC & CAS', Football Legal # 14, p. 42.](#)

⁶ [FIFA Commentary on the RSTP 2021](#), Chapter VIII, p. 331.

⁷ [FIFA Commentary on the RSTP 2021](#), Chapter VIII, p. 332.

At its meeting on 22 October 2022, the FIFA Council approved the [FIFA Clearing House Regulations](#), which came into force on 16 November 2022. Following the entering into force of these regulations, the procedure in relation to claiming and receiving solidarity contribution was amended, and all payments in relation to training rewards should, in principle, be made via the FIFA Clearing House.

In this article, the author will discuss the solidarity mechanism in light of the FIFA Clearing House Regulations and the recent jurisprudence of the FIFA DRC and the CAS.⁸

Solidarity mechanism

If a professional player moves during the course of a contract, 5% of any compensation paid within the scope of this transfer, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the club(s) involved in his training and education over the years.⁹ As such, solidarity contribution is calculated as a percentage of an agreed transfer compensation.¹⁰ Thus, the solidarity contribution is inextricably linked to the transfer compensation agreed between the professional player's new and former club. Hence, the most basic precondition for applying the solidarity mechanism is that a professional player must move between two clubs affiliated to different member associations while they are still under contract.¹¹ In other words, the entitlement of a club to receive solidarity contribution is triggered by the registration of a player against the payment of transfer compensation.¹²

The solidarity contribution reflects the number of years the player was registered with the relevant

club(s) between the calendar years of his 12th and 23rd birthday.¹³ For the calendar years of the 12th until the 15th birthday of the player, the compensation amounts to 5% of 5% of any compensation and from the calendar years of the player as from his 16th birthday until the calendar year of his 23rd birthday, the compensation amounts to 10% of 5% of any compensation.¹⁴ In the case where the professional player is not yet 23 and transferred while still under contract, the portion of the solidarity contribution for the period of their current age until the end of the calendar year of their 23rd birthday will not be immediately payable. However, the new club does not benefit financially from this situation. Per the principles of the solidarity mechanism described in the [FIFA RSTP](#), the new club commits to pay a certain amount as a solidarity contribution, and the solidarity mechanism only affects the way this amount is distributed. Based on this fundamental principle, the solidarity mechanism should not allow the new club to pay less in transfer compensation or solidarity mechanism than what it had originally committed to pay.¹⁵

Moves during the course of a contract

A training club is entitled to receive (a proportion of) the 5% solidarity contribution in case (i) a professional player is transferred, either on a definitive or loan basis, between clubs affiliated to different associations and (ii) a professional player is transferred, either on a definitive or loan basis, between clubs affiliated to the same association, provided that the training club is affiliated to a different association.¹⁶

Since 1 July 2020, the solidarity mechanism has been extended to national transfers with an international dimension. Subject to whether compensation is paid, the transfer of a player during the course of a contract between clubs affiliated to the same association is also subjected to the payment of solidarity contribution to any of the player's training clubs affiliated to different associations.¹⁷ In other words, the solidarity mechanism

⁸ All published cases from the FIFA DRC and the CAS from the years 2020, 2021 and 2022 on 19 December 2022 are analysed.

⁹ Art. 1 par. 1 Annexe 5 RSTP.

¹⁰ FIFA Commentary on the RSTP 2021, Chapter VIII, p. 332.

¹¹ FIFA Commentary on the RSTP 2021, Chapter VIII, p. 335.

¹² [FIFA DRC, 26 February 2021, Rog.](#)

¹³ Calculated *pro rata* if less than one year.

¹⁴ Art. 1 par. 1 Annexe 5 RSTP. Any compensation includes also payment of bonuses, see for example [FIFA DRC, 9 April 2021, Omar Colley](#) and [FIFA DRC, 18 November 2020, De Paula](#).

¹⁵ FIFA Commentary on the RSTP 2021, Chapter VIII, p. 344.

¹⁶ Art. 1 par. 2 Annexe 5 RSTP.

¹⁷ [FIFA Circular no. 1709, 13 February 2020](#).

is also applicable between clubs belonging to the same association when the transfer of a player on the basis of a dispute occurs between clubs belonging to different associations.¹⁸

Prior to 1 July 2020, the FIFA DRC considered that as the Regulations only govern the transfer of players between clubs affiliated to different member associations, and they explicitly instruct member associations to issue specific regulations governing national transfers, the solidarity mechanism could not be applied to national transfers.¹⁹ With the introduction of Article 1 par. 2 sub b) of the FIFA RSTP also, transfers of players between two clubs affiliated to the same association are subject to the payment of solidarity contribution, provided that the training club is affiliated to a different association.

