

**Decision**  
of the  
**adjudicatory chamber**  
of the  
**FIFA Ethics Committee**

Mr Vassilios Skouris [GRE], chairperson  
Mr Fiti Sunia, [ASA], deputy chairperson  
Mr Mohammed Al Kamali, [UAE], member

taken on 4 March 2020

in the case of:

**Mr Markus Kattner (SUI)**

Adj. ref. no. 26/2019  
(Ethics E16-00015)

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## **I. Factual overview**

### **A. Proceedings before the investigatory chamber of the FIFA Ethics Committee**

#### **a) Procedural background**

1. Mr Markus Kattner was employed with FIFA between 2003 and 2016. During this period, he held different functions: Deputy Director of FIFA Finance & Controlling (2003 – 2005), Director of FIFA Finance & Controlling (2005 – 2007), Director of FIFA Finance & Administration (2007 – 2015), Director of FIFA Finance & Corporate Services (2015). He was also FIFA Deputy Secretary General from 2007 to 2015 and FIFA Acting Secretary General between 2015 and 2016.
2. On 27 May 2015, the U.S. Department of Justice announced that “[a] 47-count indictment was unsealed early this morning in federal court in Brooklyn, New York, charging 14 defendants [Nine FIFA Officials and Five Corporate Executives] with racketeering, wire fraud and money laundering conspiracies, among other offenses, in connection with the defendants’ participation in a 24-year scheme to enrich themselves through the corruption of international soccer.” On the same day, the Office of the Attorney General of Switzerland (“OAG”) announced that it had opened criminal proceedings against unknown parties on suspicion of criminal mismanagement and money laundering in connection with the allocation of the 2018 and 2022 FIFA World Cups. Consequently, FIFA retained [...] ([Law Firm 1]) and [...] ([Law Firm 2]) to represent FIFA in connection with the U.S. and Swiss investigations and mandated them to conduct an internal investigation on several issues involving certain officials of FIFA, including Mr Markus Kattner.
3. On 23 May 2016, the employment contract with Mr Kattner was terminated by FIFA with immediate effect, because the internal investigations revealed violations of Mr Kattner's responsibilities in connection with his employment contract.
4. On 3 June 2016, [Law Firm 1] released information regarding details on contracts and compensation for a small group of former FIFA officials, including Mr Kattner, and stated that “The evidence appears to reveal a coordinated effort by three former top officials of FIFA to enrich themselves through annual salary increases, World Cup bonuses and other incentives totalling more than CHF 79 million – in just the last five years”.
5. In the meantime, the investigatory chamber of the FIFA Ethics Committee (hereinafter: “*the investigatory chamber*”) had started a preliminary investigation against him based on art. 62 par. 3 of the FIFA Code of Ethics, 2012 edition (“*FCE 2012*”). Apart from the results of the investigation carried out by [Law Firm 1] and [Law Firm 2], the investigatory chamber focused on various events that occurred in connection with the FIFA congress of 13 May 2016, in Mexico City and the previous meetings of the FIFA Council.

6. On 28 July 2016, Mr Kattner was officially notified pursuant to art. 63 par. 1 and 64 par. 1 of the FCE 2012, that formal investigation proceedings with ref. no. E16-00015 had been opened against him for possible violations of articles 13, 15, 16, 19, 20 and 21 of the FCE 2012. He was further informed that Mr Robert Torres, member of the investigatory chamber, had been assigned to lead the investigation proceedings as chief of investigation (cf. art. 65 of the FCE 2012).
7. On 11 August 2016, following an objection filed by Mr Kattner against the institution and any individual members of the FIFA Ethics Committee, as well as his request for the appointment of an External Secretariat to the investigatory chamber, Mr Kattner was informed that, in accordance with art. 66 par. 3 of the FCE 2012, in cases of complex nature third parties might be engaged to act under the leadership of the chief of investigation, and that the third party to be engaged would contact him in due course.
8. Following the withdrawals of Mr Cornel Borbely (former chairman of the investigatory chamber) and Mr Djimrabaye Bourngar (former deputy chairman of the investigatory chamber) from participating in the respective proceedings, Mr Kattner was informed on 23 September 2016 that Mr Ahmed Yahia, a member of the investigatory chamber, was appointed as acting chairman in the investigation.
9. On 5 October 2016, the chief of investigation informed Mr Kattner about the appointment of [...] and [...], attorneys at law at the [Law Firm 3], as acting secretaries in the investigation ("External Secretariat").
10. On 28 July 2018, Mr Kattner was informed that Ms Maria Claudia Rojas had been formally appointed Chairperson of the investigatory chamber at the 67th FIFA Congress in Bahrain and that she was appointing Bruno De Vita, Deputy Chairperson, to lead the investigation proceedings as the new chief of investigation.
11. Reference is made, in respect to any further procedural factual and procedural aspects, to the final report ("Final report") submitted, together with the investigation files, by the chief of investigation and External Secretariat to the Chairperson of adjudicatory chamber of the FIFA Ethics Committee (hereinafter: "*the adjudicatory chamber*") on 30 October 2019, upon completion of the respective investigation proceedings, in accordance with art. 62 par. 3 and art. 68 of the FCE, 2019 edition ("*FCE 2019*").

## **b) Findings of the investigatory chamber**

12. In the scope of its investigation, the investigatory chamber, chief of investigation and External Secretariat gathered different types of evidence, including: the "Amended investigative report regarding bonus payments in connection with the 2010 FIFA World Cup South Africa™" dated 29 March 2017 ("Bonus Report") prepared by [Law Firm 1] and [Law Firm 2]; transcripts of telephone interviews conducted with Mr Issa Hayatou (former FIFA vice-president and member of the FIFA Compensation Sub-Committee – "CSC") on 15 November 2016 and 8-9 February 2017, as well as with [A] on 16 November 2016; documents related to meetings of the CSC in 2015; employment contracts between FIFA and Mr Kattner (including

amendments); written submission of Mr Kattner concerning the allegation that he had improperly demanded compensation for private legal costs from FIFA.

### **1. Bonus payments**

13. According to the Final report (cf. p. 11 ff), Mr Kattner received various bonuses, together with the most senior members of FIFA leadership/management, in the period 2010 – 2014.
14. On 1 December 2010, the existing employment contracts of Mr Kattner (at the time FIFA Deputy Secretary General and Director of FIFA Finance & Administration), as well as of Mr Joseph Blatter (FIFA President) and Jérôme Valcke (FIFA Secretary General) were amended. The respective amendments to the agreements provided extraordinary bonuses, related to services the aforementioned three officials performed in connection with the 2010 FIFA World Cup™, which would be paid over a span of four years in four equal instalments in December 2010, 2011, 2012 and 2013. The content of the three amendments was very similar, with the main difference being the amount of the bonus and name/title of the respective official, as follows:
  - CHF 11 million to Mr Blatter;
  - CHF 9 million to Mr Valcke; and
  - CHF 3 million to Mr Kattner.
15. In an interview with the investigatory chamber, Mr Kattner specified that Mr Julio Grondona - former chairman of the FIFA Finance Committee, deceased in 2014, and Mr Issa Hayatou - former FIFA Vice President and chairman of the Organising committee for the 2010 FIFA World Cup™, had both received bonuses to the amount of USD 1 million in connection with the 2010 FIFA World Cup™.
16. Drafts of the amendment agreements of Messrs Blatter, Valcke and Kattner were found on a USB drive in Mr Kattner's office, which showed that the amendment agreements were prepared by the latter. Furthermore, similar amendment agreements were also found on the same USB drive and were titled "[Auditor] Bonus 2010 jva," "KMPG Bonus 2010 mka," and "[Auditor] Bonus P". These documents contain two main differences from the amendment agreements of 1 December 2010: the total amount of the bonuses was removed, leaving only a reference to the annual payments; and all references to the 2010 FIFA World Cup™ were removed, leaving only the employees' "exceptional services" as the reason for the bonuses. From the latter three draft agreements, only the "[Auditor] Bonus 2010 jva" document (for Mr Valcke) was signed.
17. The (official) 1 December 2010 amendment agreement of Mr Blatter was signed by Messrs Grondona and Valcke on behalf of FIFA, the respective amendment agreement of Mr Valcke was signed by Mr Blatter (for FIFA), and that of Mr Kattner was signed by Messrs Blatter and Valcke. The schedule of Mr Valcke's bonus payments was accelerated in February 2011 by early payment of the 2011 bonus

instalment. In June 2011, it was further accelerated by a loan structure with regard to the 2012 and 2013 bonus instalments.

18. The aggregate bonus amount to be paid to Messrs Blatter, Valcke, and Kattner of CHF 23 million was not included in FIFA's financial statements for the year ended 2010. The 2010 FIFA financial statements only recorded the aggregate annual instalment paid to Messrs Blatter, Valcke, and Kattner in December 2010 in the amount of CHF 5.75 million. The 2010 bonus payments to Grondona and Hayatou totalling USD 2 million were also recorded in FIFA's 2010 financial records. No liability was recorded in the 2010 FIFA financial statements for the remaining instalments of FIFA's bonus commitments to Messrs Blatter, Valcke, and Kattner in the aggregate amount of CHF 17.25 million.
19. A new series of amendment agreements, similar to the ones signed on 1 December 2010, were signed by Messrs Blatter, Valcke and Kattner on 19 October 2011, including extraordinary bonuses in connection with the FIFA Confederations Cup Brazil 2013 and the 2014 FIFA World Cup Brazil™ for the following amounts:  
  
CHF 12 million Mr Blatter;  
  
CHF 10 million to Mr Valcke; and  
  
CHF 4 million to Mr Kattner.
20. The amendment agreement of Mr Blatter was signed by Messrs Valcke and Grondona on behalf of FIFA, while the amendment agreement of Mr Valcke was signed by Blatter and Grondona, and the amendment agreement of Mr Kattner by Blatter, Valcke, and Grondona on behalf of FIFA.
21. The rights of Messrs Blatter, Valcke and Kattner to receive the respective bonuses depended on the fulfilment of ten criteria assessing the organizational success of the FIFA Confederations Cup Brazil 2013 and the organizational and financial success of the 2014 FIFA World Cup Brazil™. If the criteria concerning the FIFA Confederations Cup Brazil 2013 were met, thirty-five percent of the aggregate bonus amounts would be paid in December 2013. Similarly, if the criteria concerning the 2014 FIFA World Cup Brazil™ were met, the remaining amount (i.e., sixty-five percent of the aggregate bonus) would be paid in December 2014.
22. In its meetings on 3 October 2013 and 24 September 2014, the FIFA Compensation Sub-Committee confirmed that the criteria triggering the bonus entitlements under Messrs Valcke and Kattner's 2011 amendment agreements were satisfied. The bonus of Mr Kattner was therefore paid in December 2013 and December 2014. The bonus of Mr Valcke in connection to the 2014 FIFA World Cup Brazil™ (65% of the aggregate) was also paid in December 2014 (as per the 2011 amendment agreement). However, at Mr Valcke's express request, and upon Mr Kattner's approval, the bonus in connection to the FIFA Confederations Cup Brazil 2013 (35% of the aggregate) was paid to Mr Valcke in September 2013. In other words, the payment of the respective bonus was approved by Mr Kattner before the FIFA

Compensation Sub-Committee could meet and confirm that the criteria triggering the bonus entitlement was met.

23. Neither the 2011 nor the 2012 FIFA financial statements contained provisions, accruals or liabilities for the bonuses of Messrs Blatter, Valcke and Kattner. This was confirmed by the Head of FIFA Finance & Accounting. The 2013 FIFA financial statements only recorded the bonuses in connection to the FIFA Confederations Cup Brazil 2013 paid to Messrs Valcke, and Kattner (35% of the aggregate bonus amounts as per the 2011 amendment agreements) as "salaries". The same applied to the bonuses in connection to the 2014 FIFA World Cup Brazil™ (65% of the aggregate bonus amounts) paid to Messrs Valcke, and Kattner, which were also reflected as "salaries" in the 2014 FIFA financial statements. It furthermore appears that Mr Kattner again failed to share the relevant information with the staff of the FIFA Finance and FIFA Human Resources divisions that he was the director of.
24. On 10 June 2014, Messrs Valcke and Kattner entered into additional amendment agreements with FIFA in connection with the FIFA Confederations Cup Russia 2017 and the 2018 FIFA World Cup Russia™, which provided for a CHF 11 million bonus to Mr Valcke, and a CHF 4.5 million bonus to Mr Kattner. The amendment agreement were signed by the same persons as before on behalf of FIFA (Messrs Blatter and Grondona for Mr Valcke's agreement, and Messrs Blatter, Valcke, and Grondona for Mr Kattner's) and included criteria for the payment of the bonuses very similar to the previous 2011 amendment agreements. Once more, it appears that the relevant FIFA financial statements (in particular those for the year 2014) did not contain provisions, accruals or liabilities for the bonuses of Messrs Valcke and Kattner, and that the FIFA Finance and FIFA Human Resources divisions were once more not informed of the bonus commitments. It further appears that Domenico Scala, acting as Chairman of the FIFA Compensation Sub-Committee and Chairman of the FIFA Audit and Compliance Committee, may have been privy to the bonus information at the time.

## **2. Further employment contract conditions**

25. According to the Final report (cf. p. 16 f), Mr Kattner entered into two further amendments to his employment agreement on 30 April 2011 and on 31 May 2015, prior to the respective FIFA presidential elections (held in May 2011 and June 2016, respectively).
26. The 2011 amendment agreement would extend the term of Mr Kattner's employment agreement from 31 December 2015 to 31 December 2019, and contained clauses that provided for a severance pay equivalent to the salary accruing until the expiration of the ordinary term of the employment agreement, even if the employment relationship was terminated for cause. An indemnity clause was also included, providing that in the event Mr Kattner was prosecuted for conduct in connection with his official duties, FIFA would not only pay attorney's fees, but also fines and damages arising therefrom. A similar amendment agreement was also entered into by Mr Valcke on the same date in 2011.

27. The 2015 amendment agreement extended Mr Kattner's existing employment contract until 31 December 2023. This extension was approved by the FIFA Compensation Sub-Committee only three days after the U.S. Department of Justice announced that "[a] 47-count indictment was unsealed early this morning in federal court in Brooklyn, New York, charging 14 defendants [Nine FIFA Officials and Five Corporate Executives] with racketeering, wire fraud and money laundering conspiracies, among other offenses, in connection with the defendants' participation in a 24-year scheme to enrich themselves through the corruption of international soccer." (and after the start of the criminal proceedings by the Office of the Attorney General of Switzerland). A similar amendment agreement was offered (by the FIFA Compensation Sub-Committee) to Mr Valcke, who refused it for personal reasons.
28. The 2015 amendment agreement included similar clauses (concerning severance and indemnity) as the 2011 one.

### **3. Private legal costs**

29. According to the Final report (cf. p. 17 f) , in connection with the preparation of his and Mr Valcke's 2011 amendment agreements, Mr Kattner obtained legal advice (apparently in a private capacity) from a Zurich law firm specializing in employment law, [Law Firm 4]. The invoice for the services rendered by [Law Firm 4] amounted to CHF 9,715 and was issued to Mr Kattner's private home address. However, with Mr Valcke's approval, FIFA reimbursed Mr Kattner for the respective invoice.

### **4. Behaviour in relation to confidential audio recording**

30. According to the Final report (cf. p. 18 f), prior to the FIFA Congress 2016 held in Mexico on 13 May 2016, various meetings of the FIFA Council were held on 9 and 10 May 2016. The meeting of 10 May 2016 was not attended by representatives of the General Secretariat of FIFA (as per usual) and was recorded electronically, by a private company. [A], a member of the FIFA audio and video (AV) team, transferred the recording of the meeting on his laptop, once the meeting ended, in order to archive it upon his return to the FIFA headquarters in Zurich, as per the usual procedure.
31. On 12 May 2016, [A] travelled back to Switzerland and spent the Pentecostal weekend of 14 -16 May 2016 at his home. On 16 May 2016 (public holiday in Switzerland), [A] was contacted on his mobile phone by Mr Kattner, and then visited by the latter in person at his home. Mr Kattner asked [A] to hand over the audio recording of the FIFA Council meeting of 10 May 2016, which would have been archived on the next day. [A] was unsure how to deal with this request, as he was aware of the confidential content of the meeting, both because of the given circumstances and because he listened to a part of the recording at the airport before his return to Switzerland. At Mr Kattner's insistence, [A] surrendered the audio recordings and asked the former to send him an e-mail with his written request in his function as his superior. Mr Kattner was the FIFA acting Secretary General at the time.

32. The above events were confirmed by [A] during his interview by the investigatory chamber on 16 November 2016 (cf. Exhibit 24 to the Final report). He also stated that he had not had any prior personal contact with Mr Kattner before the events of May 2016.

### **5. Conclusions of the investigatory chamber**

33. Taking the above considerations into account in their entirety, the investigatory chamber concluded (cf. p. 22 ff of the Final report) that Mr Kattner had violated the following provisions of the FCE:
- Art. 15 of the FCE 2019 (Loyalty);
  - Art. 19 of the FCE 2019 (Conflicts of interest);
  - Art. 25 of the FCE 2019 (Abuse of position).

