



**TAS / CAS**

TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT  
TRIBUNAL ARBITRAL DEL DEPORTE

**CAS 2024/A/10542 Bologna FC 1909 SPA v. KV Oostende**

## **ARBITRAL AWARD**

**delivered by the**

### **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

President: Mr. José Juan Pintó Sala, Attorney-at-law in Barcelona, Spain  
Arbitrators: Prof. Luigi Fumagalli, Professor and Attorney-at-law in Milan, Italy  
Mr. Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland  
Ad hoc Clerk: Mr. Alejandro Naranjo Acosta, Attorney-at-law in Barcelona, Spain

**in the arbitration between**

**Bologna F.C. 1909 S.P.A.**, Bologna, Italy

Represented by Mr. Mattia Grassani, Mr. Luigi Carlutti and Mr. Luca Smacchia, Attorneys-at-law in Bologna, Italy

**Appellant**

**and**

**KV Oostende**, Oostende, Belgium

Represented by Mr. Stefano La Porta, Attorney-at-law in Rome, Italy

**Respondent**

## I. PARTIES

1. Bologna F.C. 1909 S.P.A (“Bologna” or the “Appellant”) is an Italian professional football club with its registered office in Bologna, Italy. Bologna is affiliated to the Italian Football Federation (Federazione Italiana Giuoco Calcio – FIGC), which, in turn, is affiliated to the Fédération Internationale de Football Association (“FIFA”), the world governing body of football.
2. KV Oostende (“Oostende” or the “Respondent”) is a Belgian professional football club under liquidation with its registered office in Oostende, Belgium.
3. Bologna and Oostende are hereinafter referred to as the “Parties”.

## II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as submitted by the Parties in their written submissions and at the hearing. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. Towards the end of August 2021, the Parties concluded an agreement (the “Transfer Agreement”) for the transfer on loan, with a purchase option, of the player Arthur Théate (the “Player”) from Oostende to Bologna.
6. The most relevant clauses of the Transfer Agreement state the following (emphasis in the original):

“3) *With this Agreement **KVO** undertakes to transfer temporary to **Bologna**, who accepts, until 30/06/2022, the right for sport services of the **Player**, who also accepts, in accordance with FIFA Regulations on the Status and Transfers of Players, with obligation to turn the transfer from loan to permanent, at the following terms and conditions:*

**A) Compensation for the loan:**

*For the loan of the player, **Bologna** undertakes to pay the total amount of € 1.000.000/00 (Euro One million/00), within 30/09/2021. **KVO** expressly waives any and all requests on its share relating to Training Compensations and Solidarity mechanism ex Art. 20 / 21 of FIFA Regulations on the Status and Transfer or Players.*

- 4) ***Bologna** and **KVO** establish that at the first point collected in Serie A 2021/2022 by **Bologna**, after 31/01/2021, the transfer of the **Player** will turn from loan to permanent, at the following conditions:*

**B) Compensation for the permanent transfer:**

*For the permanent transfer of the **Player**, **Bologna** undertakes to pay the amount of € 5.000.000/00 (Euro Five millions/00). **KVO** expressly waives any and all*

*requests on its share relating to Training Compensations and Solidarity Mechanism ex Art. 20 /21 of FIFA Regulations on the Status and Transfer of Players.*

*The amount will be paid with the following schedule:*

- € 2.000.000/00 (Euro Two millions/00 within 31/07/2022;
- € 1.500.000/00 (Euro One million five hundred thousand/00) within 31/07/2023;
- € 1.500.000/00 (Euro One million five hundred thousand/00) within 31/07/2024;

**C) Variable Amounts regarding the Transfer:**

*Bologna undertakes to pay to KVO the following variable amounts:*

- I. *The once only sum of € 500.000/00 net (Euro Five hundred thousand/00) if the **Player** played 40 (forty) official matches (for at least 30 minutes) with **Bologna** (first team) during the period in which the Player is registered with **Bologna**. In the event that the **Player** will not reach 40 (forty) caps as explained before, but **Bologna** will transfer him to a third club for a minimum amount of € 20.000.000/00 (Euro Twenty millions/00), **Bologna** and **KVO** establish that the above mentioned bonus will be payable.*
- II. *The once only sum of €100.000/00 net (Euro One hundred thousand/00) after every international cap with the Belgian National A Team in an official competition organized by UEFA or FIFA, for a maximum of 5 caps.*

*The above variable amounts under I. and II. Are due and payable within 2 weeks after the realization of the relevant conditions.*

**D) Sell-on-fee (percentage on transactions concerning the Player):**

*In case of any transfer (or loan) of the player from **Bologna** to any third club, **Bologna** undertakes to pay to **KVO** a share of 7,50% (Seven point fifty percent) from any Future Transfer Fee (including possible loan fee) stipulated with a third club (after deduction of solidarity contribution) effectively collected by **Bologna** exceeding all the amounts (shall mean fixed and variable amounts) regarding the transfer compensation paid to **KVO** by **Bologna**.*

*Payments schedules in favour of **KVO** will correspond to the payments received by **Bologna** from third clubs and will be due within 30 days after **Bologna** receives any (even partial) payment from the third club.”*

7. The Player was registered with Bologna for the sport season 2021/2022. While registered with Bologna the Player made 3 appearances with “the Belgian National A Team in an official competition organized by UEFA or FIFA” (i.e., 3 “international caps”), at the following matches:
  - Wales – Belgium, on 16 November 2021;
  - Ireland – Belgium, on 26 March 2022; and
  - Wales – Belgium, on 11 June 2022.
8. The aforementioned international caps triggered the obligation of Bologna to pay to Oostende a bonus of EUR 100,000 per match (minus solidarity contribution) under

Article 3(B)(II) of the Transfer Agreement. The corresponding amounts were effectively paid.

