

Decision

of the

FIFA Disciplinary Committee

Mr. AKPOVY Kossi Guy [TOG], Member
Mr. HAMMAMI Mahmoud [TUN], Member
Mr. HOLLERER Thomas [AUT], Member

on 26 February 2020,

to discuss the case of:

Arsenal Football Club, England

(Decision 200145)

regarding:

Third-party influence and failure to enter correct information in TMS

Article 18bis par. 1 of the FIFA Regulations on the Status and Transfer of Players (hereinafter, the "Regulations") and art. 4 par. 3 of Annexe 3 of the Regulations

TCF 2869 (Related cases 2870 and 2871)

I. inferred from the file

1. On 2 August 2018, the club Arsenal FC (hereinafter also referred to as Arsenal or the Club) and the club FC Paok Thessaloniki (hereinafter also referred to as FC Paok or Counterclub 1) entered into an agreement for the transfer of the player Chuba Akpom (hereinafter also referred to as Player 1) from Arsenal to Paok. In particular, the transfer agreement included the following clause:

"Future transfer of the Player

3.6 if PAOK agrees to transfer, on a permanent basis, the registration of the Player to another football club (the "Future Transfer"), PAOK shall pay to Arsenal an amount in cash (the "Future Transfer Compensation") equal to (a) in the event of a Future Transfer to a football club in the UK, 40% (forty per cent), or (b) in the event of a Future Transfer to a football club outside the UK, 30% (thirty per cent), [...]"

2. Furthermore, on 15 August 2018, Arsenal FC and the club Frosinone Calcio (hereinafter also referred to as Frosinone or Counterclub 2) entered into an agreement for the transfer of the player Joel Nathaniel Campbell Samuels (hereinafter also referred to as Player 2) from Arsenal to Frosinone. In particular, the transfer agreement included the following clause:

"Future transfer of the Player

3.5 if Frosinone agrees to transfer, on a permanent basis, the registration of the Player to another football club (the "Future Transfer"), Frosinone shall pay to Arsenal an amount in cash (the "Future Transfer Compensation") equal to (a) in the event of a Future Transfer to a football club that is regulated by a national football association in the United Kingdom (UK), 30% (thirty per cent), or (b) in the event of a Future Transfer to any other football club, 25% (twenty-five per cent), [...]"

3. Following the conclusion of the above-mentioned agreements, on 2 and 16 August 2018, Arsenal entered a "release permanently" instruction in the Transfer Matching System (TMS) to release Player 1 to Paok (TMS instruction 207454) and the Player 2 to Frosinone (TMS instruction 210338), respectively.
4. In the context of the aforementioned transfer instructions, the Club indicated for each of the instructions, that it had not entered into a contract which enabled a

counter club/counter clubs, and vice versa, or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams.

5. On 28 January 2020, following the investigations conducted by FIFA's TMS Global Transfers & Compliance Department¹ (hereinafter, the FIFA TMS) disciplinary proceedings were opened against Arsenal with respect to a potential breach of art. 18bis par. 1 of the Regulations on the Status and Transfer of Players, 2018 edition (hereinafter: *the RSTP* or *the Regulations*) and art. 4 par. 3 of Annexe 3 of the RSTP.
6. On 7 February 2020, Arsenal FC provided its position, which, together with the arguments provided by the Club to the FIFA TMS on 20 December 2019, can be summarised as follows²:
 - Arsenal understands that art. 18bis of the RSTP is not infringed by commercial clauses in transfer agreements of the nature of the Sell-On Clauses.
 - Arsenal believes that the common vision within the football industry of the relevant provision is that it is predominantly focused on preventing influence over clubs by third parties which are not affiliated to FIFA, and to the extent that commercial terms in transfer agreements between clubs are capable of being interpreted in a way that a club's employment and transfer related decisions may be considered to be indirectly affected by such terms, then Article 18bis would not be engaged, or a more narrow interpretation would be adopted
 - The key consideration for assessing if there is an infringement of article 18bis in cases where there is a potential position of influence by one club or a third party over another club, if it is deemed to exist, is whether such influence is direct/material or indirect/ immaterial. In case the second scenario applies, Arsenal is of the opinion that no breach should arise.
 - In the cases at stake, the sell on clauses simply provide for Counterclub 1 and 2 to pay to Arsenal an increased sell-on percentage in the event they subsequently transfer the Players to a club in the UK, but they do not restrict the said clubs from transferring the relevant players to any other club and there is no provision in the relevant transfer agreements that enables Arsenal to interfere in any way

¹ All documents included in the proceedings conducted by FIFA's TMS Global Transfers & Compliance Department were duly analysed and considered by the FIFA Disciplinary Committee in its discussion and deliberations.