All transfers between clubs affiliated to two different associations affiliated to FIFA are subject to the FIFA RSTP. This is evidenced by the fact that all member associations are bound by the regulations of FIFA and therefore the FIFA RSTP, such as the facilitation of transfers between different associations via TMS. In this regard, it follows from the jurisprudence of the FIFA DRC that the FIFA RSTP does not foresee any “*gentlemen’s agreement*” as an internal regulation between associations that may have an effect on national competitions. Such internal regulation cannot affect the claim of solidarity contribution in the event that the transfer gives right to solidarity contribution and fulfils the requirements of Annexe 5 of the FIFA RSTP.²⁰

Loan

Solidarity contribution is also payable in the event a professional player is loaned in return for the payment of a loan fee. 5% of that loan fee will be deducted as a solidarity contribution. This means that solidarity contribution has to be deducted from the loan fee by the engaging club and distributed to the training clubs. As an aside, this also means that if a

professional player is loaned for a fee with the option of a permanent transfer at the end of the loan, and if that permanent transfer would require an additional transfer fee to be paid, the respective training clubs will receive a second solidarity contribution if the permanent transfer comes to fruition, based on the transfer fee.²¹

Any compensation

The term “*compensation*” is not meant to be construed narrowly as merely encompassing a “*transfer fee*” *stricto sensu* but, rather, as encompassing any amount paid by the new club to the old club as a result of the player’s move from the latter to the former.²² It, therefore, not only encompasses the main and fixed transfer or loan fee, but all the portions of the price that add up to the transfer or loan fee, such as conditional/contingent fees (e.g. performance bonus),²³ sell-on fees,²⁴ and/or players exchanged as part of the compensation, all globally considered.²⁵ In case of interest on future transfer, the sum paid by the party receiving the “*future*” transfer fee to the party which shall receive the interest on future sale may be

considered as part of any compensation in the sense of Article 1 par. 1 of Annexe 5 of the FIFA RSTP.²⁶

However, in case of an unjustified breach of contract, the solidarity mechanism does not apply as at least two of the criteria for a valid transfer (specifically, the consent of the club of origin to the early termination of its contract with the player and the need for there to be a price or value associated with the transaction) are not fulfilled.²⁷

In a move designed to stop clubs from reducing solidarity payments by re-categorising transfer compensation as some other kind of payment,

18 [FIFA DRC, 22 December 2020, Petkovic.](#)

19 FIFA Commentary on the RSTP 2021, Chapter VIII, p. 343-344.

20 [FIFA DRC, 20 April 2021, McBurnie.](#)

21 FIFA Commentary on the RSTP 2021, Chapter VIII, p. 347.

22 FIFA Commentary on the RSTP 2021, Chapter VIII, p. 338. CAS case-law confirms it is the whole “*price or value of the transaction*” that must be taken into account “*for the purposes of the solidarity contribution mechanism*” ([CAS 2011/A/2356 SS Lazio S.p.A. v. CA Vélez Sarsfield & FIFA](#)). The calculation basis is the “*total amount of compensation negotiated for the player transfer*” ([CAS 2015/A/4137 Olympique Lyonnais v. AS Roma](#)). See, in this regard, [CAS 2019/A/6196 Sport Club Corinthians Paulista v. Clube de Regatas do Flamengo](#), par. 50, award of 23 September 2019.

23 [FIFA DRC, 13 May 2022, Diallo.](#)

24 [FIFA DRC, 11 June 2022, Nwobodo.](#)

25 [CAS 2019/A/6196 Sport Club Corinthians Paulista v. Clube de Regatas do Flamengo](#), award of 23 September 2019.

26 [FIFA DRC, 5 May 2022, Gomes Netto.](#)

27 [FIFA DRC, 23 June 2005, no. 65178.](#)

Article 1 of Annexe 5 of the FIFA RSTP was amended to make clear that any compensation paid “*within the scope of [a] transfer*” is subject to the solidarity mechanism, regardless of whether it is described as part of the transfer fee or not. The only compensation which is not subject to the 5% solidarity contribution is training compensation. Training compensation may be payable together with the transfer fee if a player moves while still under contract. This is a consequence of the fact that training compensation is designed to allow a club that has trained and developed a player to recover its training costs if it is not benefitting directly from the player’s services. With this aim in mind, it would not be appropriate to reduce the training compensation payment.²⁸

From recent jurisprudence, it follows that, in order to establish that a transfer of a player between clubs against the payment of transfer compensation occurred, the following four elements shall be required:

- a. The consent of the club of origin to the early termination of its contract with the player;
- b. The willingness and consent of the club of destiny to acquire the player’s rights;

- c. The consent of the player to move from one club to the other; and,

- d. The element of price or value of the transaction.²⁹

The foregoing jurisprudence of the FIFA DRC followed from matters in which clubs tried to avoid the payment of solidarity contribution by concluding termination agreements with their players in which the player agreed to pay an amount that was agreed between the clubs involved in the transfer of the player in order to free the player of his contractual obligations with his former club. This payment of the player was considered an indirect payment of compensation by the new club to the former club of the player as in the new employment contract of the player with the new club, the new club undertook to pay the player the exact amount. Consequently, solidarity contribution was applicable over the amount stipulated in the termination agreement as this was considered compensation paid within the scope of the transfer. The amount as stipulated in the termination agreement can be considered to only represent 95% of the transfer value as such payment would trigger the “buy-out” of the player. In other words, the payment of the amount minus 5% of solidarity contribution would not result in the early termination of the player’s employment contract.³⁰

Buy-out clause

In line with the foregoing, solidarity contribution is also applicable in case a buy-out clause is activated. If a player’s employment contract contains a clause according to which they are free to leave the club at any time in return for paying the club a predetermined amount of money, and if they choose to exercise this right, the amount as stipulated in a buy-out clause is considered as a net amount which represents the 95% of the total compensation payable in connection with the transfer of the player. Hence, 5% shall be added over the net amount of the buy-out fee to obtain said fee inclusive of solidarity contribution.³¹ The FIFA DRC is of the opinion that the sum stipulated in the buy-out clause is considered an offer by the releasing club to release the player for transfer in return for the payment of the amount concerned. If the player or another club accepts this offer by unconditionally paying the amount stipulated and the player then

transfers between clubs, this payment effectively constitutes a transfer fee, and solidarity payments should be deducted from the transfer compensation paid.³²

"The amount as stipulated in a buy-out clause is considered as a net amount which represents the 95% of the total compensation payable in connection with the transfer of the player"

²⁸ FIFA Commentary on the RSTP 2021, Chapter VIII, p. 335.