#### **c) Submission of Mr Kattner**

34. In his written submission of 30 September 2019, Mr Kattner provided, through his legal representative - Mr Michael Kramer, an opinion regarding payment of the invoice of the law firm [Law Firm 4], essentially stating the following:
- The legal advice was in the interest of both parties of the employment agreement (employer and employee).
  - The payment by FIFA was approved by the direct superior of Mr Kattner.
  - The payment of legal fees in employment matters was also applied in other cases (i.e. related to employment issues of the FIFA President Gianni Infantino).
  - Accordingly, the Swiss Attorney General has closed criminal proceedings against Mr Kattner - despite the "desperate" attempt by FIFA to have him condemned.

## **B. Proceedings before the adjudicatory chamber of the FIFA Ethics Committee**

### **a) The opening of adjudicatory proceedings**

35. On 6 November 2019, a letter was sent to Mr Kattner from the chairperson of the adjudicatory chamber, Mr Vassilios Skouris (hereinafter also "the Chairperson"), informing him that adjudicatory proceedings had been opened, providing him with a copy of the Final report and the relevant enclosures and requesting him to submit his position by 20 November 2019 (cf. art. 68 and art. 71 of the FCE 2019). Mr Kattner was further requested to confirm by 12 November 2019 whether he would request a hearing and to appear in situ.
36. On 11 November 2019, Mr Kattner formulated an objection against the FIFA Ethics Committee, its members and chairpersons Rojas and Skouris in particular. The objection was transmitted to the FIFA Appeal Committee, in line with art. 35 par. 5 of the FCE.

37. On 12 November 2019, Mr Kattner requested an extension of the deadlines for the request of a hearing and submission of his position. The relevant deadlines were extended on 13 November 2019 (until 20 November 2019 and 19 December 2019 respectively).
38. On 15 November 2019, Mr Kattner filed a complaint, addressed to the chairperson and deputy chairperson of the adjudicatory chamber, to the secretariat to the investigatory chamber and to the secretariat to the FIFA Appeal Committee, against Messrs Robert Torres (former member of the investigatory chamber), Bruno De Vita (deputy chairperson of the investigatory chamber) and Vassilios Skouris, as well as any and all other members of the FIFA Ethics Committee, for alleged breaches of the FCE (arts. 16, 17 and 36).
39. On 19 November 2019, Mr Kattner made several requests, for a further extension of the deadlines (to request a hearing and to provide his position) and to be provided with the "complete case file" of the investigatory chamber. His request for the case file was transmitted to the investigatory chamber, which provided a number of additional documents on 3 December 2019. The relevant deadlines were once more extended on 4 December 2019 (until 11 December 2019 and 15 January 2020 respectively).
40. On 6 December 2019, the chairman of the Appeal Committee decided to reject the objection of Mr Kattner against the Ethics Committee and its members. Mr Kattner appealed against this decision before CAS, and the proceedings are currently pending. On 31 December 2019, Mr Kattner lodged a request for provisional measures and stay of the execution of the decision rendered by the chairman of the FIFA Appeal Committee. FIFA has opposed to such request and a decision on the matter is due to be taken by the CAS.
41. On 13 January 2020, Mr Kattner requested once more a short extension of the deadline to submit his position, until 20 January 2020, and this request was also granted by the chairperson of the adjudicatory chamber.
42. On 20 January 2020, Mr Kattner submitted his written position (within the applicable deadline) together with supporting enclosures. No request for a hearing was made within the relevant deadline.
43. On 30 January 2020, Mr Kattner was informed that, in view of the fact that no hearing had been requested, the case would be decided on the basis of the existing documents and submissions (cf. art. 69 par. 2 of the FCE). He was also informed of the composition of the Panel deciding in the present matter.

#### **b) Summary of Mr Kattner's position**

44. Mr Kattner submitted his position with regard to the Final report of the investigatory chamber on 20 January 2020, pursuant to article 71 of the FCE. His position pivots around two main line of arguments pointing at the procedural and substantial aspects of this case.

## 1. Procedural remarks

45. First, and with regard to the procedural aspects, Mr Kattner contests that the FCE applies to him and that the FIFA Ethics Committee has jurisdiction over him (cf. par. 2 ff of his position and Exhibit 1), stating in particular:
- that he is not an “official” for the purposes of the FCE and that the FCE does not apply to him for this reason already (Exhibit 1 to Mr Kattner’s position dated 20 January 2020, par. 150 *et seqq.*);
  - that he has not explicitly consented to the FCE, which would be necessary in order to bind an employee such as Mr Kattner to the FCE (Exhibit 1, par. 153 ff);
  - that the FCE can also not be incorporated into the employment contract by implied consent (Exhibit 1, par. 161 *et seqq.*);
  - that even if he had consented to the FCE (which is disputed), Mr Kattner’s consent would have been limited to the duration of his employment with FIFA (Exhibit 1, par. 168 f.);
  - that the provisions of the FCE are not applicable, as this would violate mandatory Swiss (employment) law (Exhibit 1, par. 170 *et seqq.*);
  - that FIFA’s termination of the employment contract on 23 May 2016 would in any case have terminated with immediate effect (Exhibit 1, par. no. 175 *et seqq.*) Mr Kattner’s (disputed) subjection to the FCE;
  - that Mr Kattner had terminated all (contested) contractual agreements regarding the applicability of the FCE (Exhibit 1, par. 180 *et seqq.*);
  - and that in this case the different versions of the FCE are either no longer in force or are not applicable for other reasons (Exhibit 1, par. 184 *et seqq.*).
46. Second, Mr Kattner claims that the members of the Ethics Committee and the Ethics Committee as a whole do not have the necessary independence to conduct such proceedings (cf. par. 7 *et seqq.* of his position). In this respect, Mr Kattner refers to Exhibit 1 to his position (representing his appeal brief before CAS against the decision taken by the FIFA Appeal Committee on 6 December 2019), in which he has made the following allegations:
- The FIFA Ethics Committee is controlled by FIFA and its current management and therefore unable to conduct neutral proceedings with unbiased outcome (Exhibit 1, par. 35 ff);
  - FIFA’s current management has an imminent interest in the outcome of the ethics proceedings against Mr Kattner (Exhibit 1, par. 89 ff);
  - The FIFA Ethics Committee as an institution and its every member (in particular chairpersons Rojas and Skouris, past member Robert Torres and

deputy chairperson Bruno De Vita) is not independent (Exhibit 1, par. 106 ff);

- Messrs Skouris, De Vita and Torres, as well as possibly further members of the FIFA Ethics Committee and its secretariat, are personally biased against Mr Kattner because of the latter's ethics complaint files against them on 15 November 2019 (Exhibit 1, par. 129 ff).

47. Third, Mr Kattner alleges that he has not been guaranteed a fair procedure, for the following reasons:

- Exculpatory evidence has not been sought and has been ignored by the investigatory chamber (cf. par. 11 *et seqq.* of Mr Kattner's position);
- Mr Kattner was not granted appropriate deadlines by the adjudicatory chamber (cf. par. 21 *et seqq.* of Mr Kattner's position);
- The investigatory chamber is concealing documentation (cf. par. 34 *et seqq.* of Mr Kattner's position).

## **2. Arguments on the merits**

48. With regard to the substance of the case (cf. par. 38 *et seqq.* of his position), Mr Kattner claims that he did not breach any duty of loyalty, was not subject to any conflict of interest and did not abuse his position in relation to the charges presented against him in the Final report. In particular, he raised the following points:

### **Bonus payments and other terms of the employment contracts**

- Mr Kattner did not grant any bonus payments either to himself or to anyone else in the top management, did not set their amount and did not determine the term of employment contracts. These decisions were taken in accordance with the applicable regulations by his superiors, namely Messrs Blatter, and in some cases Grondona and Hayatou. The investigatory chamber cannot provide one single indication of "coordinated" collusion, whereas both FIFA's internal regulations and Mr Blatter confirm the clear relationship of subordination (cf. par. 41 *et seqq.* of Mr Kattner's position).
- Mr Kattner's contribution was limited to his drafting of the corresponding agreements on behalf of his superiors (without determining the amounts). When doing so, he adapted existing drafts and followed FIFA's previous practice. The contracts were signed and approved by all relevant internal bodies (cf. par. 62 *et seqq.* of Mr Kattner's position).
- Since its creation, the CSC created specifically for this purpose has approved all additional agreements and payments. The CSC took note of all relevant documents and contracts and demonstrably examined the amounts intensively and drawing on external expertise and made a fully informed decision on this basis (cf. par. 89 ff of Mr Kattner's position).

- The long-term contracts were deliberately intended by FIFA (and in particular by its presidents) owing to “political exposures” and in order to ensure continuity for FIFA. This practice of FIFA was explicitly incorporated into the FIFA Compensation Rules by the subsequently established CSC (cf. par. 125 *et seqq.* of Mr Kattner’s position).
- Mr Kattner and FIFA's accounting department gave the external auditors [Auditor] full access to all contracts concerning compensation, which they took advantage of every year and examined the contracts in detail, which is proven by numerous documents. Mr Kattner requested and followed the expert opinions of internal experts and [Auditor] when drafting and booking the relevant agreements. Both the external auditor and an expert opinion confirm that the employment contracts were booked correctly (cf. par. 135 *et seqq.* and 162 *et seqq.* of Mr Kattner’s position).
- In April 2019, the Swiss Deputy Attorney General ordered FIFA to cease criminal proceedings against Mr Kattner. This shows that said body also came to the conclusion that FIFA's unilateral claims in the Bonus Report concerning the allegedly incorrect booking are incorrect.
- Mr Kattner always acted in accordance with the instructions of his superiors, FIFA's internal rules and the specialist advice of experts (cf. par. 118 *et seqq.*; par. 131 *et seqq.* of Mr Kattner’s position).

### **The allegations concerning the private law firm’s invoice**

- Mr Kattner expressly instructed the law firm not to give particular weight to the interests of either party (cf. par. 11 ff of Mr Kattner’s position);
- legal advice was also in FIFA's interest because both parties wanted “waterproof” contracts in the interest of legal certainty (cf. par. 195 *et seqq.* of Mr Kattner’s position);
- reimbursing an employee for attorney's fees in connection with his employment was also in line with FIFA's practice (cf. par. 203 *et seqq.* of Mr Kattner’s position);
- Mr Kattner submitted a request for the reimbursement of expenses on the instructions of and with the approval of his supervisor (cf. par. 183 *et seqq.* of Mr Kattner’s position);
- FIFA had an effective control mechanism for expenses and accepted the reimbursement of these expenses (cf. par. 206 *et seqq.* of Mr Kattner’s position);
- Mr Kattner had no reason to doubt the legitimacy of the reimbursement of the expense. Nothing would have been more foreign to him than to breach his duties and/or any FIFA regulations in relation to an amount that was not even CHF 10,000 in order to pursue private interests contrary to the wishes

of his employer, for which he had been working successfully and with great dedication for more than 13 years;

- In any case, Mr Kattner alleged that the [Law Firm 4] issue would be time-barred, in accordance with art. 12 of the 2019 FCE, since the relevant facts date from 2011 (cf. par. 217 *et seqq.* of Mr Kattner's position).

### **The audio recordings**

- In a case with identical facts, the Ethics Committee took the view that there had been no violation of the FCE;
  - There was never any instruction that would have prohibited Mr Kattner from accessing the audio recordings (cf. par. 223 *et seqq.* of Mr Kattner's position);
  - The exclusion from the FIFA Council meeting could not have been ordered by FIFA President , but only by the FIFA Council (cf. par. 226 *et seqq.* of Mr Kattner's position);
  - In any case, the exclusion constituted an infringement of FIFA's internal regulations, which absolutely required that Mr Kattner should be present at the meeting and draw up the minutes (cf. par. 228 *et seqq.* of Mr Kattner's position);
  - There is no conflict of interest as alleged by the investigatory chamber as justification of the irregular exclusion, which conflict is merely asserted as a pretext. In fact, the FIFA President wanted to ensure that his takeover and his coup was not put at risk by Mr Scala (cf. par. 238 *et seqq.* of Mr Kattner's position);
  - Therefore, Mr Kattner not only had legitimate reasons to access the audio recordings, but was also required to do so out of a duty of loyalty towards FIFA. Both the responsibility for the minutes, but in particular the complaint to the Ethics Committee, justify Mr Kattner's actions, even if there were any other unlawful "instructions" (cf. par. 257 *et seqq.* of Mr Kattner's position).
49. The adjudicatory chamber has analyzed and reviewed the case file in its entirety and 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 outline of Mr Kattner's position .

### **c) Additional submissions of Mr Kattner**

50. On 5 February 2020, Mr Kattner made new submissions to the adjudicatory chamber, in the form of a letter dated on the same day and two enclosures. Mr Kattner referred to the pending proceedings before CAS, in which he has appealed against the decision of the FIFA Appeal Committee taken on 6 December 2019 rejecting his objection against the members of the FIFA Ethics Committee. In this

respect, Mr Kattner claims that the refusal of FIFA, Respondent in the aforementioned CAS proceedings, to pay the respective advance of procedural costs would represent a breach of a (potential) contractual agreement between FIFA and himself. Mr Kattner further refers to a letter dated 3 February 2020 he addressed to FIFA, informing that – in the event that, contrary to expectations, the applicability of the Code of Ethics and the jurisdiction of the Ethics Committee were to be held (both disputed) – he would withdraw from the (disputed) contractual agreement regarding the applicability of the Code of Ethics and the jurisdiction of the Ethics Committee and/or terminate it with immediate effect.

51. Although the new submissions were provided by Mr Kattner after the final deadline set for his position (20 January 2020), the adjudicatory chamber decided to admit the respective correspondence and enclosure into the file for consideration.
52. On 28 February 2020, Mr Kattner submitted new evidence, in the form of a letter dated on the same day and one enclosure which contained an order of the Office of the Attorney General of Switzerland (OAG) dated 21 February 2020. Mr Kattner referred to the document and claimed that, in accordance with its content, there are no longer any criminal proceedings against him, nor have any ever existed, and that the respective criminal case of the OAG involving him was reset to the status existing before the separation and extension ordered on 13 February 2018. He claimed that the relevant order of 21 February 2020 is further proof that, even in the opinion of the OAG, Mr Kattner cannot be accused of anything concerning either the "Bonus", "employment contracts," and "[Law Firm 4]" matters, and that the "accusations" in the investigatory chamber's Final report are thus unfounded.
53. Although the new submissions of Mr Kattner were provided more than one month after the deadline for his position, the Panel has decided to admit the respective documents and resume the deliberations in order to take them into consideration. The deliberations of the Panel were therefore conducted on 18 February 2020 and 4 March 2020.

## **II. Legal analysis**

### **A. Applicability of the FCE *ratione materiae* (art. 1 of the FCE)**

1. The adjudicatory chamber notes that according to the Final report of the investigatory chamber on the present matter, there are several indications of potential improper conduct in terms of the FCE by Mr Kattner. In particular, during the investigations, possible violations of the relevant provisions of the FCE related to loyalty (art. 15), conflicts of interest (art. 19) and abuse of position (art. 25), as well as their analogous provisions in the 2012 edition of the FCE, have been identified. The factual circumstances raise, without any doubt, questions of potential misconduct in terms of the FCE.
2. Consequently, the FCE is applicable to the case according to art. 1 FCE (*ratione materiae*).

## **B. Applicability of the FCE *ratione personae* (art. 2 of the FCE)**

3. According to art. 2 of the FCE, the Code shall apply, inter alia, to “officials”. The term “official” is included in the definitions section of the FCE, as well as in that of the FIFA Statutes.

### ***Definition of “officials”***

4. According to Circular no. 939 issued on 30 November 2004, entitled “FIFA Code of Ethics – We are the Fair Play Family” and enclosing the first edition/version of the FCE, “This Code binds everyone acting as a FIFA official, as well as all those who have duties in line with the FIFA Statutes or Organisational Rules and Regulations”. The 2009 and 2012 editions of the FCE have incorporated this principle in their provisions (art. 1 of the FCE 2009 - “This Code applies to all officials”; art. 2 of the FCE 2012 – “This Code applies to all officials and players as well as match and players’ agents who are bound by this Code on the day the infringement was committed”).
5. The definition of “Official” has been included in the FIFA Statutes since its 2004 edition as follows: “every board member, committee member, referee and assistant referee, coach, trainer, and other persons responsible for technical, medical and administrative matters in FIFA, a Confederation, Association, League or club”. This definition has not been amended until the 2013 edition of the FIFA Statutes, when it was slightly updated to also include “all other persons obliged to comply with the FIFA Statutes (except Players)”. Since the 2015 edition, its content has been amended to “[...] (except Players and intermediaries)”.
6. The Preamble of the 2004 edition of the FCE stated that “The purpose of this Code of Ethics is to safeguard FIFA's image and pursuit of objectives against the unethical actions of Officials (cf. definitions in FIFA Statutes) and to ensure Officials' integrity in the discharge of their duties.” The definitions of “officials” from the FIFA Statutes has been inserted in the FCE since its 2009 edition.
7. The content of the “official” definition clearly includes “persons responsible for technical, medical and administrative matters in FIFA”. There is no distinction made, in the FIFA Statutes or the FCE, between FIFA officials and FIFA employees when it comes to the applicability of the latter regulations. No provision specifies that the FCE does not apply to FIFA employees in general, or to any specific senior management of FIFA.
8. Mr Kattner was employed with FIFA between 2003 and 2016. During this period, he held different functions: Deputy Director of FIFA Finance & Controlling (2003 – 2005), Director of FIFA Finance & Controlling (2005 – 2007), Director of FIFA Finance & Administration (2007 – 2015), Director of FIFA Finance & Corporate Services (2015). He was also FIFA Deputy Secretary General from 2007 to 2015 and FIFA Acting Secretary General between 2015 and 2016. It is clear from the above that Mr Kattner occupied, since his start in FIFA, very senior positions in the organization. In particular, during the relevant period under scrutiny (2010 – 2016), it can be

considered that he was responsible for administrative matters in FIFA, and therefore an official according to the relevant definition in the FIFA Statutes and the FCE.

