Arbitration CAS 2021/A/8227 SSC Napoli S.p.A. v. Real Betis Balompié S.A.D., award of 29 June 2023

Panel: Mr Bernhard Welten (Switzerland), President; Mr Mark Hovell (United Kingdom); Mr José Juan Pinto (Spain)

Football
Solidarity contribution
Conditions for solidarity contribution to come into play
Predetermined buy-out fee
Exercising a buy-out clause
Deduction of solidarity contribution

1. **For solidarity contribution to come into play, two conditions are to be met: (i) the player's transfer (Article 21 of the FIFA Regulations on the Status and Transfer of Players; "RSTP") or "move" (Article 1 Annex 5 of the RSTP) to a foreign club during the course of his employment contract; and (ii) the payment of a transfer compensation by the new club to the former club. The solidarity mechanism shall apply when there is a move of the player from one club to another club from another association (international move/transfer). This solidarity mechanism shall help to bring smaller clubs on board to invest in the training of young players. As a consequence, the "move" of a player shall be considered in a general way, not limiting this to formal points. Therefore, such a "move" of a player from one club to another is not restricted by the necessity that such movement takes place in accordance with the "typical" transfer.**

2. **A predetermined buy-out fee set forth in a buy-out clause is generally not materially different from a negotiated transfer fee for the purposes of solidarity mechanism. One main difference is, however, that from a negotiated transfer fee, the new club is allowed to deduct the solidarity contribution and distribute it according to the FIFA RSTP.**

3. **The FIFA Commentary to the RSTP (2021 Edition) maintains, *inter alia*, that *"for a buy-out clause to be properly exercised, the agreed sum must be paid unconditionally, with no deductions of any kind"*. An amount that is lower than the amount set out as the buy-out fee, would not trigger such buy-out. It would be therefore logical that the solidarity needs to be paid on top, so the trigger price is met as is the solidarity compensation.**

4. **According to Article 21 and Annexe 5 of the FIFA RSTP, the solidarity contribution is paid by the new club by deducting the corresponding percentage from the total amount of the negotiated transfer fee for the player transfer (i.e. the gross transfer value). It is noted that the wording of the RSTP does not prohibit that the amount specified in a transfer contract represents only 95% of the gross transfer value, as long as the solidarity contribution in the end is still deducted from the gross transfer value and distributed in**

conformity with the wording of Article 1 Annexe 5 of the RSTP. The fact that a net calculation leads to the situation that a club can no longer calculate the solidarity contribution simply by deducting 5% from the amount stipulated in the transfer contract does not lead to a destabilization of the system.

I. PARTIES

1. SSC Napoli S.p.A. (the "Appellant" or "Napoli") is a football club with its registered office in Napoli, Italy. The Appellant is a member of the Italian Football Federation (the "FIGC") which in turn is affiliated to the Union of European Football Associations ("UEFA") and the Fédération Internationale de Football Association ("FIFA").

2. Real Betis Balompié S.A.D. (the "Respondent" or "Real Betis") is a football club with its registered office in Sevilla, Spain. The Respondent is a member of the Royal Spanish Football Federation (the "RFEF") which in turn is affiliated to UEFA and to FIFA.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established by the Panel on the basis of the Parties' written and oral submissions and the exhibits produced during these proceedings and statements made during the hearing. Additional facts and allegations found in the Parties' submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered carefully all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its award only to the submissions and evidence it considers necessary to explain its reasoning.

A. Background Facts

4. On 1 February 2018, Real Betis and Mr A. (the "Player"), born on 3 April 1996, entered into an employment contract valid from the date of its signature until 30 June 2023 (the "Employment Contract").

5. Between 21 June 2018 and 2 July 2018, the Parties exchanged several emails including drafts of transfer agreements in relation to the Player, after Napoli had expressed an interest in acquiring the Player.

6. On 4 July 2018, Napoli deposited an amount of EUR 30,000,000 in the account of La Liga in favour of Real Betis.

7. On 6 July 2018, the Player was deregistered by the RFEF and the International Transfer Certificate (the "ITC") was delivered to the FIGC.

8. On 10 July 2018, Real Betis confirmed having received the payment of EUR 30,000,000.

9. On 13 July 2018, the Player was registered by the FIGC for Napoli.

10. On 18 September 2018, Real Betis contacted Napoli and asked for the payment of the solidarity contribution pursuant to Article 21 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") in the amount of EUR 1,275,000 as well as the training compensation pursuant to Article 20 RSTP in the amount of EUR 595,000.

11. On 9 October 2018, Napoli fully rejected Real Betis' requests.

12. On 10 October 2019, Real Betis reiterated its requests to receive the training compensation and solidarity contribution in relation to the transfer of the Player.

13. On 21 October 2019, Napoli confirmed the payment of the solidarity contribution to Elche FC (the club that the Player had been loaned during his employment relationship with Real Betis) and its rejection of Real Betis' requests.

B. Proceeding before the FIFA Dispute Resolution Chamber

14. On 5 August 2020, Real Betis lodged its claim with the FIFA Dispute Resolution Chamber (the "FIFA DRC") against Napoli and asked for the following:

    "i. To accept this claim and to declare that the Respondent has failed to satisfy the financial obligations related to the Solidarity Mechanism.

    ii. To issue a decision requiring the Respondent to pay the Claimant the overdue solidarity contribution due to the Player's Transfer in the amount of EUR 1,275,000.00 (one million two hundred seventy five thousand Euro) immediately, together with five percent 5% per annum interest rate starting from 6 August 2018 until full and entire payment.

    iii. To order the Respondent to assume the entirety of the FIFA DRC administration and procedural fees, if any".

15. On 4 September 2020, FIFA informed Napoli about the claim filed by Real Betis and asked Napoli to start with the payment of the solidarity contribution *"in accordance with the applicable rules or to provide our services with valid reasons which might justify a possible refusal".*

16. On 9 October 2020, Napoli filed its answer to Real Betis' claim and asked as follows:

    "In the light of all the described circumstances, SSC Napoli requests FIFA to dismiss the claim filed by Real Betis, condemning it to pay all the proceedings costs and legal fees".

17. On 2 November 2020, FIFA confirmed having received Napoli's answer and set Real Betis a deadline to file its comments to it.

18. On 18 November 2020, Real Betis filed its comments to Napoli's answer, confirming its prayers filed on 5 August 2020.

19. On 2 December 2020, Napoli filed its final position with the FIFA DRC, filing the following prayers:

– *"to dismiss the claim filed by Real Betis;*

– *subsidiarily, to reduce the sum to be granted to Club Betis as described at paragraph 6 above;*

– *to condemned Club Betis to pay all the proceedings costs and legal fees".*

20. On 11 March 2021, the FIFA DRC took its decision in the case TMS 6508 which was sent to the Parties by email of 20 April 2021. The findings were as follows:

" 1. The claim of the Claimant, Real Betis Balompié, is partially accepted.

