



Arbitration CAS 2012/A/2875 Helsingborgs IF v. Parma FC S.p.A, award of 28 February 2013

Panel: Mr Hendrik Kesler (The Netherlands), President; Mr Lars Hilliger (Denmark); Mr Rui Botica Santos (Portugal)

Football

Transfer (sell-on fee)

CAS scope of review (admissibility of new requests)

Amount to be used to calculate a sell-on fee

Due date of the sell-on fee

Interests due

1. According to article R57 of the CAS Code, the CAS panel has full power to review the facts and the law and may issue a new decision that replaces the decision challenged. CAS jurisprudence shows that, in reviewing a case in full, a panel cannot go beyond the scope of the previous litigation and is limited to the issues arising from the challenged decision. In this respect, alleged “new” requests claimed before the previous instance fall within the scope of the previous litigation and therefore under the scope of review of the CAS.
2. It is common practice in the world of football that contracting parties deviate from initially agreed fictitious amounts. The relevant amount to be used as the basis for calculating a sell-on fee is therefore the amount actually to be received by a club for selling a player to a subsequent club and not an indicative amount.
3. A sell-on fee is related to the transfer fee actually to be received by a club transferring a player to another club. If such transfer fee is to be paid in contingent payments and in the absence of a contractual provision determining otherwise, the contingent payment schedule has to be taken into account. It would be inequitable for a club to be obliged to pay the entire sell-on fee immediately upon first request of the creditor even before it received any amounts under the transfer fee from the third club. Consequently, the payment of a sell-on fee is related to the payment schedule agreed upon between the club liable to pay the sell-on fee and the third club on a *pro-rata* basis.
4. The interest awarded in a confirmed decision remains due. However, in the absence of any request for interest over the instalments fallen due by a club liable to pay a sell-on fee since the decision confirmed was rendered, no interest can be awarded to the creditor over said instalments.

I. PARTIES

1. Helsingborgs IF (hereinafter: the “Appellant” or “Helsingborgs”) is a football club with its registered office in Helsingborg, Sweden. Helsingborgs is registered with the Swedish Football Association, which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter: the “FIFA”).
2. Parma FC S.p.A. (hereinafter: the “Respondent” or “Parma”) is a football club with its registered office in Parma, Italy. Parma is registered with the Italian Football Federation, which in turn is affiliated to FIFA.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
4. On 29 August 2007, Helsingborgs and Parma entered into an agreement written in Italian (hereinafter: the “Italian Agreement”) regarding the loan from Helsingborgs to Parma of Mr McDonald Mariga (hereinafter: the “Player”), a professional football player of Kenyan nationality, born on 4 April 1987. The loan of the Player covered the 2007/2008 football season and included an option for a possible later definite transfer of the Player to Parma.
5. One day later, on 30 August 2007, Helsingborgs and Parma entered into a similar agreement written in English (hereinafter: the “English Agreement” or the “Transfer Agreement”).
6. During the FIFA proceedings it was in dispute which of the two transfer agreements was to prevail. The FIFA PSC Single Judge decided that the English Agreement prevailed over the Italian Agreement and in the present appeal proceedings the parties’ positions no longer differ in this respect; both parties confirmed at the hearing that the English Agreement prevails over the Italian Agreement.
7. The English Agreement, *i.e.* the Transfer Agreement, *inter alia*, contains the following terms:
 1. “(...) Helsingborgs IF agree to transfer on loan the PLAYER to Parma FC (“Loan”) starting from 30/08/2007 until 30/06/2008 (“Loan Period”). Parma F.C. shall pay to Helsingborgs IF the net amount of Euro €350.000,00 (euro three hundred fifty thousand/00) as transfer fee for the loan of the PLAYER (“Loan Transfer fee”) under the condition to receive the International Transfer Certificate. (...)”
 2. Helsingborgs IF reserves to Parma F.C. an option to buy to change the loan in a definitive transfer of the PLAYER, through a communication by fax to be sent to Helsingborgs IF fax number (...) or through an express courier within 30/04/2008 (“Option”).

3. *If Parma decides to take the option under the terms of article 2), Parma F.C. shall pay to Helsingborgs IF, as net amount for the definitive transfer of the PLAYER, Euro 1.650.000,00 (euro one million six hundred fifty thousand/00) to be given in three years on equal amount (20/07/2008 – 01/03/2009 – 15/09/2009).*

(...)

6. *If Parma F.C. decides to take the option under the terms of the article 2), Parma F.C. undertakes to pay to Helsingborgs IF, in case of future transfer of the PLAYER to another club, the net amount of 15% - Transfer fee minus the net amount of € Euro 2.000.000,00 (two million/00) paid under the terms of the article 3 before”.*

8. Payment of the loan fee of EUR 350,000 is not in dispute and was made by Parma on 10 October 2007.
9. On 29 April 2008, Parma exercised the option in the Transfer Agreement to acquire the services of the Player on a permanent basis. Consequently, pursuant to article 3 of the Transfer Agreement, Parma had to pay Helsingborgs the following amounts: EUR 550,000 by 20 July 2008, EUR 550,000 by 1 March 2009 and EUR 550,000 by 15 September 2009; together with the loan fee of EUR 350,000 totalling to an amount of EUR 2,000,000.