²⁹ [FIFA DRC, 4 November 2021, Ndao](#) and [FIFA DRC, 15 November 2021, Doukara](#). See also [CAS 2011/A/2356 SS Lazio S.p.A. v. CA Vélez Sarsfield & FIFA](#), par. 74, award of 28 September 2011.

³⁰ [FIFA DRC, 15 November 2021, Doukara](#). See, in this regard, also the FIFA Commentary on the RSTP 2021, Chapter VIII, p. 338 with reference to [CAS 2020/A/7291 Club Atlético de Madrid SAD & Sporting Clube de Portugal - Futebol SAD v. Clube Futebol Benfica](#).

³¹ [FIFA DRC, 11 March 2021, Ruiz Peña](#). See, in this regard, also [CAS 2018/A/5950 Valencia Club de Fútbol, S.A.D. v. Fenerbahçe Spor Kulübü](#), award of 14 August 2019.

³² [FIFA DRC, 24 April 2015, no. 04151496](#).

Player exchange

The FIFA DRC confirmed on numerous occasions that the solidarity mechanism is also applicable to an exchange of players,³³ since the exchanged players constitute an indirect financial agreement between the clubs, as the players have economic value in the transfer market.³⁴ The value of an exchange of players is generally based on the average of the costs of acquisition by their respective former clubs. The market value of the player and the value of a player to a particular club is rather subjective and is, in general, based on several factors, including but not limited to the transfer fee paid to acquire the player's services, the value and length of the contract, the player's reputation, the player's performances, etc. It is for the claiming club to discharge its burden of proof to demonstrate, to a degree of comfortable satisfaction, that a mutual exchange of obligations was agreed upon by and between the two clubs which allegedly exchanged players.³⁵ To protect the interests of the

training clubs, it would be recommended that FIFA adheres to an approach in which it presumes that an exchange of players occurred in the event that two players transferred free of charge to the same clubs within the same transfer window and consequently the clubs that have contributed to the education and training of a player shall receive a proportion of the compensation. What is more, as already suggested by Mr *Frans de Weger* and Ms *Allisson Hatch* in the 11th edition of the *Football Legal* journal, it would be beneficial for FIFA to codify a valuation methodology in its regulations in order to provide more predictability in cases involving player exchange, thus providing a mechanism for clubs to determine the solidarity payment required where no financial transaction exists.³⁶

Calendar year

It is worth mentioning that as from 1 January 2021, the calculation method for solidarity contribution is amended, and the training rewards are based on the calendar year of the player's birthday, as opposed to the season.³⁷ This amendment ensured an efficient and consistent approach in preparation for the future introduction of the Clearing House, which was introduced in October 2022. In addition, the amendment prevents situations in which clubs are confronted with overlapping seasons. However, solidarity contribution disputes shall be assessed according to the regulations in force when the contract at the centre of the dispute was signed or when the disputed facts arose.³⁸ Consequently, as current disputes are still decided based on a version of the FIFA RSTP prior to the January 2021 edition, it is still possible to be confronted with overlapping seasons. When confronted with overlapping seasons, it is the well-established jurisprudence of the FIFA DRC that it reduces the season during which a player is registered with a particular club to 6 months when

the player's birthday is prior to 1 July and extends it to 18 months if the birthday falls after 1 July. The amount to be distributed as solidarity contribution per season remains the one set out in Article 1 par. 1 of Annexe 5 of the FIFA RSTP, i.e. a proportion (if less than one year of registration) of 5% of 5% of any compensation for the seasons of a player's 12th - 15th birthday and of 10% of 5% of any compensation for the seasons of a player's 16th - 23rd.³⁹

33 [FIFA DRC, 29 April 2021, Bueno](#); FIFA DRC 26 May 2016, no. 0516200 and [FIFA DRC, 17 August 2012, no. 812019](#).

34 See in this regard for example also [CAS 2016/A/4821 Stoke City Football Club v. Pepsi Football Academy](#), award of 30 March 2017.

35 See in this regard for example the *Rebic* cases: [FIFA DRC, 6 August 2020, Rebic a, b](#). In accordance with Article 12 par. 3 of the Procedural Rules, the burden of proof lies on the party claiming the right on the basis of the alleged fact. See in this regard [FIFA DRC, 29 April 2021, Bueno](#). In this decision it was considered that the mere fact that the same clubs were involved in two transfers for different players on the same date does not necessarily mean that such clubs engaged in a swap of players. In the absence of conclusive evidence of the contrary, it was determined that the loan of the players were two distinct transactions.

36 [F.M. DE WEGER and A. HATCH, 'Principles deriving from "Exchange of Players" jurisprudence', *Football Legal* # 11, p. 31](#).

37 [FIFA Circular no. 1743, 14 December 2020](#).