9. In his position, Mr Kattner claims he was not an official, as defined in the FCE, and that he has not consented to the FCE, either explicitly or through his employment contract with FIFA. Furthermore, he claims that, in any case, his consent, and therefore the applicability of the FCE, was only limited to the duration of his employment with FIFA. Since his employment contract was terminated on 23 May 2016, his subjection to the FCE ended as well, with immediate effect.

### ***“Officials” and employees according to FIFA regulations***

10. One of Mr Kattner’s arguments is that “the common understanding within FIFA was that the FCE would not apply to employees” and that “the employee’s conduct was governed by Swiss employment law and the organization regulations (e.g. the FIFA Organizational rules FOR)”, whereas the “FIFA Officials’ conduct shall be governed by the FCE and potential violations be sanctioned by the Ethics Committee” (cf. par. 150 of Exhibit 1 to Mr Kattner’s position). However, as mentioned prior, such distinction/separation is not made in the FIFA Statutes or the FCE.
11. An important aspect that needs to be pointed out is the parallelism of forms when it comes to the football family and its pyramidal structure. All football confederations, associations, leagues and clubs have employees who sign contracts with those organisations. As the extensive jurisprudence of the FIFA Ethics Committee could prove, over the years a significant number of officials from those organisations, at different levels (senior or not), have been investigated and sanctioned by the Ethics Committee on the basis of the FCE. It would be completely discriminatory and legally incorrect to interpret the definition of “officials” in such a way as to consider that all persons responsible for technical, medical and administrative matters in confederations, associations, leagues and clubs would fall under its scope, but those working/part of FIFA – the largest, highest and most important football authority and organization in the world – would be exempted (with the exception of the FIFA President and Secretary General, who have already been established as being officials by the FIFA judicial bodies and CAS).
12. Furthermore, neither the FIFA Internal Organisational Rules and Regulations (in force between 2004 and 2008), nor the FIFA Internal Organisation Regulations (FOR, in force between 2008 and 2013) mention that the FCE are not applicable to FIFA employees. To the contrary, art. 3.8 of the 2008 FOR expressly mentions that “The FIFA President shall take the final decision on any matter concerning the conduct of members of a body and of employees in connection with the provisions of these regulations. This rule is subject to the jurisdiction of other bodies, in particular FIFA’s judicial bodies (art. 56 of the FIFA Statutes)”. Art. 56 of the relevant (2006) edition of the FIFA Statutes refers, among others, to the FIFA Ethics Committee which, according to art. 59 par. 3 of said Statutes “may pronounce the sanctions described in these Statutes against Officials, Players and match and players’ agents”.

13. Mr Kattner submits three separate documents to support his argument on the distinction between FIFA officials and FIFA employees when it comes to the applicability of the FCE: a PowerPoint presentation allegedly made at a meeting of the FIFA Audit & Compliance Committee on 10 August 2012 (Exhibit A-79 to Exhibit 1 of Mr Kattner's position); a description of the FIFA's Compliance Management System allegedly drafted and provided by [Auditor] by correspondence dated 22 May 2015 (Exhibit A-80 to Exhibit 1 of Mr Kattner's position); FIFA's Financial Report 2014 (Exhibit A-81 to Exhibit 1 of Mr Kattner's position).
14. First of all, Mr Kattner does not explain how he could be in possession of FIFA confidential documents such as the presentation the FIFA Audit & Compliance Committee and the FIFA's Compliance Management System since, according to the FOR he was required to return every possession belonging to FIFA, including business documents (such as files etc.) as soon as his employment contract was terminated. Second, all three documents mentioned above (in particular the paragraphs or sections referred to by Mr Kattner) represent internal guidelines or informational presentations, and not regulations, thus not having a legally binding nature. In other words, they cannot supersede legal documents such as the FCE or the FIFA Statutes - the fundamental regulations of FIFA. Third, and notwithstanding of the above, the relevant passages in the documents referred to by Mr Kattner, when read carefully, do not exclude the applicability of the FCE to (at least a part of) FIFA employees, but only mention that the FIFA Code of conduct applies to officials (as defined in the FIFA Statutes and the FCE) and FIFA employees. Therefore, it is absolutely possible and acceptable that the aforementioned two groups (officials and employees) are, at least partially intersecting, which would mean that a person employed by FIFA, responsible for administrative matters (potentially at some managerial level in the general secretariat as mentioned prior) would be at the same time an official according to the statutory definition.
15. A separate argument Mr Kattner is making is that he never gave his explicit consent to the applicability of the FCE, when signing his various employment contracts with FIFA, and that the Code could not become part of his contract by "implicit consent" (from his part).
16. First of all, the definition of an official concerns "every board member, committee member, referee and assistant referee, coach, trainer, and other persons responsible for technical, medical and administrative matters in FIFA, a Confederation, Association, League or club". Many, if not most, of these persons would have a contractual relationship with the respective organization they are a part of (FIFA, a confederation, a member association, a league or a club). Therefore, if we were to follow Mr Kattner's reasoning, all these persons would have to give their explicit consent to being subjected to the various regulations of the respective organization, and of all the organization(s) it is a member of, when signing their respective employment contracts, or amending such. This would be practically impossible and also illogical, given the multitude of regulations, at the different levels of the pyramid structure of the football world/family, which are amended and updated constantly.

17. Secondly, the various employment contracts and addendums that Mr Kattner has signed with FIFA starting 2004 referred to and enclosed the different editions/versions of the FOR. During the relevant period at stake (2010-2016), during which Mr Kattner held the position of FIFA Deputy Secretary General, two versions of the FOR were in force (2008 and 2013). The content of the 2008 FOR referred on several occasions (art. 3.2 and art. 3.8) to the jurisdiction of the FIFA judicial bodies, which include the Ethics Committee, with respect to the conduct of “members of FIFA’s bodies and employees”. Furthermore, the 2013 FOR is even more specific, both with regards to the FIFA Deputy Secretary General being a member of the FIFA bodies (art. 2.1 let. d), and the referral to the FCE: “During their work and as part of their functions, members of FIFA bodies and judicial bodies shall do everything possible that is conducive to fulfilling FIFA’s objectives (art. 2 of the FIFA Statutes) and refrain from any action that could be detrimental to those objectives. Inside and outside FIFA, they shall know and comply with all applicable laws and regulations, as well as FIFA’s regulatory framework (hereafter “the FIFA Internal Rules”), such as those contained in the FIFA Code of Conduct, the FIFA Code of Ethics and the FIFA Disciplinary Code”.

***Distinction between employment law and ethics proceedings (association law), and influence on distinction between employees and officials***

18. With respect to the distinction between (Swiss) employment law, on one side, and association law (ethics proceedings representing internal procedures of a private association/organisation) on the other, a series of important and relevant findings were made in the CAS award CAS 2017/A/5003 Jérôme Valcke v. FIFA, concerning the case against the former FIFA Secretary General (succeeded by Mr Kattner upon his sanctioning by the Ethics Committee):
- FIFA’s authority to impose disciplinary sanctions cannot be limited by mandatory Swiss law (par. 150);
  - Mr Valcke was in a situation of “role splitting” in the sense that, in his capacity as the FIFA Secretary General, he had two separate legal statuses or roles. On the one hand, he was an official (and even an organ) of FIFA, on the basis of the association rules; on the other hand, he was a FIFA employee by virtue of an employment agreement under private law. The Appellant’s dual legal relationship as both an official/organ and employee of FIFA is underscored by the fact that the moment he assumed the role of FIFA Secretary General, with his appointment by the FIFA Executive Committee upon proposal by the FIFA President (Article 31, par. 10 of the FIFA Statutes of 2007), was different from the moment he became an employee by signing his employment contract (par. 153);
  - The Panel concluded (par. 154) that these legal relationships, even if they are interrelated, are separate and independent of each other as bears on their inception, effects and termination (and referred to ATF 130 III 213 at 2.1). This would entail that his status as an official or organ of FIFA has been governed by Swiss association law, while his status as an employee of FIFA has been governed by Swiss employment law (par. 155);

- Consequently, the Panel held (par. 156) that FIFA had the power to sanction Mr Valcke as it did, on the basis of association law, without being limited by employment law (and compared the situation to that of a professional coach hired by an association as the national team coach who would have a dual role as a sport official and as an employee; such coach might receive a disciplinary sanction from the association regardless of her/his employment relationship or, conversely, may have an employment-related dispute without any impact on his status as an official of that federation)
  - The Panel's conclusion (par. 157) was that FIFA has a legitimate interest in and is entitled to control and supervise the conduct of its organs and officials by implementing inter alia specific ethical standards of conduct in its rules, and that it is also entitled to sanction persons bound by its ethical rules irrespective of whether they are also employees of FIFA. Its power to impose sanctions under association law is limited by public policy ("ordre public"), in particular the fundamental rules protecting personality rights (art. 27 et seq. CC and competition law), but not by the mandatory provisions of employment law;
  - In reaching its conclusion, the Panel found it irrelevant that the employment relationship no longer existed at the time of disciplinary sanctioning because that sanction was based on association law and could be imposed on conduct which occurred during the time which Mr Valcke served as FIFA Secretary General;
  - The Panel considered that under the Mr Valcke's approach/reasoning – where mandatory provisions of Swiss law would automatically apply to all sanctions imposed by a sport governing body under association law – a FIFA official with an employment contract (such as the FIFA Secretary General) and a FIFA official without such contract (e.g. a FIFA Executive Committee member) would effectively be treated differently, in that only the former – due to mandatory labour law – would be exempt from sanctions, creating an imbalance and incoherence in the application of the FCE, which would be unacceptable for the protection of ethical standards and of equality of treatment within the association. Consequently, for this additional reason the mandatory provisions of Swiss employment law are inapplicable to the present case. Instead, the disciplinary authority of FIFA is solely based on the FIFA regulations supplemented by association law.
19. After carefully reviewing the content of the aforementioned CAS award, the adjudicatory chamber considers that no elements would suggest a different approach in the present case, for the following reasons.
  20. First, Mr Kattner held two of the most important functions in FIFA, in the period presently relevant (2010 – 2016): FIFA Deputy Secretary General and then FIFA Acting Secretary General. He was also occupying the position of FIFA Director of Finance and Administration between 2010 and 2015. Therefore, the situation of "role-splitting" also applies to him – he was both an official of FIFA (in the aforementioned functions) and an employee thereof (between 2003 and May 2016).

21. As in the case of Mr Valcke, the moment Mr Kattner became FIFA Deputy Secretary General and FIFA Director of Finance and Administration (2007) is distinct from the moment he started his employment with FIFA (2003). Therefore, these two legal relationships (FIFA employee and FIFA/football official), are separate and independent of each other as bears on their inception, effects and termination.
22. Furthermore, as has been specifically presented in the Final report, Mr Kattner, but also Mr Blatter and Mr Valcke - the two most senior members of FIFA management (as President and Secretary General of the organisation) – had not only a contractual relation with FIFA regulated through their respective employment agreements (and several amendments). Therefore, it is evident that one relationship/status within FIFA (employment) would not exclude the other (official), not for Mr Kattner and not for the senior management of the organisation.
23. Another very important aspect is that Mr Kattner's conduct presently under scrutiny, as described in the Final report, is related to his respective functions of FIFA Deputy Secretary General, FIFA Director of Finance and Administration and FIFA Acting Secretary General and not only to his simple status as a FIFA employee. It is only due to his aforementioned senior positions that he was involved in matters related to the implementation of bonus payments or the perusal of a sensitive recording of the FIFA Council meeting. In other words, Mr Kattner was not a simple FIFA employee but also an official, with authority and prerogatives over specific areas of the organisation (Finance and Administration), as well as with responsibilities incurring from his function as the deputy, and therefore replacement, of the FIFA Secretary General (which were clearly established in the FOR at art. 8.4).
24. It results that Mr Kattner's status as an official of FIFA (in his capacity as FIFA Deputy Secretary General, FIFA Director of Finance and Administration and later FIFA Acting Secretary General) would be governed by Swiss association law, in the present case the FCE, which applies to football officials.
25. It follows that the fact whether Mr Kattner still has an employment or contractual relationship with FIFA is irrelevant. What is relevant is that he was an official at the time of the conduct currently under scrutiny. This aspect is explicitly mentioned under art. 2 par. 2 of the FCE, according to which the FIFA Ethics Committee is entitled to investigate and judge the conduct of persons who were bound by the applicable Code at the time the relevant conduct occurred, regardless of whether the person remains bound by the Code at the time proceedings commence or any time thereafter.
26. In view of the above, it is demonstrated that the FCE can apply to specific employees of FIFA as long as their function includes a high responsibility for technical and administrative matters in FIFA. More importantly, it is established that the FCE was fully applicable to Mr Kattner at the time the relevant conduct and events occurred, due to his (high ranking) position of Deputy Secretary General (and later Acting Secretary General), which made him a member of a FIFA body bound by the FCE.

27. As a consequence, the FCE applies to the official according to art. 2 of the FCE (*ratione personae*).

### **C. Applicability of the FCE *ratione temporis* (art. 3 of the FCE)**

28. The relevant events took place between 2010 and 2016, at a time prior to the current edition of the FCE coming into force (during which the 2009 and 2012 editions of the Code were in force). With regard to the applicability of the FCE in time, art. 3 of the FCE stipulates that the Code shall apply to conduct whenever it occurred. Accordingly, the material rules of the FCE shall apply, provided that the relevant conduct was sanctionable at the time (with a maximum sanction that was equal or more) and unless the 2009 and 2012 edition of the FCE would be more beneficial to the party (*lex mitior*).

29. In this context, following the relevant case law and jurisprudence, the adjudicatory chamber notes that the spirit and intent of the 2009 and 2012 editions of the FCE (which was applicable between September 2009 and August 2018) is duly reflected in the below articles of the FCE, which contain equivalent provisions:

- Art. 25 of the FCE has a corresponding provision in the 2012 FCE (art. 13 par. 4) and in the 2009 edition (art. 3 par. 3);
- Art. 19 of the FCE has a corresponding provision in the 2012 FCE (art. 19) and in the 2009 edition (art. 5);
- Art. 15 of the FCE has a corresponding provision in the 2012 FCE (art. 15) and in the 2009 edition (art. 9 par. 1).

30. In consideration of all the above, the adjudicatory chamber concludes that the different FCE editions cover the same offence.

#### *Lex mitior*

31. The principle of *lex mitior* foresees that the accused should benefit from the most favourable law, imposing the lesser penalty.

32. In this respect, the adjudicatory chamber takes note that neither the 2009 FCE nor the 2012 FCE foresee any minimum or maximum sanctions for the aforementioned provisions presently relevant. However, the 2019 FCE stipulates a minimum fine of CHF 10,000 as well as a general maximum ban for a duration of two years for the relevant infringements (arts. 15, 19 and 25), and a special ban for a maximum of five years in serious cases or in cases of repetition, for arts. 19 and 25.

33. Another provision that is relevant to the present case, in view of the fact that Mr Kattner has been charged with multiple breaches of the Code, is art. 11 of the FCE (Concurrent breaches), which corresponds to art. 11 in the 2012 FCE and stipulates that “Where more than one breach has been committed, the sanction other than monetary sanctions shall be based on the most serious breach, and increased as appropriate, depending on the specific circumstances”. The 2009 FCE does not contain any provision related to concurrent breaches.

34. After examining the various versions of the provisions mentioned above, the adjudicatory chamber concludes that the 2019 FCE appears to be the most limitative in terms of the sanction that can be imposed for the violation of such provisions (between a fine of CHF 10,000 and a ban of two years for a breach of art. 15; between a fine of CHF 10,000 and a ban of five years for a breach of art. 19 or 25). Therefore, the 2019 FCE would appear to be more beneficial to the official according to the principle of *lex mitior*.
35. Consequently, the material rules of the 2019 FCE are applicable to the case, according to art. 3 of the FCE (*ratione temporis*) and the principle of *lex mitior*. Moreover, based on art. 88 of the 2019 FCE, the current edition of the Code is also applicable with respect to the procedural rules enacted therein (for example jurisdiction).