B. Proceedings before the Single Judge of the FIFA Players’ Status Committee

10. On 11 December 2009, Helsingborgs filed a claim with FIFA against Parma, claiming payment of an outstanding transfer fee of EUR 709,657, as Parma allegedly did not comply with the payment schedule determined in the Transfer Agreement.
11. On 1 February 2010, during the FIFA proceedings, the Player was transferred by Parma to the Italian club FC Internazionale Milano S.p.A. (hereinafter: “Internazionale”) for a transfer fee of, allegedly, EUR 10,000,000. In light of article 6 of the Transfer Agreement, Helsingborgs supplemented its pending claim before FIFA by requesting an additional payment of 15% of the amount paid by Internazionale to Parma in excess of the fees that should have been paid by Parma to Helsingborgs regarding the transfer of the Player.
12. Also on 1 February 2010, Parma and Internazionale entered into a Co-ownership agreement (“*Accordo di partecipazione No. 0117/A*” – hereinafter: the “Co-ownership Agreement”) according to which Internazionale granted Parma the right of 50% co-ownership in the economic effects of the Player for a total amount of EUR 5,000,000 to be paid in three instalments (with EUR 1,700,000 during the season 2009/2010, EUR 1,600,000 during the season 2010/2011 and EUR 1,700,000 during the season 2011/2012).
13. On 7 April 2010, before the Single Judge of the FIFA Players’ Status Committee (hereinafter: the “FIFA PSC Single Judge”) was able to render its decision in the present matter, Parma complied with its payment obligations towards Helsingborgs concerning the outstanding transfer fee of EUR 709,657. The FIFA PSC Single Judge was therefore no longer required to render a decision in this respect.

14. On 25 June 2010, Parma and Internazionale signed an agreement titled “*Liquidazione consensuale dell’accordo di partecipazione*” – hereinafter: the “Consensual Payment Agreement”), according to which Internazionale allegedly purchased the remaining 50% of the economic rights of the Player from Parma for a total amount of EUR 4,200,000, to be paid in three instalments (with EUR 1,400,000 during the season 2010/2011, EUR 1,400,000 during the season 2011/2012 and EUR 1,400,000 during the season 2012/2013).
15. It is therefore in dispute whether the 15% sell-on fee shall be based on a transfer fee of EUR 10,000,000 or EUR 9,200,000 and on which date(s) the sell-on fee became due.
16. On 30 January 2012, the FIFA PSC Single Judge rendered its decision (hereinafter: the “Appealed Decision”), deciding that the sell-on fee was to be based on a transfer fee of EUR 9,200,000 and that Parma had to pay the sell-on fee in different instalments. The decision contained, *inter alia*, the following operative part:
 1. “*The claim of [Helsingborgs] is partially accepted.*”
 2. *[Parma] has to pay to [Helsingborgs] the amount of EUR 551,790 within 30 days as from the date of notification of this decision. The cited amount is composed as follows:*
 - EUR 199,590 related to the instalment due on the sports season 2009/2010;
 - EUR 187,830 related to the instalment due on the sports season 2010/2011;
 - EUR 164,370 related to the instalment due on the sports season 2010/2011.
 3. *Any further claims lodged by [Helsingborgs] are rejected. (...)*”
17. On 11 July 2012, upon the request of Helsingborgs, the FIFA PSC Single Judge communicated the grounds of the Appealed Decision to the parties and held, *inter alia*, the following:
 - “*(...) [T]he Single Judge was keen to analyse the documentary evidence at disposal in order to establish which, in fact, it [sic] was the transfer amount agreed between [Parma] and [Internazionale]. In this respect and after an exhaustive analysis of the relevant documents, the Single Judge concluded that originally [Internazionale] and [Parma] agreed on a transfer amount of EUR 10,000,000 but, later on, both parties renegotiated the relevant amount and finally agreed on a transfer amount of EUR 9,200,000.*”
 - *As a consequence, the Single Judge concluded that the amount of EUR 9,200,000 was the transfer amount agreed between [Parma] and [Internazionale] and as a consequence it is the amount that shall be taken into account for the calculation of the sell-on fee in accordance with point 6 of the agreement.*
 - *Moreover, the Single Judge deemed appropriate to highlight that the relevant amount of EUR 9,200,000 was agreed between [Internazionale] and [Parma], to be paid in 6 instalments, according to the following payment plan:*
 - a. *The amount of EUR 5,000,000 to be paid as follows: EUR 1,700,000 during the sports season 2009/2010; EUR 1,600,000 during the sports season 2010/2011 and EUR 1,700,000 during the sports season 2011/2012;*