² The summary does not purport to include every single contention put forth by the Club. However, the FIFA Disciplinary Committee has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.

in case Counterclub 1 and/or 2 decide to transfer the relevant players to a third club.

- The relevant transfer agreements were approved by the FA and the Premier League, as they were satisfied that there was no potential breach of art. 18bis of the RSTP, a provision also reflected into the English domestic football regulations.
- Arsenal has agreed on similar clauses in the past, and as far as Arsenal is aware so has many other clubs, and no issue had been raised by FIFA to this respect.
- Arsenal is unaware of any instructions or guidance from FIFA suggesting that these type of commercial terms would breach article 18bis of the RSTP. In this sense, if FIFA was now to determine that variable sell-on fees are a breach of Article 18bis, this would be unlawful as it does not respect the principle of legal certainty.
- The independence of Counterclub 1 and 2 are not undermined by the sell-on clauses and the fact that financial implications may flow from a future transfer does not change this approach.
- With respect to the potential breach of art. 4 par. 3 of Annex 3, Arsenal claims that it completed the information in good faith and believing that no third party influence existed. In addition, the said article foresees that clubs shall declare the existence of “third-party payments and influence” and following the definition of third-party provided in the RSTP, the clubs from or to which the relevant player is transferred is not considered as such. Therefore, Arsenal has a technical defense on this point.

II. and considered

A) Jurisdiction of the FIFA Disciplinary Committee

1. First of all, the FIFA Disciplinary Committee (hereinafter also referred to as the Committee) notes that at no point during the present proceedings did the Club challenge its jurisdiction or the applicability of the FIFA Disciplinary Code (FDC).
2. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasise that, on the basis of art. 53 of the FDC as read together with arts. 25 par. 3, 18bis par. 2 of the RSTP and art. 9 par. 2 of Annexe 3 of the

RSTP, it is competent to evaluate the present case and to impose sanctions in case of corresponding violations.

B) Applicable regulations

3. In order to duly assess the matter, the Committee would like to begin by recalling the content and the scope of the provisions at stake.

1. Article 18bis of the RSTP

4. The Committee points out that article 18bis par. 1 of the RSTP establishes a prohibition on the so-called "third party influence". As a matter of fact, this provision explicitly provides that *"No club shall enter into a contract which enables the counter club/counter clubs, and vice versa, or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams"*.
5. Consequently, the Committee emphasizes that this provision is addressed to clubs, which are undoubtedly responsible to ensure that they do not influence or are in any way influenced by the counter club (or a third party).
6. In other words, this prohibition aims at avoiding that a club concludes any type of contract influencing another club's independence in employment and transfer-related matters, its policies or the performance of its teams. In particular, there should be no influence on the club's ability to independently determine the conditions and policies concerning purely sporting issues such as the composition and performance of its teams. This provision applies to the influencing club as well as to the influenced club (*vice versa*).

2. Article 4. par. 3 of Annexe 3 of the RSTP

7. Annexe 3 of the RSTP analyses in a very detailed manner the procedure related to international transfers of professional players through TMS.
8. In particular, art. 4 par. 3 of the Regulations imposes the obligation on clubs to declare different information within the framework of an international transfer of a professional player. More specifically, *"Clubs must provide the following compulsory data when creating instructions, as applicable: [...] Declaration on third-party payments and influence [...]"*.
9. In other words, should there be any influence from a counter club and/or third party on a club (as per art. 18bis of the Regulations), the club concerned must indicate it in TMS when entering the relevant transfer instruction.