2. The Respondent, SSC Napoli, shall pay to the Claimant EUR 1,197,947.37 as solidarity contribution, plus 5% interest per annum as from 13 August 2018 until the date of effective payment.

3. Any further claims of the Claimant are rejected.

4. The Claimant shall immediately inform the Respondent of the bank account to which the Respondent must pay the due amount (including all applicable interest).

5. The Respondent shall provide evidence of full payment to chhelpdesk@fifa.org. If applicable, the evidence shall be translated into an official FIFA language (English, French, German, Spanish).

6. If the due amount (including all applicable interest) is not paid by the Respondent within 45 days as from notification of the bank account details, the following consequences shall apply:

1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods.

2. The ban will be lifted immediately, and prior to its complete serving, following confirmation that the due amount (including all applicable interest) has been received by the Claimant.

3. In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.

7. No procedural costs are payable (cf. arts. 17 par. 1 and 18 par. 1 of the Rules Governing the Procedure of the Players' Status Committee and Dispute Resolution Chamber)".

21. On 26 April 2021, Napoli sent a letter to FIFA and asked for the grounds of the FIFA DRC decision.

22. On 23 July 2021, the FIFA DRC sent the decision of 11 March 2021 (TMS 6508) together with the reasons (the "Appealed Decision") to the Parties. These grounds may be summarized as follows:

In the present matter, the FIFA RSTP, edition June 2018, is applicable as well as the Rules Governing the Procedure of the Players' Status Committee and the Dispute Resolution Chamber, 2021 Edition (the "Procedural Rules"). The Parties did not dispute that the payment of the buy-out fee by Napoli to Real Betis is to be considered a "transfer" in the sense of Article 21 and Article 1 of Annexe 5 of the FIFA RSTP. Napoli, however, contested the allegation of Real Betis that the amount paid as buy-out fee was net of solidarity contribution and that solidarity contribution should be additionally paid to Real Betis. The solidarity mechanism is applicable to any compensation paid by a new club on the basis of a buy-out clause contained in the employment contract of a player with his former club. Based on the FIFA DRC and CAS jurisprudence, the wording of the FIFA RSTP does not prohibit that the amount specified in a transfer agreement represents only 95% of the transfer value, as long as the solidarity contribution in the end is still deducted from the gross transfer value and distributed in conformity with the wording of Article 1 of Annexe 5 of the FIFA RSTP. The same applies, by analogy, to the amount specified in the buy-out clause. In the case at hand, it was only the payment of EUR 30 million to trigger the buy-out of the Player; if the amount would have been 5% lower (deduction of solidarity contribution) this would not result in the early termination of the Player's Employment Contract with Real Betis. As a consequence, the amount of EUR 30 million shall be considered as net amount which represents 95% of the total compensation paid by Napoli in connection with the transfer of the Player. Calculating this, results in an amount of EUR 31,578,947 of which the 5% solidarity contribution corresponds to an amount of EUR 1,578,947. Considering Article 1 para. 1 of Annexe 5 of the FIFA RSTP and the Player's passport, the portion due to Real Betis is 75.87%. This corresponds to an amount of EUR 1,197,947.37.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 13 August 2021, Napoli filed its Statement of Appeal pursuant to Article R48 of the Code of Sports-related Arbitration (the "Code") with the Court of Arbitration for Sport (the "CAS") against Real Betis with respect to the Appealed Decision. It further nominated Mr. Mark Andrew Hovell, Solicitor in Manchester, UK as arbitrator.

24. With letter of 18 August 2021, Real Betis requested the CAS Court Office to submit the present matter to a Sole Arbitrator.

25. On 25 August 2021, Napoli replied that it does not agree to submit the present matter to a Sole Arbitrator.

26. On 31 August 2021, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division has decided to submit this matter to a three-member Panel, pursuant to Article R50 of the Code.

27. On 3 September 2021, FIFA informed the CAS Court Office that it renounces its right to intervene in the present arbitration proceedings and filed a clean copy of the Appealed Decision.

28. On 6 September 2021, Real Betis nominated Mr. José Juan Pinto, Attorney-at-law in Barcelona, Spain as arbitrator.

29. On 22 September 2021, Napoli filed its Appeal Brief pursuant to Article R51 of the Code.

30. On 27 September 2021, the CAS Court Office informed the Parties that the Panel appointed to decide the present case is constituted as follows:

President:	Mr. Bernhard Welten, Attorney-at-law in Bern, Switzerland
Arbitrators:	Mr. Mark Andrew Hovell, Solicitor in Manchester, UK
	Mr. José Juan Pinto, Attorney-at-law in Barcelona, Spain

31. On 2 November 2021, after having been granted an extension of the deadline, Real Betis filed its Answer pursuant to Article R55 of the Code.

32. On 3 and 9 November 2021, Napoli respectively Real Betis informed the CAS Court Office that they both prefer to hold a hearing in the present proceedings.

33. On 8 December 2021, the CAS Court Office confirmed the Parties that the hearing will be held in Lausanne, Switzerland, on 29 March 2022, at 9:30 am.

34. On 17 and 18 January 2022, Napoli respectively Real Betis signed the Order of Procedure and returned it to the CAS Court Office.

35. On 1 February 2022, FIFA sent the complete case file in the proceedings TMS 6508 to the CAS Court Office.

36. On 29 March 2022, the hearing took place in Lausanne, Switzerland. Napoli was represented by Mr. Mattia Grassani, Mr. Luca Smacchia and Mr. Luigi Carlutti, all Attorneys-at-law. Real Betis was represented by Mr. Alphonso León, Mr. Alessandro Mosca and Mr. Victor Omnes, all Attorneys-at-law. By videoconference, the witness for Napoli, Mr. Andrea Chiavelli, CEO was heard. Further, Mr. Federico Martínez Feria as representative of Real Betis was present in the hearing by videoconference as well. The Panel was assisted by Mr. Antonio De Quesada, CAS Head of Arbitration.

37. At the beginning of the hearing, the Parties confirmed to have no objections against the Panel deciding this case. At the end of the hearing, the Parties explicitly confirmed that their right to be heard and the equal treatment of the Parties were fully respected.

38. On 30 March 2022, Napoli sent an email to one member of the Panel with additional documents in relation to the draft of the FIFA RSTP filed by Napoli with its Appeal Brief as exhibit R24. These were passed to the CAS Court Office and then on to Real Betis.

39. On 4 April 2022, Real Betis rejected these documents filed by Napoli in pointing out to Article R57.3 of the Code and to the fact that such document was apparently sent in November 2020 whereas the transfer of the Player happened in 2018.

40. On 19 April 2022, the CAS Court Office informed the Parties about the Panel's decision to not admit the documents sent on 30 March 2022 into the case file. Further, the CAS Court Office pointed out to Napoli that any contact with the Panel shall be made through the CAS Court Office and not directly with the arbitrators.