- b. *The amount of EUR 4,200,000 to be paid as follows: EUR 1,400,000 during the sports season 2010/2011; EUR 1,400,000 during the sports season 2011/2012 and EUR 1,400,000 during the sports season 2012/2013.*
- *In this respect, the Single Judge took note that at the moment of taking this decision, there were only 3 instalments due, i.e. EUR 1,700,000 to be paid during the sports season 2009/2010; EUR 1,400,000 during the sports season 2011/2012 and EUR 1,400,000 during the sports season 2010/2011.*
 - *In view of the above, the Single Judge concluded that [Helsingborgs] was not entitled to claim its respective shares (sell-on fee) with regard to the other three instalments which were still not due (i.e. EUR 1,700,000 to be paid during the sports season 2011/2012; EUR 1,400,000 to be paid during the sports season 2011/2012 and EUR 1,400,000 to be paid during the sports season 2012/2013).*
 - *Having established the above, the Single Judge went on to calculate the exact amount to be paid by [Parma] to [Helsingborgs] as sell-on fee, on the basis of the point 6 of the agreement and the payment plan agreed between [Parma] and [Internazionale].*
 - *Therefore and as established previously, the Single Judge reiterated that according to point 6 of the agreement, [Helsingborgs] shall receive 15% of the subsequent transfer of the player (i.e. EUR 9,200,000) deducting the amount of EUR 2,000,000 (amount already paid by [Parma] to [Helsingborgs]), i.e. EUR 1,080,000.*
 - *In addition, the Single Judge stated that taking into account the payment plan agreed between [Internazionale] and [Parma], it was appropriate to deduct the amount of EUR 2,000,000 (amount already paid by [Parma] to [Helsingborgs]) “a prorata” [sic] over the relevant 6 instalments”.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 31 July 2012, Helsingborgs filed a statement of appeal together with 3 exhibits with CAS. The Appellant nominated Mr Lars Hilliger, attorney-at-law in Copenhagen, Denmark, to be appointed as arbitrator.
19. On 9 August 2012, Helsingborgs filed its appeal brief. This document contained a statement of the facts and legal arguments and was accompanied by 6 exhibits. The Appellant challenged the Appealed Decision taken by the FIFA PSC Single Judge on 30 January 2012, submitting the following requests for relief:
- “4.1.1 to accept the present appeal against the challenged decision;
 - 4.1.2 to set aside the challenged decision;
 - 4.1.3.1 to primarily order Respondent to pay to Appellant the amount of € 1,200,000; or
 - 4.1.3.2 to secondarily (alternative to 4.1.3.1) order Respondent to pay to Appellant the amount of € 1,080,000; or
 - 4.1.3.3 to thirdly (alternative to 4.1.3.1 and 4.1.3.2) order Respondent to pay to Appellant the amount of € 915,750 and establish that Respondent shall pay to Appellant the amount of € 164,250

not later than on 19 May 2013 [during the hearing the Appellant clarified that the aforementioned date should be 30 June 2013];

- 4.1.4 *to order the Respondent to reimburse Appellant for its arbitration costs, including, without limitation, all legal fees and expenses incurred by Appellant; and*
- 4.1.5 *to declare that Respondent alone shall bear all fees, expenses and other compensation to the arbitrators and CAS including any interest thereon”.*
20. On 10 August 2012, the CAS Court Office requested FIFA whether it intended to participate as a party in the present arbitration.
21. On 11 August 2012, the Respondent nominated Mr Rui Botica Santos, attorney-at-law in Lisbon, Portugal, as arbitrator.
22. On 23 August 2012, FIFA renounced its right to request its possible intervention and provided a clean copy of the Appealed Decision.
23. On 21 September 2012, pursuant to article R54 of the CAS Code of Sports-related Arbitration (hereinafter: the “CAS Code”), and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by:
- Mr Hendrik Willem Kesler, attorney-at-law in Enschede, the Netherlands, as President;
Mr Lars Hilliger, attorney-at-law in Copenhagen, Denmark; and
Mr Rui Botica Santos, attorney-at-law in Lisbon, Portugal, as arbitrators.
24. On 11 October 2012, the Respondent filed its answer, with 2 exhibits, whereby it requested CAS to decide the following:
1. *“to dismiss the Appeal;*
 2. *to confirm the Challenged Decision;*
 3. *to establish that no interest are due to the Appellant;*
 4. *to establish that the costs of the arbitration procedure shall be borne by the Appellant;*
 5. *to condemn the Appellant to the payment in the favour of the Respondent of the legal expenses incurred”.*
25. On 15 October 2012, upon the request of the Respondent, the Panel requested the Appellant to provide original copies of 4 exhibits to its appeal brief, as only translations into English were provided and not the original documents.
26. On 16 October 2012, the CAS Court Office requested FIFA to provide a copy of its file related to this matter. Such copy was filed by FIFA on 26 October 2012.

