Arbitration CAS 2022/A/9017 FC Zenit JSC, FC Dynamo Moscow, FC Sochi, PFC CSKA Moscow, FC Krasnodar, FC Lokomotiv, FC Rostov, FC Rubin v. Fédération Internationale de Football Association (FIFA), award of 12 June 2023 (operative part of 13 January 2023)

Panel: Prof. Luigi Fumagalli (Italy), President; Prof. Thomas Clay (France); Prof. Ulrich Haas (Germany)

Football
Governance
Admissibility of the appeal against the Amended Temporary Rules
Right to be heard in the context of decisions taken by the FIFA Bureau
Lack of a reasoned decision
Absence of an automatic right to compensation
Personality rights

1. **The fact that the clubs did not appeal the initial Temporary Rules does not bar them from appealing the Amended Temporary Rules. By adopting the Amended Temporary Rules, the Bureau of the FIFA Council ("Bureau") extended the period for which foreign football players and coaches were allowed to suspend their contracts with clubs affiliated to the Football Union of Russia (FUR). In other words, the Amended Temporary Rules produced effects on the clubs affiliated to the FUR which were different from those, more limited in time, deriving from the original version of Annex 7.**

2. **Due to the inherent urgency surrounding decisions taken by the Bureau, the absence of a specific mandatory stakeholder consultation process in the FIFA Statutes is not surprising or unreasonable. Indeed, in accordance with article 38 of the FIFA Statutes if a situation does not require immediate action, the Bureau is not competent to decide. *In casu*, and considering the urgency of the measures, affording an individual right to be heard to all these clubs and individuals before enacting the Temporary Rules and the Amended Temporary Rules would have impaired the decision-making process.**

3. **The prerequisite of a reasoned decision only comes into play in case FIFA exercises adjudicatory or disciplinary functions through its respective bodies. When issuing a decision, the Bureau exercised its legislative/regulatory function, therefore the is no entitlements for parties to receive a reasoned decision following a decision of the Bureau. Moreover, *in casu*, the reasons behind the adoption of the Temporary Rules and Amended Temporary Rules have been publicly exposed by FIFA via FIFA Circular Letter No. 1787 and its Interpretative Note.**

4. **Any regulatory measures may impact the economic conditions or the financial interests of their addressees. If the FIFA system is considered, the rules contained in the FIFA**

RSTP allowing the players to terminate employment contracts for sporting just cause have an effect on existing employment contracts. However, such impact does not necessarily imply that reparation for any adverse effect of economic nature is to be paid in all such situations. As a result, the fact that the Amended Temporary Rules allowed players and coaches to suspend for a limited period performance under the existing employment contracts, in the pursuit of a legitimate objective, does not, *per se*, make the Amended Temporary Rules illegal even though they might have caused a financial prejudice to the Russian clubs.

5. Personality rights include the right to health, physical integrity, honour, professional consideration, sporting activity and, in the case of professional sport, the right to development and economic fulfilment. While fundamental rights serve primarily to defend individuals from governmental infringements, their scope can be useful in determining what is tolerable in relations between individuals. The personality rights protected by Article 28 of the Swiss Civil Code are in principle applicable only to natural persons based in Switzerland.

I. PARTIES

1. FC Zenit JSC (the "First Appellant") is a football club with its registered office in Saint Petersburg, Russia. FC Zenit JSC is registered with the Football Union of Russia (the "FUR"), which is in turn affiliated to the *Fédération Internationale de Football Association*.

2. FC Dynamo Moscow (the "Second Appellant") is a football club with its registered office in Moscow, Russian, and is also registered with the FUR.

3. FC Sochi (the "Third Appellant") is a football club with its registered office in Sochi, Russia, and is also registered with the FUR.

4. PFC CSKA Moscow (the "Fourth Appellant") is a football club with its registered office in Moscow, Russia, and is also registered with the FUR.

5. FC Krasnodar (the "Fifth Appellant") is a football club with its registered office in Krasnodar, Russia, and is also registered with the FUR.

6. FC Lokomotiv (the "Sixth Appellant") is a football club with its registered office in Moscow, Russia, and is also registered with the FUR.

7. FC Rostov (the "Seventh Appellant") is a football club with its registered office in Rostov-on-Don, Russia, and is also registered with the FUR.

8. FC Rubin (the "Eight Appellant") is a football club with its registered office in Kazan, Russia, and is also registered with the FUR.

9. The *Fédération Internationale de Football Association* (the "FIFA" or the "Respondent") is the governing body of football at worldwide level, headquartered in Zurich, Switzerland. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

10. FC Zenit JSC, FC Dynamo Moscow, FC Sochi, PFC CSKA Moscow, FC Krasnodar, FC Lokomotiv, FC Rostov and FC Rubin are hereinafter jointly referred to as the "Appellants" and together with FIFA as the "Parties".

II. INTRODUCTION

11. The present appeal arbitration procedure has its roots in the events caused by the military invasion of Ukraine, on 24 February 2022, by Russian armed forces.

12. In response to such events, the Bureau of the FIFA Council (the "Bureau") adopted regulatory measures by means of a new Annexe 7 to the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") containing *"Temporary rules addressing the exceptional situation deriving from the war in Ukraine"* ("Annex 7" or the "Temporary Rules"), intended to apply to all employment contracts of an international dimension concluded between players or coaches and clubs affiliated to the FUR or to the Ukrainian Association of Football (the "UAF"). On 20 June 2022, the Bureau adopted a decision (the "Appealed Decision") approving a revised text of the Temporary Rules (the "Amended Temporary Rules") and extending its validity.

13. The Appellants are challenging the Appealed Decision, maintaining, *inter alia*, that i) it was not issued in accordance with the applicable procedural requirements; ii) it did not comply with Swiss and international public policy and other legal principles; and iii) even if such requirements were complied with, FIFA did not adopt the most appropriate measure.

14. FIFA applies for a confirmation of the Appealed Decision.

III. FACTUAL BACKGROUND

15. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. The adoption of the Temporary Rules in March 2022

16. As from 24 February 2022, once Russia's war against Ukraine broke out, FIFA maintains to have immediately started discussions as to whether and, if so, how this tragedy had to be addressed from a regulatory perspective. According to FIFA, it quickly became clear that

national football competitions would be gravely affected and that contractual relationships – at least potentially – would also be severely impacted.

17. On 2 March 2022, the World Leagues Forum and FIFPRO, acting respectively as representatives of the worldwide professional leagues and of the football players, sent a letter to FIFA as follows:

"The undersigned stakeholders write to you in their capacity as representatives of the employers (the World Leagues Forum) and of the employees (FIFPRO) in professional football at world level.

The present letter is sent in the context of Russia's invasion of Ukraine, also acknowledging the decision of the [Bureau] of 28 February 2022 suspending Russian teams from all international competitions.

The undersigned consider that consequences of the current conflict must also be addressed for foreign players who are currently employed by Russian clubs.

These foreign players may rightfully consider that they are not willing to represent any longer a Russian team and should be able to immediately terminate their contract with their employer without facing any sanction whatsoever from international bodies and to be registered in a new club without being restricted by transfer period regulations.

This must be done through the amendment of FIFA regulations and specifically the Regulations on the Status and Transfer of Players (RSTP) which rule international transfers.

As a result, with reference to art. 27 of the RSTP and following the agreement between FIFPRO and the World Leagues Forum, we urge FIFA to:

1. *Declare that any player employed by a club in Russia may immediately and unilaterally terminate his/her employment contract without consequences of any kind if they desire to do so. In particular, no compensation shall be due to any party and no sporting sanctions as per art. 17 of the FIFA RSTP shall be imposed on any party.*

2. *Declare that any club wishing to engage a player who has terminated his/her employment contract with a club in Russia can do so without consequences of any kind. In particular, no compensation shall be due to any party and no sporting sanctions as per art. 17 of the FIFA RSTP shall be imposed on any party.*

3. *Authorise and facilitate the registration of any player previously employed in Russia or Ukraine with a new club outside the registration periods as defined in art. 6 of the FIFA RSTP and suspend for those players the limitation of number of clubs a player can be registered with (and play for), as per art. 5 par. 4 of the FIFA RSTP.*

Lastly, as far as young Ukrainian players who are not in the age to fight and fled the country are concerned, we understand that they will be able to register without restriction in any foreign club of their choice whenever they have an opportunity to do so under the refugee status".

18. On 4 March 2022, a remote meeting was held between representatives of FIFA, the World Leagues Forum, FIFPRO, the European Club Association (the "ECA") and the Union of

European Football Associations (the "UEFA").

19. On 6 March 2022, draft regulations intended to address the situation of foreign players and coaches in Russia and Ukraine were transmitted by FIFA to the World Leagues Forum, FIFPRO, ECA and UEFA, inviting their comments by midnight.

20. On 7 March 2022, the Bureau adopted Annex 7, which, in the part relevant to the present dispute, provided as follows:

> *"**1 Scope of application***
>
> *This annexe applies to all employment contracts of an international dimension concluded between players or coaches and clubs affiliated to the Ukrainian Association of Football (UAF) or the Football Union of Russia (FUR).*
>
> ***2 Employment contracts of an international dimension with clubs affiliated to the UAF***
>
> *1. Notwithstanding the provisions of these regulations and unless otherwise agreed between the parties, a contract of an international dimension between a player or a coach and a club affiliated to the UAF shall be considered automatically suspended until 30 June 2022.*
>
> *2. The minimum length of a contract established under article 18 paragraph 2 of these regulations, does not apply to any new contract concluded by the professional whose contract has been suspended in accordance with paragraph 1 above.*
>
> ***3 Employment contracts of an international dimension with clubs affiliated to the FUR***
>
> *1. Notwithstanding the provisions of these regulations and unless otherwise agreed between the parties, a contract of an international dimension between a player or a coach and a club affiliated to the FUR can be unilaterally suspended until 30 June 2022 by the player or the coach, provided that a mutual agreement with the club could not be reached before or on 10 March 2022.*
>
> *2. The minimum length of a contract established under article 18 paragraph 2 of these regulations does not apply to any new contract concluded by the professional whose contract has been suspended in accordance with paragraph 1 above.*
>
> ***4 Consequences of the suspension***
>
> *A player or coach whose contract has been suspended as per article 2 paragraph 1 or article 3 paragraph 1 above does not commit a breach of contract by signing and registering with a new club. Article 18 paragraph 5 of these regulations does not apply to a professional whose contract has been suspended as per article 2 paragraph 1 or article 3 paragraph 1 above.*

5 Registration

1. Notwithstanding the provisions of article 5 paragraph 4 of these regulations, a player whose previous registration was in the UAF or FUR, may be registered with a maximum of four clubs during one season and is eligible to play official matches for three different clubs.

2. A club may register a maximum of two professional players who have benefited from the exceptions set out in this annexe.

6 Registration periods

1. Notwithstanding the provisions of article 6 paragraph 1 of these regulations, a player whose previous registration was in the UAF or in the FUR, has the right to be registered by an association outside a registration period, provided that such registration occurs before or on 7 April 2022.

2. Notwithstanding the provisions of Annexe 3, article 8.2 paragraph 7 in conjunction with Annexe 3, article 8.2 paragraph 4 b), in case the UAF or FUR reject an ITC request for a professional within the scope of this annexe, FIFA is competent to immediately authorise the provisional registration of the player at the new association for his new club. […]".

21. On 9 March 2022, FIFA issued Circular Letter No. 1787 intended to set out the key elements of the Temporary Rules. *Inter alia*, it indicated that the Temporary Rules were aimed at addressing *"a number of difficult and technical regulatory questions relating to the ordinary application of the [FIFA RSTP]"* and had been approved in order to provided *"legal certainty and clarity on a number of elements"*.

22. On 10 and 11 March 2022, during the Football Law Annual Review in Buenos Aires, Argentina, attended, *inter alia*, by representatives of the Appellants, FIFA presented the background, content and reasoning of the Temporary Rules and it publicly answered a series of questions about Annex 7.

23. On 15 March 2022, FIFA issued a document dated 16 March 2022, entitled *"Interpretative Note to Annexe 7 of the Regulations on the Status and Transfer of Players"* (the "Interpretative Note") to provide guidance to the FIFA member associations and their stakeholders in relation to Annex 7.

24. On 24 March 2022, FIFA issued Circular Letter No. 1788 to confirm that Annex 7 had been modified by the Bureau on 16 March 2022 *"in order to provide clarification regarding the movement of Ukrainian players"*.

B. The adoption of the Amended Temporary Rules in June 2022

25. On 25 May 2022 and 9 June 2022, new remote meetings were held between representatives of FIFA, the World Leagues Forum, FIFPRO, ECA and UEFA, to discuss the Temporary Rules

"and its consequences as from 1 July 2022".

26. On 10 June 2022, FIFA transmitted to the World Leagues Forum, FIFPRO, ECA and UEFA, an *"updated draft of Annexe 7 of the RSTP, which reflects the outcome of the discussions held"*, inviting comments by midnight.

27. On 13 June 2022, FIFA circulated a revised draft of the amended Temporary Rules with the World Leagues Forum, FIFPRO, ECA and UEFA.

28. On 20 June 2022, the Bureau issued the Appealed Decision, approving the Amended Temporary Rules. The Amended Temporary Rules provide as follows, in the part relevant to the present dispute (deletions crossed out and additions marked in bold and underlined in comparison with the original Annex 7 as adopted on 7 March 2022):

> *"**1 Scope of application***
>
> *This annexe applies to all employment contracts of an international dimension concluded between players or coaches and clubs affiliated to the Ukrainian Association of Football (UAF) or the Football Union of Russia (FUR)**, as well as to the registration of all players – regardless of their nationality – previously registered with the UAF**.*
>
> ***2 Employment contracts of an international dimension with clubs affiliated to the UAF***
>
> *1. Notwithstanding the provisions of these regulations and unless otherwise agreed between the parties, a contract of an international dimension between a player or a coach and a club affiliated to the UAF ~~shall be considered automatically suspended until~~**can be unilaterally suspended until 30 June 2023 by the player or the coach, provided that a mutual agreement with the club could not be reached before or on** 30 June 2022.*
>
> *2. The minimum length of a contract established under article 18 paragraph 2 of these regulations~~,~~ does not apply to any new contract concluded by the professional whose contract has been suspended in accordance with paragraph 1 above.*
>
> ***3 Employment contracts of an international dimension with clubs affiliated to the FUR***
>
> *1. Notwithstanding the provisions of these regulations and unless otherwise agreed between the parties, a contract of an international dimension between a player or a coach and a club affiliated to the FUR can be unilaterally suspended until 30 June ~~2022~~**2023** by the player or the coach, provided that a mutual agreement with the club could not be reached before or on ~~10 March~~**30 June** 2022.*
>
> *2. The minimum length of a contract established under article 18 paragraph 2 of these regulations does not apply to any new contract concluded by the professional whose contract has been suspended in accordance with paragraph 1 above.*

4 Consequences of the suspension

A player or coach whose contract has been suspended as per article 2 paragraph 1 or article 3 paragraph 1 above does not commit a breach of contract by signing and registering with a new club. Article 18 paragraph 5 of these regulations does not apply to a professional whose contract has been suspended as per article 2 paragraph 1 or article 3 paragraph 1 above.

5 Registration

~~1.~~ Notwithstanding the provisions of article 5 paragraph 4 of these regulations, a player whose previous registration was in the UAF or FUR~~,~~ may be registered with a maximum of four clubs during one season and is eligible to play official matches for three different clubs.

~~2. A club may register a maximum of two professional players who have benefitted from the exceptions set out in this annexe.~~

6 Registration periods

~~1. Notwithstanding the provisions of article 6 paragraph 1 of these regulations, a player whose previous registration was in the UAF or in the FUR, has the right to be registered by an association outside a registration period, provided that such registration occurs before or on 7 April 2022.~~

*~~2.~~**1.** Notwithstanding the provisions of Annexe 3, article 8.2 paragraph 7 in conjunction with Annexe 3, article 8.2 paragraph 4 b), in case the UAF or FUR reject**s** an ITC request for a professional within the scope of this annexe, FIFA is competent to immediately authorise the provisional registration of the player at the new association for his new club. […]"*

29. On 22 June 2022, FIFA issued Circular Letter No. 1800, setting out the content of the modifications to the Temporary Rules contained in the Amended Temporary Rules, and enclosing the June 2022 edition of the FIFA RSTP, which contained the Amended Temporary Rules. It was, *inter alia*, indicated that *"[f]ollowing the decisions taken in March 2022, ongoing developments in Ukraine concerning the uncertain duration of the conflict have led to a need for further clarification on the application of Annexe 7 to the RSTP, in particular on the suspension of employment contracts of foreign players and coaches with clubs affiliated to the [UAF] and [FUR] after 30 June 2022".*

C. Developments after the adoption of the Amended Temporary Rules

30. On 24 June 2022, the FUR, the Russian Premier League (the "RPL"), together with Russian football clubs, including the Appellants, made a joint public statement concerning the Appealed Decision, by means of which they, *inter alia*, indicated as follows:

"The [FUR], the [RPL] and professional clubs in Russia condemn this decision and categorically disagree with it. FIFA has repeatedly declared that sport should remain outside politics, but the position of the organization clearly contradicts this. We believe that the decision to suspend contracts was taken against a member of the soccer

family in the absence of his guilt.

[…]

With the hope of preserving the principles laid down in the foundation of world sport, we wish to appeal to all members of the international soccer community. We ask them not to abuse the rights granted to FIFA, as their decision contradicts the fundamental principles of the soccer family".

31. On 30 June 2022, the Appellants' counsel sent a letter to FIFA requesting it to provide the grounds of its decision to extend, in the Amended Temporary Rules, the provisions set in the Temporary Rules and to address some issues related thereto, as follows:

"[…] As FIFA had not consulted any Russian stakeholder directly affected by this decision before its adoption, I kindly request you to produce the grounds of this decision.