9. On 28 July 2022, Bologna and the French professional club Stade Rennais Football Club (“Rennais”) entered into an agreement for the permanent transfer of the Player (the “Subsequent Transfer Agreement”) from Bologna to Rennais since the date of signature. The financial conditions of the Subsequent Transfer Agreement set by its Article 4 are the following:

- Rennais would pay to Bologna a fixed transfer fee of EUR 19,000,000 (Article 4.1);
- Rennais would pay to Bologna a conditional transfer fee (capped at a maximum payable amount of EUR 3,000,000) upon the triggering of the following conditions:
  - a bonus upon Rennais qualification to a UEFA club competition (Article 4.2.1) (subject to the Player still being bound to the employment contract with Rennais at the time of the qualification and had participated in the starting eleven or for more than 45 minutes in at least 50% of Rennais’ official matches in the season before the qualification) of:
    - ❖ EUR 500,000 each time Rennais qualifies for the group stage of the UEFA Champions League;
    - ❖ EUR 250,000 each time Rennais qualifies for the group stage of the UEFA Europa League group;
  - a bonus related to the performance of Rennais in UEFA club competitions (Article 4.2.2) (subject to the Player still being bound by the employment contract with Rennais):
    - ❖ EUR 250,000 on each occasion that Rennais qualifies for the UEFA Europa League knockout stage;
    - ❖ EUR 250,000 on each occasion that Rennais wins the UEFA Conference League;
  - a bonus upon the Player’s participation upon Rennais’ official matches (Article 4.2.3):
    - ❖ EUR 500,000 on each occasion that the Player participates in the starting eleven or for more than 45 minutes per game in 30 Rennais’ matches;
    - ❖ EUR 500,000 on each occasion that the Player participates in the starting eleven or for more than 45 minutes per game in 45 Rennais’ matches;
    - ❖ EUR 500,000 on each occasion that the Player participates in the starting eleven or for more than 45 minutes per game in 60 Rennais’ matches;
    - ❖ EUR 500,000 on each occasion that the Player participates in the starting eleven or for more than 45 minutes per game in 100 Rennais’ matches;
  - a bonus upon a potential future transfer (Article 4.2.4):
    - ❖ the outstanding amount of the conditional fees (*i.e.*, EUR 3,000,000)

that have not been paid and/or triggered, in the event the Player is transferred to a third club for a fixed amount equal or above EUR 23,000,000.

10. While registered with Rennais, the Player made the following additional appearances (*i.e.* international caps) with “*the Belgian National A Team in an official competition organized by UEFA or FIFA*”:
  - Sweden – Belgium, on 23 March 2023;
  - Belgium – Austria, on 17 June 2023;
  - Estonia – Belgium, on 20 June 2023;
  - Azerbaijan – Belgium, on 9 September 2023; and
  - Belgium – Estonia, on 12 September 2023.
11. At the end of the 2022/2023 season, Rennes finished the French League in the 4<sup>th</sup> place, qualifying directly to the Group Stage of the UEFA Europa League.
12. On 26 October 2023, Oostende issued an invoice to Bologna for the amount of EUR 500,000 related to the payment of the conditional fee under Article 4(C)(I) of the Transfer Agreement (due upon the subsequent transfer of the Player for a minimum amount of EUR 20,000,000).
13. On 8 November 2023, Oostende issued an invoice to Bologna for the amount of EUR 200,000 related to the payment of the conditional fee under Article 4(C)(II) of the Transfer Agreement for “*the Fourth and Fifth cap*” of the Player.
14. On 17 November 2023, Oostende sent Bologna a letter requesting the payment of EUR 704,208.22. This sum was composed by EUR 500,000, representing the conditional fee related to the transfer of the Player for a minimum amount of EUR 20,000,000, EUR 200,000, representing the conditional fee calculated with reference to the Player’s two international caps, plus interest accrued on those amounts. In such letter Oostende granted Bologna a deadline expiring on 26 November 2023 to remit the claimed amounts.
15. On 5 December 2023, Bologna replied to the letter of Oostende of 17 November 2023, to stress its disagreement with Oostende’s interpretation of the clauses of the Transfer Agreement on which its request for payment was based. More specifically, and *inter alia*, with respect to the payment of the conditional fee of EUR 200,000 under Article 4(C)(II), Bologna indicated that such bonus was only be due if condition triggering it was satisfied in the registration period of the Player with Bologna – a circumstance that did not occur in the case of the fourth and fifth international cap of the Player.
16. On 7 December 2023, Oostende insisted with Bologna for the payment of the conditional fees under Article 4(C)(I) and (II), with their respective interests. In addition, Oostende informed Bologna that if such payment was not timely made, Oostende would pursue legal actions before the FIFA Football Tribunal.

17. On 14 December 2023, Rennes played its last match of the UEFA Europa League Group Stage and qualified for the knockout stages.

### III. PROCEEDINGS BEFORE THE FIFA FOOTBALL TRIBUNAL

18. On 19 December 2023, Oostende filed a claim against Bologna before the Player's Status Chamber of the FIFA Football Tribunal (the "PSC"). Oostende considered due the conditional fees under Articles 4(C)(I) and (II) of the Transfer Agreement, arguing that the conditions to trigger their payment were met. Accordingly, Oostende requested the PSC:

*"to accept this statement of claim and order the Respondent to pay the Claimant the sum of € 700,000, plus 5% interest per annum from the relevant due dates."*

19. On 9 February 2024, the Parties signed a settlement agreement regarding the conditional fee mentioned by Article 4(C)(I), *i.e.* EUR 500,000, due in the event Bologna transferred the Player for the minimum amount of EUR 20,000,000. Bologna undertook to pay such amount deducting the solidarity contribution.

20. On 15 February 2024, as a result, Oostende issued an invoice for the amount of EUR 480,869.86 to be paid by Bologna. On 22 February 2024, Bologna complied with the aforementioned payment to Oostende.

21. On 18 March 2024, Bologna presented its Answer to Oostende's claim and requested the following from the PSC:

- *To acknowledge the partial settlement of the claim regarding the request for bonus sub art. 4 lit. C) n. I) of the transfer agreement and the payment made by Bologna;*
- *For the rest, to reject the claim of KV Oostende as groundless."*

22. On 22 March 2024, a Single Judge of the PSC (the "Single Judge") issued the Decision FPSD-13105 (the "Appealed Decision") ruling as follows (emphasis in the original):

- "1. The claim of the Claimant, KV Oostende, is partially accepted.*
- 2. The Respondent, Bologna FC, must pay to the Claimant **EUR 192,347.94 net as an outstanding amount** plus interest p.a. as follows:*
  - *5% interest p.a. over the amount of **EUR 96,173.97 net** as from 30 September 2023 until the date of effective payment;*
  - *5% interest p.a. over the amount of **EUR 96,173.97 net** as from 3 October 2023 until the date of effective payment.*
- 3. Any further claims of the Claimant are rejected.*
- 4. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.*
- 5. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:*
  - 1. The Respondent shall be banned from registering any new players, either*

*nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.*

2. *The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.*
  6. *The consequences shall only be enforced at the request of the Claimant in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.*
  7. *The final costs of the proceedings in the amount of USD 20,000 are to be paid by the Respondent to FIFA. FIFA will reimburse to the Claimant the advance of costs paid at the start of the present proceedings (cf. note relating to the payment of the procedural costs)."*
23. On 11 April 2024, the PSC notified to the Parties the grounds of the Appealed Decision, which can be summarized as follows:
- the Parties signed a settlement agreement regarding the payment of the first conditional fee of EUR 500,000. Accordingly, the dispute to be decided concerned only the two conditional fees referred to the international caps of the Player with the Belgian national team, under Article 4(C)(II);
  - *"the objective reading of such clause reveals that there was no condition contained in the Transfer Agreement of such appearances having to occur while the player was registered with the Respondent [Bologna]";*
  - *"the fact that the cumulative number of EUR 100,000 net bonuses was limited to five supports this conclusion, as it prevents the potential of otherwise frivolous claims for such bonus without any kind of limitation. This was with particular reference to the Respondent's [Bologna's] line of argument that the above obligation is a "never-ending obligation" – it was clear [...] that the intention of the parties was to limit the abovementioned bonus to the number of appearances, rather than the specific timeframe in which the player could appear for his national team, be it in specific chronologic terms or simply during the time of registration of the player with the Respondent [Bologna]";*
  - *"consequently, [...] the Claimant [Oostende] had every right to request the last two instalments of EUR 100,000 net, as it had met the burden of proving that the clause applies beyond the player's registration with itself, and equally that the player had indeed completed two further appearances with the Belgian national team – on 9 September 2023 and 12 September 2023 respectively";*
  - the available evidence (invoice issued by Oostende and proofs of the bonus payment for the previous three international caps of the Player) shows that the payment of the disputed bonuses was subject to deductions of solidarity contribution;
  - *"furthermore, in line with the Claimant's [Oostende's] request for relief and the standard practice of the Football Tribunal, [...] interest [is to be awarded] on the*

*above amounts as from their respective due dates – i.e. 20 days after the fulfilment of the relevant condition”.*

#### **IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

24. On 30 April 2024, Bologna filed with the Court of Arbitration for Sport (“CAS”) a Statement of Appeal, pursuant to Article R48 of the Code of Sports-related Arbitration 2023 edition (the “CAS Code”), directed against Oostende, to challenge the Appealed Decision. In such Statement of Appeal, Bologna *inter alia* nominated Prof. Luigi Fumagalli, Professor and Attorney-at-law in Milan, Italy, as arbitrator and requested to proceed with the appeal in English.
25. On 2 May 2024, the CAS Court Office acknowledged receipt of Bologna’s Statement of Appeal and invited Oostende to nominate an arbitrator. On the same day and in a separate letter, the CAS Court Office, pursuant Article 41.3 of the CAS Code, informed FIFA that if it intended to participate in the proceedings it could file an application to that effect.
26. On 8 May 2024, Oostende nominated Mr. Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland, as arbitrator.
27. On 14 May 2024, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present procedure.
28. On 1 June 2024, within an extended deadline, Bologna filed its Appeal Brief pursuant Article R51 of the CAS Code. In such Appeal Brief, Bologna announced the testimony of the following witnesses:
  - Mr. Marco Di Vaio, Bologna’s Sporting Director.
  - Mr. Silvio Pagliari, football agent.
29. On 24 June 2024, Oostende submitted its Answer to the Appeal Brief, pursuant to Article R55 of the CAS Code. In such Answer, Oostende objected to the admission of the witnesses offered by Bologna, “*since neither of them can, in any way, assist the Panel in rendering its decision.*”
30. On 25 June 2024, the CAS Court office acknowledged receipt of Oostende’s Answer and invited the Parties to inform whether they preferred a hearing to be held or for the Panel to issue an award based solely on the Parties’ written submissions and whether they requested a case management conference to be held in order to discuss procedural issues. Lastly, the CAS Court Office informed the Parties that the Panel appointed to decide the case was composed by:

President: Mr. José Juan Pintó Sala, Attorney-at-law in Barcelona, Spain

Arbitrators: Prof. Luigi Fumagalli, Professor and Attorney-at-law in Milan, Italy

Mr. A.R. Michele Bernasconi, Attorney-at-law in Zurich, Switzerland.



31. After diverse correspondence between the Parties and the CAS Court Office regarding the necessity, format and the Parties' availability for the hearing, on 10 September 2024 the CAS Court Office, on behalf of the Panel, invited the Parties and their witnesses to appear at the hearing, which would be held in person at the CAS headquarters in Lausanne, Switzerland, on 24 October 2024.
32. On 17 September 2024, the CAS Court Office advised the Parties that Mr. Alejandro Naranjo Acosta had been appointed as *ad-hoc* Clerk in this procedure.
33. On 14 October 2024, the Order of Procedure was issued and sent to the Parties by the CAS Court Office. The Order of Procedure was duly signed and returned by the Parties on 17 October 2024.
34. On 19 October 2024, Bologna submitted several documents regarding bankruptcy proceedings affecting Oostende's, namely:
  - a judgment No 2024/1556 of 4 June 2024 the Business Court of Ghent declaring Oostende bankrupt;
  - a letter sent by Oostende's provisional administrator to Bologna on 20 March 2023, with the notification of a pledge of the matter of the present dispute;
  - a letter sent by DLA Piper UK LLP to Bologna on 31 May 2024, notifying it that the credit on dispute was pledged to the DLA Piper UK LLP;
  - a FIFA TMS screenshot with Oostende's identification and contact information and informing that it was not competing, that it had a registration ban imposed, that bankruptcy proceedings had been opened on 4 June 2024 and that Oostende had been disaffiliated from the Royal Belgian Football Federation on 18 June 2024.
35. On 24 October 2024, before the hearing, Oostende submitted a letter signed by its liquidator on 26 July 2024, renewing the Power of Attorney granted to Mr. Stefano La Porta to represent Oostende.
36. On 24 October 2024, the hearing was held in CAS' headquarters in Lausanne, Switzerland. In addition of the members of the Panel, Mr. Giovanni Maria Fares, CAS Counsel, and the *ad-hoc* Clerk, the following persons attended the hearing:

For Bologna:

- Mr. Mattia Grassani, legal counsel;
- Mr. Luigi Carlutti, legal counsel;
- Luca Smacchia, legal counsel;
- Mr. Marco Di Vaio, witness provided by Bologna, by videoconference; and
- Mr. Silvio Pagliari, witness provided by Bologna, by videoconference.