27. On 19 October 2012, the Appellant informed the CAS Court Office that it did not deem it necessary to hold a hearing in this matter.
28. Also on 19 October 2012, the Respondent informed the CAS Court Office that it preferred a hearing to be held.
29. On 22 October 2012, the Appellant informed the CAS Court Office that it did not have original copies of the translations into English of the exhibits to its appeal brief. The Appellant requested the Panel to consider the English documents as the documents had been provided by the Respondent during the proceedings before the FIFA PSC Single Judge.
30. On 25 October 2012, the CAS Court Office informed the parties that, pursuant to article R57 of the CAS Code, the Panel had decided to hold a hearing in this matter.
31. On 11, 12 and 13 December 2012 respectively, the Respondent informed the CAS Court Office of the persons attending the hearing, the Respondent returned a signed copy of the Order of Procedure and the Appellant informed the CAS Court Office of the persons attending the hearing and returned a signed copy of the Order of Procedure.
32. A hearing was held on 28 January 2013 in Lausanne, Switzerland. At the outset of the hearing, the parties confirmed that they did not have any objection as to the constitution and composition of the Panel.
33. In addition to the Panel, Mr William Sternheimer, Managing Counsel & Head of Arbitration to the CAS, and Mr Dennis Koolaard, Ad hoc Clerk, the following persons attended the hearing:
 - a) For Helsingborgs: Mr Nils Petersen, Counsel
 - b) For Parma: Ms Anna Smirnova, Counsel
34. No witnesses or experts were heard. The parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
35. During the hearing, the parties were offered the opportunity to come to an amicable solution of the dispute and to inform the Panel whether a settlement was concluded within a period of 10 days after the hearing, failing which the Panel would proceed to render an award.
36. Before the hearing was concluded, both parties confirmed that they did not have any objection with the procedure and that their right to be heard had been respected.
37. On 8 February 2013, the CAS Court Office informed the parties that, in the absence of any news from the parties regarding a possible settlement of their dispute, the Panel would proceed with drafting the award.

38. The Panel confirms that it carefully heard and took into account in its discussion and subsequent deliberations all the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES

39. The following outline of the parties' positions is illustrative only and does not necessarily encompass every contention put forward by the parties. However, the Panel has carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summaries.

40. The submissions of the Appellant, in essence, may be summarized as follows:

- The Appellant agrees with the conclusion of the FIFA PSC Single Judge insofar as he decided that the English Agreement is binding between the parties and not the Italian Agreement.
- The Appellant is however of the opinion that the FIFA PSC Single Judge came to a wrong conclusion regarding the transfer price for the Player and the sell-on fee the Appellant is entitled to according to the Transfer Agreement.
- The first transaction (in a line of transactions) was the full and complete transfer of all of the rights to the Player from Parma to Internazionale. The total amount of operation for that transaction was EUR 10,000,000 and the sell-on fee shall only be considered as relating to this *first* transaction. As a consequence hereof, the sell-on fee shall be based on the amount of EUR 10,000,000, *i.e.* EUR 1,200,000 $((10,000,000 - 2,000,000) \times 15\%)$.
- As the Transfer Agreement does not contain a specific payment plan for payment of the sell-on fee by Parma to Helsingborgs, the sell-on fee falls due on the Appellant's request for payment thereof. Even if the payment plan agreed upon between Parma and Internazionale should be taken into account, the full amount of EUR 1,200,000 has fallen due.
- In the event the Panel should accept the calculation of the sell-on fee as made by the FIFA PSC Single Judge, *i.e.* that the sell-on fee shall be based on a transfer price for the Player amounting to EUR 9,200,000, the payment also falls due on Appellant's request for payment thereof. In such event the Appellant is entitled to EUR 1,080,000 $((9,200,000 - 2,000,000) \times 15\%)$.
- In the event the Panel should accept the calculation of the sell-on fee as made by the FIFA PSC Single Judge *and* that consideration shall be taken with regard to the payment plans determined in the Co-ownership Agreement and the Consensual Payment Agreement regarding the sale of the economic rights of the Player, as was argued by the FIFA PSC Single Judge, the Panel should observe that at the moment of filing this appeal brief, five (of six) instalments have fallen due. The final instalment falls due on 30 June 2013 at the latest (when the sports season 2012/2013 ends).

- Consequently, should the Panel accept and establish the considerations made by the FIFA PSC Single Judge when it comes to the due dates and that the sell-on fee shall be calculated on a *pro rata* basis in relation to the payment plans in the Co-ownership Agreement and the Consensual Payment Agreement, the sell-on fee that the Appellant is entitled to shall be as follows:
 - EUR 199,590 related to the instalment due on the sport season 2009/2010;
 - EUR 187,830 related to the instalment due on the sport season 2010/2011;
 - EUR 164,370 related to the instalment due on the sport season 2010/2011;
 - EUR 199,590 related to the instalment due on the sport season 2011/2012;
 - EUR 164,370 related to the instalment due on the sport season 2011/2012.
- The total fee fallen due thus amounts to EUR 915,750. The balance of EUR 164,250 falls due on 30 June 2013 at the latest.