IV. SUBMISSIONS OF THE PARTIES

41. In the following summaries, the Panel will not include every argument put forward to support the Parties' prayers for relief. Nevertheless, the Panel has carefully considered and taken into account all of the evidence and arguments submitted by the Parties, but limits its explicit references to those arguments that are necessary in order to explain its decision.

A. The Appellant's Submissions and Requests for Relief

42. The Appellant's submissions, in essence, may be summarized as follows:

- As the Appealed Decision stated in para. 30 and 31, it is common practice in transfer of players that the clubs involved agree on a method of calculation of the solidarity contribution which differs from the one provided by the FIFA RSTP (which is a deduction of 5% from the transfer fee). However, it is important that the two clubs have to agree that the amount specified in a transfer contract represents only 95% of the gross transfer value. If such agreement is missing in the transfer agreement, it is not possible to consider the amount stated in the transfer agreement as being 95% of the gross transfer value.

- The same applies by analogy to buy-out clauses; however, it is also necessary that the parties explicitly agree that the stated amount represents only 95% of the gross transfer value. In the Employment Contract, no such clause was included. Nevertheless, the FIFA DRC wrongly added something to the Player's buy-out clause that Real Betis did not insert in it. The interpretation by analogy is only possible if the same conditions mentioned in the CAS jurisprudence are considered by the FIFA DRC which means that the Parties agreed on something different as stated in the FIFA RSTP.

- Article 21 of the FIFA RSTP states that any club that has contributed to the player's education and training shall receive a proportion of the compensation paid to his former club. Article 1.1 of Annexe 5 of the FIFA RSTP defines that the solidarity contribution shall be 5% of any compensation paid within the scope of a transfer. This means that from the stipulated transfer compensation 5% shall be deducted and distributed as solidarity contribution. It is, however, not forbidden to add 5% on top of the agreed transfer amount, if the involved clubs clearly agreed to this.

- In the present case, the Player joined Napoli after the payment of a compensation which was fixed in the Employment Contract in accordance with Article 16 of the Real Decreto 1006/1985 (the "Real Decreto"). Based on this provision a club is allowed to define the amount that it is disposed and ready to accept for the departure of the specific player. It is undisputed that in the present matter the move of the Player from Real Betis to Napoli was a transfer. Therefore, the amount paid by Napoli is a transfer compensation in the sense of Article 1.1 of Annexe 5 of the FIFA RSTP.

- In order to activate the provision in the Employment Contract, Napoli had to pay the full amount requested without any deduction. The FIFA RSTP clearly states that the solidarity contribution shall be deducted from any compensation paid for a transfer. It was the choice of Real Betis how to formulate the provision in the Employment Agreement and, e.g., it could have stated that the solidarity contribution shall not be included in the buy-out amount. It was Real Betis' duty to be clear on this point as selling club of the Player. Therefore, lacking any such specification, the general rule of the FIFA RSTP applies and the solidarity contribution shall be considered as included in the amount stated in the buy-out provision in the Employment Contract. This was confirmed by the FIFA DRC decision of 24 April 2015 which ended up in the CAS award 2015/A/4188. It was stated that the selling club impliedly accepted that the mentioned amount was a net amount in the sense that also the solidarity contribution was included in such amount.

- In CAS 2015/A/4137, the Sole Arbitrator stated that the FIFA RSTP does not prohibit that the amount specified in a transfer contract represents only 95% of the gross transfer value in the sense that 5% shall be paid in addition as solidarity contribution. However, contrary to the present matter, the relevant provision of the transfer agreement stated that the transfer amount is net of any local taxes, VAT and solidarity contribution. Therefore, the parties made an explicit agreement that the solidarity contribution shall be paid in addition. In the present matter, however, the Parties did not stipulate anything like this. As a consequence, the reasoning in CAS 2015/A/4137 cannot be applied in the present matter and the solidarity contribution shall be deducted from the compensation paid by Napoli respectively the compensation paid includes the solidarity contribution as in CAS 2015/A/4188. The same approach was taken by the FIFA DRC in the decision passed in TMS 6509 (CAS 2021/A/8230). CAS 2011/A/2559 confirmed that *"if in the scope of a player's transfer two parties conclude an agreement providing for their respective financial obligations, namely compensation, training compensation is regarded as being included in such compensation"*.

- Important to note is that Napoli paid the solidarity contribution due to Elche CF which was the Player's training club during the season December 2016 to June 2017 (season of the Player's 21st birthday). As Elche CF is a third party to the transfer, Napoli paid its solidarity contribution in addition to the transfer amount paid to Real Betis. A third-party club cannot negatively be affected by a transfer agreement between the selling and purchasing club. Real Betis could protect its position in drafting the provision in the Employment Agreement; however, Elche's position is protected by the FIFA RSTP. There is no provision in the FIFA RSTP providing for the solidarity contribution of the selling club to be paid on top of the compensation paid; if the provision enforced does

not provide otherwise, it is not possible to consider the amount as 95% of the compensation.

- In general, transfers are made by transfer agreements or buy-out clauses. In transfer agreements, the buying and selling club express their common will; on the other hand the buy-out clause is drafted by the selling club in stating the conditions for a transfer. As Real Betis did not specify in the buy-out clause that its share of solidarity contribution was to be paid on top of the buy-out fee, it shall be considered included in this compensation. The solidarity contribution is a portion of the value of the transfer and not an added value to this transfer, unless expressly provided otherwise.

- Napoli did not circumvent any rules. On the other hand, Real Betis tried to abuse its position as selling club and earn with the solidarity contribution and the training compensation a not justified economic advantage. In the transfer agreement offered by Real Betis on 25 June 2018, the transfer amount was increased to EUR 31.5 million, including solidarity contribution and training compensation. Before the FIFA DRC, Real Betis even claimed a total amount of EUR 1.87 million as solidarity contribution and training compensation. This shows the inconsistent behaviour of Real Betis.

- In CAS 2008/A/1523 it was decided that no solidarity contribution is due further to a contractual breach under Article 17 of the FIFA RSTP. This means that if the Appealed Decision should be confirmed, a club interested in the performance of a player would be much better off to sign the player without paying anything to 'La Liga' and defending its position before FIFA and the CAS and be obliged in the end to pay maybe two years after the transfer a compensation possibly equal to the value of the buy-out clause, with no solidarity contribution due in following the before stated CAS award.

- In case the Panel should decide that in addition to the compensation already paid, Napoli has to pay a solidarity contribution to Real Betis, such solidarity contribution of generally 5% shall be deducted by 0.5%, as the season when the Player became 23 years old was not completed with Real Betis and the Player was not yet fully educated. Further, the Player's passport shows that there are periods with no records; these periods cannot be considered as solidarity contribution of Real Betis; as a consequence, the solidarity contribution shall be reduced accordingly (0.547%). This was confirmed in a FIFA DRC decision of 19 February 2009. Deducting these portions, the solidarity compensation to be paid equals a maximum of 3.95%. Of this amount, Real Betis would have the right to 3.69% and Elche CF to 0.26% which brings the maximum amount of Real Betis to EUR 1,152,644.71. The Appealed Decision is wrong in considering that EUR 30 million are considered as 95% of the total compensation.