In the grounds of the said decision, I respectfully ask FIFA to answer, inter alia, the following issues not covered by the wording of the said Temporary employment rules adopted by FIFA as Annexe 7 to the FIFA Regulations on Status and Transfer of the Players (RSTP):

1. *What is the legal status of forthcoming payments related to the engagement (transfer fees) of the foreign players (Players), whose services are not available for the Russian clubs until June 2023 because of the FIFA decision? In particular, do clubs need to pay transfer fees to the former clubs concerning the Players who suspended their employment contracts because of the FIFA decision? Are the Russian clubs entitled to claim a proportion of already paid transfer fees for the Players who unilaterally suspended their employment contracts? Are the Russian clubs entitled to claim unjust enrichment from the new clubs of the Players who suspended their employment contracts with Russian clubs because of the FIFA decision?*

2. *Are the Russian clubs obliged to pay intermediary fees concerning the Players who suspended their employment contracts because of the FIFA decision? Are the Russian clubs entitled to claim a proportion of already paid intermediary fees concerning the Players who unilaterally suspended their employment contracts?*

3. *Are the Russian clubs obliged to pay sign-on and/or loyalty payments to the Players who suspended their employment contracts? Are the Russian clubs entitled to claim a proportion of the already paid sign-on and/or loyalty fees from the players who suspended their employment contracts because of the FIFA decision?*

4. *Which party is responsible for the medical treatment and insurance of the Players in case of their injury while performing in their new clubs until June 2023 under Annexe 7 to the RSTP?*

5. *Are the Players who concluded their employment contracts with the Russian clubs after February 24, 2022 (i.e., after the alleged "exceptional circumstances" occurred), also entitled to suspend their employments with the Russian clubs?*

6. *Are the Players who concluded their employment contracts with the Russian clubs after June 21, 2022 (i.e., after the FIFA decision to extend the temporary rules), still entitled to suspend their employments*

with the Russian clubs?

7. *Do we understand correctly from the wording of Annexe 7 to the RSTP that the employment contracts between the Russian clubs and the Players, who decided to suspend their employments because of the FIFA decision, are automatically extended for the duration of such a suspension? For example, if an employment contract of a player with a Russian club is valid until June 30, 2023, and this player decides to suspend it on June 30, 2022, is the duration of such employment contract extended for one year until June 30, 2024?*

8. *Does FIFA consider an agreement (written or oral) between a player and a Russian club on waiver of suspending his employment contract valid?*

9. *How does the current wording of Annexe 7 in force correspond to the universal principles of law, such as pacta sunt servanda, the autonomy of contracting parties, and their equal standing in the contractual relationship?*

Having said all the foregoing, I kindly request FIFA to produce at the earliest convenience, until July 8, 2022, the grounds of the said decision together with the answers to the above questions.

Further, with all due respect, I am forced to warn you that failure to provide the grounds of the said decision and/or answers to the above questions will be raised as an argument against FIFA before any competent jurisdictional body, as the case may be. As my principals are reflecting on the possibility to appeal the said decision, I will highly appreciate any interpretation from FIFA as a decision-maker. Therefore, I reserve any and all rights to address the pertinent issues in the future.

Finally, I respectfully draw your attention to the following.

To this end, contracts of seventeen (17) foreign players in the RPL Russian clubs are to expire at the end of sporting season 2022-2023. Moreover, there contracts of twenty-six (26) more foreign players in the clubs of RPL are valid until the end of sporting season 2023-2024. The FIFA's decision rendered without any prior consultation process with the stakeholders in the Russian football sabotaged the ongoing negotiations concerning the mentioned football players (both options of extension and possible transfers) as well as disrupted the transfer fees estimations. The said financial losses are a direct consequence of the FIFA's decision. Please note that the professional football clubs of RPL are calculating the said losses to claim remedy before any jurisdictional body and in any form which will be deemed appropriate.

Therefore, I respectfully reiterate the request to produce grounds of the said decision and answers to the above questions at your earliest convenience as indicated above" (emphasis omitted by the Panel).

32. On 2 July 2022, FIFA issued Circular Letter No. 1804 to address issues regarding players registered with the UAF. Such Circular Letter reads, in the pertinent portion, as follows:

"FIFA is aware that, given the current conflict in Ukraine, Annexe 7 may result in a larger number of outgoing transfers from Ukraine than would otherwise be the case. It follows that the Ukrainian Association of Football (UAF) and its affiliated clubs may have to deal with a non-negligible number of outgoing transfers caused by the Russian invasion of Ukraine and the ongoing war. This is, however, an inevitable consequence of the situation

in Ukraine, as well as the decision by the FIFA Council to create a temporary derogation from the generally applicable rules set out in the RSTP in order to protect the legitimate interests of foreign players and coaches currently employed on Ukrainian territory.

In these exceptional circumstances, to ensure that all international transfers involving players registered with the UAF are conducted in compliance with the FIFA regulations and also to protect the legitimate interests of both players and clubs in Ukraine, FIFA wishes to clarify that, should a player be transferred from a club in Ukraine to a club affiliated to another member association in application of article 2 of Annexe 7 to the RSTP, the engaging club should enter the relevant transfer instruction in TMS no earlier than 1 August 2022.

Should an engaging club attempt to enter the transfer instruction prior to this date, member associations may not request the International Transfer Certificate from the UAF, as a consequence of which the international transfer of the player may not take place under the conditions set out in Annexe 7 to the RSTP. For the avoidance of doubt, foreign players and coaches employed in Ukraine remain free to unilaterally suspend their contracts if no mutual agreement was reached with their club prior to or on 30 June 2022. The administrative procedure outlined in this circular letter simply gives Ukrainian clubs and foreign players and coaches employed by them the maximum opportunity to reach mutually acceptable solutions, provided that there is a common interest in doing so".

33. On 5 July 2022, FC Rostov submitted with the TMS Helpdesk of FIFA a query about an administrative issue concerning the application of Annex 7, without indicating that it would somehow be opposed to the Amended Temporary Rules.

34. On 8 July 2022, FIFA answered the letter of the Appellants' counsel dated 30 June 2022, in the following terms:

"Following the decisions taken in March 2022 by the [Bureau], in order to provide legal certainty and clarity on a number of matters following the escalation of Russia's invasion of Ukraine, which led to an ongoing and distressing humanitarian crisis, we communicated that FIFA would continue to closely monitor the situation in Ukraine to ensure that the regulatory framework reflects any developments of the ongoing situation. As you are aware, the principles were set out in the form of a temporary annexe to the Regulations on the Status and Transfer of Players (RSTP) (Annexe 7) entitled "Temporary rules addressing the exceptional situation deriving from the war in Ukraine".

Along this line, the intensification of Russia's invasion of Ukraine compelled us to closely monitor the resulting humanitarian crisis, and urgently coordinate with global football stakeholders to rapidly discuss and analyse the impact and consequences of such action on the football community.

Consequently, with no foreseeable end to the ongoing conflict in the short-term and a growing number of requests for clarification, a need grew to provide legal clarity and certainty for the football community in particular on the suspension of employment contracts of foreign players and coaches with clubs affiliated to the Ukrainian Association of Football and Football Union of Russia after 30 June 2022.

To best understand the consequences of further potential amendments to the RSTP, FIFA again initiated a consultation process inviting representatives from major global stakeholder groups, namely the World Leagues

Forum, UEFA, FIFPRO, and the European Club Association, the independent body directly representing football clubs at European level, with the views of both the player and club representatives given special attention.

This consultation was key in leading up to the decision taken by the [Bureau] on 20 June 2022. In accordance with article 9 paragraph 2 and article 12 of the FIFA Governance Regulations, this decision was approved via circular resolution and, as you know, it extended the legal framework of the current Annexe 7 to the RSTP until 30 June 2023.

Finally, regarding the "issues not covered" that you have raised in your correspondence, we would like to kindly inform you that the majority of those issues would seem to fall within the competence of the relevant decision-making bodies of FIFA (the Football Tribunal), to be assessed on a case-by-case basis in the event of a specific dispute.

However, should you have general and abstract queries concerning the interpretation of the wording of Annex 7 to the RSTP or any of the mentioned Circulars, please do not hesitate to revert to the respective departments of the FIFA administration" (emphasis omitted by the Panel).

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

35. On 8 July 2022, the Appellants filed a Statement of Appeal with CAS, challenging the Appealed Decision, in accordance with Articles R47 and R48 of the 2021 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). In this submission, the Appellants named FIFA as the sole respondent and nominated Prof. Av. Thomas Clay, Professor and Attorney-at-Law in Paris, France, as arbitrator.

36. On 19 July 2022, the Appellants proposed an expedited calendar for the arbitration.

37. On the same date, FIFA objected to the expedited calendar proposed by the Appellants and nominated Prof. Ulrich Haas, Professor in Zurich, Switzerland, and Attorney-at-Law in Hamburg, Germany, as arbitrator.

38. On 20 July 2022, the CAS Court Office informed the Parties that in light of FIFA's objection, no expedited procedure would be implemented.

39. On 22 July 2022, the Appellants applied for a stay of execution of the Appealed Decision.

40. On 8 August 2022, the Appellants filed their Appeal Brief in accordance with Article R51 CAS Code. The Appeal Brief contained also requests that the Panel order FIFA to produce some documents.

41. On the same date, FIFA filed its Answer to the Appellants' application for a stay of execution of the Appealed Decision.

42. On 22 August 2022, the CAS Court Office informed the Parties that, pursuant to Article R54 CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division,

the Panel appointed to decide the present case was constituted as follows:

President: Prof. Luigi Fumagalli, Professor and Attorney-at-Law, Milan, Italy

Arbitrators: Prof. Av. Thomas Clay, Professor and Attorney-at-Law, Paris, France

Prof. Ulrich Haas, Professor in Zurich, Switzerland, and Attorney-at-Law, Hamburg, Germany.

43. On 25 August 2022, the CAS Court Office notified the operative part of the Order on Request for a Stay of the Appealed Decision issued by the Panel, which provides as follows:

"1. The Request for a Stay of the Decision of the Bureau of the FIFA Council of 21 June 2022, to extend the temporary employment rules established in the Regulations on the Status and Transfer of Players (Annex 7), filed on 22 July 2022 by the Appellants in the arbitration CAS 2022/A/9017 FC Zenit JSC, FC Dynamo Moscow, FC Sochi, PFC CSKA Moscow, FC Krasnodar, FC Lokomotiv, FC Rostov, FC Rubin v. FIFA is dismissed.

2. The costs of the present Order shall be determined in the final award or any other final disposition of this arbitration".

44. On 31 August 2022, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing.

45. On 6 September 2022, the CAS Court Office informed the Parties that Mr Dennis Koolaard, Attorney-at-Law in Arnhem, The Netherlands, had been appointed as *Ad hoc* Clerk.

46. On 16 September 2022, the CAS Court Office provided the Parties with the reasoned Order on Request for a Stay of the Appealed Decision.

47. On 30 September 2022, FIFA filed its Answer in accordance with Article R55 CAS Code.

48. On 10 October 2022, the CAS Court Office, on behalf of the Panel, informed the Parties as follows:

"1. The request for production of evidence related to the consultation process with stakeholders initiated by FIFA (Para. 84 and 288 of the AB) is denied, for the time being, as the Appellants failed, at this stage, to establish the relevance of the positions of the stakeholders to decide on the Appellants' appeal.

2. With respect to the request for production of evidence related to the compliance with formal prerequisites for the Bureau of the FIFA Council to issue the Appealed Decision (Para. 69 and 289 of the AB), the Appellants are invited to state by 12 October 2022 whether they are satisfied with the documents produced by FIFA or whether they wish to specify their request.

3. The Appellants' request for a second round of written submissions is granted only for the purposes of

addressing briefly the following points: (i) the nature of the Appealed Decision, i.e. whether it contains a general regulatory measure or an individual decision having a sort of disciplinary nature aimed at specific entities, and (ii) the grounds for a challenge of a decision adopting general regulatory measures (with respect, for instance, the right to be heard of the addressees). The Appellant is invited to file its second written submission by 17 October 2022, at the latest. Thereafter, an identical deadline will be granted to the Respondent to file its second reply. For the sake of good order, the Parties are advised that no extension of such time limit will be granted.

4. *The request for FIFA to issue the grounds of the Appealed Decision before a second round of written submissions (Para. 87 of the AB) is denied, as the question of the obligation to issue grounds (and whether grounds were given) is part of the substantive dispute.*

5. *Regarding the Appellants' request for a public hearing, considering that such hearing will be held by video-conference, the Appellants are invited to state whether they maintain such request by 12 October 2022"* (emphasis omitted by the Panel).

49. On 12 October 2022, following an inquiry by the CAS Court Office, the Appellants indicated that they considered their prior request for a public hearing to be moot as the hearing would be held by videoconference. Furthermore, with respect to point No. 2 of the CAS Court Office letter dated 10 October 2022, the Appellants indicated that they were not in a position to state that they were satisfied with the documentation provided by FIFA and that, in their opinion, FIFA did not discharge its burden of proof regarding the issue raised and reserved their right to further comment on the said matter during the hearing.

50. On 17 October 2022, the Appellants filed their second written submission in accordance with the Panel's instructions of 10 October 2022.

51. On 19 October 2022, FIFA filed its second written submission in accordance with the Panel's instructions of 10 October 2022.

52. On 15 and 16 November 2022 respectively, FIFA and the Appellants returned duly signed copies of the Order of Procedure, provided to them by the CAS Court Office on 14 November 2022.

53. On 21 November 2022, a hearing was held by videoconference. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the Panel.

54. In addition to the members of the Panel, Mr Antonio de Quesada, CAS Head of Arbitration, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

a) For the Appellants:

External counsel:

1) Mr Mikhail Prokopets, Counsel;

2) Mr Alexandre Zen-Ruffinen, Counsel;

3) Mr Georgi Gradev, Counsel;

4) Mr Ivan Bykovskiy, Counsel;

5) Mr Artur Zestanichenko, Interpreter.

In-house counsel:

1) Mr Ilya Kedrin, PFC CSKA Moscow;

2) Mr Denis Postnov, PFC CKSA Moscow;

3) Mr Oleg Zadubrovskiy, FC Zenit JSC;

4) Mr Eduard Zadubrovsky, FC Dynamo Moscow;

5) Mr Dmitry Dubovskikh, FC Dynamo Moscow;

6) Mr Aleksandr Kuzmin, FC Lokomotiv;

7) Mr Kirill Korovkin, FC Sochi.

b) For the Respondent:

1) Dr. Jan Kleiner, FIFA Director of Football Regulatory;

2) Mr Miguel Liétard Fernández-Palacios, FIFA Director of Litigation; and

3) Mr Roberto Nájera Reyes, FIFA Senior Legal Counsel.

55. The following witnesses were heard, in order of appearance:

1) Mr Pavel Pivovarov, CEO of FC Dynamo Moscow, witness called by the Appellants;

2) Mr Maxim Pogorelov, Deputy CEO of FC Zenit JSC, witness called by the Appellants;

3) Mr Rustem Saymanov, CEO of FC Rubin, witness called by the Appellants.

56. All witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. The Appellants and FIFA had full opportunity to examine and cross-examine the witnesses.

57. The Appellants had initially also called to testify […], football player of […], […], football

player of […], […], football player of […], and […], football player of […]. Before the hearing it was announced that only […] would testify, but during the hearing it was announced that also […] would not give evidence.

58. FIFA did not object to the withdrawal of the witnesses initially called by the Appellants and did not request their witness statements to be struck from the record. FIFA did however request the Panel to take into account in its assessment of the weight of the evidence that FIFA had not been granted an opportunity to cross-examine the witnesses.

59. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the members of the Panel.

60. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.

61. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Appellants' Appeal Brief

62. The Appellants' submissions, in essence, may be summarised as follows:

- After the conflict between Ukraine and Russia escalated in February 2022, the Bureau decided in March 2022 to temporarily amend the FIFA RSTP in respect of Russia and Ukraine only. All foreign players and coaches that have availed of those temporary rules to suspend their contracts with the Appellants were expected to resume duty as of 1 July 2022. That is why the Appellants did not appeal against FIFA's initial decision of March 2022. The Appellants did not anticipate and could not foresee that FIFA may extend the effects of Annex 7 to Russia for the entire 2022/23 season. The foreign players and coaches who did not want to remain in Russia found a way to part ways with the Appellants in March/April 2022.

a. The burden of proof

- FIFA bears the burden of proof to demonstrate i) the urgency to extend the validity of Annex 7 in June 2022; ii) the proper objective and legitimate purpose to extend the validity of Annex 7; iii) that the Amended Temporary Rules are proportionate, are appropriate to achieve the proper objective or legitimate purpose, and that other approaches or measures would not have been less discriminating under the circumstances; and iv) that the Amended Temporary Rules can ensure the achievement of the aim in question and do not go beyond what is necessary for that purpose.

b. Natural justice

- In the event of administrative measures adopted by a sports-governing body concerning a limited and identified number of designees, there is a right to a legal hearing. In the present case, the adopted temporary employment rules by FIFA per Annex 7 concern a limited and identifiable number of designees, among which are the Appellants. Therefore, as a matter of natural justice, FIFA was obliged to consult the Appellants through FUR and RPL before adopting the Appealed Decision in June 2022.

- FIFA claims that it initiated a consultation process with major global stakeholder groups, namely the World Leagues Forum, UEFA, FIFPRO and ECA. However, FIFA failed to consider that the temporary employment rules do not concern Europe in general, but Russia (and Ukraine) in particular. Therefore, whatever consultation FIFA had with ECA was to no avail. Moreover, on 1 March 2022, the ECA Executive Board suspended all Russian members from participating in ECA activities until further notice. Therefore, ECA could not represent the interests of the Russian clubs.

c. FIFA's conduct contrary to general legal principles

- The temporary employment rules per Annex 7 are invalid because of the procedure by which they were adopted, which violated general legal principles. The autonomy of an association under Swiss law is not unlimited. Restrictions follow from the legal protection of personality rights (Article 28 of the Swiss Civil Code – the "SCC"), the obligation to act in good faith due to the contractual nature of membership in an association (Article 2 SCC), the general prohibition of arbitrary decisions (Article 2(2) SCC), and the legal protection against anti-competitive agreements and abuse of a dominant position under the Swiss Cartel Act. The Articles of Association also cannot alter mandatory law provisions.

- Between March and June 2022, there was no legal uncertainty or unclarity in Russia for foreign players and coaches, entailing the extension of the temporary employment rules for another year. Indeed, FIFA does not claim otherwise in the Appealed Decision. Hence, the Appellants expected that all foreign players and coaches who availed themselves of the temporary employment rules, would return to Russia on 1 July 2022, and those who did not leave in March/April 2022 would stay in Russia for the 2022/23 season.