C) Analysis of the violations of the RSTP by Arsenal

10. The above having been established, the Committee subsequently analyses the evidence at its disposal, in particular, the relevant transfer agreements as well as the documents uploaded into the TMS and the ones gathered during the investigation conducted by the FIFA TMS) in light of the aforementioned provisions.
11. For the sake of good order, the Committee notes that it is undisputed that Arsenal concluded a transfer agreement with Paok FC on 2 August 2018 and another one with Frosinone on 15 August 2018. The Committee also observes that the Club has not questioned or disputed neither the content nor the validity of the said transfer agreements at any point.

i. Analysis of the transfer agreements in connection with art. 18bis of the RSTP

12. Having determined the above, the Committee proceeds to analyse the content of clauses 3.6 and 3.5 of the transfer agreements concluded with Paok FC and Frosinone, respectively (cf. points I/1 and I/2 *ut supra*).
13. In this respect, the Committee is of the firm opinion that these two clauses limit the freedom of Paok FC and Frosinone in transfer-related matters. In fact, it appears to be clear that Paok FC and Frosinone would have to pay Arsenal a higher sell-on fee (40% instead of 30% in the case of Paok FC and 30% instead of 25% in the case of Frosinone) should they decide to transfer the relevant player to a club in the United Kingdom. Therefore, it is evident that in a scenario in which Paok FC and/or Frosinone receive two similar and/or identical offers for the transfer of the relevant players, one being from a club in the United Kingdom and the other one coming from a club outside the United Kingdom, Paok FC and Frosinone would be more inclined to accept the offer coming from the club outside the United Kingdom, as it would make the operation most profitable from a purely financial point of view.
14. In this context, the Committee would like to address the argument brought forward by the Club, according to which article 18bis of the RSTP is predominantly focused on preventing influence over clubs by third parties and that whenever such influence is considered to be indirect or immaterial no breach should arise.
15. In addition, the Committee observes that the Club also claims that when the relevant clauses were agreed, there were no clear guidelines or instructions from FIFA pointing out that this type of clauses could constitute a violation of art.18bis of the RSTP and therefore, Arsenal had legitimate expectation that it was not breaching the Regulations.
16. To this respect, the Committee would like to draw Arsenal's attention to the wording of article 18bis of the Regulations (cf. point II/4 *ut supra*), in which it is made very clear that clubs are prevented from concluding contracts which enable a third party or the counter club/clubs to acquire the ability to influence in the club/s employment

and transfer-related matters. Therefore, this prohibition does not only concern third parties but the counter club (s) as well and it covers any kind of situations, clauses and/or agreements in which a club is granted the ability to influence another club.

17. Furthermore, the Committee notes that the Club claims that the relevant clauses do not prohibit or restrict Paok FC and/or Frosinone from transferring the relevant players to any other third club and that neither do they enable Arsenal to interfere in any way in the said transfers.
18. With regard to the above-mentioned argument from the Club, the Committee underlines that in order for clubs to be considered fully independent, they shall not be subject to any kind of conditions when deciding, amongst others, where, how and when to transfer their players. In the case at hand, the Committee considers that, by the mere existence of these clauses, Frosinone and Paok FC are influenced by Arsenal in employment and transfer-related matters.
19. In sum, the Committee considers that the relevant clauses undoubtedly grant Arsenal the ability to influence in employment and transfer-related matters the independence, policies and the performance of Paok FC and Frosinone's teams, and therefore concludes that Arsenal is liable for the breach of article 18bis par. 1 of the RSTP.

ii. Analysis of the facts in light of art. 4 par. 3 of Annexe 3 of the RSTP

20. The Committee further notes that in the relevant transfer instructions (TMS ref. 207457 and 210338) Arsenal declared that it did not enter into a contract enabling a "*third-party influence*".
21. In this sense, the Committee focuses on the argument raised by Arsenal, by means of which it alleges that since art. 4 par. 3 of Annexe 3 of the RSTP establishes the obligation for clubs to declare third party influence and that the same regulations define third party as a party other than the two clubs transferring the player, the Club has "a technical defence on this point".
22. However, in the Committee's opinion, it is clear that the mandatory declaration of third party influence refers to the engagement of contracts as described in art. 18bis of the RSTP (cf. point II/4 ut supra).
23. Keeping in mind that, as demonstrated above, the transfer agreement signed between Arsenal and Paok FC as well as the transfer agreement signed between Arsenal and Frosinone, enabled Arsenal to acquire the ability to influence both Paok FC and Frosinone "*in employment and transfer-related matters its independence, its policies or the performance of its teams*", the Committee considers that, by declaring in TMS that there was no third-party influence, the Club failed to disclose full and correct information in TMS.
24. As a consequence, the Club is to be found guilty of having violated art. 4 par. 3 of Annexe 3 of the RSTP.

iii. Summary

25. In view of the foregoing, the Committee concludes that the Club, by its conduct as described above, violated the following provisions of the RSTP:

- Art. 18bis of the Regulations, 2018 edition, for entering into contracts enabling the Club to influence another clubs;
- Art. 4 par. 3 of Annexe 3 of the Regulations, 2018 edition; for failing to declare mandatory data in the TMS.