#### **D. Jurisdiction of the FIFA Ethics Committee**

36. The scope of jurisdiction of the FIFA Ethics Committee is defined in art. 30 of the FCE, which is more restrictive compared to the equivalent provisions in the previous editions of the FCE.
37. The Ethics Committee has the exclusive competence to investigate and judge the conduct of all persons bound by the FCE where such conduct:
  - a) has been committed by an individual who was elected, appointed or assigned by FIFA to exercise a function;
  - b) directly concerns their FIFA-related duties or responsibilities; or
  - c) is related to the use of FIFA funds.
38. In the present case, the conduct of Mr Kattner under scrutiny is related to his functions as Director of FIFA Finance & Administration and FIFA Deputy Secretary General (with respect to the first three charges – bonus payments, further employment contract conditions and private legal costs), as well as FIFA Acting Secretary General (with respect to the fourth charge – confidential recording), during the relevant period (2010 – 2016).
39. The Panel considers that, in the present case, no evidence can point towards Mr Kattner having been elected, appointed or assigned in a formal manner by FIFA to exercise the first two aforementioned functions, in line with the first condition of art. 30 par. 1 of the FCE. As for the position of FIFA Acting Secretary General (ASG), it is not clear how Mr Kattner got to exercise it. While there is no doubt that the prerogatives and responsibilities of the FIFA Acting Secretary General were largely the same as of those of the “normal” Secretary General, no evidence exists as to any formal appointment of Mr Kattner as ASG. It appears that this coincided with the release from his duties as FIFA Secretary General of Mr Valcke, which was announced on 17 September 2015. As FIFA Deputy Secretary General at the time, a function which entailed the representation of the Secretary General “in his absence” according to art. 9.6.1 of the FIFA Organisation Regulations (in force

between 2013 and 2016) Mr Kattner appears to have simply taken over from Mr Valcke (which the title "Acting" may seem to indicate), without being appointed by the FIFA Executive Committee in accordance with the relevant FIFA Statutes. Therefore, the first condition of art. 30 par. 1 of the FCE does not seem to be fulfilled in the present case.

40. Furthermore the Panel considers that Mr Kattner's conduct is not related to the use of "FIFA funds", a term which should be interpreted in the sense of FIFA development funds addressed/allocated to the FIFA member associations or confederations in accordance with the relevant regulations covering the respective FIFA development programmes (FAP, Goal, Forward, etc). Therefore, the third condition of art. 30 par. 1 of the FCE appears not to be fulfilled as well.
41. Consequently, the only condition that could be applicable in the present case is that of art. 30 par. 1 lit. b) of the FCE. However, when it comes to Mr Kattner's FIFA-related duties and responsibilities, the relevant charges against him contained in the Final report have to be analyzed separately, since they relate to different conduct, in different circumstances.
42. The first charge is related to the "bonus payments", bonuses stemming from amendment agreements of Messrs Blatter, Valcke and Kattner which were signed and approved in 2010 and 2011 as well as paid to the aforementioned person in the period 2010 – 2014, while Mr Kattner was occupying the functions of Director of FIFA Finance & Administration and FIFA Deputy Secretary General. In this respect, the wording "FIFA-related duties or responsibilities" has to be interpreted as corresponding to the job description of the official's position.
43. Mr Kattner's conduct in relation to the first charge, as presented in the Final report (cf. p. 11 ff), is the following:
  - Mr Kattner was part of the closest circle of the FIFA top management over a long period of time, which included only the FIFA President, Secretary General and Deputy Secretary General (the first three positions in the FIFA administration), who were awarded bonuses in extremely high amounts (CHF 23M in 2010 and CHF 26M in 2011);
  - In his positions as Director of FIFA Finance & Administration (as well as FIFA Deputy Secretary General), Mr Kattner was in charge of the two vital aspects of the relevant bonuses: the employment relationship (operated/regulated by the HR department, part of FIFA Administration) and the financial implementation (operated by FIFA Finance);
  - Mr Kattner prepared and provided the drafts of the amendment agreements (in 2010 and 2011) for Messrs Blatter and Valcke, as well as for himself, which stipulated the relevant bonuses;
  - In his function as Director of FIFA Finance & Administration (as well as FIFA Deputy Secretary General), Mr Kattner had also the duty and responsibility of reflecting and recording all payments, commitments or liabilities of FIFA,

including the considerable bonuses awarded to Messrs Blatter, Valcke and Kattner, in the relevant financial statements of the organisation;

- Mr Kattner was also involved in the actual payment of the bonuses, carried out by FIFA Finance. In particular, Mr Kattner was directly involved, at different times (2011 and 2013) in the acceleration or early payment of various bonuses to Mr Valcke.
44. In the opinion of the Panel, the conduct of Mr Kattner as described in the scope of the first charge (the bonus payments) directly concerns his "FIFA-related duties and responsibilities". Consequently, it appears that the condition of art. 30 par. 1 lit. b) of the FCE is met in this respect.
  45. The second charge relates to amendments made to Mr Kattner's employment contract in 2011 and 2015. In this respect, the Panel considers that Mr Kattner's conduct is not directly related to his specific FIFA duties and responsibilities, since the employment contract of any FIFA official or employee can be amended or extended, not only that of the Director of FIFA Finance & Administration and FIFA Deputy Secretary General. Moreover, Mr Kattner's conduct did not include the implementation of any financial aspects related to the amendment of the employment contracts, no specific payments or bonuses. Moreover, the Panel considers that the facts regarding to the second charge concern primarily aspects of civil or employment law, which do not seem to fall under the competence of the Ethics Committee. Therefore, the condition of art. 30 par. 1 lit. b) of the FCE would not appear to be met with respect to the second charge.
  46. The third charge concerns legal costs, charged by a private law firm to Mr Kattner and Mr Valcke for a labour law advice (related to their respective employment contracts with FIFA), which were reimbursed by FIFA to Mr Kattner (and to Mr Valcke) at his request. The Panel considers that, in this case as well, the conduct of Mr Kattner is not directly related to his FIFA duties and responsibilities as his conduct – seeking legal advice on the amendment of his employment contract – does not fall under his specific job description. Furthermore, the facts pertaining to this charge also relate to purely employment/contractual matters that would not enter into the area of expertise and jurisdiction of the Ethics Committee, leading to the conclusion that the condition of art. 30 par. 1 lit. b) of the FCE would not be met in this respect.
  47. Finally, the fourth charge concerns Mr Kattner's conduct as FIFA Acting Secretary General in 2016, in relation to an audio recording of a meeting of the FIFA Council. Mr Kattner is accused of having abused his authority, as Acting Secretary General and thus CEO of the FIFA administration, by putting pressure on a FIFA employee so that he could be provided with the relevant audio recording, despite the previous express order of the FIFA President that the respective FIFA Council meeting be conducted without the presence of the FIFA administration (which would render the meeting's audio recording strictly confidential). In this respect, it is clear that Mr Kattner's conduct directly concerns his FIFA-related duties or responsibilities as Acting Secretary General, a position which provided him authority over the entire FIFA administration, including the relevant employee ([A]) that he directly contacted.

Moreover, Mr Kattner himself states in his position that, in his function as FIFA Acting Secretary General, he had the duty to draft the minutes of the FIFA Council meetings, reason for which he needed the respective recording. Therefore, the condition of art. 30 par. 1 lit. b) of the FCE appears to be met in relation to the fourth charge against Mr Kattner, which would entail that the Ethics Committee has competence to investigate and judge Mr Kattner's relevant conduct.

48. In conclusion, from the analysis of art. 30 of the FCE, it would appear that the adjudicatory chamber of the Ethics Committee has the exclusive competence to judge the conduct of Mr Kattner related to the first (bonus payments) and fourth (recording of FIFA Council meeting) charge presented in the Final report.

## **E. Procedural issues**

49. In his various position to the adjudicatory chamber, Mr Kattner presented a list of procedural issues or requests. Notwithstanding the fact that most of such procedural issues have already been analysed and dealt with previously, either by the adjudicatory chamber (cf. par. I.36 *et seqq.* above) or by the FIFA Appeal Committee (cf. par. I.40 above), the adjudicatory chamber would like to hereby address the matters once more, in detail.

### **a) Objection to the chairpersons and members of the Ethics Committee, as well as to the committee as a whole**

50. By letter dated 11 November 2019, Mr Kattner objected, among others, against the chairperson of the adjudicatory chamber in accordance with art. 35 par. 4 of the FCE. He listed the following arguments as "evidence of Vassilios Skouris' lack of independence" in support of his objection:
- As part of the Football Leaks revelations of 3 November 2018, it emerged that the chairman of the adjudicatory chamber allowed the new draft of the FCE to be approved by FIFA President (Mr Infantino);
  - Exacerbating matters, instead of sending the draft for information purposes only (which alone would have violated the rules governing independence), the chairman even asked for the President's comments, and some of the latter's suggestions for watering it down were incorporated in the FCE.
51. Furthermore, Mr Kattner objected that "the individual members of the FIFA Ethics Committee and the FIFA Ethics Committee as a whole are not impartial or independent". In this respect, Mr Kattner lists the following arguments:
- Mr Kattner was exposed to a "smear campaign" by FIFA, in response to his proceedings against FIFA before the employment tribunal in Zurich for unfair and unjustified dismissal without notice. Both the ethics and criminal proceedings instigated against him are part or related to that campaign to protect FIFA's reputation. In particular, after the stopping of the criminal proceedings (in April

2019) the ethics proceedings against him represent “FIFA’s last chance to somehow make Dr Markus Kattner look bad in the public eye”;

- The result of the FIFA leadership’s great interest in the outcome of these ethics proceedings is that the members of the Ethics Committee are not acting independently or impartially and are also incapable of doing so. This is evidenced by:
  - The fact that the Ethics Committee has demonstrated many times that it is neither willing nor capable of taking decisions that contradict the interests of the current FIFA leadership (for example, non-opening of ethics proceedings against Mr Infantino (FIFA President) in 2016 or against Ms Fatma Samoura (the current FIFA Secretary General);
  - The close personal and technical ties that the Secretariat of the Ethics Committee has with FIFA, as well as the influence of the Secretariat on the proceedings;
  - The “replacement” of the original members of the Ethics Committee with the “favourites” of the current FIFA leadership in 2017;
  - The fact that, although proceedings were initiated by the Ethics Committee in 2016 against Messrs Blatter, Valcke and Kattner, only those against Mr Kattner have been driven forward or prioritized, as only Mr Kattner is pursuing employment tribunal proceedings against FIFA;
  - The current FIFA leadership have tried to exploit their contacts at the highest level to influence the OAG to take criminal proceedings against Mr Kattner, which resulted in the court pronouncement that various state prosecutors had to withdraw from the proceedings;
  - Liberia official Musa Bility, who opposed FIFA President Infantino, was threatened with ethics sanctions (by FIFA) and then sanctioned by the Ethics Committee, which represents further proof that FIFA was using the Ethics Committee for its own political ends;
  - A former member of the Ethics Committee, Mr Sundra Rajoo (elected in 2017 with the support of the current FIFA leadership) was arrested for corruption in 2018 and stepped down from the committee, which shows that there is justified doubt as to the integrity of the Ethics Committee.

52. In this respect, the Panel would like to first state that, in full accordance with art. 35 par. 5 of the 2019 FCE, the objection against the chairman of the adjudicatory chamber was transmitted to and dealt by the chairperson of the FIFA Appeal Committee. The respective chairperson was also provided with the position of the chairman of the adjudicatory chamber in this respect.

53. The Panel would like to add that the content of art. 35 par. 5 of the FCE was amended, as part of the 2019 revision of the Code, in order to provide even more

transparency and independence to the ethics proceedings. Following the principle of “checks and balances” and separation of powers, any objections against the chairperson of the adjudicatory chamber are decided by the chairperson or deputy chairperson of the FIFA Appeal Committee, a distinct independent judicial body of FIFA.

54. After carefully examining the relevant documents, the chairperson of the FIFA Appeal Committee decided on 6 December 2019 to dismiss the respective objection submitted by Mr Kattner against the Chairperson (as well as the other members of the Ethics Committee, and the committee as a whole), citing the following arguments:

- Contrary to art. 35 par. 4 of the FCE, Mr Kattner failed to substantiate his allegations by any documentary evidence demonstrating the lack of independence of the objected members;
- The chairman of the FIFA Appeal Committee considered that there are no grounds for questioning the impartiality and/or the independence of the members of both the investigatory and adjudicatory chambers;
- In particular, Mr Kattner failed to demonstrate that the conditions for a recusal as set for under art. 35 par. 2 of the FCE are met. More fundamentally, on the basis of the documents at disposal of the chairman, there is no basis for concluding that any of the individuals cited has:
  - i. Either a direct interest in the outcome of the matter;
  - ii. a personal bias or prejudice concerning Mr Kattner; or personal, first-hand knowledge of disputed evidentiary facts material to the proceedings; or has expressed an opinion, other than as part of the proceedings in question, concerning the outcome of the proceedings; or when the immediate family of the member is a party to the subject matter in controversy, is a party to the proceedings or has any other interest that could be substantially affected by the outcome of the proceedings and his impartiality;
  - iii. the same nationality as Mr Kattner;
  - iv. or has already dealt with the case in a different function other than his function as a member of the Ethics Committee.
- As a result of the above considerations, the chairman of the FIFA Appeal Committee concluded that “the request for recusal of the members of the investigatory chamber as well as of the adjudicatory chamber (Ethics Committee as a whole) has to be dismissed”.

55. In addition to the content of the decision taken by the chairperson of the FIFA Appeal Committee on 6 December 2019, the Panel would like to make the following additional considerations with respect to Mr Kattner’s objection dated 11 November 2019.

56. First of all, the Panel would like to stress that the independence of any member of the FIFA Ethics Committee is provided by art. 34 of the FCE, which establishes clear rules and requirements for such membership (in particular the interdiction for members of the Ethics Committee and their immediate family members to belong to any other judicial body within FIFA, to the FIFA Council or to any standing committee of FIFA, as well as the interdiction – for Ethics Committee members – to belong to any body or carry out any position with regard to FIFA, a confederation or a member association, other than being member of a judicial body at FIFA, confederation or national level). These requirements have evolved over time, becoming more restrictive over the latest revisions of the FCE in 2018 and 2019, during the tenure of the current chairperson of the Ethics Committee.
57. Furthermore, the institutional independence of the judicial bodies of FIFA is explicitly stated/stipulated at art. 50 of the FIFA Statutes - the most important regulations of the organization which also contains specific and strict rules regulating the FIFA judicial bodies, in particular their composition, election and organization (art. 52 and 54). In addition, the FIFA Governance Regulations (in force since 2016) set further conditions concerning eligibility checks conducted by the FIFA Governance/Review Committee on all members of the independent committees of FIFA (including the Ethics Committee) prior to their (re)election or (re)appointment (art. 4), as well as independence requirements (art. 5) and other rules concerning judicial bodies (art. 38) such as eligibility and independence reviews.
58. The Panel would also like to recall that Mr Kattner's objection directed against "the individual **members** of the FIFA Ethics Committee and **the FIFA Ethics Committee as a whole**" does not satisfy the procedural requirements of art. 35 of the FCE, which clearly establishes that objections can only be submitted "against **a member** of the Ethics Committee believed to be biased" (emphasis added).
59. Furthermore, Mr Kattner's general recusal of the entire (or all the members of the) Ethics Committee contravenes a general principle of law – the rule of necessity according to which a recusal cannot result in a lack of competence for any court or tribunal. In other words, should Mr Kattner's objection against the Ethics Committee be granted, then it would be impossible for the above-mentioned ethics proceedings to be conducted or continued, which cannot be acceptable (and would constitute an abuse of law).
60. Finally, the Panel would like to state that Mr Kattner's objection does not contain any allegations that are related to ethics proceedings, in particular the present ones. In particular, the allegations concerning the chairman of the adjudicatory chamber are not substantiated with any evidence that would demonstrate any bias towards Mr Kattner.
61. The adjudicatory chamber would also like to recall that, since the opening of the adjudicatory proceedings on 6 November 2019, the Chairperson has consistently shown transparency and swiftness in answering all of Mr Kattner's queries and procedural requests. Furthermore, the Chairperson has duly informed Mr Kattner of his procedural rights, particularly his right to submit his position, extending several

time his timeline to provide such, as well as to request a hearing. Such approach and procedure has been made in line with the FCE, the constant practice and the jurisprudence of the adjudicatory chamber.

62. Furthermore, the members of the Panel would like to state that they had not dealt with or known Mr Kattner before being involved in the present proceedings, and had no previous knowledge of Mr Kattner's case, both with respect to the ethics investigations and any other (Swiss) civil or criminal proceedings initiated against him. The members of the Panel would also like to assure that none of the conditions of art. 35 par. 2 of the FCE are applicable for any of them, and stress that no argument or proof to the contrary has been brought by Mr Kattner.
63. In fact, it should be pointed out that Mr Kattner has never specifically objected against the other members of the Panel – Messrs Fiti Sunia and Mohammad Al Kamali – after being informed of the composition of such on 30 January 2020, nor has he brought any arguments concerning bias of the Panel members (or any evidence in this respect).
64. In conclusion, the members of the adjudicatory chamber part of the present Panel have reviewed the objection submitted by Mr Kattner, as well as the decision taken by the chairperson of the FIFA Appeal Committee in this respect, and considered that the objection submitted by Mr Kattner must be dismissed.