For Oostende:

- Mr. Stefano La Porta, legal counsel.

37. At the outset of the hearing, the Parties confirmed not to have any objection or comments as to the constitution and the composition of the Panel nor in respect of the conduction of the proceedings up to that moment. Moreover, the Parties commented on Oostende's bankruptcy status; however, neither of the Parties presented any request in this regard; on the contrary, both Parties confirmed their prayers for relief and that the creditor of the dispute remained the same. Accordingly, the Parties agreed on the continuation of the proceedings.
38. The Parties had a complete opportunity to present their case, submit their arguments, question the witnesses and answer the questions posed by the Panel.
39. At the closure of the hearing, both Parties confirmed that they did not have any objections as to the procedure conducted by the Panel and that their respective rights to be heard had been fully respected.

## V. THE PARTIES' SUBMISSIONS

40. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by them. The Panel, however, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the Parties, even if there is no specific reference to those submissions in the following section.

### A. BOLOGNA

41. In its Appeal Brief, Bologna requested the following prayers for relief:

*“- to accept the appeal and annul the decision passed by the FIFA Football Tribunal, recognizing that no bonus is payable to Oostende under article 4 lit. c) of the transfer agreement;*

*- to condemn FIFA and/or Oostende to refund \$ 20.000 (twenty thousand US dollars) paid by Bologna FC to FIFA as procedural costs of the procedure before the FIFA Football Tribunal.*

*- to condemn Oostende to pay all the cost of the CAS proceedings as well as the legal fees.”*

42. Bologna's submissions to support the aforementioned prayers for relief can be, in essence, summarized as follows:

- a. Background of the case

43. Along the negotiation process between the Parties there was for Bologna a maximum budget of EUR 7,000,000 (only at one point Bologna tried unsuccessfully to reduce it to EUR 6,750,000), including fixed and variable fees, for the transfer of the Player. In that framework, the Parties agreed at all time that the Sell-on fee of 7.5% would be calculated on the benefit gained by Bologna, *i.e.* the difference between the sum agreed with the third club in the context of the subsequent transfer minus the sum paid by Bologna to Oostende for the Player as fixed transfer fee plus the variable transfer fee.

44. Accordingly, the variable transfer fee was limited to the Player being registered with Bologna, considering that such sums would be included to calculate Bologna's benefit and afterwards the sell-on fee.

45. An opposite conclusion regarding the variable transfer fee would be illogical, since the possibility of accruing a bonus further to the transfer of the Player would entail a cost exclusively borne by Bologna, which could not be deducted for the purposes of calculating the sell-on fee due to Oostende with respect to the subsequent transfer of the Player.

b. The standard of proof to be applied by CAS

46. The Panel must apply the "*balance of probabilities*" standard of proof which is typically applied in civil law matters and arbitration. According to Bologna, the mentioned standard has historically been considered to require that the Panel be satisfied that there is a 51% chance of a relevant scenario having occurred.

47. In CAS 2009/A/1926 & CAS 2009/A/1930 was stated that "*it is the Panel's understanding that, in case it is offered several alternative explanations for the ingestion of the prohibited substance, but it is satisfied that one of them is more likely than not to have occurred, the Player has met the required standard of proof regarding the means of ingestion of the prohibited substance. In that case, it remains irrelevant that there may also be other possibilities of ingestion, as long as they are considered by the Panel to be less likely to have occurred. In other words, for the Panel to be satisfied that a means of ingestion is demonstrated on a balance of probability simply means, in percentage terms, that it is satisfied that there is a 51% chance of it having occurred. The Player thus only needs to show that one specific way of ingestion is marginally more likely than not to have occurred.*"

48. Differently, "*comfortable satisfaction*" is a standard of proof that is stated to be lower than the criminal standard of "*beyond reasonable doubt*", but higher than the civil standard of balance of probabilities. However, the standard of comfortable satisfaction is used in disciplinary procedures and doping matters, but not in civil issues or sports arbitration related to employment disputes.

c. The position of Oostende is groundless

49. The interpretation of the relevant clause shall start from the literal meaning, as supported by Oostende and the Single Judge, but cannot be strictly limited to that because, by doing so, the *rationale* of the contractual disposition is partial and misleading. The *scenario* must contemplate the *bona fide*, the function of the clause and the real intention of the Parties.

50. According to Oostende, the bonus should arise for every cap in the Belgian national team with no time limit and regardless of the registration of the Player. For example, even if the cap occurs fifteen years later than the transfer of the Player from Bologna to a third club, the bonus should be payable. In a nutshell, Bologna would be bound to a never-ending obligation that is not under its sphere of control.

51. If Oostende's interpretation is adopted, the sell-on fee does not work correctly due to the potential modification of Bologna's profit, on which the Parties had to calculate the 7.5% due to Oostende.
52. Moreover, when Bologna acquired the Player's services, he was still a prospective player, his future economic growth was to be rewarded and reflected with the bonuses and the sell-on fee. Accordingly, the bonuses are not to be triggered after the subsequent transfer of the Player from Bologna to Rennes.
53. Furthermore, Oostende's interpretation has the effect of potentially enrich Oostende without justification, as it creates a double effect for Oostende, *i.e.* a higher sum of sell on fee (calculated on a transfer fee that does not consider the bonus occurred after such transfer) and a bonus for the Player's international cap.

d. The interpretation criteria to be considered

54. The starting point of the contractual interpretation shall be Article 18 of the Swiss Code of Obligations according to which “[w]hen assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement.”
55. The wording of the award in CAS 2021/A/8306 needs to be recalled, which in turn refers to CAS 2005/A/871 and CAS 2008/A/1518, that established respectively:

*“According to the interpretation given to this article by CAS jurisprudence, “(u)nder this provision, the parties’ common intention must prevail on the wording of their contract. If this common intention cannot be determined with certainty based on the wording, the judge must examine and interpret the formal agreement between the parties in order to define their subjective common intention (Winiger, Commentaire Romand – CO I, Basel 2003, n. 18-20 ad Art. 18 CO). This interpretation will first take into account the ordinary sense one can give to the expressions used by the parties and how they could reasonably understand them (Winiger, op. cit., n. 26 ad art. 18 CO; Wiegand, Obligationenrecht I, Basel 2003, n. 19 ad art. 18 CO). The behaviour of the parties, their respective interest in the contract and its goal can also be taken into account as complementary means of interpretation (Winiger, op. cit., n. 33, 37 and 134 ad art. 18 CO; Wiegand, op. cit., n. 29 and 30 ad art. 18 CO)”*

*“By seeking the ordinary sense given to the expressions used by the parties, the real intention of the parties must – according to the jurisprudence of the Swiss Federal Court – be interpreted based on the principle of confidence. This principle implies that a party’s declaration must be given the sense its counterparty can give to it in good faith (‘Treu und Glauben’: WIEGAND W., op. cit., n. 35 ad art. 18 CO), based on its wording, the context and the concrete circumstances in which it was expressed (ATF 124 III 165, 168, consid. 3a; 119 II 449, 451, consid. 3a)…”*

e. The correct interpretation of Article 4(C)(II) of the Transfer Agreement

56. The bonus in dispute depends on the caps of the Player with the Belgian national team, which results in an improvement of his economic worth as asset of the club for which he is registered.
57. According to the classic approach of interpretation of legal texts under Swiss Law, there are four elements to be considered: 1) wording, 2) systematics, 3) purpose, and 4) history of the contract.
58. According to a general and systematic interpretation of the provision in dispute, of the whole Transfer Agreement and of the intention of the Parties, the positive effect of the Player's appearance in the Belgian national team can be reflected only in case of the registration of the Player with Bologna. Otherwise, the obligation of payment disregarding the connection and interest of Bologna would determine a lack of lawful cause, also given that such bonus could not have been taken into consideration as the amount to be deducted for the purposes of calculating the sell-on fee.
59. The witnesses offered by Bologna certify that the bonuses offered and agreed between Bologna and Oostende were strictly linked to:
- the enhancement of the sporting performance of the Player (playing a quantity of matches and being called up by the Belgian national team);
  - the consequent increase of his economic value, to be possibly exploited by Bologna in a negotiation with a third club;
  - the Player being registered with Bologna at the time the bonuses were triggered, so that both the bonus is received and enjoyed by Oostende and, in the meantime, Bologna can consider the additional cost to be paid to Oostende in the context of a negotiation with a third club;
  - the possibility to consider the bonuses in the calculation of the sell-on fee.

f. The procedural costs before the PSC

60. CAS has the power to rule against FIFA with respect to the costs of the first procedure before the FIFA Football Tribunal.
61. In case the appeal is upheld and the Appealed Decision set aside, FIFA should refund Bologna for the costs incurred. Alternatively, if CAS considers that FIFA shall not reimburse to Bologna the costs paid to the PSC, Oostende must do so and shall compensate Bologna for the expenses incurred in having to defend itself up to CAS instance.

**B. OOSTENDE**

62. In its Answer to the Appeal Brief, Oostende asked CAS to “*dismiss the Appeal in its entirety and confirm the Decision*” and “*to order the Appellant to bear the entire costs of these proceedings and to pay the Respondent a significant contribution towards its legal fees and expenses.*”

63. Oostende's submissions to support the aforementioned prayers for relief may be, in essence, summarized as follows:
- a. Standard of proof
64. Bologna referred to the case CAS 2009/A/1926 & CAS 2009/A/1930 to argue that the present dispute should be decided under the "balance of probabilities" standard of proof. However, such case was a doping one, while the present matter is a contractual dispute and the standard of proof to be applied shall be of the "comfortable satisfaction".
65. Under this standard, the Panel must be comfortably satisfied that the evidence presented by Bologna substantiates the allegations to a degree that leaves no serious doubts about the occurrence of the event in question.
66. In the case CAS 2020/A/7180 it was stressed that "*neither the FIFA RSTP nor the FIFA Procedural Rules were setting the standard of proof in a breach of contract dispute. It then recalled that when the regulations of a sports organization did not provide the applicable standard of proof, it was the CAS to determine it, and that, when dealing with breach of contract disputes, CAS panels had in several occasions applied the standard of "comfortable satisfaction", which falls in between "beyond a reasonable doubt" and "balance of probabilities" on the standard of proof spectrum. Accordingly, the applicable standard of proof to apply in the present case was "comfortable satisfaction".*"
- b. Sell-on clause
67. Bologna's statement that the sell-on clause reveals the intention of the Parties to limit the enforceability of the bonus of Article 4(C)(II) to the period during the Player was registered with Bologna is illogical and without merit.
68. In fact, the Parties merely agreed on a method to calculate the sell-on fee specifying that only the amounts already paid by Bologna to Oostende had to be taken into account for the calculation of the 7.5% of sell-on fee. The fact that further bonuses might become due after the sell-on fee is neither illogical nor inconsistent with the sell-on clause.
69. Bologna's arguments are detrimental to Oostende legitimate reliance and financial expectations, which led to the agreement for the transfer of the Player from Oostende to Bologna under the terms and conditions of the Transfer Agreement. Oostende accepted to receive a relatively low fixed fee for the transfer of the Player on the assumption that, thanks to the potential of the Player, further sums would very likely become payable as a result of his increased value and his appearances with his national team. No additional conditions (like the one suggested by Bologna, that the Player had to be still registered with the same team) were included in the Transfer Agreement; otherwise, Oostende would have rejected the deal.
70. Moreover, at no point in the negotiations have the Parties ever mentioned (nor made any implicit or explicit reference to) the fact that the payment of the bonuses of Article 4(C)(II) was conditional upon the Player being registered with Bologna while being called up by the Belgian national team.

c. The features of Article 4(C)(II)

71. Bologna considers that adhering to the literal meaning of Article 4(C)(II) would create a never-ending obligation for it. However, Bologna disregards not only the wording, but also the spirit of Article 4(C)(II), that was to limit the payment of the relevant bonus to a specific number of triggering events, rather than to a specific timeframe. The reasoning of the Appealed Decision on this matter is clear and must be confirmed.
72. Moreover, if the literal interpretation of Article 4(C)(II) leaves no doubts regarding the Parties' intention, there is no need for further interpretation of such provision.