- The Appealed Decision lacks the legal basis as the interpretation by analogy made by the FIFA DRC is not based on the specific wording of the contractual provision respectively the provisions of the FIFA RSTP. By not stating anything in the buy-out clause, Real Betis implicitly accepted that the lump sum stated in the Employment Agreement includes the solidarity contribution. Another interpretation would contravene the FIFA

DRC decision of 24 April 2015 respectively the FIFA DRC decision in the case TMS 6509.

43. In its prayers for relief, the Appellant requested as follows:

– *"to acknowledge its jurisdiction to deal with the present appeal;*

– *on the merit, to overturn the decision of FIFA DRC and recognize that Real Betis has no right to receive solidarity contribution from SSC Napoli Spa in the context of the transfer of the player Mr A.;*

– *subsidiarily, on the merit, to reduce the sum eventually due to Real Betis as per justice;*

– *in any case, to condemn Real Betis to pay all costs of the present proceeding as well as the legal costs and fees borne by SSC Napoli Spa".*

B. The Respondent's Submissions and Requests for Relief

44. The Respondent's submissions, in essence, may be summarized as follows:

- The FIFA DRC rightfully qualified the operation as a transfer and the amount specified in the buy-out clause of the Employment Contract as a net amount, and, therefore, the solidarity contribution shall be paid in addition.

- Napoli misinterpreted the aim of Article 16 of the Real Decreto and its consequences. This Real Decreto is exclusively subject to Spanish law and does not give any other obligations to the clubs from other legal sources like for example the FIFA RSTP. Therefore, such other duties have to be calculated on top. The Real Decreto is handling the premature transfer of a player but not its training and education. As a consequence, the solidarity contribution is not included in the indemnification provided. This is confirmed in CAS 2019/A/6525 and CAS 2010/A/2098. As this compensation for a premature termination of an Employment Contract is governed by law, there was no reason for Real Betis to stipulate anything about the solidarity contribution in the buy-out clause stated in the Employment Contract.

- The reasoning brought forward by Napoli, based on CAS 2015/A/4137, cannot be applied in the present matter as the Parties did not sign a transfer agreement for the Player. Real Betis even expressly refused to include the solidarity contribution and training compensation in the buy-out fee of EUR 30 million. Napoli knew about the additional amount requested for solidarity contribution and training compensation, but maliciously tried to find a way to attempt avoiding this additional payment. Napoli clearly acted in bad faith trying to avoid paying the solidarity contribution and training compensation imposed by the FIFA RSTP.

- Napoli wrongly distinguished the legal situation of Elche CF and Real Betis regarding the solidarity contribution; Article 21 of the FIFA RSTP grants any club having contributed to a player's education and training a proportion of the compensation paid to his former

club. CAS 2018/A/5950, cited by Napoli, clearly supports the position of Real Betis; the gross value of the transfer was not the buy-out fee mentioned in the contract but an increased amount to include the solidarity contribution. The only important difference to the present case is that when the player Nani changed clubs he was at the age of 29 and, therefore, Fenerbahce had no right to solidarity contribution. In the CAS award CAS 2015/A/4188, it was stated that the amount of indemnification to be paid in accordance with the Real Decreto shall be considered a "net" amount to be paid without any deduction.

- The Real Decreto grants a mandatory right exclusively to professional football players to terminate their employment relationships prematurely and unilaterally. The RFEF regulation defines in Article 169 that the contractual status of professional footballers will be governed, beside the Real Decreto, by the labour rules of general scope and the collective bargaining agreements that could be concluded. Further, Article 180bis of the RFEF regulation states that the indemnification for the innocent party when the other one terminates the contract without just cause, shall be stipulated in the contract itself. As a consequence, the stipulation of the compensation amount in the Employment Contract is a requirement imposed by the RFEF regulations. The solidarity contribution to be paid by Napoli is an obligation arising out of the FIFA RSTP which is not applicable to the Employment Contract which is exclusively governed by Spanish law.

- Real Betis would also have preferred to conclude a transfer agreement and it was, therefore, willing to give a little discount to Napoli regarding the solidarity contribution and training compensation to be paid. As Napoli referred to CAS 2008/A/1523, it is important to consider CAS 2015/A/4188 which brings up disciplinary sanctions in case a player early terminates his employment contract without just cause. In addition, in the present case the breach would happen within the protected period which means that the Player and Napoli would have certainly been subject to disciplinary measures. In conclusion, Real Betis has the right to receive solidarity contribution from Napoli in relation to the Player's transfer.

- Regarding the calculation of the solidarity contribution, it is referred to the calculation made by the FIFA DRC in the Appealed Decision. The amount of EUR 1,197,947.37 as solidarity contribution for Real Betis shall be confirmed. In addition, 5% interests shall be paid starting from 6 August 2018 which is 30 days after the Player's registration in Italy, happening on 6 July 2018.

45. In its prayers for relief, the Respondent requested as follows:

"A. To dismiss the Appeal filed by Napoli against Real Betis with respect to the Decision passed by the FIFA DRC on the 11th of March 2021 with the reference TMS/6508, and communicated to the parties with the grounds on 23rd of July 2021;

B. To confirm in its entirety the Decision passed by the FIFA DRC on the 11th of March 2021 with the reference TMS/6508, regarding the solidarity contribution due to Real Betis, and communicated to the parties with grounds on the 23rd of July 2021;

C. Therefore, to award an amount of EUR 1,197,947.37 for solidarity contribution in favour of Real Betis, plus 5% interest per annum as from 13 August 2018 until the date of effective payment

D. To condemn Napoli to the payment of the whole CAS administration costs and the Arbitrators fee; and

E. To fix the sum of 20,000 CHF to be paid by Napoli to the Real Betis to help the payment of his legal fees covering the costs of its legal representation in front of the Court of Arbitration for Sport".

V. JURISDICTION

46. Article R47 of the Code states as follows:

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

47. In its Statement of Appeal, Napoli referred to Article 58 of the FIFA Statutes providing for CAS being competent to decide appeals against decisions of FIFA's legal bodies. Real Betis did explicitly agree with the CAS jurisdiction to decide the present Appeal in its Answer. Both Parties further confirmed the CAS jurisdiction when signing the Order of Procedure.

48. The Panel decides that the CAS has jurisdiction to decide the present case.

VI. ADMISSIBILITY

49. The Appealed Decision was communicated by FIFA to the Parties by email of 23 July 2021.

50. Napoli's Statement of Appeal is dated 13 August 2021 and was received by the CAS Court Office on the same day. Therefore, the Statement of Appeal was filed within 21 days from the communication of the Appealed Decision. The Appeal complied with all of the requirements of Article R47 ss. of the Code, including of the payment of the Court Office fee.

51. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

52. In its Appeal Brief, Napoli referred to Article R58 of the Code and Article 57 para. 2 of the FIFA Statutes and stated that the FIFA regulations shall be applied and, subsidiarily, Swiss law.

53. In its Answer, Real Betis confirmed that first of all the FIFA regulations shall be applied in accordance with Article 57 para. 2 of the FIFA Statutes and Article R58 of the Code. In addition, Real Betis pointed out to the primacy of the application of Spanish law and, particularly, the Real Decreto as well as the RFEF regulations.

54. The Panel acknowledges that Real Betis and the Player did not explicitly agree on an applicable law in the Employment Contract. With the transfer of the Player to Napoli, this internal Spanish matter became an international case. The Real Decreto is applicable to employment relations within Spain and therefore particular to Spanish Law. However, it is not disputed whether the buy-out clause was exercised, and the Player moved accordingly. What is in dispute, is whether Solidarity Compensation was triggered or not, and that concerns the FIFA RSTP and subsidiarily Swiss Law. Therefore, Real Betis' allegations of the primacy of the application of Spanish law, especially the Real Decreto, has to be rejected.

55. Further, the Panel points to Article 57 para. 2 of the FIFA Statutes and Article R58 of the Code and holds that primarily the FIFA regulations and, subsidiarily, Swiss law shall be applied.

VIII. MERITS

56. In the present matter, the main relevant facts of the Player's transfer from Real Betis to Napoli are clear and uncontested. Therefore, it is for the Panel to decide on the questions: if the move of the Player under the Employment Contract (incorporating the Real Decreto) is considered a transfer; whether such transfer leads to the duty to pay the solidarity contribution, respectively how much such solidarity contribution is; and if it must be paid on top of the compensation paid.

57. The starting point for the Panel is the wording and its interpretation of the buy-out clause as agreed between Real Betis and the Player in Article 5 of the Employment Contract, which relied on the *"Real Decreto 1006/1985, de 26 junio, por el que se regula la relación laboral especial de los deportistas profesionales"* (free translation: Real Decreto 1006/1985, of 26 June which regulates the special employment relationship of professional athletes) and the applicable FIFA regulations, especially Article 21 and Annexe 5 of the RSTP.

A. Employment Contract / FIFA Regulations / Real Decreto

58. Article 5 of the Employment Contract states:

"5.1 Rescisión por voluntad unilateral del jugador:

Si durante el periodo de vigencia del presente contrato se planteara la extinción del mismo, por voluntad del JUGADOR, sin causa imputable al Club, el Real Betis Balompié tendrá derecho a percibir, bien directamente por parte del jugador o por un tercer club o sociedad anónima deportiva en su nombre, una indemnización de:

a) TREINTA MILLONES DE EUROS (30.000.000.-€) para el caso de que el Club milite en Primera División en la temporada en curso en el momento de dicha extinción o para el caso en que, aun militando el club en Segunda División, las retribuciones del jugador previstas en el presente contrato no sufrieran reducción alguna por descenso de categoría, circunstancia que deberá comunicar el Club al jugador antes del 1 de julio de la temporada en la que el Club milite en Segunda División; o

b) […]

El abono de las indemnizaciones arriba descritas serán requisito ineludible para la efectividad de dicha extinción, estándose con respecto a los responsables del pago a lo dispuesto en el Artículo 16 del Real Decreto 1006/1985, de 26 de junio.

EL JUGADOR no podrá rescindir el presente CONTRATO, ni el CLUB autorizar la transferencia de su ficha federativa, ni ser contratado por Club o entidad deportiva española o extranjera de clase alguna si previamente no se ha materializado íntegramente, el pago indemnizatorio aquí convenido".

Freely translated by the Respondent:

"5.1 Termination by unilateral will of the player:

If during the period of validity of this contract the termination of the same is planned, by will of the PLAYER, without cause attributable to the Club, Real Betis Balompié will be entitled to receive, either directly by the player or by a third club or sports-limited company on his behalf, a compensation of:

a) THIRTY MILLION EUROS (30.000.000.-€), in the event that the Club plays in the First Division in the season in progress at the time of such termination or in the event that, even if the Club plays in the Second Division, the player's remuneration provided for in this contract does not suffer any reduction due to relegation, a circumstance that the Club must communicate to the player before July 1 of the season in which the Club plays in the Second Division;

b) […]

The payment of the above-described indemnifications will be an unavoidable requirement for the effectiveness of the above-mentioned extinction, being with respect to what is provided for in the Article 16 of the Royal Decree 1006/1985, of 26 June.

The PLAYER may not terminate this CONTRACT, nor may the CLUB authorize the transfer of its federative record, nor be contracted by any Spanish or foreign Club or sports entity of any kind if the indemnity payment agreed herein has not been paid in full".

59. The Panel acknowledges that Article 5 of the Employment Contract corresponds to Article 16 of the Real Decreto and speaks about a termination of the employment relationship. Articles 13 and 16 of the Real Decreto state:

"Art. 13 Extinción del contrato

La relación laboral se extinguirá por las siguientes causas:

[…]

i) Por voluntad del deportista profesional".

"Art. 16. Efectos de la extinción del contrato por voluntad del deportista.

Uno.–La extinción del contrato por voluntad del deportista profesional, sin causa imputable al club, dará a éste derecho, en su caso, a una indemnización que en ausencia de pacto al respecto fijará la Jurisdicción Laboral en función de las circunstancias de orden deportivo, perjuicio que se haya causado a la entidad, motivos de ruptura y demás elementos que el juzgador considere estimable.

En el supuesto de que el deportista en el plazo de un año desde la fecha de extinción, contratase sus servicios con otro club o entidad deportiva, éstos serán responsables subsidiarios del pago de las obligaciones pecuniarias señaladas.

Dos.–La resolución del contrato solicitada por el deportista profesional, fundada en alguna de las causas señaladas en el artículo 50 del Estatuto de los Trabajadores, producirá los mismos efectos que el despido improcedente sin readmisión".

Freely translated:

"Art. 13. Termination of the contract.

The employment relationship will be terminated for the following reasons:

[…]

i) At the will of the professional athlete.

Art. 16 Effects of the termination of the contract at the will of the athlete.

One.-The termination of the contract at the will of the professional athlete, without cause attributable to the club, will give the club the right, where appropriate, to compensation that, in the absence of an agreement in this regard, will be established by the Labor Jurisdiction based on the sporting circumstances, damage that has been caused to the entity, reasons for rupture and other elements that the judge considers estimable.

In the event that the athlete, within one year from the date of termination, hires his services with another club or sports entity, they will be subsidiarily responsible for the payment of the pecuniary obligations indicated.

Two.- The resolution of the contract requested by the professional athlete, based on any of the causes indicated in article 50 of the Workers' Statute, will produce the same effects as unfair dismissal without reinstatement".