38 [FIFA DRC, 26 February 2021, Rog](#). See also Art. 26 par. 2 FIFA RSTP.

39 [FIFA DRC, 27 January 2021, Martínez](#).

Calculation and distribution

As said, in October 2022, the FIFA Clearing House Regulations were introduced and entered into force on 16 November 2022. The Clearing House Regulations shall apply to all transactions in which the trigger for the entitlement of training rewards occurs as from 16 November 2022.⁴⁰ The FIFA Clearing House project began to take shape with the main goals of centralising, processing and automating payments between clubs, initially relating to training rewards and of promoting financial transparency and integrity. The process of distributing training rewards consists of three steps: (i) identification of entitlement to training rewards; (ii) creation of an electronic payer passport; and (iii) transfer of payments between clubs through the FIFA Clearing House entity. This represents a fundamental change in how training clubs receive compensation for their efforts, being a shift from the current claims system to a system of automatic entitlement.⁴¹

For cases not governed by the FIFA Clearing House Regulations, it is the responsibility of the new club to calculate the amount of the solidarity contribution and to distribute it in accordance with the player's career history as provided in the player passport. The player shall, if necessary, assist the new club in discharging this obligation.⁴² In this regard, the player passport plays a crucial role.⁴³ The FIFA DRC confirmed on several occasions that the effective training and education could only be determined by one objective factor: the player's registration history, included in the player passport issued by the relevant member association.⁴⁴ According to the jurisprudence of the FIFA DRC, the Chamber shall in principle rely on the information inserted in the player passport(s) issued by the relevant member association(s) unless there is clear evidence that would contradict its contents.⁴⁵

With the new regulations, the electronic player passport was introduced in order to avoid discussions as to the content of the player passport.⁴⁶ When a training rewards trigger is identified,⁴⁷ a provisional electronic player passport for the relevant player will be generated by TMS, and the electronic player passport will be available for inspection in TMS by all member associations and clubs for ten days after generation.⁴⁸ During this period, a member association may request to include an affiliated club in the review process.⁴⁹ After the review process, the FIFA general secretariat will evaluate any request before deciding on the registration information to be incorporated and amended in the final electronic player passport, based on which the allocation of solidarity contribution is decided. In a situation of legal or factual complexity, the FIFA general secretariat shall refer the matter to the FIFA DRC, after which the FIFA DRC will decide on the final electronic player passport.⁵⁰ Clubs must upload proof of (each) payment within thirty days of the date of the payment,⁵¹ based on which FIFA will issue a so-called Allocation Statement, following which a payment notification will be issued to the new club detailing the amount due.⁵² Upon receipt of the payment notification, the new club shall pay the requested amount within thirty days to the FIFA Clearing House.⁵³

The foregoing is in line with the jurisprudence of the FIFA DRC, from which it follows that the player's new club is ordered to remit the relevant proportion(s) of the 5% solidarity contribution to the club(s) involved in the player's training. The new club was even ordered to remit the relevant proportion(s) in the event that the new club had agreed otherwise with the former club of the player in the relevant transfer or loan agreement.⁵⁴ In such an event, the player's new club can lodge a separate claim

40 A training rewards trigger is an event related to the registration of a player that may give entitlement to training rewards to the clubs having trained the player in accordance with the FIFA Regulations on the Status and Transfer of Players (RSTP). Examples of training rewards triggers are international transfers, domestic transfers with transfer compensation or the first registration of a player as a professional. [Explanatory notes on the FIFA Clearing House Regulations](#), p. 3.

41 [FIFA Circular no. 1817, 8 November 2022](#).

42 Art. 2 par. 2 Annexe 5 RSTP.

43 See, in this regard, for example [FIFA DRC, 4 December 2020, Santini](#). In this decision, the player passport provided additional information with regard to the registration of the player following which the claim of the claimant was rejected. See also [FIFA DRC, 31 August 2021, Pereira Gonçalves](#).

44 [FIFA DRC, 25 January 2021, El Shaarawy](#).

45 [FIFA DRC, 10 December 2021, Tijani](#).

46 The electronic player passport is an electronic document containing consolidated registration information of a player throughout their career, including relevant member association, their status (amateur or professional), the type of registration (permanent or loan), and the club(s) (including training category) with which the player has been registered since the calendar year of their 12th birthday.

47 A training rewards trigger is an event related to the registration of a player that may give entitlement to training rewards to the clubs having trained the player in accordance with the FIFA RSTP. Examples of training rewards triggers are international transfers, domestic transfers with transfer compensation or the first registration of a player as a professional. See [FIFA Explanatory notes on the FIFA Clearing House Regulations](#), p. 3.

48 Art. 8.2 FIFA Clearing House Regulations.

49 Art. 8.3 FIFA Clearing House Regulations.

50 Art. 10 FIFA Clearing House Regulations.

51 Art. 11 FIFA Clearing House Regulations. The amount declared in the proof of payment will be considered to reflect the respective transfer compensation (or instalment thereof), with 5% of solidarity contribution having been withheld by the club making the payment, Art. 11 par. 4 FIFA Clearing House Regulations.