26. Therefore, the Committee considers that the Club is to be sanctioned for the aforementioned violations.

D) Determination of the sanction

27. With regard to the applicable sanctions for the present case, the Committee observes in the first place that Arsenal is a legal person, and as such it can be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC.

28. For the sake of good order, the Committee underlines that it is responsible to determine the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances (art. 24 par. 1 of the FDC).

29. In these circumstances, the Committee considers that the relationship between the clubs involved in the present case in relation to the scope and effects of the relevant clauses have to be taken into account. As a matter of fact, and as previously demonstrated above, the burden of such clauses mainly lie on Paok FC and Frosinone, while Arsenal is undoubtedly benefitting from the provision described in said clauses.

30. In the same line, the Committee deems it necessary to distinguish between the influencing club's and the influenced club's responsibility in relation to art. 18bis of the RSTP. In this sense, the Committee considers that the influencer's behaviour is more reprehensible than the one of the influenced. In the matter at hand, the Committee notes that Arsenal is the influencing club as it was only in Arsenal's interest to impose such clauses.

31. Having said that, the Committee notes that Arsenal does not have any precedents related to violations of art. 18bis of the RSTP. However, the Committee wishes to point out that although the analysis of the transfer agreements concluded by Arsenal with Paok FC and Frosinone, respectively, has been merged into one single case, the fact that the Club concluded two contracts that have been found, each of them individually, to be in breach of art. 18bis of the Regulations, has to be taken into account.

32. In light of all the above, the Committee considers a fine to be the appropriate sanction.
33. With regard to the fine, according to the provisions of art. 6 par. 4 of the FDC, the Committee notes that it may not be lower than CHF 100 and greater than CHF 1,000,000.
34. Taking into consideration all the circumstances of the case, while keeping in mind the deterrent effect that the sanction must have on the reprehensible behaviour, the Committee deems a fine of CHF 40,000 to be adequate and proportionate to the offence.
35. In addition, a warning is also issued pursuant to art. 6 par. 1 lit. a) of the FDC in relation to Arsenal's conduct. In particular, Arsenal is ordered to undertake all appropriate measures in order to guarantee that the FIFA regulations (in particular the FDC as well as the Regulations and its provisions related to third party influence) are strictly complied with. Should such infringements occur again in the future, the Committee would be left with no other option than to impose harsher sanctions on the Club.

III. Therefore decided

1. The FIFA Disciplinary Committee found the Arsenal Football Club responsible for the infringement of the relevant provisions of the Regulations related to third-party influence (art. 18bis par. 1) and the failure to declare mandatory information in TMS (art. 4 par. 3 of Annexe 3)
2. The FIFA Disciplinary Committee orders the Arsenal Football Club to pay a fine to the amount of CHF 40,000.
3. In application of art. 6 par. 1 lit. a) of the FIFA Disciplinary Code, the Arsenal Football Club is warned on its future conduct.
4. The above fine is to be paid within thirty (30) days of notification of the present decision.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



HOLLERER Thomas
Member of the Disciplinary Committee

Note relating to the payment of the fine

Payment can be made either in Swiss francs (CHF) to account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to case number above mentioned.

Note relating to the legal action:

This decision can be contested before the FIFA Appeal Committee (art. 57 of the FDC, 2019 edition). Any party intending to appeal must announce its intention to do so in writing within three (3) days of notification of the grounds of the decision. Reasons for the appeal must then be given in writing within a further time limit of five (5) days, commencing upon expiry of the first time limit of three (3) days (art. 56 par. 4 of the FDC, 2019 edition). The appeal fee of CHF 1,000 shall be transferred to the aforementioned bank account on the date of the expiry of the time limit of five days for submitting the reasons for appeal at the latest (art. 56 par. 6 of the FDC, 2019 edition).