41. The submissions of the Respondent, in essence, may be summarised as follows:

- The Respondent first points out that the FIFA PSC Single Judge was correct in noting that the English Agreement was binding upon the parties and not the Italian Agreement.
- Regarding the Appellant's primary request for relief, *i.e.* that the sell-on fee shall be based on the amount of EUR 10,000,000, the Respondent is of the opinion that according to Italian football legislation, when two clubs agree on the transfer of a player and simultaneously share the economical rights to 50% for each club (so-called "*compartecipazione*"), they have to agree on the amount that the transferred 50% share is worth. The double of this amount represents only an indicative amount for the transfer of 100% rights for the player concerned. In the moment however that the new club wishes to purchase the remaining 50% of the economical rights of the player, the two clubs have to negotiate about the value of such rights and are free to agree on the amount they deem suitable.
- The amount of EUR 10,000,000 claimed by the Appellant as being the definitive amount on which it calculated the share due to it, is therefore nothing else than an indicative amount for the transfer of 100% of the economic rights of the Player based on the fact that the Respondent and Internazionale established a 50% co-ownership with respect to the rights for the Player for the amount of EUR 5,000,000. The Appellant has not produced any document signed by the Respondent proving that the Player was transferred for the amount of EUR 10,000,000.
- At the moment Internazionale expressed its intention to purchase the remaining 50% of the rights for the Player and following negotiations between the Respondent and Internazionale, the clubs estimated these 50% in the amount of EUR 4,200,000. The said amount, and only this one, finally represented the definitive one, *i.e.* the fee the Respondent would gain from the transfer of the Player and payable in accordance with the agreed schedule. The Respondent therefore requests the Panel to solely recognize the amounts of EUR 5,000,000 (of the first 50%) and EUR 4,200,000 (of the second 50%) and the respective payment schedule for these amounts shall be taken into

consideration for the calculation of the sell-on fee as stipulated under the Transfer Agreement.

- Regarding the due date of the sell-on fee to be paid to the Appellant, the Respondent contends that, should one follow the approach proposed by the Appellant, *i.e.* requesting the payment of the sell-on fee to be arranged for at its first demand, this could entail the conclusion that the Respondent in a literal way was obliged to pay the Appellant the sought amount notwithstanding the fact whether it already received the relevant transfer amount from Internazionale and notwithstanding any payment schedule agreed with this third party. It was therefore correct on the side of the FIFA PSC Single Judge to establish in the Appealed Decision that since the Respondent and Internazionale had agreed on contingent payments, also the sell-on fee shall follow the same payment dates and the amount of EUR 2,000,000 already paid by the Respondent to the Appellant shall be deducted *pro rata*.
- The Respondent argues that the Appellant has waived any right to legal interest, since it did not request for any default interest in its prayers for relief.
- Finally, the Respondent maintains that the present appeal clearly represents a default of the creditor according to article 91 of the Swiss Code of Obligations to accept performance properly offered to it by the debtor or to carry out such preparations as it is obliged to make and without which the debtor cannot render performance. By appealing the Appealed Decision the Appellant hinders the Respondent to perform its obligation pending the outcome of the present procedure.
- These circumstances shall also be taken into account while assessing the party that shall be responsible for the costs of the arbitration procedure and the legal expenses that shall be paid to the counterparty. In fact, it is the Respondent's position that the present procedure was absolutely not necessary since the Respondent recognizes the conclusions reached in the Appealed Decision. The Appellant shall therefore be condemned to the full payment of the present arbitration procedure as well as the legal expenses incurred by the Respondent while defending the present case.

V. ADMISSIBILITY

42. The appeal was filed within the deadline of 21 days set by article 63(1) FIFA Statutes. The appeal complied with all other requirements of article R48 of the CAS Code, including the payment of the CAS Court Office fees.
43. It follows that the appeal is admissible.

VI. JURISDICTION

44. The jurisdiction of CAS, which is not disputed, derives from article 63(1) FIFA Statutes 2011 edition as it determines that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of

notification of the decision in question” and article R47 of the CAS Code. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.

45. It follows that CAS has jurisdiction to decide on the present dispute.
46. Under article R57 of the CAS Code, the Panel has full power to review the facts and the law and it may issue a new decision that replaces the decision challenged.