52 Art. 13 FIFA Clearing House Regulations.

53 Art. 13.2 FIFA Clearing House Regulations.

54 [FIFA DRC, 11 February 2022, Barak](#).

in front of the FIFA Players' Status Chamber (FIFA PSO) against the former club to seek reimbursement for the solidarity contribution.⁵⁵ As per the same jurisprudence, and in line with the principle of procedural economy, the FIFA DRC has rendered decisions in the past in which it would, at the same time, order the former club to reimburse the same proportion(s) of the 5% of the solidarity compensation that it had received from the player's new club as transfer or loan fee. However, a club should claim such payment; otherwise, a potential reimbursement by the former club cannot be discussed.⁵⁶ Based on the latest decision of the FIFA DRC in this regard, it seems that it does not longer follow the line based on the principle of procedural economy but orders a training club to lodge a separate claim in front of the FIFA PSO to seek reimbursement of the solidarity mechanism.⁵⁷

Besides clauses in which a club is to remit the relevant proportion of the solidarity contribution, clubs frequently included clauses in the transfer agreement that explicitly indicate that the transfer fee does not comprise solidarity contribution. In these events, it is considered that solidarity contribution shall be added on top of the transfer fee.⁵⁸ As a result, 5% is to be added to the total amount.⁵⁹ Clauses in a transfer agreement providing for the solidarity contribution to be paid by the new club on top of the stipulated transfer fee are permissible.⁶⁰ However, the pertinent clause must clearly indicate that the amount paid as the transfer compensation is net of any solidarity contribution. The FIFA DRC considers the term "net" in itself insufficient

to conclude that a 5% solidarity contribution should not be deducted from the transfer compensation.⁶¹ At the same time, training clubs can claim solidarity payments based on the total amount paid, which amounts to the transfer fee plus 5%.⁶²

When complying with the solidarity mechanism, the new club has to act diligently and take the necessary precautionary steps to ensure that it pays the relevant amounts to the correct bank account. In case of lack of diligence, the FIFA DRC may decide that the new club did not fulfil its obligations to pay the solidarity contribution.⁶³ However, under the FIFA Clearing House Regulations, the new club shall pay the requested amount to the FIFA Clearing House in order to avoid payments from the new club to the wrong bank account.⁶⁴ Subsequently, the FIFA Clearing House will make payment into the bank account provided by each training club.⁶⁵

An association is entitled to receive the proportion of solidarity contribution which, in principle, would be due to one of its affiliated clubs, if it can provide evidence that the club in question - which was involved in the professional's training and education - has in the meantime ceased to participate in organised football and/or no longer exists due to, in particular, bankruptcy, liquidation, dissolution or loss of affiliation. This solidarity contribution shall be reserved for youth football development programmes in the association(s) in question.⁶⁶

Limitation periods and applicable FIFA RSTP

For cases not governed by the FIFA Clearing House Regulations, the new club shall pay the solidarity contribution to the training club(s) pursuant to the solidarity provisions, no later than 30 days after the player's registration or, in case of contingent payments, 30 days after the date of such payments.⁶⁷

In cases where the clubs agreed to pay any of the instalments before the player's registration with the

new club, solidarity contribution will only fall due once the player is effectively registered with the new club, i.e. once the International Transfer Certificate (ITC) is delivered and the player is registered with the new club's association. In a recent decision of a Single Judge of the FIFA DRC, it was stated that the RSTP applicable to disputes relating to solidarity contribution are always based on the date of effective registration (if the transfer fee is payable at once) or on the date of

⁵⁵ [FIFA DRC, 22 June 2021, Vergara.](#)

⁵⁶ [FIFA DRC, 6 May 2021, Núñez Ribeiro.](#)

⁵⁷ [FIFA DRC, 22 June 2021, Vergara.](#)

⁵⁸ [FIFA DRC, 22 July 2021, Luyindama](#); [FIFA DRC, 30 April 2021, Santos Santana](#) and [FIFA DRC, 18 December 2020, Rodrigues de Souza.](#)

⁵⁹ [FIFA DRC, 8 January 2021, Mujica](#) and [FIFA DRC, 17 November 2020, Musa.](#)

⁶⁰ See, in this regard, for example [FIFA DRC, 11 June 2022, Nwobodo](#). In this decision, the Respondent did not contest being the party liable to pay solidarity contribution to the claimant, as such a potential reimbursement by the former club could not be discussed.

⁶¹ [FIFA DRC, 21 January 2022, Azevedo.](#)

⁶² FIFA Commentary on the RSTP 2021, Chapter VIII, p. 342.

⁶³ See, in this regard, [FIFA DRC, 11 September 2020, Starfelt.](#)

⁶⁴ Art. 13.2 FIFA Clearing House Regulations.

⁶⁵ Art. 14.2 FIFA Clearing House Regulations.

⁶⁶ Art. 2 par. 4 Annexe 5 FIFA RSTP.

⁶⁷ Art. 2 par. 1 Annexe 5 FIFA RSTP. See, in this regard, for example [FIFA DRC, 12 January 2021, Herrera](#). It is well-established jurisprudence of the FIFA DRC that interests at a rate of 5% p.a. applies as of the day after the due date of the payment of (instalment of) the transfer fee, 30 days after the payment + 1 day, until the date of effective payment. See, in this regard, for example [FIFA DRC, 30 April 2021, Santos Santana](#) and [FIFA DRC, 17 November 2020, Musa.](#)

payment of the instalments of the transfer fee (in case of contingent payments), not on the date the transfer agreement was concluded.⁶⁸ However, in another decision, in which the transfer fee was payable in instalments, it was established that the entitlement of a club to receive solidarity contribution is triggered by the registration of a player against the payment of transfer compensation and the effective registration of the player with his new club was considered as the event giving rise to the dispute.⁶⁹

Hence, from a constant line in the jurisprudence of the FIFA DRC, it follows that these lines of reasoning are considered to be against the principle of legal certainty and of non-retroactivity, i.e. rules not having retrospective effect.⁷⁰ In these decisions, it was indicated that it would not be fair for parties to be subjected to a provision that was not applicable at the moment they discussed the content of a transfer agreement.⁷¹ As such, the FIFA DRC decided that the date of signing the transfer agreement is decisive in establishing the applicable RSTP.