- Soon after the Appealed Decision, under pressure from the Ukrainian side, FIFA issued Circular No. 1804 of 2 July 2022, which further amended Annex 7 regarding Ukraine only. FIFA decided to postpone the application of Annex 7 to Ukraine, but not to Russia. The immediate entry into force of the Appealed Decision in respect of Russia, while its effects were postponed for a month in respect of Ukraine does not conform to FIFA's duties of good faith, procedural fairness, and equal treatment and

is contrary to the prohibitions of *venire contra factum proprium* and arbitrary decisions.

- FIFA opted to justify the timing of the Appealed Decision with an urgent need for action. However, FIFA did not explain which new circumstances created the "urgency" after adopting the initial version of Annex 7 on 7 March 2022. FIFA interfered with FUR's internal affairs and the Appellants' private employment relationships with foreign players and coaches (*res inter alios acta*) just a few weeks before the start of the Russian championship on 15 July 2022. FIFA chose a timing that made it practically impossible for the Russian clubs to adjust to the new temporary employment rules and plan their future operations in line with them.

- A change of legislation or administrative regulations, which adversely affect individuals and entities that comply with the old but not with the new rules, may have to be enacted subject to a transitory period (as FIFA did concerning Ukraine). FIFA adopted a discriminatory approach towards Russia compared with Ukraine, resulting in an arbitrary decision.

d. Failure to comply with Article 38 FIFA Statutes

- The enacted amendments under Annex 7 are invalid because of the procedure by which they were adopted in violation of Article 38 FIFA Statutes. The Appealed Decision was issued without grounds. Although the Appellants requested the grounds from FIFA, the latter refused to issue the reasons, which makes it impossible to control FIFA's compliance with the procedures established in Article 38 FIFA Statutes. Under these circumstances, unless FIFA can prove with tangible evidence otherwise, the Appellants hereby claim that the Bureau did not comply with all mandatory procedures of Article 38 FIFA Statutes, e.g., convening the meeting by the FIFA President, presence/quorum of members, notification of the FIFA Council of the decisions taken, and replacement of a member (if need be).

e. Decision without grounds

- The Appellants are not in a position to present a detailed defence on the merits, being deprived of their right to a reasoned decision and their right to be heard thereof. FIFA, *inter alia*, informed the Appellants on 2 August 2022 that *"the reasoning behind all these regulatory steps has always been well-known to you (and, indeed, to all football stakeholders)"*. This is wrong, the Appellants cannot wait to find the reasons for the Appealed Decision in the anticipated Answer and request that the Panel grants them a second round of written submissions to address FIFA's arguments and the evidence to be submitted with the Answer.

f. Proper objective

- FIFA did not state any sporting objective for adopting the Amended Temporary Rules

in June 2022. At the same time, the objective is key to the case at hand. Without knowing the objective, it is impossible to understand whether the adoption of the Appealed Decision was necessary, whether it was proportional and reasonable, and whether it fulfilled the alleged objective. In anticipation of FIFA's Answer, only FIFA's vague and meagre arguments under the Appealed Decision can be addressed.

- FIFA's reference to the alleged need to provide *"urgent legal certainty and clarity on a number of important regulatory matters"* is too vague and unsubstantiated. There was no need for FIFA to facilitate *"the departure of foreign players and coaches from Russia"* in the 2022/23 season.

- FIFA righteously did not refer to safety, security, financial, or travel constraints in Russia because there are none. There has never been any risk for foreign players and coaches in Russia that they might not be able to plea their trade or receive their salary; such issues are not arising currently and are not anticipated in the future. The Russian championship has been running smoothly and the Russian clubs have been paying fully and timely their foreign players and coaches. In the meantime, many foreign players renewed their contracts with Russian clubs, and many new foreign players signed in Russia. Therefore, FIFA must make a detailed statement of what it meant by *"legal certainty and clarity on a number of important regulatory matters"*.

- The same applies to the issue of *"a number of important regulatory matters"*. What did FIFA aim at with this? What regulatory issues arose? It is formally contested that any problem related to the regulation would require a different response for Russian clubs than for any other club in the world. Why did FIFA need to facilitate the departure of foreign players and coaches from Russia in the first place but not protect Russian clubs (as it did with Ukrainian clubs)? Why did FIFA wait so long to extend the temporary employment rules if the matter was as urgent as they claim? All these questions are very important for the outcome of the present case and, unfortunately, remained unanswered by FIFA.

- There is no evidence that any foreign player or coach contracted in Russia has turned to FIFA (or FIFPRO) asking for clarification of their legal situation after 30 June 2022 and claiming legal uncertainty and unclarity. The foreign players who left Russian clubs based on the Appealed Decision and those who stayed in Russia demonstrated great solidarity regarding their conditions in Russia, in general, and in the Appellants, in particular.

- It is frustrating that many foreign players (28) who did not suspend their contracts in March/April 2022 suspended their contracts for the first time after the Appealed Decision was notified on 21 June 2022. The answer to this anomaly is simple. While the transfer window in most countries was closed in March 2022, after the Appealed Decision in June 2022, the foreign players in Russia had the opportunity to choose the most attractive offers from all over the world while knowing that the players would sign without any transfer fee being paid to the Russian clubs. Those players have left

Russia not because of legal uncertainty or unclarity (as FIFA suggests) but for more money (as the practice showed). FIFA could have dealt with the matters on a case-by-case basis, applying the existing legal framework, without ruining and damaging Russian football so badly.

- The rules in question are poorly written. Why does Annex 7 not differentiate between those who signed an employment contract in Russia before the Russian-Ukrainian conflict and those who signed after the conflict arose? By allowing the latter to suspend their contracts, the rule could encourage foreign players, coaches, and agents to misuse it for the sole purpose of making profits.

- FIFA says that *"[t]hese provisions give players and coaches the opportunity to train, play and receive a salary, while protecting Ukrainian clubs and facilitating the departure of foreign players and coaches from Russia"*. The objective is, therefore, not the same. In one case, it is necessary to protect Ukrainian clubs; in the other, it is necessary to facilitate the departure of foreign players and coaches from Russia. Why facilitate their departure if not to punish Russian clubs by depriving them of essential assets duly contracted and when strictly no fault can be attributed to them in the situation? The real outcome of the Appealed Decision is that foreign players acquired by Russian clubs for huge transfer fees have left or will leave for free, making themselves and their agents richer.

g. Consequential effects

- The Appealed Decision's consequential effects are not inherent to the objective and are disproportionate. They are devastating to the Appellants. Whilst the *"situation in Ukraine"* may have required the adoption of temporary measures by FIFA, after a transitional period, *"to protect the legitimate interests of foreign players and coaches currently on Ukrainian territory"*, this was definitely not the case with Russia in June 2022. The situation in Russia was not like that in Ukraine. Foreign players and coaches have no objective reason to suspend their contracts with Russian clubs in the 2022/23 season. Those who wanted to leave departed already last season under the previous version of Annex 7. Those who stayed or joined later leave now only because they are poached by greedy agents and foreign clubs with lucrative offers, not because of alleged legal uncertainty and unclarity.

- Greedy agents and foreign clubs are abusing Annex 7 to illegally approach players employed in Russia. What is rather cynical is that FIFA claims the Appealed Decision aims to create legal certainty and clarity, but it is silent about the issue concerning Article 18(3) FIFA RSTP and the unlawful approach by the foreign clubs to foreign players contracted in Russia who have more than 6 months remaining on their employment contracts.

- The behaviour of the foreign players, coaches, clubs, and agents could have been foreseen by FIFA. With the Appealed Decision, FIFA demonstrated that the rights of

the Russian clubs could be ignored without invoking objective reasons exclusively related to sports.

h. Financial damage for Russian clubs and balance of interests

- It is crucial to understand that the core of the FIFA transfer system is the contractual stability principle, where players under valid employment contracts could not change their club without compensation. Players and coaches are assets of the clubs. In this case, FIFA annulled this system for Russia and Ukraine only, letting players leave clubs like the Appellants without any good reason or compensation. FIFA did not explain what was happening in Russia to cause the clubs such enormous damages. It is difficult to calculate the loss of profit from the players that left based on Annex 7, but it is predicted that it will be millions of euros. Even the Ukrainian club Shakhtar Donetsk heavily criticised FIFA over the Appealed Decision and filed a claim for damages of EUR 50 million against FIFA with CAS. Furthermore, in situations where the employment contract expires at the end of the 2022/23 season, the suspension is equivalent to contract termination.

- The bottom line is that FIFA violated the Appellants' fundamental right to private property. FIFA allowed the market to take the Appellants' assets without compensation and, more importantly, without any good reason.

i. Waiver and venire contra factum proprium

- Most of the players who invoked the Appealed Decision in July 2022 did not do so in March/April 2022. For the Appellants, it is obvious that players who did not suspend their contracts in March/April tacitly waived their right to do so in the future. Staying in Russia after March/April 2022 was a clear sign that these players felt absolutely comfortable with the situation in the country and that their rights were not violated. The same conclusion should be reached for the players who signed with Russian clubs after March 2022. In that case, Russian clubs will have valid claims against those foreign players and their new clubs for compensation for unjustified contract termination. The above will bring football into legal disrepute and may have devastating consequences for the foreign players looking to avail themselves of Annex 7 after the first week of July and their new clubs. Clubs are generally not particularly interested in signing a player involved in a contractual dispute with his former club, as they can be held jointly and severally liable to pay compensation for damages if the player did not have just cause to terminate his contract prematurely.

j. Sporting damages to Russian clubs

- The Appellants are Russian football clubs competing in the top tier of Russian professional football, except for FC Rubin, which was relegated to the second tier for the first time in 20 years after five starting foreign players suspended their contracts

once Annex 7 was enacted. Allowing foreign players to unilaterally suspend their contracts after the Russian championship has started on 15 July 2022 has no sporting justification or purpose and undermines contractual stability and the integrity of the sports competition. This will seriously impact the integrity of the FUR championship and the Russian clubs' sporting and economy activities and even their existence.

k. Unlimited period of the suspension of contracts

- According to the wording of the Appealed Decision, players can suspend their contracts at any time during the season, even one hour before an important game or after the Russian transfer window closes, thus creating immense uncertainty. FIFA submits that it cares about legal certainty. However, if this was the case, it would never have adopted a rule allowing players to suspend their contracts anytime during the seasons. By doing so, FIFA opened the floodgates for all foreign players and coaches contracted in Russia to disregard the rules regarding the contractual stability stipulated in the FIFA RSTP, without any sporting or legal justification. Therefore, the consequential effects are not inherent in pursuing the objective (if there is any), are not proportionate, are discriminative, and incapable of reaching the envisaged purpose.

l. FIFA's dominant position

- FIFA enjoys a dominant market position. It is also an undertaking within the meaning of the Swiss Cartel Act. The Appellants are undertakings in the sense of Article 2 Swiss Cartel Act. FIFA holds a dominant position and even has a *de facto* monopoly position. Article 7 Swiss Cartel Act prohibits the abuse of a dominant position by controlling the behaviour of the dominant undertaking. An undertaking abuses its dominant position when it hinders competition without its behaviour being based on legitimate business reasons.

- A rule which selectively allows the key elements of only the Appellants to leave their job without notice for the duration of the whole current season, when, except in Ukraine, this rule is not applicable in any other country where the competing clubs are located, is a textbook case of discrimination.

- There are no commercial grounds for the Appealed Decision. There is also no sporting reason. The only justification FIFA gives is an alleged need for legal certainty that does not exist and the clarification of regulatory issues that do not arise. These two justifications are pretexts, supposedly masking a disguised retaliation and sanctioning measure against Russian affiliates, whom FIFA seeks to make bear the consequences of events over which they have no control.

m. Personality and constitutional rights

- In line with Article 28 SCC, measures taken by a federation not limited to ensuring the

smooth running of the game, but which impinge on the legal interests of the person concerned are subject to judicial review. The SFT and CAS agree that the right to economic development and fulfilment in professional sport falls within the scope of protected personality rights under Article 28 SCC.

- By unconditionally allowing foreign players and coaches to leave the Appellants until the end of the 2022/23 season, the Appealed Decision enshrines an inequality concerning all other clubs in other federations (except for Ukrainian clubs). The situation affects the economic interests of the Appellants. Given their fixed-term contracts, the Appellants are free to demand compensation for their early departure (transfer or loan sum) to compensate for the loss of the corresponding asset. It is also detrimental to the Appellants' sporting interests. As there is no consent from the Appellants and the law does not allow for this infringement, it remains to be examined whether FIFA can rely on an overriding public or private interest. When balancing the interests involved, it seems clear that the balance tips in favour of the Appellants.

- The Appealed Decision also violates several constitutional guarantees. In addition to the equality of treatment and the prohibition of discrimination within the meaning of Article 8 SCC, the Appealed Decision also infringes the guarantee of property (Article 26 Swiss Constitution) and economic freedom (Article 27 Swiss Constitution). The Appealed Decision has the effect of expropriating the Appellants' claims deriving from the employment contracts concluded with their foreign players and coaches. It also reduces the intrinsic value of the claim. By intervening in the contractual sphere, the Appealed Decision amounts to a forced modification of the contract, which is a violation of Article 27 Swiss Constitution.

n. Public policy

- Annex 7 was rendered in violation of the general principles of public policy. The right vested with the foreign players and coaches contracted in Russia to suspend their contracts for the entire season based on Annex 7 is a purely potestative right depending entirely on their will, allowing them to suspend the effects of their employment contracts for purely subjective reasons for an entire season. The Appealed Decision ultimately leads to a possible circumvention of Article 335(a) of the Swiss Code of Obligations (the "SCO").

- The best demonstration that a violation of the contractual fidelity is not compatible with the determining values of the Swiss legal order is that, in its most restrictive approach, the SFT would sanction an award rendered in international arbitration *"if the arbitral tribunal refuses to enforce a contractual clause while admitting that it binds the parties"*. This is exactly the result reached by the Appealed Decision: recognising the existence of contracts but refusing to enforce them. This principle is part of the transnational legal order.

- According to the legal concepts accepted in Switzerland, there is a corrective to the principle of *pacta sunt servanda*, but this correction cannot, at least in the states of law, result of *"le fait du prince"* as it is the case here: it lies in the principle of *clausula rebus sic stantibus*. The UNIDROIT Principles also enshrine the theory of hardship. Under both concepts, there must in any case be i) a change of circumstances; ii) that seriously alters the balance of the contract. First, it is challenged that the military conflict in which Russia is engaged is a change in circumstances that affects the practice of football in any way and would therefore be relevant here. Secondly, even if a player or a coach could consider himself affected in his convictions by the injustice of these events, as regrettable as they are, it must be denied that this creates any imbalance between the player's or coach's performance and that of his club. It seems obvious that for foreign players and coaches in Russia, there is no question of *force majeure* or subsequent impossibility to execute their contracts.

o. Non-discrimination and equality

- The prohibition of discrimination based on nationality applies not only to public authorities but extends likewise to the rules of private sports associations, designed to regulate in a collective manner gainful employment and the provision of services, like FIFA. Among the principles that FIFA must uphold is the fundamental principle of equal treatment.

- However, FIFA failed to justify the difference in treatment between Russia and Ukraine. FIFA had the opportunity to adopt less discriminative measures in respect of Russia as it did with Ukraine. FIFA adopted a discriminative approach towards Russia compared with Ukraine, resulting in an arbitrary decision. Nothing can justify the appalling and discriminative treatment of Russia.

- The Appealed Decision is also unprecedented. In previous years, FIFA never employed such measures when military conflicts between countries arose. For example, clubs from Israel and Azerbaijan, when their countries were engaged in conflicts with Palestine and Armenia, respectively, were not hit by FIFA with similar temporary measures and were allowed to retain their foreign players while the military conflicts were ongoing.

p. Proportionality

- Instead of attempting to deliberately destroy the whole professional football system in Russia, FIFA had a wide variety of measures at its disposal that could have ensured reaching its ultimate goal. For example, FIFA could have either limited the application of Annex 7 to a one-week maximum or could have done as it did with Ukraine, prohibiting outgoing foreign player transfers/registrations before 1 August 2022, thus allowing the Appellants to negotiate with foreign clubs and transfer the foreign players' registrations permanently or on loan. FIFA could also establish a fixed compensation,

which should be paid to Russian clubs that is equal to the non-amortised value of the player. FIFA could have pronounced that if a player wants to suspend his contract, the contract is automatically extended by the suspended period. Also, FIFA could have obliged players who wanted to suspend contracts to return previously received advance payments due to be amortised over the relevant period. FIFA could also have limited the temporal scope of the Appealed Decision, e.g., up to one month after its adoption or valid only during registration periods, so as not to cause damage to those clubs who could not search for replacements for the departed players outside the registration periods.

- It follows from the above that FIFA had ample alternatives and that, therefore, the Appealed Decision is disproportionate.

63. On this basis, the Appellants submit the following prayers for relief in their Appeal Brief:

"On these grounds, the Appellants respectfully request that the CAS:

1. Set aside the decision of the Bureau of the FIFA Council to extend the temporary employment rules established in the FIFA Regulations on the Status and Transfer of Players (Annex 7), notified on June 21, 2022.

Alternatively,

2. Amend the decision of the Bureau of the FIFA Council to extend the temporary employment rules established in the FIFA Regulations on the Status and Transfer of Players (Annex 7), notified on June 21, 2022, and its extent of application at the Panel's discretion as to protect the Appellants' interests and legitimate expectations.

In any case,

3. Order FIFA to bear all costs incurred with the present proceedings.

4. Order FIFA to pay the Appellants a contribution towards their legal and other costs of EUR 80,000".

B. The Respondent's Answer

64. FIFA's submissions, in essence, may be summarised as follows:

a. The adoption of the Temporary Rules in March 2022

- Quite quickly after Russia's war against Ukraine broke out, and following immediate internal discussions within FIFA, it became clear that national football competitions would be gravely affected and that contractual relationships – at least in theory – would also be severely impacted. To give a few examples only, it had to be expected that football

players may need to flee Ukraine or Russia for security concerns and/or family reasons, that they may be called in for military services, that they may no longer be able or willing to honour existing employment contracts, that they may consider having a *"just cause"* to terminate existing agreements, etc. Similarly, it had to be expected that clubs may intend to rely on *force majeure* situations to delay salary payments, to cancel existing contracts, to transfer away players against their will, etc.

