

Decision of the adjudicatory chamber of the Ethics Committee

Taken on 17 December 2020

COMPOSITION:

Vassilios Skouris, Greece (Chairman)
Mohammad Al Kamali, UAE (Member)
Melchior Wathelet, Belgium (Member)

PARTY:

Mr Jérôme Valcke,
France

Regarding an infringement of the FIFA Code of Ethics (adj. ref. no. 08/2020)

I. FACTS OF THE CASE

A. PROCEEDINGS BEFORE THE INVESTIGATORY CHAMBER

a) Procedural background

1. Preliminary investigation and opening of proceedings

1. Mr Jérôme Valcke ("Mr Valcke") was the FIFA Director of Marketing Services between 1 September 2003 and December 2006, then the FIFA Secretary General between 27 June 2007 and 18 September 2015.
2. On 27 May 2015, the U.S. Department of Justice announced that "[a] 47-count indictment was unsealed early this morning in federal court in Brooklyn, New York, charging 14 defendants [Nine FIFA Officials and Five Corporate Executives] with racketeering, wire fraud and money laundering conspiracies, among other offenses, in connection with the defendants' participation in a 24-year scheme to enrich themselves through the corruption of international soccer." On the same day, the Office of the Attorney General of Switzerland ("OAG") announced that it had opened criminal proceedings against unknown parties on suspicion of criminal mismanagement and money laundering in connection with the allocation of the 2018 and 2022 FIFA World Cups. Consequently, FIFA retained [Law Firm 1] and [Law Firm 2] to represent FIFA in connection with the U.S. and Swiss investigations and mandated them to conduct an internal investigation on several issues involving certain officials of FIFA, including Mr Valcke.
3. On 3 June 2016, [Law Firm 1] released information regarding details on contracts and compensation for a small group of former FIFA officials, including Mr Valcke, and stated that "The evidence appears to reveal a coordinated effort by three former top officials of FIFA to enrich themselves through annual salary increases, World Cup bonuses and other incentives totaling more than CHF 79 million – in just the last five years".
4. In the meantime, the investigatory chamber of the FIFA Ethics Committee ("the investigatory chamber") had started a preliminary investigation against Mr Valcke based on art. 62 par. 3 of the FIFA Code of Ethics, 2012 edition ("FCE 2012").
5. On 9 September 2016, based on the documentation available, the Deputy Chairperson of the investigatory chamber at the time, Mr Djimrabaye Bourngar, concluded that there was a prima facie case that Mr Valcke has committed violations of the FCE 2012 and appointed Mr Robert Torres, member of the mentioned chamber, as chief of the investigation.
6. On that same date, the Mr Valcke was informed of the opening of investigation proceedings under reference E16- 00018.
7. On 29 March 2017, [Law Firm 1] and [Law Firm 2] rendered their investigation report thought which they exposed several conducts that breached several provision of the FIFA Code of Ethics committed by Mr Valcke.

2. Communications with the party

8. On 25 March 2020, the investigatory chamber sent a communication to Mr Valcke requesting the submission of a written statement in response to the following allegations:

- a) Mr Valcke's participation in the stipulation and implementation of extraordinary bonus payments in connection with the 2010 FIFA World Cup South Africa, the 2013 FIFA Confederations Cup Brazil, the 2014 FIFA World Cup Brazil, the 2017 FIFA Confederations Cup Russia and the 2018 FIFA World Cup Russia.
 - b) Mr Valcke's authorization of a reimbursement of CHF 9,714.95 as FIFA business expenses, knowing that, the same amount was caused by private legal services carried out by [Law Firm 3] in favor of Messrs Valcke and Kattner.
 - c) An explanation of the amended provisions in 2011, which were included in his employment agreement and that were not in the best interest of FIFA, such as:
 - i. The extension of the duration of the employment contract until 31 December 2019.
 - ii. A severance payment equivalent to the salary accruing until the expiration of the ordinary term of the employment agreement, even if the employment relationship was terminated for cause.
 - iii. An indemnity clause that stated that, even in the event prosecution for conducts in connection with his official duties, FIFA would pay the incurred attorney's fees, as well as and fine and damages arising therefrom.
9. On 30 March 2020 and based on article 34 par. 5 of the FCE, Mr Valcke submitted his request for the withdrawal from the investigatory proceedings of the chairperson of the investigatory chamber, as well as, of all members of the FIFA Ethics Committee. Mr Valcke's argued that such members were not independent as required by article 34 of the FCE. Additionally, Mr Valcke requested the complete case file and an extension to provide his position before the investigatory chamber.
 10. Regarding Mr Valcke's request to consult the entire file, the investigatory chamber pointed out that, due to the confidentiality of the investigations, which were still pending (art. 36 par 1 of the FCE), the case file could not be provided at that stage.
 11. Notwithstanding the above, and with reference to articles 62 par. 3 and 65, the investigatory chamber expressed that, once the investigation would be complete, it would issue a final report on the investigation proceedings. Such report, together with the related investigation files, would be forwarded to the adjudicatory chamber. Accordingly, Mr Valcke would have the right to receive and analyze the case file during the adjudicatory proceedings. Additionally, the investigatory chamber informed Mr Valcke that in accordance with arts. 69 and 71, he would be entitled to submit his position, to present evidence and to inspect evidence to be considered by the adjudicatory chamber in reaching its decision.
 12. Mr Valcke failed to submit a position before the investigatory chamber regarding the allegations as mentioned in the letter dated 25 March 2020, even though he had been given an extension of the time limit initially provided.
 13. On 14, 20 and 29 April 2020, Mr Valcke submitted his arguments before the FIFA Appeal Committee in favor of the recusal of all the members of the investigatory chamber of the FIFA Ethics Committee from the investigation proceedings.

14. On 15 May 2020, the chairperson of the FIFA Appeal Committee, Mr Thomas Bodström, notified both Mr Valcke and the investigatory chamber of its decision to dismiss the request for recusal based on art. 35 par. 5 of the FCE.

b) Factual findings of the investigatory chamber

15. In the scope of its investigation, the investigatory chamber gathered different types of evidence, including: the "Amended investigative report regarding bonus payments in connection with the 2010 FIFA World Cup South Africa™" dated 29 March 2017 ("Bonus Report") prepared by [Law Firm 1] and [Law Firm 2]; transcripts of telephone interviews conducted with Mr Issa Hayatou (former FIFA vice-president and member of the FIFA Compensation Sub-Committee – "CSC") on 15 November 2016 and 8-9 February 2017; documents related to meetings of the CSC in 2015; employment contracts between FIFA and Mr Valcke (including amendments); written submissions of Mr Valcke.
16. According to the Final Report, Mr Valcke received various bonuses, together with the most senior members of FIFA leadership/management, in the period 2010 – 2014.

1. Amended employment agreements of 1 December 2010 in relation to the 2010 FIFA World Cup South Africa™

17. On 1 December 2010, the existing employment contracts of Mr Kattner (at the time FIFA Deputy Secretary General and Director of FIFA Finance & Administration), as well as of Mr Joseph Blatter (FIFA President) and Jérôme Valcke (FIFA Secretary General) were amended. The respective amendments to the agreements provided extraordinary bonuses, related to services the aforementioned three officials performed in connection with the 2010 FIFA World Cup™, which would be paid over a span of four years in four equal instalments in December 2010, 2011, 2012 and 2013. The content of the three amendments was very similar, with the main difference being the amount of the bonus and name/title of the respective official, as follows:
 - CHF 11 million to Mr Blatter;
 - CHF 9 million to Mr Valcke; and
 - CHF 3 million to Mr Kattner.
18. Such bonuses were styled as amendments to Messrs Blatter's, Valcke's, and Kattner's existing employment contracts. The amendments all contained identical language, differing only in the amount of the bonus and the name of the employee. Additionally, the amendments stated that the bonuses were related to services each official provided in connection with the 2010 FIFA World Cup South Africa.
19. Notably, the bonus agreements also expressly mentioned that, in the event that Messrs Blatter, Valcke or Kattner left FIFA for any reason, the full aggregate bonus amount would accelerate and become immediately due for payment. In addition, the bonus agreements explicitly specified that in case of death of the recipient of the bonus, the full aggregate bonus amount would have to be paid to the heirs of the recipient.
20. In regard to disbursement of such bonuses, the amounts were to be paid over a span of four years in four equal instalments, of CHF 2,250,000 in the case of Mr Valcke. However,

the schedule of Mr Valcke's bonus payments was accelerated in February 2011 by early payment of the 2011 bonus instalment, upon approval of Mr Blatter. In June 2011, it was further accelerated by a loan structure with regard to the 2012 and 2013 bonus instalments, also upon approval of Mr Blatter (who at the time possessed the sole signature power binding FIFA). In this respect, on 6 December 2011, Mr Blatter issued a letter through which he thanked [Bank 1] (which had granted the loan structure to Mr Valcke) for its financial support in regards to the bonus payments for 2012 and 2013 to Mr Valcke for his contribution to the success of the 2010 FIFA World Cup.