Moreover, in the event that the applicable RSTP is based on the date of payment of the contingent payments, this might lead to a situation in which different RSTPs are applicable to the same transfer agreement. In the opinion of the author, such a situation must be avoided and therefore, in principle, the date of the signing of the transfer agreement must be leading for determining the applicable RSTP. This reasoning is consistent and in line with Article 26 par. 2 of the FIFA RSTP, in which it is explicitly mentioned that solidarity contribution disputes *"shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose."*⁷² As from 16 November 2022, the FIFA Clearing House Regulations shall apply to all transactions in which the trigger for the entitlement of training rewards occurs as from 16 November 2022, i.e. the day on which the regulations entered into force.⁷³ It is worth noting that transfers or registrations of players having occurred before the go-live of the FIFA Clearing House will be paid and processed with the

previous claims system. Accordingly, training rewards related to instalments falling due after 16 November 2022, but which still result from transfers concluded before the entry into force of the FIFA Clearing House Regulations, will be paid and processed with the current claims system.⁷⁴

According to Article 25 par. 5 of the FIFA RSTP, the FIFA DRC shall not hear any case if more than two years have elapsed since the event giving rise to the dispute. The event giving rise to the dispute was mainly the alleged absence of payment of solidarity contribution and not the moment in which the new club proceeded with the payment of the transfer fee.⁷⁵ In this regard, the CAS has confirmed on several occasions that Article 25 par. 5 of the FIFA RSTP contains a *lacuna* with regard to the possible interruption of the prescription period and has recognized that, under certain

circumstances, Articles 135 and 138 of the [Swiss Code of Obligations](#) (SCO) additionally apply. As recognized by the CAS, the two years prescription period provided for in Article 25 par. 5 of the FIFA RSTP can be interrupted by a debtor acknowledging its debt against the creditor in line with Article 135 of the SCO. The

acknowledgement or recognition of debt by a club interrupts the prescription of a possible claim and, in line with Article 137(1) of the SCO, a new prescription period commences as of the date of the interruption.⁷⁶ The notion of recognition of debt is not specifically defined in the law. It may consist of one formal document or a combination of several documents. Case-law has defined recognition of debt as a declaration of intent or an acknowledgement signed by the debtor to pay a certain amount determinable and payable without any restrictions. In particular, it has been held that a bank statement constitutes a recognition of debt.⁷⁷

However, in the event that the FIFA administration closes a claim by way of an administrative letter, it may be considered as an end of proceedings based on the extinction of the object or extinction of the interest for legal protection, especially if the claimant does not request the proceedings to be re-opened or does not lodge a new claim within a certain period of time.

68 [FIFA DRC, 22 June 2021, Vergara](#).

69 [FIFA DRC, 26 February 2021, Rog](#).

70 [CAS 2006/A/1181 FC Metz v. FC Ferencvarosi](#), award of 14 May 2007, par. 5-12 and [CAS 2014/A/3776 GFA v. FIFA](#), award of 27 April 2016, par. 266.

71 [FIFA DRC, 23 February 2021, Karamoh](#); [FIFA DRC, 3 September 2021, Chiriches](#); [FIFA DRC, 27 August 2021, Veretout](#) and [FIFA DRC, 19 August 2021, Kosok](#).

72 See also [CAS 2021/A/8238 Cagliari Calcio v. RNK Split](#), award of 8 September 2022, par. 69-85.

73 Art. 19 FIFA Clearing House Regulations.

74 See also FIFA Explanatory notes on the FIFA Clearing House Regulations, p. 3.

75 See in, *inter alia*, [FIFA DRC, 2 December 2020, Ribeiro De Souza](#). In this decision, the claimant argued that the new club of the player did not pay the instalments as stipulated in the transfer agreement on time and argued that the payment of solidarity contribution only fell due after the execution of the decision of the FIFA DRC in relation to the outstanding instalments of the transfer fee. The FIFA DRC did not follow the same line of reasoning of the claimant and decided that the claims of solidarity contribution in relation to the first four instalments of the transfer fee were time-barred. The event giving rise to the dispute is the absence of the payment by the new club of the solidarity contribution due to training club(s) of the players and not the moment in which the new club proceeded with the payment of the transfer fee.

76 The new prescription period is also two years. See, in this regard, [FIFA DRC, 25 February 2021, Da Silva Costa](#).

77 The recognition of debt under Swiss Law is governed by the [Swiss Federal Act on Debt Enforcement and Bankruptcy](#) (DEBA).

It is unclear within what timeframe the claimant should complete its claim and/or should make contact with the FIFA Regulatory Compliance and/or Disciplinary department to report, for example, potential misconduct of the association in case it is not willing to provide the claimant with a player passport.