- The conflict remains, until today, extremely unpredictable. There were serious concerns whether the conflict would affect further areas within Ukraine, whether it may spill over to additional territories, whether the North Atlantic Treaty Organisation (the "NATO") as a whole could become involved, etc. There were, in addition, regular reports of incidents within Russia and of Ukrainian troops moving closer to Russia's territory. Similarly, attacks were reported recently on Crimea (claimed by Russia to be Russian territory). To suggest or to assume that this war should somehow only affect the territory of Ukraine, or even only limited regions in Ukraine, would have been catastrophically wrong.

- The only reasonable approach was to take immediate regulatory steps, and to do so equally for both countries involved in this war, and to thus provide regulatory guidance for players and clubs in Ukraine and in Russia. In theory, FIFA could have just stood by idly. However, this would have meant that players and clubs in Ukraine and in Russia would not only have suffered from the dramatic security situation, but they would also have been left without any regulatory guidance. Therefore, it was clear for FIFA that an urgent regulatory response was needed, balancing the interests of all those involved, which response was shared by international football stakeholders (FIFPRO and World Leagues Forum).

b. The adoption of the Amended Temporary Rules in June 2022

- In the course of the month of May 2022, it sadly became clear that no end to the war in Ukraine could be expected in the near future. It was therefore also clear that again, an urgent further regulatory response was needed, for the time after the expiry of the Temporary Rules, i.e., after 30 June 2022. Once again, FIFA could – in theory – have stood by idly. However, once again, this would not have been a responsible approach for a governing body. FIFA again took proactive steps and reached out to all its stakeholders and held a number of meetings to explore the respective positions and to find common ground as to how the tragic circumstances needed to be further addressed. FIFA prepared draft proposals of a regulatory approach and shared it with the stakeholders on 10 June 2022. Following this consultation process, it was very clear that these Amended Temporary Rules had to be passed quickly and urgently, in order to avoid any regulatory gap in between the original expiry of the Temporary Rules and the entry into force of a possible amendment or extension thereof.

c. The burden of proof

- The Appellants suggest that it would somehow be up to FIFA to prove the legality of the Appealed Decision. Yet, this is fundamentally wrong, as the burden of proof rests fully upon the Appellants. As in any other appeal before CAS, it is up to the Appellants to i) substantiate and prove the factual reasons for an alleged illegality; ii) indicate the exact legal provisions which were supposedly breached; and iii) prove that this must lead to the annulment of the Appealed Decision. The Appellants fail in each of these steps.

d. No decision "without grounds"

- The Appellants' contention that the Appealed Decision was issued *"without grounds"* is wrong. The Appealed Decision was not rendered in the context of, for example, proceedings before the Football Tribunal. For the Appealed Decision, there are no such rules. In any event, the reasoning of the Appealed Decision, and indeed of Annex 7 overall, has been openly communicated on repeated occasions. Whenever a request was made to FIFA to answer additional questions concerning Annex 7, immediate responses were given.

e. The argumentation of the Appellants is contradictory

- At the time when Annex 7 was adopted, there was no objection, comment or concern at all of neither the Appellants, nor any other club in Russia, nor of the FUR. One of the Appellants even engaged with FIFA in a transfer-related query in connection with Annex 7, without challenging the validity of Annex 7 at all. Today, the Appellants completely change position. Suddenly, they argue that Annex 7 was illegal and unjustified from the start. This is manifestly contradictory and a schoolbook example of *venire contra factum proprium*.

f. All formal and statutory requirements were complied with

- Contrary to the Appellants' unfounded accusations, FIFA has complied with all formal and statutory requirements to validly pass the Appealed Decision, in accordance with Articles 34 and 38 FIFA Statutes. Given the obvious urgency of these regulatory steps, it was clear that a formal in-person Bureau meeting could not be convened *"within an appropriate period of time"*, simply because this issue required an immediate decision. After duly receiving an email from the FIFA Secretary General, each of the Bureau's members approved all items proposed by FIFA. Following this unanimous approval, the FIFA Secretary General sent a communication to all members of the Council who were informed of the decisions taken by the Bureau. FIFA also informed them that these issues would be ratified in the next Council meeting. In view of the above, FIFA followed the proper procedure to pass the Appealed Decision and complied with Article 38 FIFA Statutes.

g. FIFA's regulatory steps were reasonable, proportionate and fully within FIFA's autonomy

- Russia's war against Ukraine triggered, first of all, a human tragedy. Right after Russia's invasion into Ukraine started, FIFA was forced to urgently address these extraordinary and unforeseen circumstances and the legal uncertainty, which had been caused, because a number of complex regulatory questions arose. Rather than simply waiting for countless legal disputes to arise, to put players who terminate their contracts at risk of sanctions and claims, and rather than leaving all these stakeholders without a clear legal framework, FIFA decided to be proactive to provide as much regulatory guidance as possible, and to do this within a very short timeframe. FIFA immediately engaged in discussions with all relevant stakeholders. Based thereupon, FIFA decided to adopt the temporary rules incorporated in Annex 7, and it subsequently decided to extend their temporal validity.

- All these steps were proportionate, legal, and fully justified. They were, indeed, a compromise between all various interests of the concerned stakeholders, and the most proportionate and pragmatic way to address a highly complex situation in a very pressing timeframe. From a technical and legal perspective, there can be no doubt that these steps were fully within the regulatory autonomy, which FIFA enjoys as an association under Swiss law. Swiss law grants a wide margin of discretion to associations in the exercise of such autonomy, and CAS never interferes in this discretion. CAS confirms that deference must be given to the autonomy of sports governing bodies and the decision which their competent bodies take. In the matter at stake, the Appellants have not even made the effort to explain why, in their view, CAS should exceptionally interfere in FIFA's autonomy.

h. Irrelevance of alleged procedural flaws

- The Appellants' argument that FIFA allegedly violated their right to be heard is wrong, but also irrelevant. It is wrong because, as confirmed by the Appellants, this is not a disciplinary matter, where FIFA would have had to grant the right to be heard to an accused party. This is a case where FIFA, in its regulatory responsibility, drafted and enacted a specific set of regulations. This has nothing to do with an accused party's right to be heard. If one were to follow the logic of the Appellants, this would mean that whenever FIFA enacts regulations, most of which potentially apply to all football players and all football clubs and all member associations worldwide, every single one of these players, clubs and associations would have to be heard first, because otherwise, FIFA would supposedly violate their right to be heard. This cannot be correct. Finally, the allegation of the Appellants is also irrelevant, because under CAS case law, any supposed procedural flaw is healed by the *de novo* review of CAS.

i. No Breach of Competition Law

- The Appellants' argument based on a supposed breach of competition law is not

substantiated, nor properly developed. First, there is no serious discussion, let alone definition, of any relevant market. The Appellants, for example, do not define any product market, they do not define any geographical market, they do not elaborate on FIFA's position on that market, nor do they define their own activities or position on such a market. They therefore also cannot substantiate how exactly FIFA's position should allegedly be dominant, or how the Appellants' position on such a market would be affected by FIFA's alleged behaviour.

- The Appellants again try to have it very simple: they make vague references to other cases that are not comparable at all, in which dominance of FIFA, or of other sports governing bodies, was established. However, dominance was established for those specific cases and respective markets only. The Appellants also would have had to i) define the relevant market; ii) provide a relevant market analysis to substantiate and prove FIFA's dominance on such market; iii) substantiate and prove FIFA's allegedly anti-competitive behaviour, i.e., an abuse of dominance or a cartel-like arrangement; and iv) based on the above, identify a specific provision of competition law and substantiate and prove how such a provision was breached by FIFA. The Appellants have not brought forward any single element of such proof and it is not for CAS to undertake such an analysis from a competition law perspective.

- Finally, for the sake of completeness only, it shall be underlined again that the decision to extend the validity of Annex 7 was a reasonable, proportionate and fully justified regulatory step. There is no indication whatsoever of any abusive behaviour of FIFA. There is no refusal by FIFA to *"deal with competitors"*, there is no discrimination in relation to prices or conditions of trade, there is no unfair or predatory pricing, etc. The Appellants may legitimately disagree with some contents of Annex 7 or of the Appealed Decision. However, this does not render the Appealed Decision anti-competitive, let alone illegal.

j. No violation of personality rights

- The Appellants invoke an alleged violation of their personality rights under Article 28 SCC. However, no such violation occurred. The Appellants do not substantiate at all how their supposed personality rights were allegedly breached. They refer to some cases concerning individual athletes who, for example, suffered from a suspension and could therefore not exercise their professional activities. In such cases, CAS held that the ability to exercise a sport forms part of an individual athlete's personality rights. These cases are obviously not comparable to the matter at hand. This case is not about personality rights of individual athletes. It is about regulatory steps taken by FIFA to address an unprecedented situation. No limitation of any personality rights has been established.

- Even if personality rights of the Appellants were affected by the Appealed Decision, *quod non*, such a limitation in personality rights is in any event justified under Swiss law. Pursuant to Article 28(2) SCC, any infringement of personality rights can be justified by

consent or by overriding private or public interests. By participating in organised football under the auspices of FIFA, the Appellants have consented to the regulatory authority of FIFA. This is expressly provided in the Statutes of the FUR. This may naturally cause some limitations to the Appellants' economic freedom, or their rights or interests. However, any such limitation is justified by consent. Further, this Answer has already explained in detail the fundamental general interest to provide regulatory guidance and to address the legal uncertainty caused by Russia's war against Ukraine. Therefore, in addition to the Appellants' consent, there is also a clearly overriding private and public interest in that FIFA may validly pass the regulations as enshrined in Annex 7 and, for the matter at hand, extend the validity of such regulations.

k. No violation of constitutional rights

- The Appellants' argument related to their constitutional rights, i.e., that FIFA violated their *"guarantee of property"* or their *"economic freedom"*, is erroneous. Under Swiss law, constitutional rights protect an individual from state intervention. Constitutional rights to not, *per se*, apply to civil law disputes between private legal entities (such as the Appellants on the one side, and FIFA on the other). Only exceptionally, it is recognised that some constitutional rights may have an *"indirect effect"* in civil law relationships. The Appellants, however, have not submitted any argument as to why such an exception should apply in the present case. Simply invoking constitutional rights and pretending that FIFA, in its regulatory action, violated such rights, is insufficient.

- In any event, the mentioned public and private interest in adopting Annex 7, and in extending its validity, serves as a valid justification also for any (hypothetical) limitation to constitutional rights of the Appellants.

l. No violation of public policy

- The Appellants' suggestion that the Appealed Decision violated public policy, more precisely the concept of *pacta sunt servanda*, is groundless. The SFT confirms that a violation of such concept exists only in extremely limited circumstances. Evidently, this does not apply to the matter at hand.

- In the present matter, FIFA enacted regulations, which establish specific rules to address the circumstances caused by Russia's war against Ukraine. Even if these regulations have a certain impact on existing contracts, it is simply wrong to state that FIFA in any way violated the principle of *pacta sunt servanda*, as defined by the SFT. What Annex 7 does is to provide exceptional measures to provide regulatory guidance and some relief to players and clubs affected by Russia's war. This is fully within FIFA's regulatory authority and autonomy, and it has nothing to do with violating the concept of *pacta sunt servanda.*

65. On this basis, FIFA submits the following prayers for relief in its Answer:

"Based on the foregoing, FIFA respectfully requests CAS to issue an Award:

(a) rejecting the reliefs sought by the Appellants;

(b) confirming the Appealed Decision;

(c) ordering the Appellants to bear the full costs of these arbitration proceedings; and

(d) ordering the Appellants to make a contribution to FIFA's legal costs".

C. The Appellants' second written submission

66. The Appellants' second written submission, in essence, may be summarised as follows:

- As indicated in the Appeal Brief, FIFA aimed to enact *a priori* administrative measures. However, the question posed is not decisive, since the "decisions" subject to the action for annulment under Article 75 SCC include normative, individual and concrete acts.

- A distinction is usually made between a decision, which is an individual and concrete act, and a legislative act, which is general and abstract. It should also be pointed out here that there is a third category of acts, the decisions of general application, which certainly regulate a concrete subject but are addressed to a more or less large circle of addressees, whether open or closed. The SFT considers such provisions to be equivalent to rules of law, but it notes that when certain persons – called special addressees – are affected by the decision rendered in a much more serious manner than the rest of the multitude of normal addressees, they must be allowed to express their views in the decision-making process. In the event of administrative measures adopted by a sports-governing body concerning a limited and identified number of designees, there is a right to a legal hearing.

- The Appealed Decision is not a legislative act, as it only applies to two members and their affiliates. The Appealed Decision substantially affects the Appellants' interests, particularly their sporting and financial interests. It does not affect the interests of clubs affiliated with other FIFA members (on the contrary, the latter are indirect beneficiaries). The Appellants, via their national associations, should have been consulted during the decision-making process.

- The Appealed Decision is, in all cases, an appealable decision within the meaning of Article 75 SCC and Article R47 CAS Code. FIFA appears to be on the same page as us regarding the nature of the Appealed Decision.

- The Appealed Decision to reintroduce and reenforce Annex 7 after it should have expired on 30 June 2022, is unlawful because of the procedure by which it was adopted and for reasons of substance.

- As FIFA correctly points out, this appeal is against the essence of the Appealed Decision,

i.e., the existence of lawful reasons to reintroduce and reenforce Annex 7 and its content considering the new temporal issues arising thereof. FIFA did not state any objective related to sport exclusively for adopting the new Annex 7 in June 2022 in light of the circumstances. There was no need for a new urgent regulatory response by FIFA. In reality, FIFA created a mess and chaos, which helped greedy agents to become richer. FIFA did not resolve a problem but created many new ones. This could have been avoided if FIFA had consulted the interested parties directly or through their domestic associations and unions. Consulting ECA – which, in the meantime, suspended all Russian members – on matters concerning Russian clubs is moot and does not represent good governance.

- Finally, FIFA speculates that we did not challenge Annex 7 when it was first enacted in March 2022. But why challenge it when we had legitimate expectations that Annex 7 would have a short life expectancy until 30 June 2022? If FIFA did not know until May 2022 that it would have to reintroduce and reenforce Annex 7, how could the Appellants know and appeal already in March 2022? Therefore, it is FIFA who acted *venire contra factum proprium* when it violated the Appellants' legitimate expectations by reintroducing and reenforcing Annex 7 as of 1 July 2022.

D. The Respondent's second written submission

67. FIFA's second written submission, in essence, may be summarised as follows:

- Nothing in the Appellants' second written submission provides any further legal argument to support their appeal. In fact, it mostly does not address the queries raised by the Panel, and where it does, the allegations made are either irrelevant or inaccurate.

- First, the explanations in the section on *"Distinction between normative acts and decisions in the sense of public law"* are largely irrelevant. FIFA never questioned that it had indeed issued an appealable decision in the meaning of the CAS Code. For the rest, the statements made in this context are simply inaccurate, as it is plainly obvious that the Appealed Decision consists of a regulatory step and not of a purported *"administrative measure"*.

- With respect to the alleged right to be heard, the Appellants' reference to a decision of the SFT is plainly misleading. In reality, the decision confirms the general principle that whenever legislative or regulatory steps are taken, there is no need to grant any sort of right to be heard to the respective addressees. The decision further confirms that even if a legislative (or regulatory) step addresses a specific topic and a closed circle of addressees (as in this case, clubs in Russia and Ukraine and their foreign players), there is no need to grant the right to be heard to those addressees.

- However, it is already explained how FIFA engaged in very detailed discussions and consultation processes with its relevant stakeholders, which represent clubs, leagues, players and confederations, so that also the interests of the Appellants could be taken into account. Moreover, any supposes violation of procedural rights is cured by the *de novo*

review of CAS.

- Insofar the Appellants suggest that there was *"no need"* to extend the validity of Annex 7 and that FIFA *"did not follow any procedure before re-introducing and re-enforcing Annexe 7"*. This is simply baseless. The Answer already sets out all the reasons for the Appealed Decision.

- It remains a fact that the Appellants did not raise any challenge when Annex 7 was originally adopted. This appeal is therefore highly contradictory to the Appellants' earlier position. FIFA made it clear from the beginning that it would continue monitoring the situation, so that it was clear that further regulatory steps could, and would, follow, should the circumstances so require. Most arguments raised today by the Appellants could have been raised already when Annex 7 was adopted.

- It is highly misleading if the Appellants now suggest that with the Appealed Decision, Annex 7 was somehow reenforced or reintroduced, to create the appearance as if the Appealed Decision was somehow a stand-alone decision. The truth is that Annex 7 was a set of rules already in place, and the only content of the Appealed Decision was to extend its validity in time. If the Appellants had genuine concerns about the validity of Annex 7, they would – and should – have challenged it when it was adopted back in March 2022.

VI. JURISDICTION

68. Article R47 CAS Code provides 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. [.]"

69. The jurisdiction of CAS, which is not disputed between the Parties, derives from Article 57(1) FIFA Statutes (2021 Edition), as it determines that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question"*, and Article R47 CAS Code aforementioned.

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

VII. ADMISSIBILITY

71. Article R49 CAS Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt

of the decision appealed against".

72. Since the Appealed Decision was notified on 22 June 2022 and the Appellants filed their appeal with CAS on 8 July 2022, the appeal duly complied with the time limit to appeal provided for in the FIFA Statutes.

73. FIFA indicates that the admissibility of the appeal, as such, is not contested. However, FIFA maintains that, insofar the Appellants are bringing forward legal arguments against the adoption of Annex 7 as such, they are challenging a decision which was taken back in March 2022. Any such challenge, and argumentation, is manifestly late and inadmissible. Any arguments raised by the Appellants can only be addressed at the extension in time of Annex 7, but not to its substantive validity.

74. The Appellants argue that they did not challenge Annex 7 when it was first introduced in March 2022, because they legitimately expected that it would expire already on 30 June 2022. The Appellants maintained at the hearing that they were not challenging the Temporary Rules, but only the Amended Temporary Rules and that nothing should prevent them from challenging the Amended Temporary Rules.