**b) Exculpatory evidence not sought or ignored by the investigatory chamber**

65. In his position (cf. par. 11 ff), Mr Kattner claims that the investigatory chamber has never been and is not interested in establishing the true facts. He adds that the "Bonus Report", on which the investigation and Final report are based, presents the facts in a very one-sided manner and that the investigatory chamber should not have relied on it alone, but also on "numerous" other documents and facts which exonerate Mr Kattner and have been ignored by [Law Firm 1] and [Law Firm 2]. Mr Kattner further alleges that the one-sided nature of the "Bonus Report" (and of other reports elaborated by [Law Firm 1] and [Law Firm 2]) has been proven by the history of the criminal proceedings against him (in the scope of which FIFA produced such reports), which were discontinued in April 2019.
66. In this respect, the Panel would like to make the following considerations.
67. The investigatory chamber conducts its investigation on the basis of the relevant provisions of the FCE, in particular arts. 58 – 67 of the Code. This would include the initial evaluation of any complaints submitted, the collection of information and documents, as well as witness statements, actions which are undertaken either during the preliminary investigations (art. 59 of the FCE) or investigation proceedings (art. 60 – 65 of the FCE). Furthermore, it should be stressed that the content of art. 64 par. 3 of the FCE allows, in complex cases, for the engagement of third parties with investigative duties, for enquiries that must be clearly defined.
68. In the present case, as previously mentioned (cf. par. 1.2 above), [Law Firm 1] and [Law Firm 2] were mandated by FIFA, following the initiation of criminal proceedings

by the U.S. Department of Justice (“DOJ”) and the OAG, to conduct internal investigations into various specific issues involving officials of the organisation. One such specific investigation concerned several bonus payments in connection to the FIFA World Cups (in particular the 2010 FIFA World Cup South Africa™), which resulted in the elaboration of the “Bonus Report” in 2017.

69. As specifically mentioned at chapter I.B of the “Bonus Report” (Enclosure 3 to the Final report, p. 4), in the scope of the investigation conducted by [Law Firm 1] and [Law Firm 2], more than twelve million documents were collected from a wide variety of sources (from FIFA, FIFA offices and employees, national associations and confederations as well as third parties), of which two million were designated as potentially relevant and reviewed. Some document requests to third parties were declined and/or remained outstanding. Moreover, the investigation was not granted access to all documents in possession of the DOJ, and only to select documents in possession of the OAG. Finally, a number of eleven football officials were either interviewed (including Mr Kattner and Mr Blatter) or submitted written responses to questions.
70. It is therefore clear that [Law Firm 1] and [Law Firm 2] requested and did their best to collect as much relevant information and documentation possible from FIFA and other various sources. Furthermore, it is not clear how the accuracy or objectivity of the “Bonus Report” would be put into question by the fact that it was submitted in the scope of the criminal proceedings before the OAG. Mr Kattner has not brought forward any specific evidence that would contest the credibility or evidentiary value of the report, either from the OAG or from the respective proceedings. The mere fact that those proceedings were not continued, as alleged by Mr Kattner (but not proven), does not prove any default or inaccuracy of the “Bonus Report”, which was not a document elaborated by the criminal prosecutors and would not necessarily reflect or constitute criminal charges in the scope of the respective proceedings.
71. Furthermore, it should be stressed once again that, following repeated requests from Mr Kattner in this respect, the investigatory chamber exceptionally decided to appoint in October 2016 (at the early stages of the investigation) [...] and [...], attorneys at law at [Law Firm 3], to act as an External Secretariat in the scope of the relevant investigation proceedings against Mr Kattner. This unique measure was taken in accordance with art. 66 par. 3 of the FCE and in response to Mr Kattner’s submission that, due to his position as a former FIFA employee, and in order to ensure confidentiality as well as the integrity and independence of the proceedings, “the internal FIFA Secretariat” should not be involved in the investigation and that external resources should be utilized to assist the investigatory chamber.
72. Moreover, as previously mentioned (cf. par. I.10 above), the investigatory chamber, chief of investigation and External Secretariat gathered various additional evidence (apart the “Bonus Report”) in the scope of its investigation, including: transcripts of telephone interviews conducted with Mr Issa Hayatou (former FIFA vice-president and member of the CSC) on 15 November 2016 and 8-9 February 2017, as well as with [A] on 16 November 2016; documents related to meetings of the CSC in 2015;

employment contracts between FIFA and Mr Kattner (including amendments); written submission of Mr Kattner concerning the allegation that he had improperly demanded compensation for private legal costs from FIFA. It should also be mentioned that former members of the FIFA CSC – Messrs Scala and Jean-Pierre Pedrazzini – were also invited to be interviewed but refused.

73. According to art. 43 of the FCE, any type of proof may be produced, in particular, documents, reports from officials, declarations from the parties, declarations from witnesses, audio and video recordings, expert opinions and all other proof that is relevant to the case. Art. 46 of the FCE refers to inadmissible evidence as such, obtained by means or ways involving violations of human dignity or that obviously does not serve to establish the relevant facts shall be rejected.
74. With regard to the evaluation of the evidence, the adjudicatory chamber recalls that, according to art. 47 of the FCE, the Ethics Committee shall have absolute discretion regarding proof. In this regard, two main conclusions can be drawn from the application of the above mentioned provisions.
75. First, it depends on this Panel to clarify the facts on any pertinent document. It follows that the adjudicatory chamber has the discretion to decide which documents are pertinent for a specific case.
76. Second, the adjudicatory chamber is not bound by the legal assessment of the facts submitted by the investigatory chamber. In particular, the adjudicatory chamber may extend or limit the rule violations pointed out by the investigatory chamber. Again, the discretion of the Panel is large and it can decide whether the evidence provided to it is significant or insignificant depending on the particular circumstances of the case and the quality of the document itself.
77. Bearing the above in mind, and after having thoroughly examined both the “Bonus Report” and the Final report and their respective enclosures on which the reports are based, the Panel did not find any particular issues that would question (let alone contest) the accuracy or objectivity of the documents.
78. Finally, the Panel has also carefully analysed the extensive position submitted by Mr Kattner, as well as the relevant enclosures, and has taken all such documents into consideration when deciding in the present matter. In this respect, the Panel would like to mention once more its perplexity towards the fact that Mr Kattner would be in possession of a variety of FIFA internal and confidential files (such as presentations, emails, employment agreements of former FIFA employees, meeting minutes of various FIFA committees and other) despite specific regulations in force at the time his employment agreement with FIFA was terminated (in particular art. 3.2j) of the FIFA Internal Organisational Directives) requiring him to return every possession belonging to FIFA - including electronic equipment, office equipment, business documents (files, data carriers etc.) - immediately upon such termination.
79. In view of all of the above, Mr Kattner’s claim that the investigation conducted by the Ethics Committee, including the documents collected, analysed and elaborated as part of such (Final Report and its enclosures) was not objective is hereby rejected.

Furthermore, the Panel has taken into consideration not only the case file received from the investigatory chamber but also the position of Mr Kattner (including its relevant exhibits) in response to the Final report, which allowed it to gain a balanced, impartial and accurate overview of the facts pertaining to the present matter.

**c) Inappropriate deadlines**

80. Mr Kattner claims that, while the investigatory chamber took more than three and a half years to conduct its investigation and produce the Final report, he was given unreasonable deadlines, with short extensions, to request a hearing and provide his position. This made it impossible to defend himself appropriately, violated the principle of equality of arms, and did not ensure a fair procedure in this respect (cf. par. 21 *et seqq.* of Mr Kattner's position).
81. The Panel would like to make the following considerations in relation to this allegation.
82. First, it should be pointed out once more that the investigatory chamber appointed an External Secretariat, as early as October 2016, for the respective investigation, at the repeated requests of Mr Kattner. The External Secretariat conducted the relevant proceedings, including the request for and collection of evidence as well as the interviewing of witnesses, under the leadership of the chief of investigation but completely independent from the Ethics Committee. Furthermore, various members of the investigatory chamber were in charge of the proceedings over time, Mr Bruno De Vita being appointed chief of investigation only in July 2018 (cf. par. 1.8 above), which must have had an impact on the conduct and duration of the respective ethics investigation. In addition, while Mr Kattner's claims that the "Bonus Report" was available to the FIFA Ethics Committee since January 2017, it is not clear what was the exact scope of the prohibition on disclosure of such report imposed by the OAG on 13 January 2017, in particular whether such prohibition would allow for the report to be shared with, analysed and used by the External Secretariat in the conduct of the ethics proceedings.
83. Notwithstanding the above, and while it is uncontested that the proceedings conducted by the investigatory chamber lasted for approximately three years and three months (between 28 July 2016 and 1 November 2019), the Panel does not consider that Mr Kattner should have been granted a similar period to exert his right to be heard, or that providing him with a shorter deadline would represent a breach of the principle of equality of arms.
84. In this respect, the Panel would like to clarify that the proceedings before the FIFA Ethics Committee are regulated by private (association) law, in particular the FCE. Although the Code does not set specific deadlines that should be granted to the accused in the scope of the adjudicatory proceedings to request a hearing and provide his position (cf. art. 68 *et seqq.* of the FCE), there is no indication that such time limits should be in any way related or dependent on the duration of the investigatory proceedings. In fact, calculating such deadlines on the basis of the duration of investigations would not only be disproportionate but also seriously

impact on the duration of adjudicatory proceedings (and therefore overall ethics proceedings), which has been significantly reduced in recent years (to approximately three months, on average), following various complaints from former sanctioned officials.

85. In the present case, the adjudicatory proceedings were initiated on 6 November 2019 and Mr Kattner submitted his position on 20 January 2020, therefore was granted a total time limit of two months and a half (almost 11 weeks or 82 days), which was extended four times. Mr Kattner was also granted a deadline of more than one month (until 11 December 2019) to request a hearing, but did not submit any such request.
86. The Panel would like to stress that the aforementioned time limits granted to Mr Kattner were not only duly appropriate in the present case but also perfectly in line with the recent jurisprudence and customary practice of the adjudicatory chamber (and in fact largely exceeding the duration of normal deadlines granted in recent adjudicatory proceedings, which average to approximately one week for a hearing request and three weeks for the submission of a position).
87. The above is clearly proven by the extent and complexity of Mr Kattner's position - 87 pages, as well as the large number of enclosed documents (99), which show that he was allocated sufficient time to duly respond to the Final report (which had 32 pages and enclosed 32 exhibits) and, therefore, that his defense rights in this regard were duly respected.

#### **d) Concealment of documentation by the investigatory chamber**

88. Mr Kattner claims that the investigatory chamber has failed to mention and enclose various allegedly exculpatory evidence in/to the Final report (cf. par. 34 *et seqq.* of Mr Kattner's position). Even after Mr Kattner submitted a request to the adjudicatory chamber asking to inspect "all investigative files and documents related to investigative matters (e.g. interviews, written information obtained, etc.) that was not explicitly mentioned in the Final Report" and was provided with additional documents (on 3 December 2019), at least one document (a letter from the former Head of the FIFA Secretary General Office to the Ethics Committee dated 8 June 2016) was allegedly "overlooked".
89. The Ethics Committee is the competent body to interpret the FIFA Code of Ethics (art. 4 par. 2 of the 2018 FCE). Adjudicatory proceedings commence only if warranted by a review of a "final report" and "investigation files" forwarded from the investigatory chamber. The "investigation files", therefore, comprise the "relevant evidence" gathered and presented by the investigatory chamber. In accordance with art. 68 par. 3 of the FCE, the Chairperson provided the aforementioned files to Mr Kattner along with the Final report on 6 November 2019, when the present adjudicatory proceedings were opened, which entails that the adjudicatory chamber has duly fulfilled its respective duties stipulated in the FCE.

90. On 19 November 2019, Mr Kattner requested to be provided with the complete file of the investigatory chamber relating to the proceedings conducted against him (i.e. the preliminary investigation and the investigation itself), including:
- The audio recordings of the interviews conducted by the investigatory chamber with Messrs Hayatou and [A], as well as all email correspondence exchanged with Mr Hayatou (before and during the respective interview);
  - All correspondence, including documents, on contact made in connection with the preparation and organisation of the interviews with Messrs Hayatou and [A] and in connection with the requests and refusals of the interviews originally intended to be conducted with Messrs Scala and Pedrazzini;
  - The entire correspondence (including meetings and phone calls) between FIFA (particularly the Legal Affairs Division, the President and Secretary General) and/or their lawyers from [Law Firm 2] and/or [Law Firm 1] and the investigatory chamber ;
  - All documents relating to the information according to which the investigation reports by [Law Firm 2] and [Law Firm 1] were apparently not provided to the Ethics Committee until May 2019;
  - A list and copies of all of FIFA's rules and regulations and/or decisions of FIFA's bodies and committees analysed by the Ethics Committee;
  - All investigation files and documents relating to investigations (interviews, obtaining information in writing, etc.) that were not mentioned explicitly in the Final Report;
  - Other documents and materials.
91. On 3 December 2019, the chief of investigation provided Mr Kattner with additional documents, including audio files of the interviews with Messrs [A] and Hayatou, as well as documents referenced in their interviews, and correspondence between Messrs [A], Hayatou, Pedrazzini and Scala and the External Secretariat. The chief of investigation also informed (Mr Kattner) that he had had "no communication with the President, Legal Affairs division, Secretary-General or the FIFA executive generally in relation to the subject matter of this investigation and there are accordingly no documents in my possession in this regard".
92. Moreover, as mentioned previously, Mr Kattner was invited to submit his position, which would include all evidence upon which he intended to rely, which he did on 20 January 2020. In particular, Mr Kattner enclosed a number of 99 documents to his position, mostly from FIFA and (former) FIFA officials. Finally, Mr Kattner did not mention any specific and relevant documents that were in possession of the investigatory chamber and which could not be submitted or added to the case file, nor did he make any motivated request for the admission of precise evidence.
93. In view of the above, the adjudicatory chamber would like to point out that all potentially case-relevant documents that it has taken into consideration and relied upon in reaching its decision in the present matter (which includes the Final report and investigatory files, as well as the submission and supporting documents received from Mr Kattner) have been duly shared with the party in order to ensure that his defense rights are safeguarded.

**e) State proceedings involving FIFA and Mr Kattner**

94. In his position, Mr Kattner mentions that on one side he is “conducting employment law proceedings against FIFA for his unjustified and unfair dismissal without notice” (cf. par. 23 of Mr Kattner’s position), and that on the other FIFA “has triggered criminal proceedings” against him (cf. par. 13 of Mr Kattner’s position). He is also claiming that the objective of the present ethics proceedings is “to provide FIFA with a better starting point within the employment law proceedings”, by portraying Mr Kattner’s actions as misconduct. With respect to the criminal proceedings, Mr Kattner alleges that they have been discontinued since April 2019, and that the person in charge of the proceedings and top OAG officials were required to recuse themselves on account of their proximity to FIFA by decision taken in June 2019 (cf. par. 16 of Mr Kattner’s position).
95. In his new submission dated 28 February 2020, Mr Kattner claimed that there are no longer any criminal proceedings against him, nor have any ever existed, and that the criminal case of the OAG involving him was reset to the status existing before the separation and extension ordered on 13 February 2018. In support to his claim, he enclosed an order of the OAG dated 21 February 2020, which, in his opinion, was further proof that he cannot be accused of anything concerning either the “Bonus”, “employment contracts,” and “[Law Firm 4]” matters, and that the “accusations” in the investigatory chamber’s Final report are thus unfounded.
96. First, it should be stressed that the proceedings before the FIFA Ethics Committee should be regarded as having an internal, administrative nature, regulated by private (association) law (TAS 2011/A/2433 Amadou Diakite c. FIFA, award of 8 March 2012, paras. 55-56). Moreover, the FIFA judicial bodies are completely independent from any third parties (cf. art. 34 par. 1 of the FCE) and, as such, are not obliged to follow the outcome of state proceedings (criminal or otherwise) being conducted in a specific country, which are distinct and different from FIFA proceedings.
97. One such major distinction concerns the standard of proof, which is governed by the principle “beyond any reasonable doubt” under ordinary criminal law, and by the inferior standard of “comfortable satisfaction” in FIFA proceedings (cf. art. 48 of the FCE), as well as CAS jurisprudence (CAS 2016/A/4501 Joseph S. Blatter v. FIFA, paras. 117-122; TAS 2016/A/4474 Platini c. FIFA, paras. 217-220; CAS 2017/A/5086 Mong Joon Chung v. FIFA, paras. 134-137).
98. Additionally, the adjudicatory chamber conducted, pursuant to the FIFA Code of Ethics, its own assessment of the current matter, based on the file at its disposal. This includes its own assessment of possible breaches to FIFA regulations, *in casu* the FCE. This assessment is made completely separately of any assessment that would be conducted, from criminal authorities, and can thus naturally lead to different results. Therefore, the outcome of any such state proceedings (criminal or otherwise) involving a FIFA official, cannot bind the adjudicatory chamber in its decisions, or prevent it from conduct its own proceedings and reaching its own conclusions.

99. Notwithstanding the above, the Panel would like to make the following considerations about the submission dated 28 February 2020 from Mr Kattner, and the document dated 21 February 2020 from the OAG.