VII. APPLICABLE LAW

47. Article R58 of the CAS Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

48. The Panel notes that article 62(2) FIFA Statutes stipulates 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”.

49. The parties agreed to the application of the various regulations of FIFA and subsidiary to the application of Swiss law. The Panel is therefore satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. PRELIMINARY ISSUES

A. New requests made before CAS that were not made before FIFA

50. In its answer the Respondent objects the admissibility of requests made by the Appellant in these arbitration proceedings insofar as these requests were not made in the proceedings before the FIFA PSC Single Judge. The Respondent contends that should the Appellant wish to maintain these requests, it should start a new procedure before the competent FIFA bodies.
51. During the hearing, the Appellant expressed the view that the requests made in the present proceedings did not differ from the requests made in the initial proceedings before the FIFA PSC Single Judge.
52. Although not specifically clarified by the Respondent, the Panel understands that the alleged “new” requests made by the Appellant concern instalments that could not be awarded by the FIFA PSC Single Judge as he considered that these instalments had not fallen due on the date of rendering the Appealed Decision.

53. The Panel refers to article R57 of the CAS Code, which determines that the Panel has full power to review the facts and the law and it may issue a new decision that replaces the decision challenged. CAS jurisprudence shows that, in reviewing a case in full, a Panel cannot go beyond the scope of the previous litigation and is limited to the issues arising from the challenged decision (CAS 2007/A/1396 & 1402). The Panel however noted that the Appellant claimed the full sell-on fee in the proceedings before the FIFA PSC Single Judge and that the alleged “new” requests therefore fell within the scope of the previous litigation.
54. The Panel took into consideration that the parties’ positions did not differ regarding the fact that solely due to the passing of time, five of the total six instalments fell due at the moment this Panel rendered its decision in the present appeal proceedings, instead of only three instalments that fell due at the moment the FIFA PSC Single Judge rendered its decision.
55. The Panel furthermore took into account that the Respondent confirmed at the occasion of the hearing in the present appeal proceedings that, although the total amount of the sell-on fee was disputed, it did not object that it finally would have to pay to the Appellant six instalments in relation to the sell-on fee.
56. Consequently, the Panel finally did not have to consider the admissibility of the “new” requests as they were not disputed between the parties.

B. Admissibility of translated exhibits without providing the originals

57. In its answer, the Respondent argued that the Appellant only adduced translations of certain exhibits, without providing the original copies and therefore requested the Panel not to consider these exhibits.
58. As already mentioned *supra*, on 15 October 2012, the Panel requested the Appellant to provide original copies of four exhibits to its appeal brief.
59. On 22 October 2012, the Appellant informed the CAS Court Office that it did not have original copies of the translations into English of the exhibits to its appeal brief. The Appellant requested the Panel to consider the English documents as they had been provided by the Respondent during the proceedings before the FIFA PSC Single Judge.
60. On 26 October 2012, FIFA provided the CAS Court Office with a copy of its file related to this matter.
61. The Panel noted that the file provided by FIFA contained the original copies in the Italian language of the translated exhibits that were provided by the Appellant in its appeal brief.
62. At the outset of the hearing, the parties were informed that the Panel had discovered the original copies in the file provided by FIFA and asked the parties whether they had any objections if these original documents would be taken into consideration by the Panel.

63. Since both parties expressly stated not to have any objections in this respect and since no objections were raised regarding the translations into English compared with the original documents in Italian, the Panel decided to admit the documents to the file and to dismiss the Respondent's initial objection regarding the inadmissibility.

IX. MERITS

A. The Main Issues

64. In view of the above, the main issues to be resolved by the Panel are:
- a) What is the relevant amount to be used as the basis to calculate the sell-on fee?
 - b) On which date(s) did the sell-on fee to be paid by the Respondent to the Appellant fall due?
 - c) Is any interest due?
- a) *What is the relevant amount to be used as the basis to calculate the sell-on fee?*
65. It is undisputed between the parties that Helsingborgs was entitled to 15% of the transfer fee Parma would receive from a third club in case of a future transfer of the Player from Parma to such third club.
66. Article 6 of the Transfer Agreement determines the following:
- "If Parma F.C. decides to take the option under the terms of the article 2), Parma F.C. undertakes to pay to Helsingborgs IF, in case of future transfer of the Player to another club, the net amount of 15% - Transfer fee minus the net amount of € Euro 2.000.000 (two million/00) paid under the terms of the article 3 before".*
67. Helsingborgs asserts that only the first transaction, in a line of transactions, was the full and complete transfer of all of the rights of the Player from Parma to Internazionale. The total amount of operation for that transaction was EUR 10,000,000. Helsingborgs' right to a sell-on fee shall only be considered as relating to this first transaction. Helsingborgs therefore alleges to be entitled to EUR 1,200,000 ((EUR 10,000,000 – 2,000,000) x 15%).
68. Parma asserts that according to Italian football legislation, when two clubs agree on the transfer of a player and simultaneously share the economic rights to 50% for each club, a so-called "*compartecipazione*", they have to agree on the amount that the transferred 50% is worth. The double of this amount represents only an indicative amount for the transfer of 100% rights for the player concerned. In the moment however that the new club wishes to purchase the remaining 50% of the economical rights of the player, the two clubs have to negotiate about the value of such rights and are free to agree on the amount they deem suitable. The remaining 50% of the economical rights of the player can therefore be worth more, less or the same amount as the first 50%, depending on the particular situation of the player and on the agreement of the clubs concerned.