75. The Panel finds that the mere fact that the Appellants did not challenge the initial version of Annex 7 does not bar them from challenging the Appealed Decision. The Panel notes that, with the Appealed Decision, the Bureau extended the period for which foreign football players and coaches were allowed to suspend their contracts with clubs affiliated to the RFU. In other words, the Amended Temporary Rules produced effects on the clubs affiliated to the RFU which were different from those, more limited in time, deriving from the original version of Annex 7. There has been no acquiescence with respect to the Temporary Rules and their effects that would have the consequence of preventing the raising of an appeal against the Amended Temporary Rules. The Panel finds that the present appeal is also not in violation of the general legal principle of *venire contra factum proprium*.

76. Consequently, the Panel finds that the Appellants' appeal against the Appealed Decision is admissible.

VIII. APPLICABLE LAW

77. Article R58 CAS Code provides as follows:

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

78. Article 56(2) FIFA Statutes (2021 Edition) provides the following:

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

79. The Parties agree that pursuant to Article R58 CAS Code in conjunction with Article 56(2) FIFA Statutes, the present dispute is to be adjudicated and decided primarily on the basis of the various regulations of FIFA, and that Swiss law shall be applied should the need arise to fill a possible gap in the regulations of FIFA.

IX. PRELIMINARY ISSUES

A. The Appellants' Procedural and Evidentiary Requests

80. As mentioned above, the Appellants submitted some requests for production of documents by FIFA, as well as a request that a second round of submissions be allowed.

81. At the same time, the Appellants requested that a public hearing be held in this case. However, on 12 October 2022, the Appellants indicated that they considered this request to be moot, as the hearing would be held by videoconference.

82. On 10 October 2022, the CAS Court Office informed the Parties of the Panel's decisions in respect of the requests for document production.

83. The Panel notes that, following the CAS Court Office letter dated 10 October 2022 (*"The request for production of evidence related to the consultation process with stakeholders initiated by FIFA (Para. 84 and 288 of the AB) is denied, for the time being, as the Appellants failed, at this stage, to establish the relevance of the positions of the stakeholders to decide on the Appellants' appeal".*), the Appellants did not reiterate or file any new document production request with regard to FIFA's consultation process. The Panel therefore finds that the Appellants' request in para. 1 of said letter is moot.

84. With respect to para. 2 of the CAS Court Office letter dated 10 October 2022 (*"With respect to the request for production of evidence related to the compliance with formal prerequisites for the Bureau of the FIFA Council to issue the Appealed Decision (Para. 69 and 289 of the AB), the Appellants are invited to state by 12 October 2022 whether they are satisfied with the documents produced by FIFA or whether they wish to specify their request".*), the Appellants, in a letter of 12 October 2022, indicated that they were not in a position to state that they were satisfied with the documentation provided by FIFA and that, in their opinion, FIFA did not discharge its burden of proof regarding the issue raised and reserved their right to further comment on the said matter during the hearing. The Appellants, then, were afforded full opportunity to comment on the evidence relied upon by FIFA at the hearing, but they did not reiterate or file any new document production request with respect to the formal prerequisites for the Bureau to issue the Appealed Decision. The Panel therefore finds that, insofar the Appellants' request was not already definitively decided by means of the Panel's letter of 10 October 2022, it is moot.

85. With respect to para. 3 of the CAS Court Office letter dated 10 October 2022 (*"The Appellants' request for a second round of written submissions is granted only for the purposes of addressing briefly the following points: (i) the nature of the Appealed Decision, i.e. whether it contains a general regulatory measure or an individual decision having a sort of disciplinary nature aimed at specific entities, and (ii) the grounds for a challenge of a decision adopting general regulatory measures (with respect, for instance, the right to be heard of the addressees)"*), the Appellants did not object to the Panel's decision to only partially grant their request.

86. In the same way, the Appellants did not object to the Panel's decision to dismiss their request after the CAS Court Office letter dated 10 October 2022 with respect to para. 4 (*"The request for FIFA to issue the grounds of the Appealed Decision before a second round of written submissions (Para. 87 of the AB) is denied, as the question of the obligation to issue grounds (and whether grounds were given) is part of the substantive dispute"*).

87. At the end of the hearing, the Appellants expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.

88. The requests addressed in paras. 3 and 4 of the CAS Court Office letter dated 10 October 2022 were, therefore, definitively disposed of by means of the afore-mentioned CAS Court Office letter.

B. The Panel's Decision to Issue the Operative Part of the Award prior to the Reasons

89. During the hearing, the Appellants asked for the operative part of the Award to be issued before the reasons and before the end of 2022. FIFA requested that a fully motivated Award be issued concurrently with its operative part.

90. Article R59(3) CAS Code provides that the Panel *"may decide to communicate the operative part of the award to the parties, prior to the reasons"*. It is, thus, within the discretion of the Panel to issue either the full award or the operative part only. In the view of the Panel, it was in the interest of good administration of justice to issue the operative part of the award first, because it considered that the Appellants had a legitimate interest in knowing the outcome of the present arbitration before the end of the January 2023 transfer window. Had the Appellants been successful in their appeal, this would have potentially protected it from further foreign football players and coaches suspending their employment contracts and from incurring further financial damages. The Panel did not consider it incumbent to issue the operative part before the end of 2022 as players could also still be transferred in January 2023, although the Panel of course tried to issue the operative part as soon as possible.

91. Consequently, the Panel decided to issue the operative part of the Award prior to the reasons.

X. MERITS

A. The Main Issues

92. The main issues to be resolved by the Panel are the following:

i. Was the Appealed Decision issued in accordance with the formal requirements set by FIFA to issue regulations?

ii. Was the Appealed Decision necessary and proportionate in the pursuit of a legitimate objective?

iii. Was the Appealed Decision issued in violation of the Swiss Cartel Act?

iv. Was the Appealed Decision rendered contrary to general legal principles?

i. Was the Appealed Decision issued in accordance with the formal requirements set by FIFA to issue regulations?

93. The power of the FIFA Council to issue regulations derives from Article 34 FIFA Statutes (entitled *"Powers of the Council"*), which provides, *inter alia*, as follows:

"11. The Council shall issue regulations generally and, in particular, the FIFA Governance Regulations.

12. The Council shall deal with all matters relating to FIFA that do not fall within the spere of responsibility of another body, in accordance with these Statutes".

94. This power of the FIFA Council is reiterated specifically in the context of the FIFA RSTP, based on Article 27 thereof, which provides as follows:

"Any matters not provided for in these regulations and cases of force majeure shall be decided by the FIFA Council whose decisions are final".

95. The powers of the Bureau are set forth in Article 38 FIFA Statutes (entitled *"Bureau of the Council"*), which provides, *inter alia*, as follows:

"1. The Bureau of the Council shall deal with all matters within the competence of the Council requiring immediate decision between two meetings of the Council. The Bureau of the Council shall consist of a maximum of seven members. The FIFA President and the six confederation presidents are ex officio members of the Bureau of the Council.

2. The President shall convene meetings of the Bureau of the Council. If a meeting cannot be convened within an appropriate period of time, decisions may be passed through other means of communication. Such decisions shall have immediate legal effect. The President shall notify the Council immediately of the decisions passed by the Bureau of the Council.

3. All decisions taken by the Bureau of the Council shall be ratified by the Council at its next meeting".

96. On this basis, the Panel accepts that the FIFA Council was entitled to introduce the Amended Temporary Rules. By extension, the Bureau was also vested with such competence, provided that an immediate decision between two meetings of the FIFA Council was required.

a. The urgency to issue the Appealed Decision

97. Notwithstanding the foregoing, the Appellants deny that there was an urgency of the situation permitting the Bureau to pass the Appealed Decision.

98. The Panel accepts that the wartime events between Russia and Ukraine required immediate action from FIFA and that the implementation of the Temporary Rules was justified. However, the Appellants challenge that such urgency was still present when the Amended Temporary Rules were implemented.

99. The Panel agrees with the Appellants that there was less urgency for the implementation of the Amended Temporary Rules than for the implementation of the Temporary Rules back in March 2022. Indeed, while the Temporary Rules were in force, FIFA had time to evaluate the Temporary Rules, plan how to approach the situation after the Temporary Rules would expire on 30 June 2022 and leave time between the implementation of the Amended Temporary Rules and their actual entry into force so that the persons and entities affected thereby had time to adjust to the new situation.

100. Nonetheless, although more time was available than for the implementation of the Temporary Rules, the Panel finds that the time between the implementation of the Temporary Rules on 7 March 2022 and the implementation of the Amended Temporary Rules on 20 June 2022 was still relatively short. The Panel finds that the passing of three and a half month did not take away the urgency, particularly considering that it had to be awaited how the Temporary Rules would work in practice and that this had to be evaluated, all within the same relatively short period. The situation became more pressing in May and June 2022, because, if not for the adoption of the Amended Temporary Rules, the Temporary Rules would have expired on 30 June 2022 and foreign football players and coaches registered with Russian clubs would have been required to return to their employers despite the ongoing war. Therefore, when the date of 30 June 2022 was approaching, it became more pressing to find a solution.

101. The Appellants do not specifically argue that, because of the alleged lack of urgency, the FIFA Council should have assumed competence in favour of the Bureau. In any event, the Panel finds that the armed conflict between Russia and Ukraine was sufficiently urgent still in June 2022 to justify the implementation of the Amended Temporary Rules by the Bureau.

b. Additional formalities for the Bureau to issue the Appealed Decision

102. As to the other procedural prerequisites for the Bureau to issue the Appealed Decision, on 17 June 2022, the members of the Bureau, consisting of the President of FIFA and the Presidents

of the six confederations (AFC, CAF, CONCACAF, CONMEBOL, UEFA and OFC) were informed by the FIFA Secretary General of the proposed Amended Temporary Rules. All seven members of the Bureau approved the proposal by email between 17 and 20 June 2022, thereby issuing the Appealed Decision.

103. On 23 June 2022, the FIFA Secretary General informed the FIFA Council of the Appealed Decision issued by the Bureau, indicating, *inter alia*, that *"[i]n accordance with article 38 paragraph 3 of the FIFA Statutes, the above decisions of the Bureau shall be ratified by the Council at its next meeting"*.

104. The Panel finds that the Bureau thereby complied with all statutory prerequisites to issue the Appealed Decision.

c. The alleged violation of the Appellants' right to be heard

105. The Appellants rely on "natural justice", particularly the right to be heard, in submitting that FIFA was required to involve the RFU and the Appellants in the decision-making process before issuing the Appealed Decision.

106. At the outset, the Panel notes that the proceedings leading to the adoption of the Appealed Decision were not of a disciplinary nature, which would have required affording a right to be heard to those prejudiced by that decision. Rather, the Appealed Decision was issued by FIFA in its capacity as an association exercising its administrative and/or regulatory function, in which area it has a considerably margin of discretion when governing the sport and its members as it deems fit, restricted merely by mandatory rules of law.

107. The Appellants argue that their right to be heard was violated because they were not consulted. At the same time, however, they admit that there was no formal requirement in the applicable rules for FIFA to involve the RFU and the Appellants in the consultation process, as they submit that *"it appears to be advisable and good practice to acquire as much information as possible and to hear the views of potentially affected parties before issuing general regulations"*. In this respect, the Appellants rely on CAS 98/200.

108. First of all, insofar the Appellants argue that the RFU or the Russian Premier League (the "RPL") should have been consulted, the Panel finds that this would be something for the RFU and the RPL to argue, but these entities are not parties to the present proceedings before CAS and they have not challenged the Temporary Rules or the Amended Temporary Rules.

109. As to the Appellants themselves, the Panel agrees that it may be advisable and good practice for international sports governing bodies such as FIFA to consult various stakeholders before enacting regulations, but this is not the yardstick to be applied for setting aside the Appealed Decision. What is decisive is that there is no legal norm, either under FIFA Statutes and regulations or under Swiss law, requiring the Bureau to consult the Appellants – as indirect members of FIFA – before issuing the Appealed Decision, or at least no such norm has been identified by the Appellants. In light thereof, the Panel finds that there is no violation of any formal requirement by the Bureau.

110. The Panel feels itself comforted in this analysis by the CAS jurisprudence relied upon by the Appellants:

> *"[E]ven assuming that for some purposes clubs could be considered as indirect members of UEFA, the Panel is of the opinion that «indirect» members could not be wholly equated with «direct» members. Therefore, clubs could not claim anyway the right to be heard when general resolutions are adopted by UEFA. It is certainly opportune that UEFA consults with at least some of the clubs, or possibly with some of the national leagues, before adopting rules concerning conditions of admission to its competitions, but in the Panel's view this cannot be construed as a legal obligation under Swiss association law.*
>
> *With regard to the right to be heard, the Panel wishes to stress that the CAS has always protected the principle audiatur et altera pars in connection with any proceedings, measures or disciplinary actions taken by an international federation vis-à-vis a national federation, a club or an athlete (see CAS 91/53 G. v. FEI, award of 15 January 1992, in M. REEB [ed.], Digest of CAS Awards 1986-1998, Berne 1998, 87, paras. 11-12; CAS 94/129 USA Shooting & Q. v. UIT, award of 23 May 1995, ibidem, 203, paras. 58-59; CAS OG 96/005, award of 1 August 1996, ibidem, 400, paras. 7-9). However, there is a very important difference between the adoption by a federation of an ad hoc administrative or disciplinary decision directly and individually addressed to designated associations, teams or athletes and the adoption of a general regulation directed at laying down rules of conduct generally applicable to all current or future situations of the kind described in the regulation. It is the same difference that one can find in every legal system between an administrative measure or a penalty decided by an executive or judicial body concerned with a limited and identified number of designees and a general act of a normative character adopted by the parliament or the government for general application to categories of persons envisaged both in the abstract and as a whole. The Panel remarks that there is an evident analogy between sports-governing bodies and governmental bodies with respect to their role and functions as regulatory, administrative and sanctioning entities, and that similar principles should govern their actions. Therefore, the Panel finds that, unless there are specific rules to the contrary, only in the event of administrative measures or penalties adopted by a sports-governing body with regard to a limited and identified number of designees could there be a right to a legal hearing. For a regulator or legislator, it appears to be advisable and good practice to acquire as much information as possible and to hear the views of potentially affected people before issuing general regulations – one can think of, e.g., parliamentary hearings with experts or interest groups – but it is not a legal requirement. As a United States court has stated, requiring an international sports federation «to provide for hearings to any party potentially affected adversely by its rule-making authority could quite conceivably subject the [international federation] to a quagmire of administrative red tape which would effectively preclude it from acting at all to promote the game» (Gunter Harz Sports v. USTA, 1981, 511 F. Supp. 1103, at 1122)"* (CAS 98/200, paras. 57-58).

111. The Panel does not consider the absence of a specific mandatory stakeholder consultation process in the FIFA Statutes to be surprising or unreasonable, because decisions issued by the Bureau are necessarily urgent. Indeed, if a situation does not require immediate action, the Bureau is not competent to decide. As a corollary, in a situation where immediate action is required, it would be very inefficient to require a sophisticated consultation process. This is all the more true, considering that the various stakeholders would have to be granted sufficient time to submit a meaningful response.

112. The Appellants also rely on jurisprudence of the SFT (ATF 119 Ia 141, consid. 5.c.cc) according to which certain persons – called "special addressees" – are affected much more seriously than "normal addressees" and must be allowed to express their views in the decision-making process.

113. The Panel notes that, even assuming for the sake of the argument that the legislative authority of a Swiss Canton is identical to the regulatory authority of FIFA as an association under Swiss law, the approach set forth by the SFT in the precedent cited is more nuanced than portrayed by the Appellants. In particular, the SFT holds that *"this opportunity to express yourself does not necessarily have to exist before the resolution on the plan is passed; according to the case law of the Federal Supreme Court, it is sufficient that objections can be raised as part of an objection or complaints procedure (see BGE 114 Ia 238 ff. E. 2c, cc-cf; FRANÇOIS RUCKSTUHL, Der Rechtsschutz im Zürcherisches Planungs- und Baurecht, ZBl 86/ 1985, p. 287, with further references)"* (ATF 119 Ia 141, para. 5.c.bb – free translation into English).

114. The Panel finds that the Appellants' right to be heard is therefore in any event accommodated by means of the present appeal arbitration proceedings before CAS.

115. Furthermore, although the Amended Temporary Rules in particular affect football clubs in Russia and Ukraine and the foreign football players and coaches employed by them, the Panel finds that such group of addressees is still so large that they cannot be considered as "special addressees". Also, again considering the urgency of the measure, affording an individual right to be heard to all these clubs and individuals before enacting the Temporary Rules and the Amended Temporary Rules would have impaired the decision-making process.

116. Notwithstanding that it was formally not required to do so, various stakeholders were consulted. In particular, FIFA discussed the Amended Temporary Rules with FIFPRO, the World Leagues Forum, ECA and UEFA, before the Bureau issued the Appealed Decision. These stakeholders had been invited to participate in a videoconference, a draft version of the Amended Temporary Rules was shared with them and they were invited to comment.

117. Given the time constraints, the Panel considers it reasonable for FIFA not to directly involve the RFU and/or Russian clubs (including the Appellants) in this consultation process. The present proceedings relate to the Appellants, and no evidence has been presented that they attempted to intervene in the consultation process prior to the implementation of the Amended Temporary Rules. At the time, the Appellants were members of ECA and the latter was involved in the consultation process. The mere fact that ECA decided on 1 March 2022 that *"all Russian members will cease to be involved in ECA activities with immediate effect until further notice"* does not make this any different.

118. Considering the circumstances and the urgency required, the Panel finds that it was reasonable of FIFA to keep the number of stakeholders limited to a minimum and to involve only ECA, and to a certain extend World Leagues Forum, as the representative organisations of clubs and leagues respectively, including the Appellants.

d. The lack of a reasoned decision

119. The Appellants maintain that they are not in a position to present a detailed defence on the merits as they were deprived of their right to a reasoned decision.

120. For the same reasons as stated with respect to the Appellants' right to be heard, the Panel finds that the Appellants are also not entitled to a "reasoned decision". The latter prerequisite only comes into play in case FIFA exercises adjudicatory or disciplinary functions through its respective bodies. This, however, is not the case here, since FIFA, when issuing the Appealed Decision, exercised its legislative / regulatory function.

121. In any event, the Panel finds that FIFA has been sufficiently clear that Annex 7 was implemented in response of the crisis that arose as a consequence of the armed conflict between Russia and Ukraine and to provide legal certainty and clarity on a number of elements (FIFA Circular Letter No. 1787), *"because the war in Ukraine is indubitably having an impact on foreign players and coaches in Russian clubs who want to leave the country, or have already left, as a consequence of the armed conflict"* and to *"facilitate the departure of these foreign players and coaches"* (Interpretative Note).