With the new FIFA Clearing House Regulations, clubs only have ten days after the generation of the electronic player passport to be requested to be included in the review process.⁷⁸ As said, after the review process, the FIFA general secretariat will evaluate any request before deciding on the registration information to be incorporated and amended in the final electronic player passport based on which the allocation of solidarity contribution is decided. In the situation of legal or factual complexity, the FIFA general secretariat shall refer the matter to the FIFA DRC, following which the FIFA DRC will decide on the final electronic player passport.⁷⁹ The FIFA general secretariat will notify the final electronic player passport and the allocation statement to all parties in the review process. The notification shall be considered a final decision by the FIFA general secretariat or the FIFA DRC for the purpose of Article 57 par. 1 of the FIFA Statutes and may be appealed to the CAS.

Clubs may still lodge a claim against the relevant clubs in accordance with Article 27 of the Procedural Rules on which the FIFA DRC shall decide when a club:

- ➔ did not take part in the relevant electronic player passport process; and,

- ➔ considers, as a result of a bridge transfer, exchange of players or information declared by the new club or its member association (including the training category of the club), that:

- it was incorrectly not entitled to any training rewards or entitled to a lesser amount than should have been calculated; or,
- an electronic players passport review process should have taken place; and,

- ➔ considers that it is entitled to receive training rewards.⁸⁰

Besides the player passport, a claim for solidarity contribution must contain several formalities such as the exact date of the transfer on which the claim is based, information about the clubs involved in the transfer on which the claim is based, the percentage of the solidarity contribution claimed; and the alleged amount for which the player was transferred to their new club, if known, or a statement to the effect that the amount is currently not known.⁸¹ Upon receipt of the claim, the FIFA general secretariat will assess whether the regulatory requirements have been met. If the claim is incomplete, the FIFA general secretariat will inform the claimant and request rectification. If the claim is not rectified within the time limit, it is deemed withdrawn and will need to be resubmitted. If this occurs, the resubmitted claim will be treated as a new claim from the date of its submission, including for the purposes of examining whether the two-year time limit has been respected.

Article 20 Procedural Rules

As of 21 August 2019, the FIFA Players' Status Department (PSD) started to apply the old Article 13 and current Article 20 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the Procedural Rules).⁸² Article 20 of the Procedural Rules grants the FIFA PSD the ability to submit written proposals to the parties involved in a dispute related to training compensation and the solidarity mechanism regarding the calculation of the amounts owed.

With the principle of procedural economy in mind, Article 20 of the Procedural Rules was introduced in

order to speed up the decision-making process in training compensation and solidarity mechanism cases without complex factual or legal issues.⁸³ The relevant article grants the PSD the power to make written proposals, without prejudice, to the parties regarding the amounts owed in the case in question as well as the calculation of such amounts. The amount to be paid set forth in a proposal only becomes final and binding if such proposal is accepted by both parties or if no objection is raised against it within the stipulated time limit. However, the parties to which the proposal is issued do not necessarily know whether the opposing party accepted or rejected the

⁷⁸ Art. 8.2 and 9.2 FIFA Clearing House Regulations.

⁷⁹ Art. 10 FIFA Clearing House Regulations.

⁸⁰ Art. 18.2 FIFA Clearing House Regulations.

⁸¹ See for further formalities Art. 27 of the FIFA Procedural Rules Governing the Football Tribunal.

⁸² As from the June 2022 edition, the old Article 13 became the new Article 20 of the Procedural Rules.

⁸³ The CAS Panel in *CAS 2020/A/7252 BFC Daugavpils v. FC Kairat & FIFA*, par. 129 stated that the precondition of "without complex factual or legal issues" is somewhat unfortunate, as this determination can actually only be made if and when all parties involved have communicated their views.

proposal until this is confirmed by FIFA. Accordingly, a proposal itself cannot be considered a final and binding decision; only a “confirmation letter” is a decision that definitely affects the legal position of the parties involved. The assessment of whether or not there are complex factual or legal issues for a proposal to be formulated,⁸⁴ is to be made on a *prima facie* basis and on the basis of the claim alone. The FIFA administration must be afforded ample discretion in determining whether or not it considers a case to be complex and, thus, whether or not to issue a proposal to the interested clubs, given that such discretionary power is wholly counterbalanced

by the fact that each of those clubs has the right, at its sole discretion, to reject the FIFA proposal and ask for a reasoned decision (with a subsequent right of appeal to the CAS).⁸⁵ Article 20 of the Procedural Rules was introduced to have the potential to settle a considerable number of training compensation and solidarity mechanism disputes swiftly and efficiently.⁸⁶ The Article 20 procedure seems more or less to be incorporated within the new FIFA Clearing House Regulations and comparable with the assessment by the FIFA general secretariat and the subsequent electronic player passport review process as detailed in Articles 8 to 10, as previously discussed.