d. Additional remark on Bologna's arguments

73. Limiting the international caps bonus to only five matches inherently defines the timeframe during which Oostende could be entitled to the respective payment. The fourth and fifth Player's international cap occurred on 24 April and 17 June 2023, that is, only a few months after the Player's transfer to Rennes.
74. As a result, the nexus between the investments made by Bologna for the enhancement of the Player's market value (also through caps at an international level) and the high transfer fee obtained from Rennes' acquisition of the Player's services (which generated a significant capital gain for the Appellant) is clear and cannot be denied.

e. Conclusions on Article 4(C)(II)

75. Bologna's argument that the payment of the remaining 2 international caps would represent a burden for Bologna with no benefit in return is refuted. Bologna could have included in the Subsequent Transfer Agreement with Rennes a similar clause of international caps, so that Bologna would receive an additional compensation that could be used to re-pay the bonus due to Oostende.
76. In any case, the enhancement of the Player's market value due to the international caps will be indeed perceived by Bologna, as it has also agreed on a sell-on fee in the Subsequent Transfer Agreement with Rennes.
77. In conclusion, Bologna's interpretation of Article 4(C)(II) is groundless and there is no element (i) to confirm that the intention of the Parties was what Bologna postulated and (ii) to deviate from the principle of *pacta sunt servanda*. Consequently, Bologna's arguments have no evidence to be supported and are an attempt to escape or at least delay compliance with its financial obligations.

## VI. JURISDICTION

78. The CAS jurisdiction derives from Article R47 of the CAS Code that provides as follows:
- “An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the*

*legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.”*

79. Article 56(1) of the FIFA Statutes, May 2022 edition (the “FIFA Statutes”) reads as follows:

*“FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, football agents and match agents.”*

80. In addition, the Articles 9 and 17 of the Transfer Agreement provide:

*“9) The Parties accept to submit to the decision of FIFA and TAS competent Body for the resolution of any disputes that may arise.*

*17) Save what expressly provided by this Agreement this latter will be submitted to the applicable FIFA regulations. Any disputes arising out in connection with the execution of this Agreement shall be submitted firstly to FIFA competent Body and after to the Court for Arbitration for Sport in Lausanne.”*

81. Moreover, the Parties did not dispute CAS jurisdiction, which is further confirmed by the Order of Procedure, duly signed and returned by the Parties.

82. Consequently, the CAS has jurisdiction to adjudicate and decide the present Appeal.

## **VII. ADMISSIBILITY**

83. Article R49 of the CAS Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.”*

84. Article 57(1) of the FIFA Statutes states:

*“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.”*

85. Additionally, the Appealed Decision confirmed that

*“according to article 57 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.”*

86. The Panel notes that the admissibility of the Appeal is not contested by the Parties.

87. The grounds of the Appealed Decision were notified to the Parties on 11 April 2024 and the Statement of Appeal was filed on 30 April, *i.e.* within the time limit required both by



the FIFA Statutes and the CAS Code.

88. Consequently, the Panel finds that the Appeal filed by Bologna is admissible.

## **VIII. APPLICABLE LAW**

89. Article R58 of the CAS Code reads as follows:

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

90. In addition, Article 56(2) of the FIFA Statutes establishes the following:

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

91. Moreover, Article 8 of the Transfer Agreement determines that:

*“the Parties accept that for all and any other matters not expressly provided for herein, FIFA Regulation on the Status and Transfer of Players shall unconditionally apply.”*

92. Lastly, the Parties' submissions shows that the Parties concur that the FIFA regulations and, subsidiarily, Swiss Law may apply to the dispute.

93. Accordingly, the Panel confirms that the present dispute shall be resolved based on the applicable FIFA regulations and, subsidiarily, on Swiss Law.

## **IX. MERITS**

94. The present arbitration concerns the Appealed Decision, ordering the Appellant to pay to the Respondent an amount of money (*i.e.* EUR 192,347.94) found to be due under the Transfer Agreement. The Appellant wants the Appealed Decision to be set aside. The Respondent, on the other hand, seeks its confirmation.

95. As a result, there are some issues relating to whether the amount awarded to the Respondent by the Single Judge was due or not. However, before entering into the merits of the dispute, the Panel finds it necessary to address, for the sake of completeness, a couple of preliminary questions: the matter of Oostende's bankruptcy and the admissibility of the deposition of Bologna's witnesses.

96. As already stated above (§§ 34, 35 and 37), the Parties have submitted documents and oral statements regarding the bankruptcy of Oostende. On their basis, the Panel notes the following:

- it is undisputed that Oostende entered in bankruptcy as a result of the judgment No 2024/1556 of 4 June 2024 of the Business Court of Ghent;
  - on 20 March Oostende’s provisional administrator sent a letter to Bologna notifying a pledge over the matter of the present dispute;
  - Oostende’s liquidator confirmed the participation and representation of Oostende in the present procedure by granting a new power of attorney to Mr. La Porta, counsel who represented Oostende also before the bankruptcy was declared;
  - neither of the Parties presented a request involving Oostende’s bankruptcy;
  - both Parties confirmed their prayers for relief;
  - the Parties confirmed that the creditor of the dispute remained the same;
  - both Parties agreed to continue the proceedings with no further observations nor requests.
97. As a result, the Panel finds that there is no issue to be resolved regarding the standing and capacity of Oostende and its representative in the present dispute, or affecting the arbitration procedure itself.
98. With respect to the admissibility of Bologna’s witness evidence, the Panel recalls that Oostende, in its Answer to the Appeal Brief, stated that “*neither of them can, in any way, assist the Panel in rendering its decision*”.
99. The Panel understands that such contentions come from the allegation that the witnesses may be biased, because of their relationship with Bologna. For instance, Mr. Marco Di Vaio is Bologna’s Sporting Director.
100. In this regard, the Panel recalls the CAS jurisprudence expressed in the case CAS 2020/A/7279, in which the sole arbitrator indicated that:
- “A., cannot, contrary to what the Respondent argues, be considered to have no legal value for the sole reason that the accountant is an employee of the Appellant. At the outmost, such a contractual relationship may affect the probative value of a witness statement but does not render such evidence inadmissible or devoid of any legal value.”*
101. Having the aforementioned in mind, the Panel accepted the questioning of the witnesses regardless of the probative value that it would grant to their depositions. Furthermore, the Panel notes that at the hearing Oostende even referred in its favour in the closing submissions to the statements made by the witnesses called by Bologna.
102. In summary, the Panel confirms the admissibility of the depositions of the witnesses named by Bologna, without prejudice to the relevance or the probative value of their declarations.
103. As mentioned, in light of the Parties’ written and oral submissions and their requests for relief, the merits of the dispute to be decided concerns the determination:
- a. whether the variable fee set by Article 4(C)(II) of the Transfer Agreement,