122. The Panel further notes that such information was publicly available and that the Appellants were therefore also able to defend themselves against any such allegations in the present appeal arbitration proceedings before CAS. The Appellants' contention that they *"cannot wait to find the reasons for the Appealed Decision in the anticipated Answer"* is disingenuous. Whether such arguments indeed justify the implementation of the Amended Temporary Rules is a different matter that is assessed below, but the Appellants' argument that they are unaware of the reasons behind the Appealed Decision is dismissed.

e. Conclusion

123. Consequently, in light of all the above, the Panel finds that the Bureau issued the Appealed Decision in accordance with all formal requirements set forth in the FIFA Statutes and Swiss law. However, this formal validity does not preclude any evaluation concerning the substantive validity of the Appealed Decision. Indeed, it may well be that, although issued in accordance with all formal prerequisites, Annex 7 is still to be invalidated, because, e.g., it is discriminatory or otherwise in violation of applicable mandatory legal principles. Whether this is the case will be assessed below.

ii. Was the Appealed Decision necessary and proportionate in the pursuit of a legitimate objective?

124. The Panel notes that the Appellants raise numerous, and sometimes overlapping, legal arguments in support of their challenge of the Appealed Decision. All arguments raised by the Appellants will be addressed individually below. However, the Panel finds that the main issue raised in the present proceedings can basically be reduced to a fundamental one: was the Appealed Decision necessary and proportionate in the pursuit of a legitimate objective?

125. In answering this fundamental question, the Panel first resorts to FIFA's purported objective underpinning the Appealed Decision, before subsequently turning to the necessity and proportionality of the measures taken to achieve such objective.

126. The Panel considers it important to highlight at the outset that the present appeal arbitration is not about individual employment relationships between the Appellants and the foreign football players and coaches employed by it. Rather, the present procedure concerns the adoption of a regulatory framework, implemented and subsequently extended by FIFA in its capacity as the global governing body of football, *vis-à-vis* the Appellants, which are indirect members of FIFA, through their affiliation to the RFU, which in turn is a member of FIFA.

127. It is to be noted that on one hand, the terms and conditions of each and every employment contract may be different, including the extent to which Russian law or the FIFA RSTP are applicable to it. On the other hand, the validity of resolutions adopted by FIFA are governed primarily by the rules and regulations of FIFA, and by Swiss law, in accordance with Article R58 CAS Code and Article 56(2) FIFA Statutes. This is even true in case the resolution at stake enacts a regulatory framework intended to apply to some of its indirect members (such as the clubs affiliated to the RFU). This is also not contested by the Appellants. FIFA's regulatory measures, if intended to affect employment relationships (as the FIFA RSTP and its Annexes do), are inevitably applicable to employment contracts concluded between clubs (as indirect members of FIFA) and their employees. The *validity* of such regulatory measures, however, is not governed by the laws of any State in which they are applied. Only their concrete *application* in an individual case might be verified on the basis of domestic laws. However, the compliance with mandatory rules of the jurisdictions affected by the FIFA regulations is not a relevant yardstick when examining the validity of a resolution by FIFA to adopt the regulations in question.

128. In other words, the fact that the introduction and extension of Annex 7 may result in a foreign player invoking Annex 7 to suspend his employment contract with any of the Appellants in violation of Russian law is a matter to be assessed on a case-by-case basis. Indeed, as indicated above, this may depend on the extent to which such employment relationship is governed by Russian law and/or the FIFA RSTP. The FIFA RSTP and Russian labour law are two distinct regulatory/legal frameworks. The FIFA RSTP does not impact Russian labour law and does not deal with claims arising under Russian law. If Russian law is directly applicable, the player concerned may well have acted inappropriately. However, if such employment contract is primarily governed by the FIFA RSTP, the Player may have acted appropriately.

a. FIFA's objective behind the Appealed Decision

129. According to FIFA, Russia's invasion of Ukraine caused legal uncertainty in relation to the stability of employment contracts entered into between Russian clubs (including the Appellants) on the one hand, and foreign football players and coaches registered with such clubs on the other hand. It had to be expected that football players may need to flee Ukraine or Russia for security concerns and/or family reasons. There were regular reports of incidents within Russia,

including in Crimea, which is claimed by Russia to be Russian territory. FIFA maintains that, to suggest or to assume that this war would somehow only affect the territory of Ukraine, or even only limited regions of Ukraine, would have been catastrophically wrong. FIFA considers that the only reasonable approach was to take immediate regulatory steps, and to do so equally for both countries involved in this war, and to thus provide regulatory guidance for players and clubs in Ukraine and Russia. In addition, FIFA notes that the situation at the moment the Appealed Decision was issued was far from stable. To the contrary, the war was evolving and had the potential of further escalation.

130. FIFA identified the following regulatory issues that arose due to the ongoing war between Russia and Ukraine in warranting the necessity of providing regulatory guidance:

> *"Would players of Ukrainian and/or Russian clubs have a 'just cause' to immediately terminate their employment contracts because of the rapidly deteriorating security situation?*
>
> *Would the situation be the same for local players, as opposed to foreign players?*
>
> *Would clubs in Ukraine and/or Russia have the right to suspend payments to players because of economic difficulties caused by the war?*
>
> *Would clubs in Ukraine and/or Russia have a "just cause" to unilaterally terminate valid employment contracts because of the deteriorating security situation?*
>
> *Would the resulting economic difficulties, for example because a championship cannot take place or because a club has been expelled from international competitions, give a "just cause" to clubs to cancel existing contracts or to suspend or delay salary payments?*
>
> *In case a national championship is stopped, could clubs still meet their basic obligations towards players (e.g., to provide training, medical care and give the opportunity to play competitive matches)? If not, what would the impact be on ongoing contractual relationships?*
>
> *What if a club no longer has any adequate training facilities at all and/or if a player considers training to be insecure? Does such a player have the right to unilaterally suspend his activities for the club?*
>
> *Conversely, would such a player face the risk of a severe sporting sanction (i.e., a suspension of several months) if he/she were to leave a club (for example, because of safety concerns), and the FIFA Football Tribunal would subsequently find that this constituted a breach of contract?*
>
> *Could clubs face severe sporting sanctions (i.e., a transfer ban), if they delay salary payments, and the FIFA Football Tribunal would subsequently find that this constituted a breach of contract?*
>
> *Could a compromise between the conflicting interests be found, e.g., by offering the possibility to suspend contracts, so that players could temporarily play for clubs abroad? How could this be facilitated, taking into account that many registration windows were closed in March 2022?".*

131. The Panel finds that, although the conflict has so far been taking place particularly on Ukrainian

territory, there are indeed also safety concerns in Russia. Considering that Russia claims to have annexed parts of the Ukrainian territory occupied after the invasion, the war is arguably indeed also taking place on alleged Russian soil. In any event, in a situation where two neighbouring countries are at war, the Panel finds that, at the moment the Appealed Decision was issued, the possibility could not be excluded that there would soon be attacks on Russian territory as well, that the Russian Premier League could be interrupted, etc.

132. The Panel finds it particularly important that governments from around the world have called upon their citizens to leave Russia immediately out of security concerns. The Panel drew the Parties' attention to such announcements being issued on the official websites of the governments of Germany, France and England. The existence thereof was not contested by the Appellants. The Panel considers this to be publicly available evidence of the security threats faced by foreigners in Russia. Even if there would be no particularly concrete safety threat for one or more of the Appellants, the Panel finds that foreign football players and coaches receiving such general warnings from governments can legitimately feel like they may be in an insecure position. Against this background, the Panel finds that there can be no reasonable doubt that this caused uncertainty and instability in employment relationships between Russian clubs (including the Appellants) and the foreign football players and coaches employed by them, requiring FIFA's intervention.

133. What is more, the Panel finds it also legitimate for FIFA to accommodate the concerns of foreign football players and coaches registered with clubs in a country that is perceived by a considerably majority of countries as the aggressor in the armed conflict with Ukraine. The foreign football players and coaches were facing (potential internal or external) pressure to side with any of the conflicting parties by either staying in or leaving Russia. This is, *inter alia*, demonstrated by the international sanctions imposed on Russia and Russian citizens and companies by several countries worldwide. Although, it is true that Russian clubs (including the Appellants) are not responsible for the conflict, what matters is that Russia is currently a country at war that is severely criticized by the international community (in particular from the Western world) whereas this was not the case when the foreign football players and coaches concluded their employment contracts with the Appellants. The foreign football players and coaches may legitimately feel unsafe or subjected to pressure to leave Russia. The Panel finds that such a change legitimizes FIFA's approach to regulate some of the football-related consequences of Russia's war against Ukraine in a general, i.e., regulatory manner.

134. The Panel also considers FIFA's argument reasonable that it wanted to treat Russian and Ukrainian clubs and the foreign football players and coaches registered with such clubs equally in the Amended Temporary Rules, even though the situations in both countries are not identical.

135. The Panel finds that there can be little doubt that, besides being a threat to the life of people residing in Russia, the conflict also caused legal uncertainty in employment relationships in football. Given the significant number of foreign football players and coaches employed in Russia (and Ukraine), the Panel finds it reasonably that FIFA explored options to address the situation in a general manner, in an attempt to provide general regulatory guidance for all

stakeholders affected by the war. This happened not least because the World Leagues Forum and FIFPRO, the international representative organisation for professional football players, jointly urged it to take action. In this respect, it must be added that such request was directly aimed at foreign football players and coaches employed in Russia, not Ukraine.

136. Given the threats caused by the war, the Panel finds that it was reasonable for FIFA to provide general regulatory support for those foreign football players and coaches willing to leave Russia. On the contrary, it would have been unreasonable to expect that foreign football players and coaches would be required to fulfil their employment contracts as if nothing had happened. The consequence of leaving the country without reference to any legal justification would have in fact implied the abandonment of their workplace, exposing them to the risk of potential contractual claims by their employers and disciplinary sanctions. While it would be possible to deal with the football-related consequences of the war also on a case-by-case basis, the legal insecurity of such an approach might have deterred players from availing themselves of their contractual rights. It is well-known that football players involved, or facing a threat of being involved, in contractual disputes encounter difficulties in finding new employment. The main reason for this is the principle of joint liability set forth in Article 17(2) FIFA RSTP, i.e., the threat that any new club be declared jointly liable with the player to pay damages to the player's former club. The extent of a potential liability arising from a breach of contract paired with the joint liability following from Article 17(2) FIFA RSTP may be considerable, resulting in millions of Euros of damages being payable. Consequently, clubs generally try to steer clear of registering such players because of the legal insecurity involved, which point is also confirmed in the submissions of the Appellants.

137. Furthermore, the FIFA RSTP does not provide for a mechanism for football players to seek prior permission to terminate employment contracts. Rather, whether a player or a club had just cause to terminate the employment relationship is only determined retrospectively, with the obvious legal risks this approach implies.

138. In these circumstances, while emphasising again that individual cases are to be examined on a case-by-case basis, the Panel finds that FIFA's objective in providing general legal guidance in times of exceptional and unprecedented legal uncertainty was legitimate and justified. This was certainly a reasonable basis at the time the initial version of Annex 7 was introduced; the Panel, in addition, finds that it was still valid at the time of the Appealed Decision. Indeed, at the time of issuance of the Appealed Decision, the armed conflict raged on and the future developments remained unpredictable.

b. Was the Appealed Decision necessary and proportionate in achieving the objective?

139. The Panel finds that FIFA's assessment of the factual situation underlying the adoption of the Appealed Decision is sufficiently accurate and that therefore FIFA was entitled to strike a balance between the legitimate interests of Russian clubs (including the Appellants) and the legitimate interests of foreign football players and coaches by application of regulatory measures.

140. In coming to this conclusion, the Panel accepts that the autonomy of associations is larger in the field of regulatory measures than in disciplinary matters. The majority of the Panel finds that the solution adopted by FIFA to allow foreign football players and coaches to unilaterally suspend (not terminate) their employment contracts remains within the acceptable margin of a federation's discretion.

1. The priority of providing foreign football players and coaches with the option to leave Russia

141. The Appealed Decision's primary focus is to address the existing security risks and the potential resulting threats to contractual instability of foreign football players and coaches in Russia. While the Panel considers it to be legitimate, this focus entails unavoidable disadvantages for Russian clubs as such measures had the potential of depriving them of the services of their foreign football players and coaches.

142. The Panel finds that the Appellants did not put forward any feasible alternative measure that would have ensured the safety and contractual stability of foreign football players and coaches while continuing to perform their duties as employees of the Appellants.

143. Accordingly, in assessing the proportionality of the Amended Temporary Rules one has to start from the presumption that foreign football players and coaches could not be required to continue performing their employment contracts as normal. Thus, the interests of the players and coaches wanting to leave their employment because of the conflict must be valued higher than the interests of the clubs to retain their services as if nothing has happened. The question, however, is whether the Russian clubs are entitled to some kind of compensation because of the potential loss of services by their foreign football players and/or coaches and the loss of the opportunity to transfer players to third-party clubs for a transfer fee. The implied issue is whether the absence in Annex 7 of any rules addressing the issue of compensation in favour of Russian clubs makes the Appealed Decision illegal.

2. Financial reparation for Russian clubs

144. The Appellants submit that FIFA should have included in the Amended Temporary Rules a mechanism to compensate the Russian clubs for their loss as a result of the Russian armed conflict with Ukraine. However, who should pay such compensation, if any? FIFA, the foreign football players and coaches entitled to invoke the Amended Temporary Rules, agents/intermediaries, and/or the third-party clubs that might register the foreign football players and coaches following the suspension of their employment contracts?

145. The Panel, as a preliminary remark, notes that any regulatory measures may impact the economic conditions or the financial interests of their addressees: if the FIFA system is considered, for instance, the rules contained in the FIFA RSTP allowing the players to terminate employment contracts for sporting just cause have an effect on existing employment contracts; or the rules on the release of players to allow them to play with

national teams prevent clubs from requesting the sporting performance by players during the period for which they have been released or should have been released pursuant to the provisions of the FIFA RSTP (Annexe 1), plus an additional period of five days (Article 5 of such Annexe). The majority of the Panel considers that such impact, however, does not necessarily imply that reparation for any adverse effect of economic nature is to be paid in all such situations. As a result, and in other words, the fact that the Amended Temporary Rules allowed players and coaches to suspend for a limited period performance under the existing employment contracts, in the pursuit of a legitimate objective, does not make the Appealed Decision *per se* illegal even though they might have caused a financial prejudice to the Russian clubs.

146. Commencing with FIFA, the Panel finds that, even though the Amended Temporary Rules are enacted by FIFA, it does not appear fair to make FIFA pay compensation for the loss suffered by Russian clubs (including the Appellants) because of the Russian war against Ukraine. FIFA does not financially profit from allowing players and coaches to leave a country at war based on the Amended Temporary Rules. In such circumstances, it is not appropriate to require FIFA to compensate Russian clubs financially. FIFA may obviously do so as a token of support, but there is no legal requirement to do so.

147. Turning to the foreign football players and coaches that may invoke the Amended Temporary Rules to suspend their employment relationships, the Panel finds that they, in principle, also do not necessarily derive a financial profit from the war. Indeed, by suspending their employment contracts, they at least temporarily forfeit their entitlement to receive a salary. At the same time, had FIFA remained inactive, the players and coaches (who did not dare take the risk of a legal dispute for breach of contract and remained with the Russian clubs) would have risked remaining without a salary, in light of the uncertain situation in Russia. This would have been a financial prejudice, rather than a profit. In an attempt to accommodate these players and not to deprive them of the possibility to earn an income, the Amended Temporary Rules allowed them to temporarily register with other teams.

148. In addition, not all foreign football players and coaches may be in the fortunate position of immediately finding alternative temporary employment to recuperate their loss of income. Also, knowing that foreign football players and coaches that have invoked the Amended Temporary Rules find themselves in a situation of unemployment, potential new clubs acquiring their services may well exploit their stronger bargaining position by offering lower salaries than the foreign football players and coaches would otherwise have been able to receive.

149. At the same time, the Panel recognizes the possibility that some foreign football players and/or coaches financially benefitted from invoking the Amended Temporary Rules to suspend their employment contract with Russian clubs (including the Appellants) and subsequently concluding an employment contract under more favourable financial terms. The majority of the Panel finds that this possibility does not change the financial condition of the Appellants. If players or coaches suspend their employment relation because of fear of wartime dangers, or because they receive an offer for a higher income, the employment contract would be in any case suspended. Indeed, the majority of the Panel finds it difficult

to link potentially significant financial damages for Russian clubs (including the Appellants) deriving from the suspension of an employment contract to the financial conditions agreed between a player or a coach suspending the employment contract and a third club.

150. Against such background, however, the Panel finds that an abstract scenario could be imagined under which Russian clubs (including the Appellants) file claims for unjust enrichment against such players and/or coaches, to recoup at least part of the financial profits made, thereby more equally dividing the financial setback as a result of the armed conflict and FIFA's regulatory measures in response. Although such claims for unjust enrichment would have to be examined on their own merits depending on the specific facts and circumstances of each case, Articles 62(1) *et. seq.* SCO appear to provide Russian clubs (including the Appellants) with options in this respect:

"A person who has enriched himself without just cause at the expense of another is obliged to make restitution".

151. The same observations can be made with respect to agents and/or intermediaries, who may also have potentially enriched themselves at the expense of Russian clubs (including the Appellants) on the basis of Annex 7.

152. Finally, the Panel notes that the clubs registering players who have invoked Annex 7 to suspend their employment contracts could potentially profit from Annex 7 and abuse it. Indeed, such clubs have the opportunity to acquire foreign football players and/or coaches on a temporary basis, without the consent of the club of prior (and pending) registration and without any transfer fee being payable. The Panel notes in addition that it may also happen that the employment contracts in question, temporarily suspended, expire during their suspension period, depriving the Russian clubs of the opportunity or chance to transfer such players and/or coaches to third-party clubs for a transfer fee. The Panel considers it a possible scenario that clubs, that have initially temporarily registered foreign football players and/or coaches that suspended their employment contracts with Ukrainian clubs on the basis of Annex 7, eventually register such employees on a permanent basis. Accordingly, from a financial perspective, such clubs have the potential of financially benefitting, in a significant manner, from Annex 7.