60. The regulatory basis of the solidarity mechanism is in Article 21 and Annexe 5 of the RSTP which state as follows:

"21 Solidarity mechanism

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 (solidarity contribution). The provisions concerning solidarity contributions are set out in Annexe 5 of these regulations".

Articles 1 and 2 of Annexe 5 RSTP state:

"1. Solidarity contribution

If a professional moves during the course of a contract, 5% of any compensation, 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.

[…]

2. Payment procedure

1. The new club shall pay the solidarity contribution to the training club(s) pursuant to the above 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.

2. 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.

[…]".

B. In which cases has the Solidarity Contribution to be paid?

61. The Panel refers to the wording of Article 21 and Article 1 of Annex 5 of the RSTP which state that the solidarity contribution is due if a professional player moves *"during the course of a contract"* respectively if a professional player *"is transferred before the expiry of his contract"*. Therefore, the Panel has first to assess if the termination of the Employment Contract based on Article 5 and thereafter the signing of a new employment contract with Napoli is considered a "transfer" under Article 21 of the FIFA RSTP and if the Player was *"transferred before the expiry of his contract"* respectively *"during the course of a contract"*.

62. In CAS 2012/A/2929 and CAS 2020/A/7291, the Panels set out two conditions to be met in order for the solidarity mechanism to come into play: (i) the player's "transfer" (Article 21 of the FIFA RSTP) or "move" (Article 1 Annex 5 FIFA RSTP) to a foreign club during the course of his employment contract; and (ii) the payment of a transfer compensation by the new club to the former club.

63. In order for the Panel to be able to assess the facts of the present case under the applicable rules, it is important to know the main scope of Article 21 and Annexe 5 of the FIFA RSTP to see if these two conditions have been fulfilled or whether a more formal approach is required. The Panel notes 2021 Commentary on the FIFA RSTP first.

64. The 2021 Commentary to the FIFA RSTP states *on page 331 ss.: "[...] Training compensation is supposed to reimburse the investment made by clubs in training and developing young players. On the other hand, the solidarity mechanism is designed to strengthen the notion of solidarity within the football community. [...] this means that, unlike a training compensation payment, solidarity contributions are proportional to the transfer compensation paid for the player. This proportional element is consistent with the general aim of the solidarity*

contribution, namely, to foster a level of solidarity between the members of the football community. The last fundamental structural difference lies in the fact that the solidarity mechanism only applies if a professional player moves before their contract expires (in contrast, training compensation can be payable if a professional player moves at the end of his contract)".

65. Further, the 2021 Commentary continues on page 335: *"The solidarity contribution corresponds to 5% of any compensation, not including training compensation, paid by the new club to a professional player's former club for the transfer of the registration of the player. The solidarity contribution is thus inextricably linked to the transfer compensation agreed between the professional player's new and former clubs. Since the Bosman ruling, no transfer compensation will be due if a professional player is transferred at the end of their contract with their previous 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".*

1. Is the move of the Player to Napoli a "transfer" in the sense of Article 21 of the RSTP?

66. In the present matter, the dispute is between Real Betis as the former club of the Player and Napoli as the new club of the Player. As the Player was able to early terminate the Employment Contract based on its Article 5, the Panel acknowledges that the Parties did not agree on the transfer of the Player in a written transfer agreement. The Player was able to move from Real Betis to Napoli based on the statutory right of the Real Decreto which was incorporated into his Employment Contract and thus enshrined as a contractual right, giving him the ability to terminate the Employment Contract early against payment of an agreed indemnification, as set out in Article 5 of the Employment Contract.

67. The Panel holds that based on Article 21 and Article 1 of Annexe 5 of the FIFA RSTP it is clear also in view of the Commentaries that the solidarity mechanism shall apply when there is a move of a player from one club to another club from another association (international move/transfer). This solidarity mechanism shall help to bring smaller clubs on board to invest in the training of young players. As a consequence, the 'move' of a player shall be considered in a general way, not limiting this to formal points. Therefore, such a 'move' of a player from one club to another is not restricted by the necessity that such movement takes place in accordance with the 'typical' transfer.

68. Even if in the FIFA RSTP there is no definition of a "transfer", it is undisputed by the Parties that the move of the Player to Napoli constituted a "transfer". Therefore, the Panel will not examine this question in great detail, but it will point out what the key elements of a "transfer" are. Looking at the CAS jurisprudence, namely CAS 2011/A/2356, the four key elements of a transfer of a player between two clubs for the purposes of solidarity mechanism are: (i) the consent of the releasing club, (ii) the willingness and consent of the new club to secure the player's services for itself, (iii) the consent of the player to move from one club to another, and (iv) the price or value of the transaction.

69. All these elements were fulfilled in the present matter. To be pointed out is mainly the consent of Real Betis which was given by putting Article 5 in the Employment Contract to have clarity about the indemnification to be received. Based on the Real Decreto, Real Betis did not really have a choice (free will) to accept or reject the move of the Player to another club as this is a

player's right stipulated in the Real Decreto. Real Betis, therefore, simply put the Player's right as foreseen in the Real Decreto in Article 5 of the Employment Contract and amended it with the amount to be paid by the Player or a third party. However, it was able to stipulate the amount it required. The higher the amount, the less likely it is that the right will ever be exercised. A player's statutory right to early terminate a contract and then move to another club as a free agent only exists in Spain. In the Panel's view, Article 5 of the Employment Contract is considered Real Betis' offer to accept the Player's move to another club. Insofar, even if the basis is a statutory right granted to the Player by the Real Decreto, by putting the amount in Article 5 of the Employment Contract, Real Betis has provided the Player with a contractual right and showed its acceptance for the Player's move to another club under the condition of receipt of the stipulated amount. Therefore, the Panel is of the opinion that Real Betis' consent for the Player's move is given.

(ii) Napoli paying the indemnification amount stipulated in Article 5 of the Employment Contract of EUR 30 million to La Liga and signing a new employment contract with the Player clearly showed its consent to acquire the Player's rights.

(iii) The Player unilaterally terminating the Employment Contract and signing a new employment contract with Napoli showed his consent to move from Real Betis to Napoli.

(iv) Real Betis received a compensation of EUR 30 million which was paid by Napoli to La Liga in order to early terminate the Employment Contract based on Article 5 of the Employment Contract and exercise the Player's right based on the Real Decreto.

70. The Panel notes that the question of whether the solidarity mechanism should apply to so-called "buy-out clauses" is extensively discussed in the FIFA Commentary (2021 edition):

"An interesting question is whether the solidarity mechanism should apply to so-called 'buy-out' clauses. 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, should solidarity payments be deducted from the sum paid by the player to buy out their contact?

The standard argument against applying the solidarity contribution to buy-out clauses is that a player buying themselves out of their contract is not being transferred internationally within the meaning of the provisions governing the solidarity mechanism. Those making this argument often take the view that any compensation should be paid not by the club, but by the player exercising the clause.