Concluding remarks

The jurisprudence of the FIFA DRC in relation to solidarity contribution is constant and well-established in the recent years. The current biggest change is that, as from 16 November 2022, the FIFA Clearing House Regulations applies to all transactions in which the trigger for the entitlement of training rewards occurred after the day on which the regulations entered into force.⁸⁷ The FIFA Clearing House Regulations represent a fundamental change in how training clubs receive compensation for their efforts, being a shift from the current claims system to a system of automatic entitlement. It is worth noting that transfers or registrations of players having occurred before the go-live of the FIFA Clearing House will be paid and processed with the previous claims system. Accordingly, training rewards related to instalments falling due after 16 November 2022, but which still result from transfers concluded before the entry into force of the FIFA Clearing House Regulations, will be paid and processed with the previous claims system.⁸⁸

It will be interesting to see how the FIFA Clearing House will function in the future and whether the FIFA Clearing House will be able to swiftly handle the workload as in 2021 a total of 340 international transfers were registered and the solidarity contribution calculated by engaging clubs paying a transfer fee was USD 42.8 million.⁸⁹ In the period from 1 July 2021 to 30 June 2022, a total of 1,420 claims for solidarity contributions were submitted through FIFA TMS.⁹⁰ This

was the second-highest number ever recorded. It will be interesting to see whether the new system of FIFA will contribute to a decrease in the submitted claims.

It will also be interesting to see whether clubs and associations will be able to use the system swiftly, as there are clubs and associations throughout the world that might not be well enough equipped to do so. In

"It will be interesting to see whether the new system of FIFA will contribute to a decrease in the submitted claims"

addition, it will also be interesting to see how this new procedure will affect the decision-making of the FIFA DRC and, subsequently, its jurisprudence. For example, a change will occur in the calculation of the time limit to file a claim. In cases governed by the FIFA Clearing House Regulations, the event giving rise to

the dispute seems to be the training rewards trigger, such as the first professional registration, international transfer or a domestic transfer with an international dimension,⁹¹ and no longer the absence of payment of solidarity contribution 30 days after the respective registration or the due date of a contingent payment.

It is further worth noting that Article 18.2 of the FIFA Clearing House Regulations provides the requirements for a club to lodge a claim against the relevant club. FIFA specifically mentions bridge transfers, the exchange of players or the declaration of incorrect information. In this regard, it is recommended that “incorrect information” will be widely interpreted by FIFA in order to make sure that FIFA will also be competent in matters when there is a dispute in

84 In Article 10.3 FIFA Clearing House Regulations, the same wording is used.

85 [CAS 2020/A/7252 BFC Daugavpils v. FC Kairat & FIFA](#), award of 31 May 2021 and [CAS 2020/A/7517 Antalyaspor A.S. v. Green Horse Football Academy & FIFA](#), award of 1 September 2021 par. 100.

86 [FIFA Circular no. 1689, 21 August 2019](#).

87 Art. 19 FIFA Clearing House Regulations.

88 See also FIFA Explanatory notes on the FIFA Clearing House Regulations, p. 3.

89 FIFA Global Transfer Report 2021-2022, p. 14.

90 FIFA Football Tribunal Report 2021-2022, p. 15.

91 FIFA Explanatory notes on the FIFA Clearing House Regulations, p. 3.

relation to “any compensation”, for example when a friendly match is played or a sell-on is agreed upon in return for the transfer of a player.⁹² Furthermore, FIFA should not decide too lightly that the matter is not of legal or factual complexity,⁹³ as in practice matters turn out to be more complex after the relevant parties set out their reasoning and argumentation, which may take some time. However, the electronic player passport review process only lasts ten days, which is only exceptionally extended by the FIFA general secretariat.⁹⁴ As such, clubs must act decisively in matters in which they are involved in the electronic player passport review process as, in general, they will only have ten days to review and/or request the amendment of any registration information, and only clubs that did not take part in the review process may lodge a claim against the relevant club.⁹⁵ It is a question of whether clubs are able to swiftly set out their requests and amendments within this relatively short timeframe, especially in complex cases and during hectic and busy periods such as the transfer windows, as training reward triggers will mainly occur during these periods. One might suggest extending this period as it seems that mistakes and/or omissions made by clubs during the electronic player passport review process cannot be revised except by an appeal in front of the CAS in accordance with the FIFA Statutes. However, in light of consistency and the principles of legal certainty and equality, the extension must be incorporated into the regulations because the FIFA general secretariat must comply with the regulations and does not have the regulatory power to deviate from them.

In any case, the developments regarding the FIFA Clearing House will be interesting to follow. The new system will, over time, most likely contribute to a further decrease in solidarity claims and contribute to the protection of the integrity of the football transfer system. The use of up-to-date electronic player registration data in the electronic player registration system will most likely contribute to preventing fraudulent conduct, such as the issuing of several different and unreliable player passports by a confederation.⁹⁶ As such, the objectives of FIFA and the changes in the football transfer system are therefore highly applauded in advance, but only time will tell how the amendments will actually influence the football transfer system in practice and whether the system developed by FIFA will work swiftly and whether it consists sufficient safeguards and counterbalances.

⁹² The claimant should prove that this represents a certain value in the transfer.

⁹³ As stipulated in Article 10.3 of the FIFA Clearing House Regulations.

⁹⁴ Art. 9.2 FIFA Clearing House Regulations.

⁹⁵ Art. 18.2 FIFA Clearing House Regulations.

⁹⁶ [CAS 2020/A/7517 Antalyaspor A.S. v. Green Horse Football Academy & FIFA](#), award of 1 September 2021 par. 10-17; [CAS 2019/A/6095 Red Tiger FC v. Fenerbahçe SK](#), award of 17 February 2020, par. 31-35 and [CAS 2016/A/4604 Ängelholms FF v. Kwara Football Academy](#), award of 12 January 2017, par. 58-66.