153. The majority of the Panel finds however that, as argued by FIFA, requiring such clubs to pay a predetermined loan fee (and/or transfer fee) would have been difficult to incorporate in a set of rules such as Annex 7, not least because this would create a significant obstacle for foreign football players and coaches to leave Russia in these exceptional wartime circumstances, and find suitable alternative employment. As a result, on balance, the Panel holds that the absence of any mechanism in the Appealed Decision to prevent new clubs from gaining an advantage to the detriment of Russian clubs does not affect the validity of the Amended Temporary Rules *per se*.

154. Nonetheless, the Panel finds it disturbing that such new clubs may potentially obtain a financial advantage in the form of the registration of football players and/or coaches for which they did not have to pay any transfer fee to acquire their services, while potentially making significant

profits on such players and/or coaches by subsequently transferring them to other clubs for a transfer fee.

155. Again, from a general fairness perspective, the Panel would find it difficult to justify a situation in which only Russian clubs (including the Appellants) would be suffering potentially significant financial losses from the suspension of an employment contract, while the new clubs would profit from it financially. Therefore, although entirely subject to the individual circumstances of each case, the Panel finds it conceivable (without asserting it with certainty) that in the above-mentioned scenarios Russian clubs (including the Appellants) may seek to be compensated by such clubs, if they indeed unduly enriched themselves. From a general fairness perspective, it would certainly not be unreasonable that such clubs may be called to share at least part of the windfall profits they would not have been able to realise if not for the introduction of the Amended Temporary Rules.

156. The matter can however be left open. The Panel finds in fact that these considerations do not make the Amended Temporary Rules *per se* unreasonable, as these rules primarily serve the purpose of permitting foreign football players and coaches to leave the country for safety reasons, which is a justifiable objective. It may be added here that public statements made by players after having suspended their employment contracts are not necessarily determinative in providing the real reason for departure. A player may, for instance, try to maintain a good relationship with the Russian fan base of his club and therefore make positive public statements about Russia in general. This does not necessarily mean that such player invoked the Amended Temporary Rules for disingenuous reasons.

157. Further, the possibility for Russian clubs of filing individual claims against foreign football players and coaches, intermediaries/agents and third clubs was also contemplated by FIFA in its letter to counsel for the Appellants on 8 July 2022, by stating as follows:

"Finally, regarding the "issues not covered" that you have raised in your correspondence, we would like to kindly inform you that the majority of those issues would seem to fall within the competence of the relevant decision-making bodies of FIFA (the Football Tribunal), to be assessed on a case-by-case basis in the event of a specific dispute".

3. Potential cases of abuse of the Amended Temporary Rules

158. The Panel finds that the above considerations also apply with respect to potential cases of abuse of the Amended Temporary Rules, when players, agents/intermediaries or other clubs invoke Annex 7 for illegitimate purposes, i.e., for purposes other than those for which the Appealed Decision was adopted.

159. The Amended Temporary Rules do not deal exhaustively with any and all types of questions arising from the circumstances at the basis of its adoption. However, in the event that the opportunity offered by Annex 7 is exploited for illegitimate and/or disingenuous purposes, Russian clubs (including the Appellants) should have access to justice, and seek a remedy against such persons or entities, *inter alia*, on the basis of Article 2 SCC, which provides as

follows:

> *"1. Every person must act in good faith in the exercise of his or her rights and in the performance of his or her obligations.*
>
> *2. The manifest abuse of a right is not protected by law".*

160. Whether there is any abuse must be ascertained by properly constituted adjudicatory tribunals or courts in light of the individual circumstances of each case; all particular contingencies cannot be covered by general rules.

161. In terms of situations of abuse, one could for example think of foreign football players and/or coaches exerting undue pressure on Russian clubs (including the Appellants) shortly before the start of a match to demand additional payments in exchange for waiving their right to suspend their employment contract. Demanding an additional payment may not *per se* be unreasonable, but the content of the demand and the moment of making it and other facts and circumstances may make it unreasonable. Also, generally speaking, the longer a foreign football player or coach waits to suspend his employment contract, the less likely it becomes that Annex 7 is invoked for legitimate purposes.

162. The Panel finds that it would go too far to make a general distinction in the Amended Temporary Rules and apply a different regime to foreign football players and coaches that had already suspended their employment contracts under the Temporary Rules and those that did not, as suggested by the Appellants. Such distinction would ignore the unstable situation between Russia and Ukraine and the consequences this may have on individual employment relationships.

163. Furthermore, as indicated in FIFA Circular Letter No. 1800, with the Appealed Decision *"the Bureau of the FIFA Council approved further temporary amendments to the FIFA regulatory framework in order to* ***extend*** *the legal framework of the current Annexe 7 to the RSTP until 30 June 2023"* (emphasis added by the Panel). Accordingly, employment contracts suspended under the Temporary Rules in principle do not have to be suspended again under the Amended Temporary Rules, but they remain suspended.

164. The general point remains that, in a case where it is found that a foreign football player or coach merely exploited the option to suspend his employment contract under the Amended Temporary Rules for the sole purpose of obtaining an excessive amount of additional compensation, without any genuine fear for his welfare being at stake, this may well lead to a conclusion that the rules were invoked in a manner inconsistent with its purposes. Whether this is the case is to be assessed on a case-by-case basis.

165. Another example of potential abuse would be a foreign football player or coach that has received a contractually agreed sign-on fee, i.e., a lump sum payment per season, but subsequently invokes Annex 7 to suspend his employment contract without paying back the relevant *pro rata* part of the sign-on fee.

166. A final example of potential abuse could also be that of a foreign football player or coach who unreasonably refuses to discuss a possible extension of the term of the employment contract temporarily suspended that has not expired when Annex 7 ceases to have effect, for the period during which the employment contract was suspended.

167. This overview of potential cases of abuse is not exhaustive and the Appellants refer to various types of potential abuse in their submissions. Indeed, there may be various additional types of abuse that could entitle the Appellants to restoration. Such claims are however to be addressed on a case-by-case basis, based on the specific circumstances of such situation.

168. Again, while the above may provide some restoration to the Appellants, the majority of the Panel finds that none of the circumstances mentioned above affect the substantive validity of the Amended Temporary Rules as such, because these rules are aimed to protect foreign football players and coaches who invoke Annex 7 for legitimate purposes, not the ones invoking them for illegitimate purposes.

4. The temporal scope of the Amended Temporary Rules

169. Another element of the Amended Temporary Rules that is challenged by the Appellants is the temporal scope of the Amended Temporary Rules, as the Appellants maintain that the Bureau should not have extended the validity of Annex 7 until 30 June 2023, but that the extension should have been limited to a one-week maximum or, as FIFA did with Ukraine, prohibit outgoing foreign player transfers/registrations before 1 August 2023.

170. In this respect, the Panel finds that it was indeed reasonable for the Bureau to extend the validity of Annex 7 until 30 June 2023, because this is when the football seasons in Russia (and Ukraine) normally end. It is therefore a natural moment to re-evaluate the necessity of potential further measures, while limiting interference with squad compositions during the football season.

171. The Panel also remarks that it was not desirable to leave foreign players in doubt as to whether they would be required to return to Russia in accordance with their employment contracts in the course of the football season. The extended one-year validity provides a certain stability for all impacted by the war. Indeed, the Panel finds that it was not unreasonable for the Bureau to assume that the conflict would not end before 30 June 2023.

172. The Panel finds that shortening the period within which foreign football players and coaches could suspend their employment contracts with Russian clubs would not have accommodated for the uncertainty of the safety situation in Russia. Indeed, should such period have expired and a particular safety threat would jeopardize the safety of a foreign football player or coach, such person would not be entitled to invoke Annex 7. This would render the Amended Temporary Rules largely ineffective, as its goal is to provide foreign football players and coaches with the possibility to suspend their employment contracts if they wish to leave Russia out of fear for their physical well-being.

173. In any case, in the Circular Letters it issued (Nos. 1787, 1788, 1800 and 1804), FIFA emphasized

that Annex 7, adopted as a result of the war between Russia and Ukraine, would be periodically reviewed and removed accordingly, and that it would continue to monitor the situation closely.

5. Persons / entities disadvantaged by the Amended Temporary Rules

174. The Panel further notes that the Appellants argue that the Amended Temporary Rules are solely in favour of foreign football players and coaches. The Panel does not consider this to be the case. Indeed, the Amended Temporary Rules also have advantages for Russian clubs (including the Appellants).

175. First of all, a suspension of an employment contract also temporarily relieves Russian clubs (including the Appellants) of their burden to pay salaries to the foreign football players and coaches concerned. Although this may not compensate Russian clubs for the loss of chance to transfer these players for a transfer fee, it does compensate them for the loss of services. Actually, the suspension of an employment contract releases both parties from their duties, as a consequence of which the *quid pro quo* of the employment relationship remains balanced.

176. Furthermore, the Amended Temporary Rules prevent foreign football players and coaches from terminating their employment contracts with Russian clubs, a scenario the Panel considers to have been realistic if not for the implementation of the Amended Temporary Rules. Indeed, FIFPRO and the World Leagues Forum requested FIFA to issue regulations permitting foreign football players and coaches to terminate their employment contracts with Russian clubs with just cause. Such measure would have been significantly more prejudicial for Russian clubs than the compromise currently implemented. The Panel finds that this is demonstrative of the fact that the Bureau did not blindly follow the demands of some of its stakeholders, but that it also duly considered the interests of the clubs concerned.

177. In fact, by only permitting foreign football players and coaches to suspend their employment contracts, the possibility was kept open for such foreign football players and coaches to resume their contractual relations after the expiration of the suspension and/or allowing Russian clubs to monetize on the market value of the foreign football players by transferring them for a transfer fee.

178. Furthermore, unlike for Ukrainian clubs (for whom employment contracts were automatically suspended under the Temporary Rules), the Temporary Rules and the Amended Temporary Rules provided Russian clubs, foreign football players and coaches with the discretion to opt out of the suspension mechanism by reaching alternative arrangements. The Panel finds that this is another important element demonstrative of the fact that FIFA was not blind for the interests of Russian clubs.

179. Related to this point is that the transfer market was not foreclosed to Russian clubs. Indeed, despite the adoption of the Amended Temporary Rules, new foreign players could join the ranks of the Appellants. According to the Appellants, 42 new foreign football players *"came to Russia"* after 24 February 2022. What is more, football players and/or coaches acquired after the introduction of Annex 7 may well be deemed to have waived their right to invoke Annex 7

to suspend their employment contracts. Indeed, concluding a new contract is in principle to be considered as an alternative arrangement permitted by the Amended Temporary Rules. Whether this is indeed the case in an individual situation depends on the specific facts and circumstances.

180. Finally, the Panel also notes that the Amended Temporary Rules only apply to international employment relationships and therefore do not impact the employment contracts concluded between Russian clubs (including the Appellants) and domestic football players and coaches. While FIFA is primarily competent to govern the international aspects of the sport, the RFU is primarily competent to govern its domestic dimension in Russia. This limit to FIFA's power raises doubts as to the possibility for FIFA to extend the scope of the Amended Temporary Rules also to domestic employment relationships; on the contrary, not doing so and refraining from exercising any pressure on the RFU to implement similar rules at domestic level must have provided some relief to Russian clubs.

181. In view of the above, the Panel finds that the Amended Temporary Rules were not only in the interest of foreign football players and coaches, but that they also produced some beneficial effects to Russian clubs.

182. In general, the Panel finds that the Appellants do not suggest viable alternative measures that would have achieved the objective behind the Appealed Decision, all the while being less burdensome for Russian clubs.

183. Several suggestions raised by the Appellants have been addressed in the sections above, in particular with respect to potential cases of abuse, which the Panel considers are best addressed in individual proceedings, but which do not render the Amended Temporary Rules invalid as such.

184. As to other alternatives proposed by the Appellants, the Panel does not consider a prolongation of the existing employment contracts for a period equal to the suspension to be a suitable alternative, reducing its impact on Russian clubs, as such measure would unduly interfere with the contractual freedom of the parties, modifying only one of the elements (the term) of an agreement originally entered into in consideration of a plurality of factors. Also, given that the conflict may continue for a long time, this would entail that employment contracts would be extended for significant periods, potentially even beyond their original date of expiry. The Panel finds that this would cause less as opposed to more legal certainty, thereby undermining the main goal of Annex 7.

6. Continuation of the Russian Premier League

185. The sole fact that the RPL has never been suspended does not have an impact on the Panel's analysis.

186. The Panel finds that, at the moment of adoption of the Appealed Decision, the Bureau had to consider the scenario that the armed conflict would escalate further, thereby continuing to jeopardise the safety of foreign football players and coaches. Accordingly, although the Russian

Premier League continued like normal until the moment the Appealed Decision was issued, the security situation was insufficiently stable to assume that the Russian Premier League would run its course in an ordinary and safe fashion for the foreign football players and coaches. Under such circumstances, it could not be reasonably expected from foreign football players and coaches that they remain in Russia and be required to comply with the obligations under their individual employment contracts as if there was no war.

7. Financial and sporting damage for Russian clubs and balance of interests

187. The Appellants argue that players and coaches are assets of the clubs and that FIFA, only for Russian and Ukrainian clubs, disapplied the principle of contractual stability, thereby annulling the transfer system that is based on such principle, resulting in a loss of profit that is difficult to estimate, but that is predicted to be millions of Euros. The Appellants argue that such consequences are not inherent to the objective and disproportionate.

188. The Appellants provide the following statistics, albeit without substantiating these figures with evidence beyond mentioning the names of the players/coaches and clubs concerned:

"Only 19 out of 121 (15.7%) foreign players registered in Russia on February 24, 2022, unilaterally suspended their contracts in March or April 2022 based on the initial version of Annex 7 (Exhibit A19);

Another 13 out of 121 foreign players (10.74%) left Russia in March or April 2022 after the mutual termination of their contracts (Exhibit A20);

22 foreign players who did not suspend their contracts the first time suspended their contracts for the first time after the Appealed Decision was notified on June 21, 2022 (exhibit A21);

Only six foreign players suspended their contracts twice, both in March/April 2022 and in July 2022 (Exhibit A22);

37 out of 98 (37.76%) foreign players registered in Russia for the 2022/2023 season signed contracts with Russian clubs for the first time in June or July 2022 (Exhibit A23), including Ukrainian player Olexandr Masalov, who signed with FC UFA (Exhibit A23.1);

11 out of 98 (11.23%) foreign players registered in Russia for the 2022/2023 season either extended their contracts or moved to other Russian clubs during the 2022 summer registration period (Exhibit A24);

Three new foreign head coaches out of 16 (18.75%) currently appointed in Russian football have signed employment contracts with Russian clubs after the Appealed Decision was rendered (Exhibit A25)" (emphasis omitted by the Panel).

189. While acknowledging that the value of football players may be included in the balance sheets of football clubs, the business of transferring football players is obviously not the same as the purchase and sale of goods or commodities, not least because players are human beings and that their consent is required for a transfer to take place.

190. In fact, unlike goods or commodities, football players themselves need to agree to their transfer, be it permanent or temporarily. Even though a football player's transfer value may be estimated at tens or hundreds of millions of Euros and although two clubs may agree to transfer the player between them for a certain transfer fee, if such player refuses and opts to execute his employment contract until its expiration and refuses to extend it, he becomes a free agent and the club that held his registration does not receive any transfer fee.

191. Although the majority of the Panel is prepared to accept that the Amended Temporary Rules have a negative impact on the Appellants' business of transferring football players, there is no guarantee that football players registered with the Appellants, who have invoked the Amended Temporary Rules to suspend their employment contracts, would otherwise have helped the Appellants to obtain transfer fees. At best, the Appellants have been deprived of the chance to monetize the transfer value of the foreign football players registered with them, which only equates to a loss of opportunity or chance. The latter, however, would only be the case, if the war situation would not be qualified as a just cause for the player or coach to terminate their employment contract. Thus, the lost opportunity or chance may appear quite vague.

192. The Appellants have also not demonstrated any concrete damages arising out of the implementation of the Amended Temporary Rules as such, i.e., without considering the Temporary Rules (that were not challenged) and the unstable situation that arose as a consequence of the Russian invasion of Ukraine. Indeed, the Appellants have not established that the introduction of the Amended Temporary Rules as such *"were devastating for the Appellants"* and jeopardised their *"existence"*, as argued by the Appellants. The consequences of the war itself and the Temporary Rules issued in response may already have caused a significant portion of the damages inflicted on the Appellants and it is unclear to what extent the Amended Temporary Rules contributed to the Appellants' damages, if at all.

193. The majority of the Panel also finds that the implementation of the Amended Temporary Rules did not *per se* undermine the sporting integrity of the Russian championship. Indeed, for domestic competitions in Russia, the impact of Annex 7 is in principle the same for all clubs participating therein. Although it is of course true that certain clubs have more foreign football players, or a coach, as employees than others, the rule applies equally to all.

194. Since Russian clubs were excluded from participation in European competitions already before the implementation of the Amended Temporary Rules, the Amended Temporary Rules did not cause any sportive prejudice to the Appellants at an international level.

8. Conclusion

195. Consequently, in view of the above assessment, the majority of the Panel finds that the Appealed Decision was necessary and proportionate in the pursuit of a legitimate objective and is valid as such.

196. Overall, the majority of the Panel finds that FIFA, with the Appealed Decision, struck a justified

and proportionate balance between competing interests in order to achieve the objective of providing regulatory guidance to avoid legal uncertainty in an extraordinarily dramatic situation, duly considering the expectations of foreign football players and coaches as well as Russian clubs.

197. This conclusion however comes with some caveats. As emphasised above, the mere fact that the Amended Temporary Rules are valid, does not mean that all foreign football players or coaches that have invoked Annex 7 to suspend their employment contracts did so for legitimate reasons. Whether this is the case must be assessed on a case-by-case basis in view of all the specific circumstances of such individual employment relationship. Potential cases of abuse of Annex 7 are not to be condoned.