- consisting in EUR 100,000 per each Player's international cap, was limited to the Player being registered with Bologna or not at the time of his appearance with the Belgian national team; and
- b. depending on the findings in that respect whether the Appealed Decision is to be set aside and Bologna is entitled to the reimbursement of 20.000 USD paid as procedural costs to the PSC.
104. Based on the Parties' written and oral submissions and the testimony of the witnesses, the Panel identifies as undisputed the following facts:
- since the 21 July 2021, the Parties entered into negotiations for the transfer of the Player to Bologna, for which Bologna had a maximum budget of EUR 7,000,000, plus a 7.5% sell-on fee on Bologna's profit, *i.e.* on the amount received in a subsequent transfer, minus the amount paid to Oostende for the transfer of the Player;
  - after several rounds of negotiations, the Parties concluded the Transfer Agreement for a total amount of EUR 7,000,000, consisting in a fixed fee of EUR 6,000,000 (EUR 1,000,000 for the loan and EUR 5,000,000 for the permanent transfer) and a variable fee of EUR 1,000,000, composed by two types of bonuses: (a) EUR 500,000 to be paid after 40 games played by the Player with Bologna or upon a subsequent transfer for a fee of at least EUR 20,000,000, and (b) a maximum amount of EUR 500,000, corresponding to a maximum of 5 caps with the Belgian national team, with each of them triggering a bonus of EUR 100,000;
  - while registered with Bologna, the Player had 3 international caps with the Belgian national team. As a result, Bologna correspondingly paid to Oostende the amount of EUR 300,000 under Article 4(C)(II) of the Transfer Agreement;
  - Bologna transferred the Player to Rennes for a fee exceeding EUR 20,000,000;
  - while registered with Rennes, the Player continued to make appearances with the Belgian national team, and therefore, so far as relevant in the present case, had at least 2 more international caps;
  - the Parties concluded a settlement agreement for the payment of the EUR 500,000 bonus due pursuant to Article 4(C)(I) of the Transfer Agreement upon the subsequent transfer of the Player to Rennes.
105. In other words, Bologna eventually paid to Oostende the total amount of EUR 6,800,000 (EUR 6,000,000 due for fixed transfer fees, plus EUR 500,000 as bonus under Article 4(C)(I) and EUR 300,000 pursuant to Article 4(C)(II) of the Transfer Agreement). In that context, therefore, the dispute concerns the application of Article 4(C)(II) of the Transfer Agreement with respect to the 2 international appearances of the Player made after his transfer from Bologna to Rennes. Under Article 4(C)(II) of the Transfer Agreement, in fact, Bologna undertook to pay to Oostende *"The once only sum of €100.000/00 net (Euro One hundred thousand/00) after every international cap with the Belgian National A Team in an official competition organized by UEFA or FIFA, for a maximum of 5 caps."*
106. The Panel, therefore, must address the issue of whether the bonus mentioned by Article

4(C)(II) of the Transfer Agreement was limited or not to the Player being registered with Bologna by the time the international caps occurred.

107. As seen, Bologna essentially considers that the bonus in dispute must be subject to the Player being registered with Bologna at the time of the international appearance, because otherwise the payment of the portion of the variable fee contemplated by Article 4(C)(II) of the Transfer Agreement would become the object of a never-ending obligation, it would be inconsistent with the sell-on fee mechanism provided by the Transfer Agreement and it would represent a burden for Bologna with no financial return.
108. Conversely, Oostende argues that in no way Article 4(C)(II) implies a never-ending obligation and must not be confused with the sell-on clause. Regarding the sell-on clause, in fact, the Parties only agreed upon a method of calculating it, without including the limitation that Bologna is trying to allege, which was not negotiated nor included in the Transfer Agreement.
109. The Panel starts its examination of the issue by recalling Article 8 of the Swiss Civil Code, under which:
- “unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact.”*
110. The relevance of the principle expressed by Article 8 of the Swiss Civil Code has been recognized in well-established CAS jurisprudence. For instance, the award in CAS 2021/A/8214 underlined that:
- “the Sole Arbitrator adheres to the principle of actori incumbit probatio, which has consistently been observed in CAS jurisprudence, and according to which “in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue, In other words, the party which asserts facts to support its rights has the burden of establishing them (...) The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence” (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff).”*
111. For the sake of completeness, the Panel also observes that such principle was also applied in the Appealed Decision, where it mentions that:
- “the Single Judge recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof.”*
112. In addition, and given that the Parties are disputing also the applicable standard of proof, the Panel agrees in that respect with the considerations made by another CAS panel in the award CAS 2022/A/9328, in which it was indicated that:

*“the Panel observes that none of the FIFA regulations set the standard of proof for disputes related to the breach and termination of employment contracts. According to*

*well-established CAS jurisprudence, when the regulations of the sports organization from which the Appealed Decision emanates, remain silent on the applicable standard, it is up to the CAS to determine it. In the present case and keeping in mind that in many other Article 17 RSTP related cases, CAS panels have applied the standard of “comfortable satisfaction”, which, on the standard of proof spectrum, sits in between the standard of “beyond a reasonable doubt” and the standard of “balance of probabilities” (see CAS 2020/A/7180 para. 84 with further references), the Panel considers that the applicable standard of proof in this case, also keeping in mind the allegations of the Club, is that of “comfortable satisfaction.”*

113. Moreover, the Panel notes that in CAS 2020/A/6985 it was determined that:

*“the standard of proof which applies to proceedings of the FIFA judicial bodies is that the members of FIFA’s judicial bodies decide on the basis of their “personal conviction” and CAS jurisprudence has consistently equalled this standard to the standard of “comfortable satisfaction”. It is a standard that is higher than the civil standard of “balance of probability” but lower than the criminal standard of “proof beyond a reasonable doubt” (see CAS 2010/A/2172; CAS 2009/A/1920).”*

114. Accordingly, the Panel considers that in principle Oostende complied with its burden to prove that the Transfer Agreement established an obligation for Bologna to pay Oostende EUR 100,000 per each international cap of the Player with the Belgian national team (with a maximum of 5 caps) and that the Player actually made those appearances. Then, whether Bologna had the obligation to pay EUR 100,000 per each of the 2 international caps of the Player after the transfer to Rennais (to reach the limit of 5 caps) is a matter of interpretation of the relevant provision of the Transfer Agreement.