100. First of all, Mr Kattner fails to provide any exculpatory evidence, or any specific evidence in support of his position. The only document he encloses is the OAG order of 21 February 2020, which contains the following decisions:

- to grant the requests of Mr Valcke (dated 21 June 2019) and of Mr Kattner (dated 24 June 2019) for “annulment of official acts taken in case SV.18.0165”;
- to annul all official acts taken in case SV.18.0165 and remove all copies of case documents procured from cases SV.15.0088 and SV.15.1013 from the respective case file;
- to not admit Mr Valcke’s request concerning cases SV.15.0088 and SV.15.1013
- to keep the files to be annulled or removed from case file SV.18.0165 “under separate lock and key” until the legally binding conclusion of the investigation concerning the set of facts covered in the Bonus Report and in the “Amended investigative report regarding the «Diaspora payment» in connection with the 2010 FIFA World Cup South Africa™” (“Diaspora Report”).
- Messrs Valcke and Kattner were granted a deadline until 6 March 2020 to quantify and substantiate any claims for damages and/or satisfaction.

101. The OAG order also mentions other relevant facts:

- That the initial criminal investigation referenced case file SV.15.0088 was opened against persons unknown in relation to transfers totaling USD 10 million from FIFA to the Confederation of North, Central America and Caribbean Association Football (Concacaf) and to the Caribbean Football Union (CFU) in 2008 (“Diaspora payment”);
- That the Diaspora Report was lodged by FIFA on 30 March 2017, which contained the Bonus Report (as Enclosure 12);
- That on 13 February 2018 it was ordered that the enquiries concerning the Diaspora payment from case SV.15.0088 against persons unknown be separated and then continued under the new case number SV.18.0165, and that the new criminal investigation being conducted under case number SV.18.0165 be extended to Messrs Valcke and Kattner;
- That the requests of Messrs Valcke and Kattner for the annulment or proceedings SV.15.0088 and SV.18.0165 were based on the decision taken on 17 June 2019 by the Appellate Division of the Federal Criminal Court

ordering the prosecutors in the case SV.18.0165 to recuse themselves for various periods as from 2016.

102. After having thoroughly analysed the OAG order of 21 February 2020, the Panel would like to state that, even if such document would be relevant or have an influence over the present ethics proceedings (*quod non*), the following conclusions should be made on the basis of its content:

- The OAG order does not establish that all the various criminal proceedings related to the Diaspora Report and Bonus Report (case files SV.15.0088 and SV.18.0165) are closed or terminated;
- The fact that all official acts taken in a criminal case (SV.18.0165) are annulled for those proceedings, does not necessarily render a document submitted in that case by one of the parties (*in casu* FIFA) null and void for the purpose of other (private) proceedings, such as the present ethics matter;
- The OAG order does not make any reference to the Bonus Report's content, in particular with respect to its truthfulness, accuracy or reliability.

103. In conclusion, the Panel considers that acts or decisions taken in the scope of the (pending) Swiss state proceedings involving Mr Kattner do not have an absolute value in respect to the present ethics proceedings, in particular to determine the guilt of Mr Kattner or the evidentiary value of the Bonus Report (or of any other documents compiled by the investigatory chamber). Moreover, even if documents from state proceedings would have an influence on FIFA ethics proceedings (which is not the case), the OAG order of 21 February 2020 does not establish (contrary to Mr Kattner's allegations) that the content of the Bonus Report is incorrect or that the accusations contained within are unfounded.

## **f) Conclusion**

104. In view of the above, all procedural objections and requests submitted by Mr Kattner have been dealt with and rejected, and the Panel considers that the present proceedings have been carried out in full compliance with the FCE, the practice and past jurisprudence of the Ethics Committee.

## **F. Assessment of potential violations of the FCE committed by Mr Kattner**

### **a) Introductory remark**

105. As mentioned previously, the jurisdiction of the Ethics Committee has only been established with respect to the first and fourth charges contained in the Final report (concerning the bonus payments and the recording of the FIFA Council meeting). Therefore, the legal assessment of any potential FCE violations will be restricted to the respective facts and charges. This does not mean that Mr Kattner's conduct with

respect to the other charges contained in the Final report is deemed as compliant to the FCE, but only that the present Panel lacks the competence to make such analysis.

**b) Possible violation of art. 19 of the FCE (Conflicts of interest)**

106. Art. 19 of the FCE describes the conflicts of interest as follows:

“1. Persons bound by this Code shall not perform their duties (in particular, preparing or participating in the taking of a decision) in situations in which an existing or potential conflict of interest might affect such performance. A conflict of interest arises if a person bound by this Code has, or appears to have, secondary interests that could influence his ability to perform his duties with integrity in an independent and purposeful manner. Secondary interests include, but are not limited to, gaining any possible advantage for the persons bound by this Code themselves or related parties as defined in this Code.

2. Before being elected, appointed or employed, persons bound by this Code shall disclose any relations and interests that could lead to situations of conflicts of interest in the context of their prospective activities.

3. Persons bound by this Code shall not perform their duties (in particular preparing, or participating in, the taking of a decision) in situations in which there is a danger that a conflict of interest might affect such performance. Any such conflict shall be immediately disclosed and notified to the organization for which the person bound by this Code performs his duties.”

107. The Panel will proceed now to analyse the constitutive elements of the conflicts of interest, as defined at art. 19 of the FCE, that would be applicable in relation to the conduct of Mr Kattner identified in the first charge (bonus payments).

*a. Persons involved*

108. The first element set out by art. 19 of the FCE is that the person accused of such infringement has to be bound by the FCE. As already established (cf. par. II.3 *et seqq.* above), at the time relevant for his conduct in relation to the bonus payments (2010 – 2011) Mr Kattner was the FIFA Deputy Secretary General and the Director of FIFA Finance and Administration, and thus an official bound by the FCE in line with art. 2 of the FCE. Therefore, the first element is met in the present case.

*b. Performance of duties*

109. The second constitutive element of art. 19 par. 1 of the FCE concerns the duties the official would perform, and which could be affected by a conflict of interest. Although the provision does not contain an exhaustive list of such duties, it does specifically mention the preparation of or participation in the taking of a decision.

110. In the present case, in his positions as FIFA Deputy Secretary General and the Director of FIFA Finance and Administration, Mr Kattner would perform a number of duties, in particular related to finance or administration aspects.

111. With respect to the bonus payments, Mr Kattner performed the following duties, as mentioned in the Final report (p. 19 *et seqq.*):
- prepared and provided the drafts of the amendment agreements (in 2010 and 2011) for Messrs Blatter and Valcke, as well as for himself, which stipulated the relevant bonuses;
  - was in charge of reflecting and recording all payments, commitments or liabilities of FIFA, including the considerable bonuses awarded to Messrs Blatter, Valcke and himself, in the relevant financial statements of the organisation;
  - was also involved in the actual payment of the bonuses, carried out by FIFA Finance. In particular, Mr Kattner was directly involved, at different times (2011 and 2013) in the acceleration or early payment of various bonuses to Mr Valcke
112. One major argument of Mr Kattner in his position (par. 41 *et seqq.*) is the fact that he had no influence on the amount of the bonuses and the terms of the respective employment contracts as he did not sign such agreements on behalf of FIFA and was not involved in the decision-making process concerning the contracts and bonus payments. He adds that the decisions on the awarding and amounts of the bonuses were taken purely top-down by his superiors, in strict accordance with internal processes and regulations.
113. In this respect, the Panel would like to point out that it seems unlikely that under the particular circumstances Mr Kattner was not involved in the decision making process. Moreover, even if it could be proven that Mr Kattner had absolutely no influence on the awarding of his bonus, as well as of the respective bonus amount, that would not signify that he did not participate in the taking of the relevant decisions by his superiors, in particular Mr Blatter and Mr Valcke – who signed his amendment agreements stipulating the bonuses, in 2010 and 2011, on behalf of FIFA.
114. In fact, Mr Kattner's position as Director of FIFA Finance & Administration provided not only his prerogatives but also responsibility when it comes to employment and financial matters. This means that, by virtue of his position, Mr Kattner had to be aware and involved in the decision-making process related to the bonuses.
115. His first level of involvement consisted in his preparation of the drafts of the relevant (employment) amendment agreements of Messrs Blatter, Valcke and himself, drafts which he provided for signature to his superiors, the FIFA President and Secretary General. He was therefore aware that bonuses would be paid in relation to the respective competitions (the 2010 FIFA World Cup South Africa, the 2013 FIFA Confederations Cup and the 2014 FIFA World Cup Brazil), as well as the very important fact that such bonuses were restricted to the top three most senior officials of FIFA – the FIFA President, Secretary General and Deputy Secretary General (himself).

116. The second aspect of his involvement with the bonuses was related to the respective amounts, which had to be reflected and recorded in the various financial accounting mechanisms of the organisation by FIFA Finance - the department that Mr Kattner was heading.
117. Third, and most importantly, Mr Kattner was also involved in the operational aspect of the bonuses, meaning the actual payment of such to the relevant beneficiaries, including himself. While that does not necessarily implies he would order these payments himself, it does mean that Mr Kattner was involved in the authorization of such. In fact, according to art. 26 of the FOR ("Bank transactions/payments"), all FIFA bank transactions would come under the responsibility of the Director of the Finance & Administration Division.
118. This aspect is particularly relevant when it comes to the bonuses of Mr Valcke. As mentioned previously, part of the bonus amounts awarded to him in 2010 and 2011, were paid in an accelerated manner.
119. According to the December 2010 amendment agreement, the special bonus (related to the 2010 FIFA World Cup South Africa) awarded to Mr Valcke – for a total of CHF 9 million, was split into four instalments of CHF 2,250,000, each to be paid in December of 2010, 2011, 2012 and 2013.
120. However, according to the Bonus Report, on 22 February 2011, two months after the respective amendment agreement was signed and the first instalment (corresponding to 2010) was paid to him, Mr Valcke requested Mr Kattner in writing for an accelerated or advance payment of his 2011 bonus instalment of CHF 2,250,000 (as well as of his CHF 500,000 yearly bonus under his employment agreement). Mr Kattner assured him he would arrange such payment, upon approval from the FIFA President. Two days later, Mr Valcke informed Mr Kattner that the President had approved the advanced payment, and on the same day Mr Valcke's bank confirmed receipt of the amounts (although no written approval from Mr Blatter of this acceleration apparently exists). It is therefore implied that Mr Kattner authorized the payment, operated by FIFA Finance.
121. Furthermore, according to the October 2011 amendment agreement, the special bonus (related to the FIFA Confederations Cup Brazil 2013 and the 2014 FIFA World Cup Brazil) awarded to Mr Valcke – for a total of CHF 10 million, was split into two instalments: one of CHF 3,500,000 and the other of CHF 6,500,000, to be paid in December 2013 and December 2014 respectively. Moreover, the bonus would be paid dependent on the organisational success of the aforementioned competitions, which would in turn be measured based on two separate sets of criteria (one for each competition). At its respective meetings in October 2013 and October 2014, the CSC decided that the respective set of criteria concerning the organisational success of the FIFA Confederations Cup Brazil 2013 and the 2014 FIFA World Cup Brazil (respectively) had been fulfilled, and that Mr Valcke (as well as Mr Kattner) should be paid the corresponding instalments of his bonus. The 2014 instalment of the bonus was accordingly paid to Mr Valcke in December 2014.

122. However, on 13 September 2013, before the meeting of the CSC that would assess the relevant criteria concerning the organisational success of the FIFA Confederations Cup Brazil 2013, Mr Valcke wrote to Mr Kattner requesting the payment of his 2013 bonus instalment. Mr Kattner confirmed on the same day that the payment would be made, and the Director of FIFA Human Resources & Services - Mr Kattner's subordinate in FIFA Administration & Finance, wrote a memo addressed to Mr Kattner on the same day, stating that the relevant criteria as per the October 2011 amendment agreement were fulfilled for the 2013 instalment of Mr Valcke's bonus. Therefore, the payment of the 2013 instalment of Mr Valcke's bonus in relation to the FIFA Confederations Cup Brazil 2013 (of CHF 3,500,000) was made, with the full knowledge and authorisation of Mr Kattner, in September 2013, before the CSC could assess whether the relevant criteria for the organisational success of said competition (and payment of the respective bonus) were met. In addition, a document signed by one of Mr Kattner's subordinates and addressed to him specifically stated that the aforementioned criteria were met, before any assessment/decision on the matter by the CSC.
123. In summary, Mr Kattner was involved in the preparation and implementation of the decision to award bonuses to the top management of FIFA, by preparing the draft amendment agreements (legal basis for the bonuses), reflecting/recording the bonuses in the FIFA financial accounting/statements and authorising the payment of the bonuses, In particular, Mr Kattner was directly involved in the authorisation of the accelerated or anticipated payment of various bonus instalments to Mr Valcke, in some cases even before the approval of such bonuses could be given by the relevant body – the CSC.

c. Secondary interests

124. According to art. 19 par. 1 of the FCE, secondary interests include gaining any possible advantage for the persons bound by the Code themselves or related parties.
125. In the present case, the 2010 and 2011 amendment agreements of Mr Kattner, which provided for the respective bonuses (in relation to the 2010 FIFA World Cup South Africa, the FIFA Confederations Cup 2013 and the 2014 FIFA World Cup Brazil) totalling CHF 7 million, were signed by Mr Blatter (FIFA President) and Mr Valcke (FIFA Secretary General) on behalf of FIFA (as foreseen by art. 24.6.2 of the FOR). In other words, Mr Kattner's aforementioned bonuses were determined and ratified solely by Mr Blatter and Mr Valcke.
126. Of course, it can be said that in general all employees can gain advantages through their normal employment salaries and yearly bonuses (which could qualify as secondary interests) which are also approved by their superiors. However, there are a number of specific circumstances that render the situation of Mr Kattner different.
127. First, even though the relevant bonuses received by Messrs Blatter, Valcke and Kattner were based on (amended) employment agreements signed in 2010 and 2011, these were not normal, yearly benefits, but rather exceptional ones related to

(and depending on) the 2010 and 2014 World Cups and the 2013 Confederation Cup, unique competitions taking place at specific points in time.

128. Second, the amount of the respective bonuses was very substantial (CHF 23 million for the 2010 bonuses and CHF 26 million for the 2011 bonuses).
129. Third, with respect to the 2010 bonuses, no specific criteria or conditions were mentioned in the relevant amendment agreements, the fulfilment of which would allow for the payment of such. In other words, the payment of Mr Kattner's 2010 bonus of CHF 4 million depended solely of the signature of Messrs Blatter and Valcke on the respective amendment agreement.
130. Fourth, even if the 2011 bonuses were theoretically subject to the fulfilment of specific criteria, it is not clear who or what body was in charge of such assessment. As mentioned previously, in the case of Mr Valcke's bonus, the 2013 instalment of CHF 3,500,000 was paid to him before the CSC could determine that the respective criteria concerning the organisational success of the FIFA Confederations Cup Brazil 2013 were met, based on an internal memo submitted to Mr Kattner by one of his subordinates which established (without any explanation or clarification) that the relevant criteria for such bonus had been fulfilled. Therefore, it appears that the fulfilment of the criteria pertaining to the 2011 bonuses was rather a procedural formality than a *sine qua non* condition.
131. Fifth, and more importantly, there is no indication that other FIFA officials (senior or not) received any exceptional bonuses related to the 2010 FIFA World Cup South Africa, the FIFA Confederations Cup 2013 and the 2014 FIFA World Cup Brazil, that could be comparable in terms of the amounts, legal basis or (lack of) criteria to the ones received by Messrs Blatter, Valcke and Kattner (the top three of FIFA's management).
132. In summary, it appears that the 2010 and 2011 bonuses of Mr Kattner approved by Mr Blatter and Valcke were quite special and different from the normal FIFA yearly bonuses (which Mr Kattner kept perceiving in addition/separately), represent a financial advantage, and would constitute secondary interests .

*d. Influence the ability to perform his duties with integrity in an independent and purposeful manner*

133. In general, bonuses have several purposes, including the rewarding of the employee's activity and positive results over a past period, as well as incentivising such employee to perform at the same level or higher in the future.
134. In the present case, the question is whether the relevant bonuses received by Mr Kattner in relation to the 2010 FIFA World Cup South Africa, the FIFA Confederations Cup 2013 and the 2014 FIFA World Cup Brazil had as well a nefarious effect on the performance of his duties.
135. The Panel considers that, the fact that his bonuses (of a significant amount) directly (and solely) depended on the signatures of Messrs Blatter and Valcke, could have

made Mr Kattner feel indebted or beholden to his superiors, much more than due the hierarchical structure of the organisation, which in turn affected his integrity and independence in performing his duties.