198. Also in the absence of abuse, in some situations mentioned above, the Appellants may still have recourse against persons or entities that benefitted financially from the Amended Temporary Rules to the detriment of the Appellants. This does not only concern the foreign football players or coaches that have invoked Annex 7 to terminate their employment contracts, but also to agents/intermediaries and third-party clubs that may potentially have obtained undue financial advantages because of Annex 7. This may include claims for unjust enrichment on the basis of Articles 62 *et seq.* SCO.

iii. Was the Appealed Decision issued in violation of the Swiss Cartel Act?

199. The Appellants maintain that FIFA abused its dominant position and thereby violated the Swiss Cartel Act.

200. The Panel finds that the Appellants' position is insufficiently substantiated to justify a full-fledged analysis of an alleged competition law infringement. Indeed, the Appellants do not even substantiate why the Swiss Cartel Act can be invoked by Russian legal entities or that the Swiss market was somehow impacted by the Amended Temporary Rules. Furthermore, as argued by FIFA, the Appellants do not define the relevant product and territorial markets. This is relevant because, as addressed above, the market for football players is unusual and is not directly comparable with markets for goods or commodities.

201. In any event, for the reasons set forth above, the Panel finds that any alleged distortion of the market by the implementation of the Amended Temporary Rules was justified.

202. In addition, according to FIFA, the alternative to the Appealed Decision was a floodgate of cases about possible termination under *force majeure* and that players involved in such disputes would face difficulties in finding new employment.

203. The Panel even goes a step further. It finds that, generally, in a situation of war where the welfare of football players and coaches is jeopardised, as is the case in the matter at hand, there is a significant likelihood that such hypothetical cases concerning the termination of employment contracts would be decided in favour of the foreign football players and coaches. This counterfactual scenario would likely have been more prejudicial to Russian

clubs than the current Amended Temporary Rules, as the foreign football players and coaches would then have been free agents right away, whereas under the Amended Temporary Rules they can only suspend employment contracts, in principle requiring them to return after the suspension, following which the Appellants potentially still have a chance to transfer the players and/or coaches concerned.

204. The Panel finds that such counterfactual scenario has been insufficiently addressed by the Appellants to permit a thorough review of the effect of the Amended Temporary Rules, as it does not put the Panel in a position to consider all relevant aspects in its assessment of whether the Amended Temporary Rules infringe the Swiss Cartel Act.

205. Furthermore, the Panel finds that it must be borne in mind that the Amended Temporary Rules are implemented in response to the Russian invasion of Ukraine and that the rules are only valid for a 1-year period. The Russian invasion put the livelihood and welfare of Ukrainian and Russian residents in jeopardy. As addressed above, the Panel finds that FIFA established that the Amended Temporary Rules are implemented to protect such persons, by permitting them to leave Russia and addressing the ensuing legal uncertainty that would flow from potential (but likely) employment-related disputes.

206. Generally, the Panel finds that protecting the welfare of foreign football players and coaches clearly outweighs the financial disadvantages arising from the Amended Temporary Rules for Russian clubs (including the Appellants).

207. Moreover, the Amended Temporary Rules provided Russian clubs and foreign football players and coaches with the possibility of deviating from the unilateral right to suspend employment contracts. The Appellants maintain that FC Zenit was able to conclude such alternative agreement with three of its foreign players, i.e., Wendel, Malcolm and Claudinho. No evidence is presented by the Appellants demonstrating that it unsuccessfully attempted to conclude such alternative arrangements with other foreign football players and coaches.

208. Unlike argued by the Appellants, on the basis of all the above, the Panel finds that the Appealed Decision was inherent in the pursuit of FIFA's legitimate objectives and proportionate to them.

209. Consequently, the Panel finds that the Appellants failed to establish that the Appealed Decision violated the Swiss Cartel Act.

iv. Was the Appealed Decision rendered contrary to general legal principles?

210. The Appellants maintain that FIFA violated several general legal principles and provisions with the implementation of the Amended Temporary Rules, including the protection of personality rights (Article 28 SCC), the obligation to act in good faith (Article 2(2) SCC), constitutional rights, procedural fairness, equal treatment, *venire contra factum proprium* and substantive public policy.

211. For the reasons set out above, the Panel finds that the implementation of the Amended Temporary Rules was generally legal, valid and proportionate. However, in the sub-sections which follow, the Panel will address several specific arguments raised by the Appellants. An overlap in legal arguments is unavoidable considering that several arguments are closely intertwined, also in the submissions of the Appellants.

212. The Panel notes that the Appellants raised a significant number of legal concepts and principles, at times however without clearly delineating their practical relevance and without substantiating their submissions as to the application of such principles to the matter at hand.

a. The right to be treated equally and the prohibition against discrimination?

213. The Appellants maintain that FIFA issued Circular Letter No. 1804 on 2 July 2022, by means of which the application of the Amended Temporary Rules was practically postponed until 1 August 2022 for Ukrainian clubs, but not for Russian clubs. The Appellants argue that such Circular letter was issued under pressure from the *"Ukrainian side"*.

214. First, the Panel finds that the present appeal arbitration proceedings concern the Appealed Decision, not directly FIFA Circular Letter No. 1804, that was introduced only subsequent to the Appealed Decision.

215. Second, FIFA Circular Letter No. 1804 was favourable for Ukrainian clubs in comparison with the Appealed Decision, but it did not prejudice Russian clubs (including the Appellants) as such.

216. Furthermore, according to the Appellants, FIFA Circular Letter No. 1804 was issued following pressure being exerted on FIFA from the *"Ukrainian side"*. Such circumstance, however, is not relevant to any evaluation as to the adoption of the Appealed Decision and/or the provisions of the Amended Temporary Rules to the extent they concern the Appellants. In addition, there is no indication on file that the Appellants requested FIFA to consider the reasonableness of postponing the practical entry into force of the Amended Temporary Rules until a later date for Russia as well, either before or after issuance of FIFA Circular Letter No. 1804.

217. Also, in the Temporary Rules, employment contracts of Ukrainian clubs were automatically suspended, but employment contracts of Russian clubs were not. Foreign football players and coaches employed by Russian clubs were only provided with a unilateral right to suspend employment contracts. Accordingly, before the implementation of the Amended Temporary Rules, and probably justifiably so, Russian clubs were treated more favourable than Ukrainian clubs.

218. FIFA was also not insensible to the complaints of the Appellants, as it answered the letter from counsel for the Appellants dated 30 June 2022 by letter dated 8 July 2022 indicating, *inter alia*, that several issues raised by the Appellants *"would seem to fall within the competence of the relevant decision-making bodies of FIFA (the Football Tribunal), to be assessed on a case-by-case basis in the*

event of a specific dispute", thereby at least to a certain extent accommodating the Appellants' concerns.

219. The Appellants also draw a parallel between the armed conflict between Russia and Ukraine and other armed conflicts in the world, arguing that FIFA treated clubs from Russia and Ukraine different from other clubs based in countries at war.

220. The Panel finds that there are good reasons justifying FIFA's approach. In particular, given the invasion of Ukraine by Russian armed forces, the livelihood and physical wellbeing of human beings in Russia and Ukraine was threatened. At the time of issuance of the Appealed Decision, this threat remained limited to Ukraine and Russia.

221. The damages incurred by Russian and Ukrainian clubs are primarily caused by the Russian invasion, not by FIFA's introduction and extension of Annex 7 as such. Rather, the Panel finds that such damages had likely been more severe but for the introduction and extension of Annex 7. Indeed, had FIFA not introduced Annex 7, foreign football players and coaches would likely have decided to leave Russia in any event and terminate their employment contracts, invoking just cause. As indicated above, any individual case would have to be adjudicated and decided on its own merits, but the Panel finds that, given the imminent security threat, they would likely have been permitted to terminate their employment contracts, albeit probably without receiving any compensation – not because of any improper behaviour of Russian clubs, but because of the threat to their welfare.

222. Against this background, the Panel does not consider it unreasonable for FIFA to have limited the scope of Annex 7 to the clubs from the two countries directly involved in the war.

223. Although this is certainly not the only armed conflict in the world, the Panel accepts FIFA's explanation that the disruption of the football market caused by the war was and is significant making the situation in Russia and Ukraine special. Unlike other regions affected by armed conflicts, there is a significant number of foreign football players and coaches registered in Russia and Ukraine and, furthermore, a high number of transfers is taking place each year.

224. In addition, the Panel finds that the situation in Ukraine and Russia can also be distinguished from other armed conflicts, because the conflict started quite abruptly and at a scale that indeed posed an immediate and significant security threat for human beings in Russia and Ukraine, including foreign football players and coaches. Armed conflicts in other countries may have been lingering for longer periods of time, permitting football players and coaches to weigh the advantages and disadvantages of being employed in a country at war. However, foreign football players and coaches employed in Russia and Ukraine at the time the war broke out could not reasonably have foreseen the risk of an armed conflict at the time of entering into their employment contracts.

225. To the extent the armed conflict in Russia and Ukraine is dealt with differently compared to other armed conflicts, the Panel is satisfied to accept that such different treatment is justified.

226. Consequently, the Panel finds that the Appealed Decision is not in violation of the right to be treated equally and/or the prohibition against discrimination.

b. Infringement of personality rights

227. In respect of this argument, the Appellants rely on Article 28 SCC, which provides as follows:

> *"1. Any person whose personality rights are unlawfully infringed may petition the court for protection against all those causing the infringement.*
>
> *2. An infringement is unlawful unless it is justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law".*

228. The Appellants maintain that the consequence of the Appealed Decision is that foreign players and coaches are unconditionally allowed to leave the Appellants by unilaterally suspending their employment contracts until the end of the 2022/23 season. This creates an inequality with all other clubs in other federations, except for Ukrainian clubs. The Appealed Decision affects the economic interests of the Appellants. According to the Appellants, *"[p]layers and coaches are assets of the clubs"* and, given their fixed-term contracts, the Appellants are free to demand compensation for their early departure to compensate for the loss of the corresponding asset. The Appellants argue that, in this case, the tolerance threshold is exceeded. The Appellants maintain that they have not consented to the Amended Temporary Rules, as a consequence of which it remains to be examined whether FIFA can rely on an overriding public or private interest to justify the implementation thereof.

229. The Appellants maintain that, in weighing the respective interests, the importance of the respect of their legal position is considered. The Appealed Decision declares employment contracts with foreign football players and coaches non-binding. Accordingly, the Appellants maintain that they are prevented from invoking Article 17 FIFA RSTP and, because of the discretion left to foreign football players and coaches, they are confronted with unbearable legal uncertainty.

230. The Appellants submit that they also have an interest in not having their financial position impaired. The book value of players will decrease by at least one third without the Appellants benefitting from the players' services or any compensation, besides weakening their teams.

231. FIFA submits that, unlike in the legal precedents relied upon by the Appellants, there are no personality rights of individual athletes at stake in the matter at hand. FIFA also argues that the Appellants have not established any limitation to any personality rights, that any such alleged limitation was in any event justified by the Appellants consent to be governed by FIFA and by FIFA's overriding private and public interest to provide regulatory guidance and address the legal uncertainty caused by Russia's war against Ukraine.

232. The Panel notes that SFT held that *"personality rights include the right to health, physical integrity, honour, professional consideration, sporting activity and, in the case of professional sport, the right to*

development and economic fulfilment" (SFT 4A_248/2019) and that *"[w]hile fundamental rights serve primarily to defend individuals from governmental infringements, their scope can be useful in determining what is tolerable in relations between individuals"* (ATF 130 III 28, consid. 4.2).

233. The Panel agrees with FIFA that the Appellants have failed to establish why the personality rights protected by Article 28 SCC, a Swiss law provision, are also applicable to legal entities with their registered seats in Russia such as the Appellants. Indeed, the personality rights protected by Article 28 SCC are in principle applicable only to natural persons based in Switzerland.

234. The Panel finds that FIFA's argument that the Appellants have voluntarily opted to be governed by FIFA by affiliating themselves to the RFU and thereby consented to the infringement of their personality rights cannot be sustained. Affiliating yourself to an association, directly or indirectly, does not allow the association to interfere with their members' personality rights.

235. However, the Panel finds that, for the reasons set forth above, insofar as the Appealed Decision infringed upon certain personality rights of the Appellants, such infringement would be justified by overriding public and private interests. Indeed, the war between Russia and Ukraine and the ensuing threat to the wellbeing of foreign football players and coaches is a sufficient reason to implement the Amended Temporary Rules.

236. Finally, insofar as the Appellants maintain that they are prevented from invoking Article 17 FIFA RSTP, the Panel does not consider this to be the case. In situations where foreign football players have invoked the Amended Temporary Rules for disingenuous reasons, the Appellants may well have legal recourse against such individuals and Article 17 FIFA RSTP may well play a role, directly or indirectly, in any such proceedings.

237. Consequently, the Panel finds that there is no infringement of personality rights.

c. Infringement of guarantee of property and economic freedom

238. The Appellants maintain that the guarantee of property protects the assets of individuals against unjustified interference by the state. The guarantee of ownership protects both the existence of the claim and its value. According to the Appellants, the Appealed Decision undermines both, as it has the effect expropriating the Appellants' claims deriving from employment contracts concluded with foreign football players and coaches.

239. The Appellants also rely on Article 27 of the Swiss Constitution, which provides as follows:

> *"1. Economic freedom is guaranteed.*
>
> *2. Economic freedom includes in particular the freedom to choose an occupation as well as the freedom to pursue a private economic activity".*

240. According to the Appellants, this provision protects the right to choose one's economic activity and to exercise it freely. The guarantee of economic freedom includes the right of contractual freedom and, according to the Appellants, the Appealed Decision is an inadmissible infringement of such freedom.

241. FIFA argues that constitutional rights as the one invoked by the Appellants in principle protect individuals from state intervention. It is only exceptionally accepted that constitutional rights may have an indirect effect in civil relationships, but the Appellants have not submitted why such exception should be applied in the present case.

242. As addressed above in the context of the assessment of a potential violation of Swiss Cartel Law, the Panel finds that the industry of transferring football players is peculiar. While a value corresponding to the services of players may be included in the balance sheets of football clubs, a transfer of a football player is obviously not the same as the purchase and sale of goods or commodities, since, *inter alia*, football players need to consent themselves to their transfer, be it on a permanent or a temporary basis. To consider foreign football players and coaches employed by the Appellants as "property", as the Appellants do, at the very least lacks nuance.

243. In addition, as indicated above, the implementation of the Amended Temporary Rules did not exclude the Appellants from the transfer market. Indeed, despite the Amended Temporary Rules, the Appellants have acquired the services of new foreign football players since the implementation of Annex 7. The transfer market and the market for the services of football players are not foreclosed to the Appellants. The Appellants were and are also free to conclude alternative arrangements with the foreign football players and coaches employed by it, so as to exclude the applicability of Annex 7 and thereby protect their "property".

244. In any event, even without the introduction and/or extension of the Amended Temporary Rules, the transfer value of football players and/or coaches registered with Russian clubs (including the Appellants) was likely already negatively impacted by the armed conflict. Indeed, in the absence of the implementation of the Amended Temporary Rules, the Panel finds that it was likely that foreign football players and coaches would have terminated their employment contracts with Russian clubs, by invoking a just cause. From this perspective, the Amended Temporary Rules protect the Appellants rather than prejudicing them.

245. Finally, the Panel reiterates all the arguments set forth above with respect to the justification and proportionality of the measures implemented by FIFA in response to the armed conflict in Russia and Ukraine in temporarily curtailing the rights of Russian clubs.

246. Consequently, the Panel finds that the Appealed Decision does not unjustifiably or excessively restrict the Appellants' guarantee of property and economic freedom.

d. Substantive public policy

247. The Appellants also maintain that if the Panel would recognise the validity of the employment contracts concluded between the Appellants and the foreign football players and coaches they employ, but refuses to enforce them, this would amount to a violation of substantive public police, in particular the principle of *pacta sunt servanda*. The Appellants submit that the concept of *clausula rebus sic stantibus* does not apply in the matter at hand.

248. The Panel finds that FIFA indeed set rules affecting employment relationships between Russian clubs (including the Appellants) and foreign football players and coaches. However, it enacted these rules for justified reasons.

249. The legal principle of *pacta sunt servanda* is not absolute. In particular, the Panel finds that the principle of contractual stability was already jeopardised because of the armed conflict between Russia and Ukraine. FIFA merely attempted to address the consequences of said conflict by seeking to strike a general and fair balance between the interests of foreign football players and coaches and Russian clubs against the background of a terrible war between Russia and Ukraine.

250. Again, the Panel finds that Annex 7 was not merely issued in favour of foreign football players and/or coaches and against Russian clubs. Rather, FIFA attempted to strike a fair and proportionate balance.

251. The Amended Temporary Rules allow for individual contractual deviations from the right of foreign football players and coaches to suspend their contracts. Once such agreement is reached, Annex 7 loses its impact on the employment relationship at stake.

252. Insofar as the Appellants rely on Article 2 SCC, the Panel finds that the Appellants might be entitled to invoke this provision in a dispute with foreign football players or coaches if they believe that they have disingenuously invoked Annex 7 to suspend their employment contracts. However, such potential abuse did not have to be specifically provided for in the Amended Temporary Rules, because it is already prohibited by Swiss law.

253. Consequently, the Panel finds that the Appealed Decision did not violate the legal principle of *pacta sunt servanda* or is otherwise in violation of substantive public policy.

e. Conclusion

254. Consequently, in the light of all the above, the Panel finds that FIFA did not violate any general legal principle or provision relied upon by the Appellants in implementing the Amended Temporary Rules.

B. Conclusion

255. Based on the foregoing, the majority of the Panel holds that:

i) The Bureau issued the Appealed Decision in accordance with all formal requirements set forth in the FIFA Statutes and Swiss law.

ii) The Appealed Decision was necessary and proportionate in the pursuit of a legitimate objective and is valid as such.

iii) The Appellants failed to establish that the Appealed Decision violated the Swiss Cartel Act.

iv) FIFA did not violate any general legal principle or provision relied upon by the Appellants in implementing the Amended Temporary Rules.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 8 July 2022 by FC Zenit JSC, FC Dynamo Moscow, FC Sochi, PFC CSKA Moscow, FC Krasnodar, FC Lokomotiv, FC Rostov and FC Rubin against the decision issued on 20 June 2022 by the Bureau of the Council of the *Fédération Internationale de Football Association* is dismissed.

2. The decision issued on 20 June 2022 by the Bureau of the Council of the *Fédération Internationale de Football Association* is confirmed.

3. (…).

4. (…).

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