On the other hand, it could also be argued that if a player leaves a club while still under contract, this implies that their buy-out clause will have to be met anyway for them to register with their new club. Moreover, in the majority of cases (though by no means always) it is actually the player's new club, and not the player, that pays the relevant sum to the former club on the player's behalf. Consequently, it would not appear justified to exclude such compensation from the solidarity mechanism. Indeed, not applying the solidarity mechanism to buy-out clauses would give clubs an easy way to torpedo efforts to foster solidarity within the football community.

In the eyes of the DRC, the second argument is the correct one. It would certainly appear to reflect the intention behind the provisions of the Regulations, and to safeguard the important principle underlying the solidarity

mechanism. In its jurisprudence, the DRC has consistently concluded that the solidarity contribution is due whenever a player moves between two clubs after triggering their buy-out clause. Specifically, the sum stipulated in the buy-out clause is considered as 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" (FIFA Commentary (2021 edition), p. 336).

71. Therefore, as the Player signed a new employment contract with Napoli as a free agent following the early termination of the Employment Contract, this move happened outside of the typical contractual scheme of transfers. However, this 'move' of the Player from Real Betis to Napoli is nevertheless to be considered a transfer in the sense of Article 21 respectively Article 1 Annexe 5 of the FIFA RSTP and, therefore, the first condition for the application of the solidarity mechanism is fulfilled.

2. The requirement of the "compensation" to be paid

72. Article 21 of the FIFA RSTP grants any club that has contributed to a player's education and training a proportion of the compensation paid. Article 1 of Annexe 5 of the FIFA RSTP defines this percentage of being a total of 5% of any compensation paid in the scope of a transfer, not including training compensation paid to the former club. Further it states that this 5% *"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"*.

73. Article 5.1 of the Employment Contract states: *"If during the term of this contract the termination of the contract occurs, at the will of the Player, without cause attributable to the Club, Real Betis Balompié will have the right to receive, either directly from the player or from a third club or public limited company on his behalf, a compensation of*:

    a) Thirty Million Euro (€ 30,000,000), in the event that the Club is in First Division in the sport season in which said termination occurs or if the Club is in the Second Division and the Player won't suffer any deduction from downgrading, a circumstance that must be communicated by the Club to the Player before July 1 of the season in which the Club is in the Second Division; or […]".

74. It remained uncontested that Napoli paid a total amount of EUR 30 million to La Liga in favour of Real Betis in order for the Player to early terminate the Employment Contract. This amount corresponds pursuant to Article 5.1 of the Employment Contract to a *"indemnización"* respectively a compensation. As a consequence, the Panel is of the opinion that this compensation of EUR 30 million is certainly a compensation in the sense of Article 21 respectively Article 1 Annexe 5 of the FIFA RSTP and, therefore, considered in relation to the solidarity mechanism. With this, the second condition for the application of the solidarity mechanism is fulfilled and the move of the Player from Real Betis to Napoli qualified as a transfer within the meaning of the FIFA RSTP. This has already been established by the FIFA DRC and it is in line with the jurisprudence of the CAS (exemplified in 2019/A/6525). Therefore, the Panel has now to decide if such solidarity contribution has to be paid on top of the compensation paid by Napoli.

C. Has the solidarity contribution to be paid on top?

75. Article 1 of Annexe 5 of the FIFA RSTP states that the solidarity contribution of 5% of any compensation shall be deducted from the total amount of this compensation and distributed by the new club. Article 2 of Annexe 5 of the RSTP further details that it is the new club being liable to calculate the amount of the solidarity contribution and to distribute it.

76. Turning then to the discussion of whether the solidarity mechanism should apply to so-called "buy-out clauses" and more specifically, to the Article 5 of the Employment Contract, the Panel agrees with the considerations of FIFA in the FIFA Commentary (2021 edition) as set forth above. Indeed, the Panel finds that a predetermined buy-out fee set forth in a buy-out clause is generally not materially different from a negotiated transfer fee for the purposes of the solidarity mechanism. One main difference is, however, that from a negotiated transfer fee, the new club is allowed to deduct the solidarity contribution and distribute it according to the FIFA RSTP. For the Panel it is obvious, that the buy-out fee stated in the Employment Contract is to be considered as an offer that remains valid throughout the term of the employment contract.

77. It is not disputed that it was Napoli (as opposed to the Player personally) that funded the EUR 30,000,000 required to satisfy Article 5 of the Employment Contract.

78. The majority of the Panel considers that Napoli acted somewhat in a contradictory manner, considering the fact that on 21 October 2019 Napoli confirmed the payment of solidarity contribution to Elche but it did not want to pay the solidarity contribution to Real Betis. The majority of the Panel is of the opinion that this undermines Napoli's contention that the solidarity sums applicable to the Player's move to Napoli were contained within the buy-out fee of EUR 30,000,000. If Napoli agrees that solidarity contribution is due to one former club, then why pay this separately in addition to this EUR 30,000,000. Then why argue that not all former clubs should be paid on top? The wording of the RSTP is clear – the right to such contribution is for *"the club(s) involved in his training and education over the years"*. There is no carve out for the last such club, as it receives the consideration or a transfer fee, unless it waives its right to receive solidarity contribution on top of the buy-out fee.

79. On one hand, Napoli failed to prove that Real Betis at any point in time waived its right to claim its share of the solidarity contribution from Napoli on top of the buy-out fee received. The majority of the Panel is of the opinion that the burden of proof is with Napoli here. There is no express reference to any such waiver by Real Betis in the Employment Agreement and the Panel saw no evidence that would imply such a waiver by Real Betis. Indeed, it claimed the solidarity contribution, around two years after the transfer of the Player happened.

80. On the other hand, Real Betis has the burden of proof to show that its share of the solidarity contribution shall be paid on top of the buy-out fee received. The DRC decided in the Appealed Decision that the buy-out fee shall be considered as a net amount, representing 95% of the total transfer fee. The majority of the Panel agrees with the Appealed Decision.

81. The Panel considers it obvious that Article 5 of the Employment Contract would only be triggered if Real Betis would receive the exact amount of EUR 30,000,000 (or more, but not

less) without any reduction or mitigation, and that it would not have been triggered if it would have received an amount of say EUR 28,500,000 (EUR 30,000,000 with 5% being deducted for solidarity payments) or if would be required to pay back a certain part of the amount of EUR 30,000,000 to Napoli. However, Article 5 of the Employment Contract did not state anything about any solidarity contribution at all. Neither whether it should be included in this exact amount of EUR 30,000,000 or if it shall be paid on top.

82. The majority of the Panel feels comforted in determining that it should be paid on top when a buy-out is ultimately based on the Real Decreto, when it considers CAS jurisprudence:

"The Panel finds it must be regarded as implied in the regulations of the [Royal Decree] that the amount of indemnification to be paid to the old club in case of a player's unilateral termination of a contract under the [Royal Decree] is a 'net' amount to be paid without any deduction" (CAS 2015/A/4188, para. 8.32).