136. This aspect is obvious from the particular circumstances of the case: the amendment agreements of 2010 were all prepared and signed at the same time, by the same trio – the FIFA President, Secretary General and Deputy Secretary General – the most senior officials of FIFA. Messrs Blatter and Valcke signed, on behalf of FIFA, the agreements of Mr Kattner (both) and Mr Valcke (only Mr Blatter), while the contract of Mr Blatter was signed by Mr Valcke and the chairman of the FIFA Finance Committee (Mr Grondona), who would separately also receive a bonus of CHF 1 million. The 2011 agreements were very similar and signed by the same persons. Additionally, the 2010 agreements did not provide for any specific criteria or conditions for the payment of the relevant bonuses, while it is not clear who was in charge of assessing the fulfilment of the criteria set in the 2011 agreements.
137. This particular situation, in the opinion of the Panel, led to the respective persons involved creating a very restricted and vicious circle of dependency and complicity that is probably best depicted by the relation between Mr Kattner and Mr Valcke.
138. After being granted and approved a CHF 3 million bonus in December 2010 by Messrs Blatter and Valcke, bonus that would be effectively paid in four equal instalments in the months of December 2010, 2011, 2012 and 2013, Mr Kattner was contacted by his direct superior, Mr Valcke, on two occasions (in 2011 and 2013) in relation to the latter's bonus payments. Mr Valcke directly requested Mr Kattner for an acceleration of his 2011 part of his bonus (related to the 2010 FIFA World Cup South Africa) of an amount of CHF 2,250,000, as well as of his 2013 bonus instalment (related to the FIFA Confederations Cup 2013) of an amount of CHF 3,500,000. The two amounts, which were due to be paid to Mr Valcke in December 2011 and December 2013 respectively, were transferred to his account in February 2011 and September 2013, with and due to Mr Kattner's involvement.
139. In the case of the 2011 bonus payment, the amount was transferred ten months prior to its official due date, without any official reason or explanation. While Mr Kattner conditioned the early payment on an authorisation from the FIFA President (who had approved and signed Mr Valcke's bonus on behalf of FIFA), there is no evidence in the file that such authorisation was given by Mr Blatter in February 2011. In other words, Mr Valcke (the FIFA Secretary General), who had only two months prior approved the bonus of Mr Kattner (the FIFA Deputy Secretary General and Mr Valcke's subordinate), asked the latter for a favour – to be paid his bonus with a significant advance of ten months, and Mr Kattner, as Director of FIFA Finance and Administration, ensured the payment was made in just two days.
140. In the case of the 2013 bonus, Mr Kattner's involvement went even further. Although being aware that the payment of Mr Valcke's bonus (as well as his own) was conditioned by the fulfilment of several criteria in relation to the organisational success of the FIFA Confederations Cup 2013, and that such assessment would be made by the CSC at its meeting in October 2013, Mr Kattner assured Mr Valcke the

bonus would be paid in September 2013. Furthermore, in order to have a legal basis for the accelerated payment, a subordinate of Mr Kattner (the Director of FIFA Human Resources & Services) prepared a Memo entitled "Advance withdrawal of the bonus «FIFA Confederations Cup Brasil 2013» for Mr Jerome Valcke" which specified that the criteria from Mr Valcke's 2011 amendment agreement were complied with, and that consequently the respective part of the bonus could be paid to him. In other words, at the direct request of Mr Valcke, Mr Kattner ensured that the 2013 bonus would be paid to the former on the basis of an assessment of the relevant applicable criteria made by his subordinate and approved by himself, before the CSC could take a decision on the matter. In this case, the Panel considers that Mr Kattner not only did a "favour" to Mr Valcke, but he also substituted himself (and his subordinate – the Director of the FIFA Human Resources & Services) to the CSC, in violation of the respective 2011 amendment agreement and of the FIFA regulations concerning the activity and prerogatives of the CSC (in particular art. 7.9 of the FIFA Organisational Regulations).

141. In view of the above, the Panel is of the opinion that Mr Kattner's conduct in the two aforementioned instances in 2011 and 2013, was not in line with the relevant ethics regulations. In particular, Mr Kattner's ability to perform his duties as Director of FIFA Finance and Administration, authorizing the advanced payment of Mr Valcke's respective bonuses, was influenced by secondary interests – the fact that Mr Kattner's amendment agreements of 2010 and 2011, providing for extraordinary bonuses of CHF 7 million to be paid between 2010 and 2014, were signed and approved by Mr Valcke, his direct superior. These secondary interests prevented Mr Kattner from performing his aforementioned duties with integrity and in an independent and purposeful manner.
142. When approached by Mr Valcke in February 2011 and September 2013 with a request for an accelerated payment of the latter's respective bonuses, Mr Kattner should have realized that this situation would entail an existing or potential conflict of interests and should have immediately stopped from authorising the respective payments as well as sought guidance either from the FIFA President, or another FIFA body, including the FIFA Ethics Committee.

e. *Danger that a conflict of interests affects the performance of duties*

143. Paragraph 3 of art. 19 of the FCE expands the definition of a conflict of interests to situations in which there is a danger of a conflict of interests (arising). This means that such a conflict does not have to be concrete or potential, but merely represent a risk, for art. 19 of the FCE to be applicable.
144. In the present case, even if Mr Kattner had not realised the existing or potential conflict of interest arising from the aforementioned situations, he should have taken into account the risk he was exposing himself to. It is clear to the Panel that the performance of Mr Kattner's duties as Director of FIFA Finance and Administration (authorizing the advanced payment of Mr Valcke's bonuses) was, at the very least, in danger of being affected by a conflict of interest (receiving a significant and extraordinary bonus directly approved by Mr Valcke during the same period as the

requests for advanced payments). This danger should have been apparent also to Mr Kattner, when being requested to authorize the payment of Mr Valcke's bonuses, and should have prompted him to refrain from performing these payments.

*f. Disclosure and notification*

145. According to art. 19 par. 3 of the FCE, officials who may find themselves in a situation in which the performance of their duties might be affected by an existing, potential or even the danger of a conflict of interest are not only obliged to not perform such duties, but also to disclose and notify the relevant conflict of interest to their respective organisation.
146. Therefore, in the present case Mr Kattner should not only have refrained from being involved in the authorisation of the payments of Mr Valcke's bonuses in 2011 and 2013, but also disclosed/notified the conflict of interest that was (potentially) influencing the performance of his duties.
147. However, from the content of the case, no evidence indicates that Mr Kattner discussed such conflict of interest with any official or body of FIFA. In particular, there is no proof that Mr Kattner sought advice from, or at least informed, the Ethics Committee on the matter, a simple action which may have averted the present proceedings.

*g. Conclusion*

148. After examining all the relevant facts of the matter, the Panel considers that Mr Kattner found himself in at least two situations in which a conflict of interest affected (or at the very least there was a danger that it could affect) the performance of his duties. These two situations occurred in February 2011 and September 2013, when Mr Valcke, his direct superior, requested him to make advanced payments of the former's bonuses (related to the 2010 FIFA World Cup South Africa and the FIFA Confederations Cup 2013, respectively). Moreover, the accelerated payment authorized by Mr Kattner in September 2013 (based on a Memo drafted by one of Mr Kattner's subordinates and addressed to him) was made before the CSC could assess whether the relevant criteria for the payment of such bonus, according to the 2011 amendment agreement, were fulfilled. In each of the two cases, Mr Kattner's secondary interests stemmed from the fact that Mr Valcke had previously approved and signed on behalf of FIFA the 2010 and 2011 amendment agreements entitling Mr Kattner to bonuses of CHF 7 million.
149. Moreover, the Panel finds that the process of awarding extraordinary bonuses to Messrs Blatter, Valcke and Kattner (in particular those in relation to the 2010 FIFA World Cup South Africa, the FIFA Confederations Cup 2013 and the 2014 FIFA World Cup Brazil) through the 2010 and 2011 amendment contracts (as well as later ones) was conducted in a manner that is not compatible with ethics and the FCE. In particular, the Panel considers that, through their conduct, the three most senior officials of FIFA (President, Secretary General and Deputy Secretary General) gave the appearance of creating a vicious circle, approving and authorizing the payment

of extremely significant amounts of bonuses among themselves, either without any kind of oversight (in the case of the 2010 amendment agreements and related bonuses of CHF 23 million) or with a formal endorsement from the CSC which apparently amounted to a mere formality (given the fact that Mr Valcke's 2013 bonus was paid before the CSC could assess the fulfilment of the respective criteria). With respect to Mr Kattner's performance of his duties, such as providing the drafts of the relevant 2010 and 2011 amendment agreements, authorizing the payment of the bonuses, including the accelerated payment in the case of Mr Valcke's 2011 and 2013 bonuses, the Panel considers that this can be found to breach art. 19 of the FCE due to Mr Kattner's overall involvement in the aforementioned process, despite the danger of a conflict of interest affecting his conduct.

150. In view of the above, the Panel considers that, in relation to the first charge (bonus payments), Mr Kattner is found to have violated art. 19 of the FCE.

**a) Possible violation of art. 25 of the FCE (Abuse of position)**

151. Art. 25 of the FCE defines the abuse of position as follows:

"Persons bound by this Code shall not abuse their position in any way, especially to take advantage of their position for private aims or gains".

152. The Panel will proceed now to analyse the constitutive elements of the abuse of position, as defined at art. 25 of the FCE, that would be applicable in relation to the conduct of Mr Kattner identified in the first charge (bonus payments) and fourth charge (recording of FIFA Council meeting).

*i) Conduct of Mr Kattner in relation to first charge (bonus payments)*

*a. Persons involved*

153. As already established (cf. par. II.108 above), at the time relevant for his conduct in relation to the bonus payments Mr Kattner was the FIFA Deputy Secretary General and the Director of FIFA Finance and Administration, and thus an official bound by the FCE in line with art. 2 of the FCE. Therefore, the first element is met in the present case.

*b. Take advantage of their position*

154. As previously explained, in his positions as FIFA Deputy Secretary General and the Director of FIFA Finance and Administration, Mr Kattner would perform a number of duties, in particular related to finance or administration aspects. Among those, he was involved in the payment of the bonuses related to the 2010 and 2011 amendment agreements. In particular, when requested by Mr Valcke, on two occasions (in 2011 and 2013) to provide him with an advanced payment of his respective bonus, Mr Kattner was directly involved in the authorization of such accelerated disbursement.

155. Moreover, with respect to the payment made in September 2013, it appears that Mr Kattner went even further, by enabling the payment of the 2013 bonus of Mr Valcke (for an amount of CHF 3,500,000) before the CSC could assess whether the particular criteria established in the 2011 amendment agreement (in relation to the organisational success of the FIFA Confederations Cup 2013) that would permit the disbursement of the respective bonus were fulfilled.
156. To that end, and not waiting for the meeting of the CSC in October 2013, Mr Kattner had the Director of FIFA Human Resources & Services (his subordinate) prepare a Memo addressed to him and entitled "Advance withdrawal of the bonus «FIFA Confederations Cup Brasil 2013» for Mr Jerome Valcke", which stated that the criteria from Mr Valcke's 2011 amendment agreement were complied with, and that consequently the respective part of the bonus could be paid to him. Therefore, by authorizing the payment of Mr Valcke's bonus based on the aforementioned Memo, before the CSC could take a decision on the matter, Mr Kattner took advantage of his position (as Director of Finance and Administration) and abusively substituted himself to the CSC and its prerogatives in this respect.

c. For private aims or gains

157. As already established (cf. par. II.125 *et seqq.* above), Mr Kattner had secondary interests, in the form of financial advantages represented by the bonuses established in the 2010 and 2011 amendment agreements (for a total of CHF 7 million) which had been signed by Messrs Blatter and Valcke. Moreover, Mr Kattner benefitted from further bonuses (for a total of CHF 4.5 million) in relation to the FIFA Confederations Cup Russia 2017 and the 2018 FIFA World Cup Russia™ by entering into a new amendment agreement in June 2014 (signed by Messrs Blatter, Valcke, and Grondona).
158. Therefore, in the opinion of the Panel, at the moment of Mr Valcke's request for the acceleration of his bonus in September 2013, Mr Kattner's involvement in the authorization of such payment in the same month (by taking advantage of his position) was motivated by private aims and gains as per art. 25 of the FCE.

d. Conclusion

159. The Panel finds that, through his conduct in relation to the first charge (bonus payments) as presented above, Mr Kattner has violated art. 25 of the FCE.

ii) *Conduct of Mr Kattner in relation to fourth charge (recording of FIFA Council meeting)*

a. Persons involved

160. The first element set out in art. 25 FCE is that the person acting must be bound by the FCE. At the time of the relevant FIFA Council meeting on 10 May 2016, Mr Kattner was FIFA Acting Secretary General and, as already established [cf. par. II.3 *et seqq.* above], he was a football official and bound by the FCE.

b. Take advantage of their position

161. As FIFA (Acting) Secretary General, Mr Kattner was the head of the FIFA administration, as Mr Valcke had been before him. According to the FIFA Statutes (2016 edition) he was the chief executive officer of the organisation. Furthermore, he managed the FIFA general secretariat and, among others, engaged and dismissed personnel in such secretariat (art. 15 par. 6 of the FIFA Governance Regulations). [A], the only FIFA employee in possession of the recording of the 10 May 2016 meeting of the FIFA Council following such meeting, was part of the general secretariat as defined in the FIFA Statutes, and therefore a subordinate of Mr Kattner.
162. Mr Kattner, as well as the FIFA management and staff, was aware that, as per the direct order of the FIFA President (Mr Infantino), the FIFA Council meeting of 10 May 2016 would take place in the absence of the FIFA administration, including the Acting Secretary General (cf. p. 18 and 31 of the Final Report and par. 223 of Mr Kattner's position). This was announced by the FIFA President during the FIFA Council meeting of 9 May 2016, and then communicated by an email correspondence to the FIFA Management Board and the relevant persons from the Administration by the Head of the Secretary General Office.
163. Mr Kattner raises a number of arguments with respect to the FIFA President's decision to exclude him, and the FIFA administration, from the 10 May 2016 meeting, the validity, legal basis and real reasons behind such decision (cf. par. 226 *et seqq.* of Mr Kattner's position). However, these aspects are not considered relevant by the Panel. What does matter, is that such decision was respected by the FIFA administration, including Mr Kattner, who did not take part in the respective meeting. This mere fact proves that, at the time it was taken, the decision was effective and complied with by all relevant parties. In case Mr Kattner had a problem being excluded from the meeting, he should have taken it directly to the FIFA President or to the FIFA Council, the executive body of the organisation. The mere fact he did not, and that the FIFA Council did not consider the absence of the FIFA Secretary General from its meeting as a particular problem, or a condition/prerequisite for the holding of such, shows that the FIFA President's order was generally respected.
164. Despite being aware that the FIFA administration, including himself, was excluded from the 10 May 2016 FIFA Council meeting, and therefore not privy to the content of such, Mr Kattner did everything possible to get in possession of the recording of the meeting as soon as possible. As he was fully aware with the process of recording and transcribing such meetings, in order to produce the minutes (in his quality of Acting Secretary General), he knew that the respective recording would be immediately available following the meeting to the members of the Audio Video team, in that particular case [A]. Therefore, Mr Kattner directly contacted [A] upon his return from Mexico to Switzerland on 16 May 2016, during a public holiday, to request the recording. First, Mr Kattner called [A] at his home, which, according to the latter was "very unusual". When [A] told him that he did not believe "it would be good" to provide him with the recording, he insisted. Taking into account that

Mr Kattner was “the CEO” and therefore his boss, which did not leave him much choice, [A] requested “an email from your side in which you are asking for that” (the recording). Mr Kattner not only complied immediately and send such request by email, but did not wait until the next day (when [A] would be back in the FIFA offices) and came directly to [A]’s domicile (located more than 20 km from Zurich), where he had never been previously, and copied the recording on his laptop.

165. The Panel considers that the conduct of Mr Kattner as described above is not only highly unusual (as also confirmed by [A]) but also unethical given the particular context. The length to which Mr Kattner went to obtain the recording, traveling to the home of a FIFA employee during a public holiday and copying the file directly on his laptop, attest not only to the personal importance of the recording for him, but also serve to establish two important aspects.
166. Foremost, while Mr Kattner desperately tries to justify the extreme urgency of procuring the recording for the purpose of compiling the minutes of the 10 May 2016 FIFA Council meeting, his arguments don’t hold up for two simple reasons: first, [A] stated that he had already provided a copy of the recording to the Head of the Executive Office of the FIFA President immediately after the meeting on 10 May 2016, as he also did with the recording of the meeting held on 9 May 2016 (according to [A], the FIFA Council meeting on 10 May 2016 was a “special” one, as the two parts of the regular meeting had already taken place on the day before). Therefore, if the drafting of the minutes was so extremely urgent, either Mr Kattner or the Secretary General Office could have contacted the Executive Office of the FIFA President directly to ask for the recording. Second, even if the minutes would be urgent, there is no logical explanation why their drafting could not have waited one more day, since 16 May 2016 was a Swiss public holiday (Whit Monday) meaning that the FIFA offices would be in any case closed and the staff was not working. Moreover, from the content of internal email correspondence (submitted by Mr Kattner together with his position), it appears that the minutes of the relevant meeting of 10 May 2016 were still not drafted on 20 May 2016, as mentioned by the Head of the Secretary General Office in an email of the same date.
167. The second aspect retained by the Panel, is the secretive and improper manner in which Mr Kattner obtained the recording from [A]. While Mr Kattner alleges that he never put [A] under pressure, and that “the atmosphere was always friendly and relaxed”, this is not exactly what the interview with [A] indicates. Being called by your CEO at home during Whit Monday, an important public holiday spent with the family, being repeatedly asked for a confidential recording of a meeting the FIFA (Acting) Secretary General and administration was explicitly not included in, being sent the same request by email and receiving a home visit for the first time by the same Acting Secretary General, on the same day, these are not normal or usual occurrences, and for sure did not set up a friendly and relaxed atmosphere. This is clear from the content of [A]’s statements, in which he mentions expressions as “very unusual”, “what should I do”, “it was quite strange situation to get a telephone call from fixed net at home from the CEO”. [A] also stated that Mr Kattner wanted the recording “immediately”, saying to him: “I need it now”. All the above circumstances reveal a completely improper conduct from Mr Kattner, who used his

position as CEO to make sure not only that he procures the recording as fast as possible from [A], but also does so in a private and covert manner. By contacting and then meeting [A] at home, Mr Kattner was basically ensuring that nobody in the FIFA administration was aware of his actions (his email of 16 May 2016 to [A] did not copy anybody), and thus that nobody would be aware he was in possession of the respective recording until he informed the Head of the Secretary General Office to that extent in an email dated 19 May 2016.