69. According to Parma, at the moment Internazionale expressed its intention to purchase the remaining 50% of the rights for the Player and following negotiations between Parma and Internazionale, these clubs estimated these 50% in the amount of EUR 4,200,000. The said amount, and only this one, finally represented the definitive one, *i.e.* the fee Parma will gain from the transfer of the Player and payable in accordance with the agreed schedule.
70. The Panel is satisfied to accept that, on 1 February 2010, Parma and Internazionale initially agreed to transfer the Player to Internazionale for a transfer fee of EUR 10,000,000 and that on the same date 50% of the economic rights of the Player were sold back to Parma for an amount of EUR 5,000,000, leading to a situation where Internazionale and Parma equally shared the economic rights of the Player.
71. On 25 June 2010, Parma and Internazionale reached an agreement regarding the sale of Parma's share of 50% in the economic rights of the Player for an amount of EUR 4,200,000.
72. The Panel finds that, in effect, on 1 February 2010, 50% of the Player's economic rights were sold by Parma to Internazionale for an amount of EUR 5,000,000. The Panel agrees with Parma that the amount of EUR 10,000,000 was only an indicative amount for the transfer of 100% of the economic rights of the Player and that Parma and Internazionale would have to agree on the sale of the 50% of the economic rights owned by Parma, on a later date.
73. In the opinion of the Panel, it is common practice in the world of football that contracting parties deviate from initially agreed fictitious amounts. The Panel considers that a sell-on fee is to be based on the amount actually to be received by a club for selling a player to a subsequent club and not on an indicative amount.
74. In the present case, the Panel deems the transfer agreements concluded between Parma and Internazionale of the essence to determine the amounts actually received by Parma from Internazionale. These agreements show that Parma was entitled to the following amounts from Internazionale:
- Regarding the first 50% of the Player's economic rights:
 - Sports season 2009/2010: EUR 3,400,000 – EUR 1,700,000 = EUR 1,700,000
 - Sports season 2010/2011: EUR 3,200,000 – EUR 1,600,000 = EUR 1,600,000
 - Sports season 2011/2012: EUR 3,400,000 – EUR 1,700,000 = EUR 1,700,000
 - Regarding the second 50% of the Player's economic rights:
 - Sports season 2010/2011: EUR 1,400,000
 - Sports season 2011/2012: EUR 1,400,000
 - Sports season 2012/2013: EUR 1,400,000
75. The Panel has no reason to doubt the good intentions of Parma by agreeing to sell the second 50% of the Player's economic rights for a lower amount of EUR 4,200,000. Parma had an incentive to negotiate the highest price possible for the remaining 50% of the economic rights,

as it would be entitled to 85% (the remaining 15% corresponds to the sell-on fee Helsingborgs was entitled to) of the amounts received from Internazionale.

76. Consequently, the Panel comes to the conclusion that the actual transfer fee paid (or to be paid) by Internazionale to Parma amounts to a fee of EUR 9,200,000. Pursuant to article 6 of the Transfer Agreement, an amount of EUR 2,000,000 has to be deducted from this amount of EUR 9,200,000. Helsingborgs is therefore entitled to 15% of EUR 7,200,000, *i.e.* EUR 1,080,000. The Appellant's primary request for relief is therefore dismissed. Whether the Appellant's secondary request for relief can be upheld will be assessed below.
- b) On which date(s) did the sell-on fee to be paid by the Respondent to the Appellant fall due?*
77. In light of the above, Parma is to pay Helsingborgs a total amount of EUR 1,080,000 in respect of the sell-on fee agreed upon by the parties in article 6 of the Transfer Agreement. However, Helsingborgs, as its secondary request for relief, claims to be entitled to the payment by Parma of the entire amount of EUR 1,080,000 at once. The Panel will therefore adjudicate when the relevant sell-on fee fell due.
78. Helsingborgs contemplates that, in the absence of a specific provision stating that Parma's payment of the sell-on fee is dependent on any eventual payment plan accepted by Parma in relation to a third club (Internazionale in the present case), the Transfer Agreement stipulates no specific time for payment of the sell-on fee.
79. As a consequence, Helsingborgs finds that the sell-on fee fell due on its request for payment thereof and that since it had requested for payment of the sell-on fee in the proceedings before the FIFA PSC Single Judge, the payment fell due at that time.
80. Parma is of the opinion that, should one follow the approach proposed by Helsingborgs, this could entail the conclusion that Parma in a literal way was obliged to pay Helsingborgs the sought amount notwithstanding the fact whether it already received the relevant transfer amount from Internazionale and notwithstanding any payment schedule agreed with Internazionale.
81. Parma finds that the FIFA PSC Single Judge was correct in establishing that since Parma and Internazionale agreed on contingent payments, also the sell-on fee shall follow the same payment dates and the amount of EUR 2,000,000 already paid by Parma to Helsingborgs shall be deducted *pro rata*.
82. The Panel took into consideration the absence of a contractual provision in the Transfer Agreement determining when Parma would be obliged to pay the sell-on fee in case of a subsequent transfer of the Player from Parma to a third club.
83. As determined *supra*, the Panel is of the opinion that a sell-on fee is related to the transfer fee actually to be received. If such transfer fee is to be paid in contingent payments and in the absence of a contractual provision determining otherwise, the contingent payment schedule has to be taken into account.