83. The same view is supported by the FIFA Commentary (2021 edition):

"A last consideration is whether the solidarity contribution should be paid by the player's new club on top of the amount stipulated in the buy-out clause. Both the DRC and CAS have previously confirmed that it should be. This is also in line with the existing jurisprudence on contractual clauses included in transfer agreements, according to which the new club has to pay both the entire stipulated transfer fee and the solidarity contribution on top of it. For a buy-out clause to be properly exercised, the agreed sum must be paid unconditionally, with no deductions of any kind. It would therefore run counter to the essence of such a clause if the amount due to be paid by the new club as a solidarity contribution were deducted from the amount stipulated in the buy-out clause" (FIFA Commentary (2021 edition), p. 338).

84. Consequently, Napoli's argument that the solidarity contribution due to Real Betis is contained within the buy-out fee in the amount of EUR 30,000,000, is not accepted by the majority of the Panel. It finds that 5% solidarity contribution is payable on top of the amount of EUR 30,000,000.

85. In the view of the majority of the Panel, quite simply, Napoli cannot have it both ways. If it was able to acquire the Player through the Real Decreto mechanism, duly inserted into Article 5 of the Employment Contract, then it has to pay the entire EUR 30,000,000 and cannot claim that 5% of that should go as solidarity compensation to the prior clubs. That would lead to less than EUR 30,000,000 being paid and it would not then have paid enough to trigger the buy-out. It is logical that the solidarity needs to be paid on top, so the trigger price is met as is the solidarity compensation.

D. Calculation of the compensation

86. Based on the considerations made, the majority of the Panel concludes that Napoli has to make a payment of 5% solidarity contribution on top of the buy-out fee stated in Article 5 of the Employment Contract. Now, in a further step, it has to be determined how the calculation of the amount to be paid to Real Betis is arrived at.

87. According to the applicable Regulations, namely Article 21 and Annexe 5 of the FIFA RSTP, the solidarity contribution is paid by the new club by deducting the corresponding percentage from the total amount of the negotiated transfer fee for the player transfer (i.e. the gross transfer value). With reference to the Award CAS 2015/A/4137, it is noted that the wording of the RSTP does not prohibit that the amount specified in a transfer contract represents only 95% of the gross transfer value, as long as the solidarity contribution in the end is still deducted from the gross transfer value and distributed in conformity with the wording of Article 1 Annexe 5 of the RSTP. The fact that a net calculation leads to the situation that a club can no longer calculate the solidarity contribution simply by deducting 5% from the amount stipulated in the transfer contract does not lead to a destabilization of the system.

88. In the present case, the majority of the Panel considers the amount of EUR 30,000,000 to be interpreted as 95% for the further calculation. This results in a sum of EUR 31,578,947 when calculating the gross value (100%). The solidarity contribution is now calculated at 5% on the latter value. This obviously gives a preliminary (or maximum) result of EUR 1,578,987, leaving Real Betis to receive the net contractual sum of EUR 30,000,000.

89. In a further step, the number of seasons must be considered in connection with the age of the player in question in accordance with Article 1 para. 1 Annexe 5 of the RSTP. The latter standard provides that 5% is calculated for the seasons in which the player turns 12, 13, 14 and 15 years old. The rest of the birthdays (16-23) are calculated at 10%.

90. The calculation is performed using the Player's passport:

- for 323 days of the season of the Player's 12th birthday (2007/2008). Therefore, the Respondent is entitled to receive 4.42% of the due solidarity contribution, i.e. 4.42% of EUR 1,578,947;

- for 300 days of the season of the Player's 13th birthday (2008/2009). Therefore, the Respondent is entitled to receive 4.11% of the due solidarity contribution, i.e. 4.11% of EUR 1,578,947;

- for 324 days of the season of the Player's 14th birthday (2009/2010). Therefore, the Respondent is entitled to receive 4.44% of the due solidarity contribution, i.e. 4.44% of EUR 1,578,947;

- for 288 days of the season of the Player's 15th birthday (2010/2011). Therefore, the Respondent is entitled to receive 3.95% of the due solidarity contribution, i.e. 3.95% of EUR 1,578,947;

- for 297 days of the season of the Player's 16th birthday (2011/2012). Therefore, the Respondent is entitled to receive 8.14% of the due solidarity contribution, i.e. 8.14% of EUR 1,578,947;

- for 312 days of the season of the Player's 17th birthday (2012/2013). Therefore, the Respondent is entitled to receive 8.55% of the due solidarity contribution, i.e. 8.55% of EUR 1,578,947;

- for 314 days of the season of the Player's 18th birthday (2013/2014). Therefore, the Respondent is entitled to receive 8.60% of the due solidarity contribution, i.e. 8.60% of EUR 1,578,947;

- for 365 days of the season of the Player's 19th birthday (2014/2015). Therefore, the Respondent is entitled to receive 10.00% of the due solidarity contribution, i.e. 10.00% of EUR 1,578,947;

- for 317 days of the season of the Player's 20th birthday (2015/2016). Therefore, the Respondent is entitled to receive 8.68% of the due solidarity contribution, i.e. 8.68% of EUR 1,578,947;

- for 180 days of the season of the Player's 21st birthday (2016/2017). Therefore, the Respondent is entitled to receive 4.93% of the due solidarity contribution, i.e. 4.93% of EUR 1,578,947;

- for 294 days of the season of the player's 22nd birthday (2017/2018). Therefore, the Respondent is entitled to receive 8.05% of the due solidarity contribution, i.e. 8.05% of EUR 1,578,947;

- for 73 days of the season of the Player's 23rd birthday (2018/2019). Therefore, the Respondent is entitled to receive 2.00% of the due solidarity contribution, i.e. % of EUR 1,578,947

91. In total of the above, Real Betis would be entitled to receive solidarity contribution on the amount of EUR 1,197,947.37 (75.87% of the maximum EUR 1,578,947).

92. Accordingly, the calculations made by the Panel lead to the same result as those made by the FIFA DRC. Consequently, the calculations of the FIFA DRC are upheld.

93. Additionally, Napoli does not dispute that interest at 5% p.a. on the amount of EUR 1,197,947.37 is owed to Real Betis. According to Article 2 of Annexe 5 of the FIFA RSTP, the new club shall pay the solidarity contribution no later than 30 days after the player's registration. In the present case, the Player was registered on 13 July 2018, therefore the payment should have been made by 12 August 2018. Accordingly, the interest is due from the default, namely 13 August 2018 until the effective payment.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by SSC Napoli S.p.A. against the decision rendered by the FIFA Dispute Resolution Chamber on 11 March 2021 (TMS 6508) is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 11 March 2021 (TMS 6508) is upheld.

3. (…).

4. (…).

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