168. In summary, the Panel considers that, through his conduct in relation to [A] as described above, Mr Kattner took advantage of his position as Acting Secretary General and CEO of the FIFA administration, to obtain from a subordinate and member of said administration the recording of the FIFA Council meeting of 10 May 2016.

c. For private aims or gains

169. In his position, Mr Kattner goes to great lengths to paint a very detailed and complex picture of the power and political struggles involving the FIFA President, Mr Scala and himself at the time of the May 2016 meetings of the FIFA Council in Mexico.

170. It is clear, from the factual background presented previously, that Mr Kattner's career within FIFA had started and developed during the Blatter and Valcke administration (2003 – 2015), being promoted by them to the third most senior position in the organisation – Deputy Secretary General. It has also been established Mr Kattner was held one of the key functions in the FIFA high management, being in charge of Finance and Administration, and having thus prerogatives in the authorisation of important or sensitive payments, such as the (extraordinary) bonuses related to FIFA competitions (the 2010 and 2014 FIFA World Cups and the FIFA Confederations Cup 2013). When Mr Blatter and Mr Valcke were provisionally and then finally banned from taking part in any football related activities by the Ethics Committee in September - December 2015 (leading to Mr Valcke being put on leave and then dismissed by FIFA), Mr Kattner not only upgraded to Acting Secretary General, but also became the main and last senior representative of the (already) former Blatter-Valcke administration. This would put him in a potential conflict with Mr Infantino, who was elected FIFA President in February 2016 and was expected to bring new persons to FIFA (also in key positions), including a new Secretary General. Mr Scala, chairman of the CSC since 2013 under Mr Blatter's presidency, was also a representative of the former administration. The conflict broke out in May 2016, when Mr Scala resigned (immediately after the FIFA Congress on 13 May 2016) and then Mr Kattner was dismissed from his position on 23 May 2016.

171. In his position, Mr Kattner alleges that the real reason for his actions seeking to obtain the recording of the 10 May 2016 FIFA Council meeting was his objective (and even duty) to inform and report to the Ethics Committee on potential violations committed by the FIFA President during the FIFA Council meetings and Congress in Mexico, held in May 2016. Mr Kattner claims that in order to support such a serious and severe complaint, he needed to listen to the respective FIFA Council meeting

recordings, draft the minutes and use them in his report. He also encloses the report submitted to the Ethics Committee on 17 May 2016 as evidence in this respect.

172. The Panel would like to make the following considerations in this respect.
173. First of all, the adjudicatory chamber does not, cannot and will not deal with any complaint lodged by Mr Kattner, Mr Scala or anyone else before the Ethics Committee against the FIFA President in 2016, as the respective matter has already been the object of ethics proceedings conducted by the judicial body at the time, and a decision was taken in this respect. The present case concerns solely the conduct of Mr Kattner.
174. Second, and more importantly, there are a number of elements that indicate the purpose of Mr Kattner's conduct in relation to the recording was rather personal, in relation to his conflict with the FIFA President:
- According to Mr Kattner's position, the respective recording showed "how Gianni Infantino used the FIFA Council meeting on 10 May 2016 to turn Council members against Domenico Scala and Markus Kattner". Therefore, Mr Kattner clearly considered himself to be in conflict with the FIFA President;
  - On 13 May 2016, days after the relevant meeting, and before Mr Kattner contacted [A], the appointment of Ms Fatma Samoura as the new FIFA Secretary General was formally announced (during another FIFA Council meeting), which she would assume before mid-June 2016. This entailed Mr Kattner's days as Acting Secretary General (or even as FIFA senior official) were numbered;
  - Mr Kattner refers in his position to an email sent on 4 May 2016 to Mr Scala, in which he describes a conversation he had with the FIFA President concerning various matters, related to the latter's expenses, with concrete examples (such as a traffic fine and an invoice for hotel laundry). According to the email, the FIFA President became abusive and ejected Mr Kattner from his office. A similar depiction of the discussion is revealed by the FIFA President in the recording of the meeting, without mentioning the name of Mr Kattner (who is simply referred to as "a FIFA employee"). This further shows the fact that the FIFA President and Mr Kattner had a personal conflict, which was referred to in the relevant recording of the FIFA Council meeting;
  - As mentioned previously, following the opening of criminal investigations by the US DOJ and the OAG in May 2015 (on suspicion of criminal mismanagement and money laundering in connection with the allocation of the 2018 and 2022 FIFA World Cups), [Law Firm 1] and [Law Firm 2] were mandated by FIFA to conduct an internal investigation on several issues involving certain officials of FIFA, including Mr Kattner. According to the Bonus Report, the investigations started in 2015, when various FIFA senior officials were interviewed, including Mr Kattner on 11 December 2015 (who also refused subsequent interview requests). On 23 May 2016, less than two weeks from the 10 May 2016 FIFA Council meeting and less than one week after he

contacted [A] to obtain the recording, Mr Kattner was dismissed in relation to the findings of the aforementioned internal investigations. On 3 June 2016, [Law Firm 1] released information regarding details on contracts and compensation for a small group of former FIFA officials, including Mr Kattner, and stated that “The evidence appears to reveal a coordinated effort by three former top officials of FIFA to enrich themselves through annual salary increases, World Cup bonuses and other incentives totalling more than CHF 79 million – in just the last five years”. This was related to the bonuses that would become the object of the Bonus Report, and directly concern Mr Kattner, as described previously.

- At the time of the FIFA Council meeting on 10 May 2016 and when he obtained the respective recording on 16 May 2016, Mr Kattner was fully aware of the scope of the internal investigation conducted by [Law Firm 1] and [Law Firm 2], both in his position as FIFA Acting Secretary General and due to his interview in December 2015. He was also aware the investigators would provide their findings to the FIFA President (with whom he was in conflict) and the FIFA Council - the executive bodies of the organisation. The disclosure of such findings could be made at a meeting of the FIFA Council, such as the one on 10 May 2016 (which took place three weeks before [Law Firm 1] publicly released information about the bonuses of Messrs Blatter, Valcke and Kattner).

175. In view of the above, the Panel considers that Mr Kattner had obvious personal reasons to find out immediately the content of the FIFA Council meeting of 10 May 2016, not in order to prepare the minutes (which, according to the FIFA President’s clear and unambiguous statement during the meeting, would have been compiled by his Executive Office) or to protect FIFA from potential unethical conduct of the FIFA President during such meeting, but to find out sensitive information related to his conflict with the FIFA President, or whether he was in danger from the findings of the internal investigation conducted by [Law Firm 1] and [Law Firm 2] concerning the previous bonuses received by Messrs Blatter, Valcke and Kattner (which would eventually be the case due to the Bonus Report, his dismissal and related proceedings against him).

176. Therefore, Mr Kattner’s conduct, taking advantage of his function as FIFA Acting Secretary General and CEO of the organisation in order to obtain the recording of the FIFA Council meeting of 10 May 2016 from [A], was therefore clearly for private aims, which directly falls under the meaning and scope of the definition at art. 25 of the FCE.

*d. Conclusion*

177. The Panel rules that, by his behavior in relation to the fourth charge (recording of the FIFA Council meeting) as presented above, Mr Kattner has clearly breached art. 25 of the FCE.

**b) Overall conclusion**

178. Overall, and in the light of the considerations and findings above, the adjudicatory chamber holds that Mr Kattner by his conduct presently relevant, has violated art. 19 (Conflicts of interest) and 25 (Abuse of position) of the FCE.
179. In the present context, bearing in mind the gravity of the violations of arts 19 and 25 of the FCE, the adjudicatory chamber finds there is no necessity to consider the potential violation of art. 15 (Loyalty) of the FCE set out in the Final report (see in this sense CAS 2014/A/3537, *Vernon Manilal Fernando v. FIFA*, par. 105), which, in any case, appears to be consumed by Mr Kattner's breach of the aforementioned FCE provisions.

## **G. Sanctions and determination of sanctions**

180. According to art. 6 par. 1 of the FCE, the Ethics Committee may pronounce the sanctions described in the FCE, the FIFA Disciplinary Code, 2019 edition (hereinafter: FDC) and the FIFA Statutes.
181. When imposing a sanction, the adjudicatory chamber shall take into account all relevant factors in the case, including the nature of the offence, the offender's assistance and cooperation, the motive, the circumstances, the degree of the offender's guilt, the extent to which the offender accepts responsibility and whether the person mitigated his guilt by returning the advantage received (art. 9 par. 1 of the FCE). It shall decide the scope and duration of any sanction (art. 9 par. 3 of the FCE).
182. When evaluating, first of all, the degree of the offender's guilt, the seriousness of the violation and the endangerment of the legal interest protected by the relevant provisions of the FCE need to be taken into account. In this respect, it is important to note that as FIFA Director of Finance and Administration, FIFA Deputy Secretary General and (later) FIFA Acting Secretary General, Mr Kattner held some of the most senior/prominent positions in the organisation, and thus in association football on a global level. By his conduct, the integrity and objectivity of FIFA have therefore been exceedingly violated, and FIFA's reputation has doubtlessly incurred serious and long-lasting damage.
183. Furthermore, Mr Kattner was not found guilty of an act of negligence, but deliberate actions. He should have been capable, in the internal and external circumstances, to avoid the violations, and was free at all times to break off the intended acts. In view of these circumstances, Mr Kattner's degree of guilt must be regarded as serious and his behaviour as inexcusable.
184. As for the motive, it is clear from the conduct established previously that Mr Kattner was pursuing his own personal and financial interests. In particular, only from the extraordinary bonuses stemming from the 2010 and 2011 amendment agreements, Mr Kattner obtained significant pecuniary advantages of at least CHF 7 million in the period 2010 - 2014, on top of his normal salary and yearly contractual bonus.
185. With respect to the reprehensibility of the behaviour, it should also be noted that, in his senior FIFA positions mentioned above, Mr Kattner had a responsibility to serve

the football community as a role model and was expected to comply with the highest standards of integrity. Yet, his conduct revealed a design of blatant disrespect for core values of the FCE and FIFA, in particular transparency and loyalty to the organisation.

186. In any case, the Panel notes that Mr Kattner has not expressed, at any point during these proceedings, awareness of wrongdoing or remorse for his actions (a circumstance that is suited to mitigate the culpability of an offender, according to the case law of FIFA's judicial bodies). To the contrary, he explicitly claimed not to have violated any provision of the FCE in his position.
187. To sum up, the adjudicatory chamber deems that the guilt of Mr Kattner in the present case is extremely serious, and virtually no aspects are suited to mitigate the degree of his guilt.
188. With regard to the type of sanction to be imposed on Mr Kattner, the adjudicatory chamber deems – in view of the particularly serious nature of his misconduct (cf. par. II.182 *et seqq.* above) – only a ban on taking part in any football-related activity is appropriate in view of the inherent, preventive character of such sanction in terms of potential subsequent misconduct by the official. In the light of this, the adjudicatory chamber has chosen to sanction Mr Kattner by banning him from taking part in any football-related activity (art. 7 par. 1(j) of the FCE; art. 56 par. 2(f) of the FIFA Statutes; art. 11(f) and art. 6 par. 2 lit. c) of the FDC).
189. With regard to the scope and duration of a ban (see art. 9 par. 2 and 3 of the FCE), the adjudicatory chamber points out that, where art. 25 par. 2 of the FCE (abuse of position) does not establish a maximum for the respective violation, art. 19 par. 4 of the FCE (Conflicts of interests) does – to the extent of five years, in serious cases and/or in the case of repetition (which are both applicable in the present matter). Moreover, art. 11 of the FCE foresees that, where more than one breach has been committed, the sanction other than monetary sanctions shall be based on the most serious breach, and increased as appropriate, depending on the specific circumstances.
190. In the present case, the Panel considers that, while both breaches are serious (or rather extremely serious), the principal violation committed by Mr Kattner was that of abuse of position.
191. In view of the above, and in accordance with the content of arts. 11, 19 par. 4 and 25 par. 2 of the FCE, the adjudicatory chamber concludes that, in the present case, the duration of the ban to be imposed does not have a maximum limit. That being said, when determining the scope and duration of the ban in a specific case, the adjudicatory chamber has to be guided by the principle of proportionality. In this connection, the adjudicatory chamber additionally points out that FIFA as a private association (see art. 60 *et seqq.* of the Swiss Civil Code) has considerable discretion, freedom and leeway with regard to excluding persons subject to its jurisdiction from its field of activity in cases of severe misconduct. Furthermore, this type of sanction is not purely of a punitive but also of a preventive nature. It should also be noted

that one of FIFA's objectives is to prevent all methods and practices that might give rise to abuse of association football (art. 2 let. e of the FIFA Statutes).

192. In the present case, and after having taken into account all relevant factors of the case as outlined above (cf. par. 181 *et seqq.* above), the adjudicatory chamber deems a ban on taking part in any football-related activity (administrative, sports or any other) at national and international level for a period of ten (10) years to be appropriate for the violation of art. 19 and 25 of the FCE committed by Mr Kattner. In accordance with art. 42 par. 1 of the FCE, the ban shall come into force as soon as the decision is communicated.
193. Furthermore, the adjudicatory chamber is of the opinion that the imposition of a ban on taking part in any football-related activity is not sufficient to sanction the misconduct of Mr Kattner adequately, in particular given the gravity of the matter and the significant financial gain involved. Hence, the adjudicatory chamber considers that the ban imposed on Mr Kattner should be completed with a fine.
194. The amount of the fine shall not be less than CHF 300 and not more than CHF 1,000,000 (art. 6 par. 2 of the FCE in conjunction with art. 6 par. 4 of the FDC). In the case at hand – taking into account the gravity of Mr Kattner's misconduct, the amount of the relevant bonuses involved, as well as the fact that he held very prominent official positions in association football –, the adjudicatory chamber determines that a fine of CHF 1,000,000 would be appropriate. Accordingly, Mr Kattner shall pay a fine of CHF 1,000,000.

## **H. Procedural costs and procedural compensation**

195. The procedural costs are made up of the costs and expenses of the investigation and adjudicatory proceedings (art. 54 of the FCE).
196. Mr Kattner has been found guilty of violations of arts. 19 and 25 of the FCE and has been sanctioned accordingly. The adjudicatory chamber deems that no exceptional circumstances apply to the present case that would justify deviating from the general principle regarding the bearing of the costs. Thus, the adjudicatory chamber rules that Mr Kattner shall bear the procedural costs (art. 56 par. 1 of the FCE).
197. In the present case, the costs and expenses of the investigation and the adjudicatory proceedings add up to [...].
198. According to art. 57 of the FCE, no procedural compensation shall be awarded in proceedings conducted by the Ethics Committee. Consequently, Mr Kattner shall bear his own legal and other costs incurred in connection with these proceedings.

## DECISION

1. Mr Markus Kattner is found guilty of having infringed art. 19 of the FCE (Conflict of interests) and art. 25 of the FCE (Abuse of position).
2. Mr Kattner is hereby banned for ten years from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) as of notification of the present decision, in accordance with art. 7 par. 1 lit. j) of the FIFA Code of Ethics in conjunction with art. 6 par. 2 lit. c) of the FIFA Disciplinary Code.
3. Mr Kattner shall pay a fine in the amount of CHF 1,000,000 within 30 days of notification of the present decision.
4. Mr Kattner shall pay costs of these proceedings in the amount of [...] within 30 days of notification of the present decision.
5. Mr Kattner shall bear his own legal and other costs incurred in connection with the present proceedings.
6. This decision is sent to Mr Kattner. A copy of the decision is sent to the chief of investigation, Mr Bruno De Vita.

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### Note relating to the financial sanction:

The payment of the fine and costs of the proceedings can be made either in Swiss francs (CHF) to account no. [...] or in US dollars (USD) to account no. [...], with reference to case no. "Adj. ref. no. 26/2019 (E16-00015)" in accordance with art. 7 par. 1 let. e) of the FIFA Code of Ethics.

### LEGAL ACTION

In accordance with art. 82 par. 1 of the FCE and art. 58 par. 1 of the FIFA Statutes, this decision can be appealed against to the Court of Arbitration of Sport ("CAS") in Lausanne, Switzerland ([www.tas-cas.org](http://www.tas-cas.org)). The statement of appeal must be sent directly to CAS within 21 days of notification of this decision. Within another ten (10) days following the expiry of the time limit for filing the statement of appeal, the appellant shall file with CAS a brief stating the facts and legal arguments giving rise to the appeal (see art. R51 of the Code of Sports-related Arbitration).

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION

A handwritten signature in blue ink, appearing to read 'V. Skouris', is positioned above the text. The signature is fluid and cursive, with a prominent loop at the end.

Vassilios Skouris  
Chairperson of the adjudicatory chamber  
FIFA Ethics Committee