84. In this respect, the Panel feels comforted by the FIFA Regulations on the Status on Transfer of Players (hereinafter: the “FIFA Regulations”) in respect of the payment procedure for Solidarity Contribution. The Panel finds the concept of Solidarity Contribution similar to the concept of sell-on fees. On both occasions, a former club of a player is entitled to a percentage of a transfer fee received by the player’s new club in case of a subsequent transfer of the player to a third club.
85. Although not directly applicable, the Panel noted that article 2(1) of Annex 5 to the FIFA Regulations determines the following:
- “The new club shall pay the solidarity contribution to the training club(s) pursuant to the above provisions no later than 30 days after the player’s registration **or, in case of contingent payments, 30 days after the date of such payments**” [Emphasis added].*
86. Finally, the Panel considers it inequitable if Parma would have to pay the entire sell-on fee of EUR 1,080,000 to Helsingborgs immediately upon Helsingborgs’ first request thereof. Considering that the Player was transferred to Internazionale on 1 February 2010 and the first instalment for the transfer of the Player by Internazionale only fell due at the end of the 2009/2010 season, in such situation Parma could be forced to pay the sell-on fee even before it received any amounts from Internazionale.
87. Consequently, the Panel came to the conclusion that payment by Parma of the sell-on fee to Helsingborgs is related to the payment schedule agreed upon between Parma and Internazionale.
88. Hence, the Panel confirms the decision of the FIFA PSC Single Judge in this respect and Helsingborgs’ secondary request for relief is dismissed.
89. The Panel understands Helsingborgs’ tertiary request for relief, as requesting the Panel to confirm the Appealed Decision in respect of amounts awarded (*i.e.* EUR 199,590 related to the instalment due on the sports season 2009/2010, EUR 187,830 related to the instalment due on the sports season 2010/2011 and EUR 164,370 related to the instalment due on the sports season 2010/2011), but to add, solely due to the fact that time had elapsed, also the fourth and fifth net instalments of the sell-on fee (*i.e.* EUR 199,590 related to the instalment due on the sports season 2011/2012 and EUR 164,370 related to the instalment due on the sports season 2011/2012).
90. In this respect, the Panel noted that Parma does not dispute the Appealed Decision and that it confirms that the last three instalments will be paid to Helsingborgs in accordance with the payment plan agreed upon between Parma and Internazionale.
91. According to the same reasoning, the Panel notes that since the Appealed Decision was rendered, two more instalments fell due and that they should be paid by Parma.

c) *Is any interest due?*

92. Since the Panel has decided to dismiss the present appeal and to confirm the decision of the FIFA PSC Single Judge dated 30 January 2012, the interest awarded in the Appealed Decision in respect of the first three instalments is confirmed.
93. However, as correctly noted by Parma, Helsingborgs did not request for interest in its appeal.
94. Although the parties agreed that the fourth and fifth instalment fell due at the end of the 2011/2012 season, the Panel finds that no interest can be awarded over these amounts by this Panel since the Appellant omitted to request for interest over these amounts.
95. Consequently, the Appealed Decision remains in force (including interest being awarded over the first three instalments), however, the Panel awards the fourth (EUR 199,590) and fifth (EUR 164,370) instalment, but no interest can be awarded over these additional net amounts.

B. Conclusion

96. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Panel finds that:
- a) The relevant amount to be used as the basis for calculating the sell-on fee is EUR 9,200,000. The sell-on fee of 15% of such amount, minus the amount of EUR 2,000,000 previously paid by Parma to Helsingborgs, is therefore EUR 1,080,000.
- b) The sell-on fee is to be paid on a *pro rata* basis, in accordance with the payment schedule agreed upon between Parma and Internazionale. The Appealed Decision of the FIFA PSC Single Judge is confirmed. Furthermore, the Panel notes that since the Appealed Decision was rendered, two more instalments fell due and that they should be paid by Parma.
- c) As the Appealed Decision is confirmed, the interest awarded in this decision remains due. However, in the absence of any request for interest over the remaining instalments, no interest can be awarded by this Panel to the Appellant over the additional instalments awarded from the due time until the time of payment in accordance with this Award.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Helsingborgs IF on 31 July 2012 against the Decision issued on 30 January 2012 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is dismissed.
2. The Decision issued on 30 January 2012 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is confirmed.
3. (...)
4. (...)
5. All other motions or prayers for relief are dismissed.