115. The Panel understands and agrees with the references made by Bologna to Article 18 of the Swiss Civil Code as a starting point for such analysis. Article 18 of the Swiss Civil Code so provides:

*“When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement”.*

116. The various steps foreseen in Article 18.1 of the Swiss Civil Code for the interpretation of contracts are best described in the following decision by the Swiss Federal Tribunal (ATF 127 III 444 E. 1b), which states – *inter alia* – as follows:

*“Pour déterminer s'il y a eu effectivement accord entre parties, il y a lieu de rechercher, tout d'abord, leur réelle et commune intention (art. 18 al. 1 CO). Il incombe donc au juge d'établir, dans un premier temps, la volonté réelle des parties, le cas échéant empiriquement, sur la base d'indices. S'il ne parvient pas à déterminer cette volonté réelle, ou s'il constate qu'une partie n'a pas compris la volonté réelle manifestée par l'autre, le juge recherchera quel sens les parties pouvaient et devaient donner, selon les règles de la bonne foi, à leurs manifestations de volonté réciproques (application du principe de la confiance). A cet égard, la jurisprudence récente a nuancé le principe selon lequel il y aurait lieu de recourir à des règles d'interprétation uniquement si les*

*termes de l'accord passé entre parties laissent planer un doute ou sont peu clairs. On ne peut ériger en principe qu'en présence d'un "texte clair", on doit exclure d'emblée le recours à d'autres moyens d'interprétation. Il ressort de l'art. 18 al. 1 CO que le sens d'un texte, même clair, n'est pas forcément déterminant et que l'interprétation purement littérale est au contraire prohibée. Même si la teneur d'une clause contractuelle paraît claire à première vue, il peut résulter d'autres conditions du contrat, du but poursuivi par les parties ou d'autres circonstances que le texte de ladite clause ne restitue pas exactement le sens de l'accord conclu”.*

117. The Panel notes that Article 4(C)(II) does not expressly subject the obligation of Bologna to pay the bonuses therein contemplated to the circumstance of the Player being registered with Bologna while the international caps occurred. Indeed, the Panel notes that the variable bonus of EUR 100,000 per each international cap of the Player was clearly made subject to a different limitation, to the extent it was limited to “*a maximum of 5 caps*”. As a result, the Panel agrees with the Appealed Decision that such bonus did not imply an obligation imposed forever on Bologna. As a matter of fact, then, it is to be noted that the Player has been called up by the Belgian national team on more opportunities than the 2 caps which are the reason of the present dispute, with no further bonuses claimed.
118. The Panel, however, is called to establish empirically the true and common intention of the Parties, as the case may be also on the basis of the circumstances, and of the evidence offered by them. In that respect, the Panel underlines that it was Bologna’s burden to prove, to a comfortable satisfaction of the Panel, that Article 4(C)(II) exceeded its literal meaning and is to be understood as limited to the circumstance of the Player being registered with Bologna while the international caps occurred, *i.e.*, that there are circumstances that merit a further analysis beyond the principle *in claris non fit interpretatio*, a principle recognized by the Swiss Federal Tribunal as well as in other CAS cases (*e.g.* CAS 2013/A/3137).
119. Contrary to the Bologna’s submissions, however, the Panel finds that the additional elements invoked, rather than contradicting the wording of the Agreement, even confirm the literal interpretation of the Article 4(C)(II).
120. Essentially, the Panel finds, based on the Parties submissions and the witnesses’ testimony in the present procedure, that since the beginning of the negotiations Bologna had a maximum budget of EUR 7,000,000 that, regardless of the changes in the agreement conditions, has been respected (only at one point in the negotiation Bologna tried to reduce it to EUR 6,750,000). In other words, the obligation to pay for the 2 additional international caps after the transfer to Rennais remains consistent with the overall budget allocated to Bologna for the transfer of the Player from Oostende.
121. Additionally, Bologna was unable to demonstrate that the Parties have effectively discussed at any moment of the negotiations, nor included in the Transfer Agreement, that the variable fee of EUR 100,000 was to be limited to the international caps to occur while the Player was registered with Bologna. As a result, no common intention of the Parties to give Article 4(C)(II) of the Transfer Agreement the meaning proposed by Bologna could be established.

122. With all, the Panel observes that the mentioned bonus was negotiated and agreed to have a limit in the explicitly maximum of 5 international caps and also finds its justification as it was the amount that complies with the maximum budget available by Bologna to acquire the Player's services, which it ultimately did and benefitted from the subsequent transfer to Rennes.
123. In this sense, any effect that Article 4(C)(II) may have on other clauses of the Transfer Agreement, such as the calculation of the sell-on fee is irrelevant, and does not modify the agreement reached by the Parties regarding the mentioned bonus. In particular, it cannot lead to the establishment of a new, additional condition for the bonus payment, lacking the evidence that such an additional condition had been discussed and agreed.
124. Consequently, the Panel confirms the reasoning and the conclusion of the Appealed Decision. Accordingly, Bologna must pay to Oostende an amount of EUR 192,347.94 net as an outstanding amount plus interest p.a. as follows:
- 5% interest p.a. over the amount of EUR 96,173.97 net as from 30 September 2023 until the date of effective payment;
  - 5% interest p.a. over the amount of EUR 96,173.97 net as from 3 October 2023 until the date of effective payment.
125. As a result, Bologna's request to be reimbursed for the costs of the proceedings before the PSC becomes moot.
126. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the Parties. Accordingly, all other prayers for relief are rejected.

## **X. COSTS**

(...).

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The Appeal filed by Bologna FC 1909 SPA against the Decision FPSD-13105 rendered on 22 March 2024 by the Player Status Chamber of the FIFA Football Tribunal is dismissed.
2. The Decision FPSD-13105 rendered on 22 March 2024 by the Player Status Chamber of the FIFA Football Tribunal is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 3 March 2025

## THE COURT OF ARBITRATION FOR SPORT

José Juan Pintó Sala

President of the Panel

Luigi Fumagalli

Arbitrator

Michele A.R. Bernasconi

Arbitrator

Alejandro Naranjo Acosta

*Ad hoc* Clerk