21. In addition to the bonuses in favor of Messrs Blatter, Valcke and Kattner, FIFA also paid substantial bonuses to two other high-level FIFA officials in connection with the 2010 FIFA World Cup, Messrs Grondona and Issa Hayatou, FIFA Vice president and Chairman of the Organising Committee for the FIFA World Cup.
22. On 25 November 2010, both Messrs Valcke and Blatter wrote a letter to Mr Grondona informing him of the award of a USD 1 million bonus payment in his favor. In addition, the bonus payments to Mr Grondona of USD 1 million continued on a yearly basis until his death in 2014. In total, Mr Grondona received the amount of USD 4,583,333 as extraordinary bonuses. FIFA made four payments of USD 1 million as extraordinary bonuses to Mr Grondona in his capacity as chairman of the FIFA Finance Committee on 1 December 2010, 15 December 2011, 13 December 2012, 6 December 2013 and a prorated bonus of USD 583,333 on 8 August 2014. Except for the first payment made in 2010, the later payments do not seem to have been made in connection with the 2010 FIFA World Cup South Africa.
23. Drafts of the amendment agreements of Messrs Blatter, Valcke and Kattner were found on a USB drive in Mr Kattner's office, which showed that the amendment agreements were prepared by the latter. Furthermore, similar amendment agreements were also found on the same USB drive and were titled "[Auditors] Bonus 2010 jva," "[Auditors] Bonus 2010 mka," and "[Auditors] Bonus P". These documents contain two main differences from the amendment agreements of 1 December 2010: the total amount of the bonuses was removed, leaving only a reference to the annual payments; and all references to the 2010 FIFA World Cup™ were removed, leaving only the employees' "exceptional services" as the reason for the bonuses. From the latter three draft agreements, only the "[Auditors] Bonus 2010 jva" document (for Mr Valcke) was signed.
24. The (official) 1 December 2010 amendment agreement of Mr Blatter was signed by Messrs Grondona and Valcke on behalf of FIFA, the respective amendment agreement of Mr Valcke was signed by Mr Blatter (for FIFA), and that of Mr Kattner was signed by Messrs Blatter and Valcke. The schedule of Mr Valcke's bonus payments was accelerated in February 2011 by anticipated payment of the 2011 bonus instalment. In June 2011, it was further accelerated by a loan structure regarding the 2012 and 2013 bonus instalments.
25. The aggregate bonus amount to be paid to Messrs Blatter, Valcke, and Kattner of CHF 23 million was not included in FIFA's financial statements for the year ended 2010. The 2010 FIFA financial statements only recorded the aggregate annual instalment paid to Messrs Blatter, Valcke, and Kattner in December 2010 in the amount of CHF 5.75 million. The 2010 bonus payments to Grondona and Hayatou totaling USD 2 million were reflected in FIFA's 2010 financial records as "various external services". No liability was recorded in the 2010 FIFA financial statements for the remaining instalments of FIFA's

bonus commitments to Messrs Blatter, Valcke, and Kattner in the aggregate amount of CHF 17.25 million.

2. Amended employment agreements of 19 October 2011 in relation to the FIFA Confederations Cup Brazil 2013 and the 2014 FIFA World Cup Brazil™

26. A new series of amendment agreements, similar to the ones signed on 1 December 2010, were signed by Messrs Blatter, Valcke and Kattner on 19 October 2011, including extraordinary bonuses in connection with the FIFA Confederations Cup Brazil 2013 and the 2014 FIFA World Cup Brazil™ for the following amounts:
 - CHF 12 million Mr Blatter;
 - CHF 10 million to Mr Valcke; and
 - CHF 4 million to Mr Kattner.
27. The amendment agreement of Mr Blatter was signed by Messrs Valcke and Grondona on behalf of FIFA, while the amendment agreement of Mr Valcke was signed by Blatter and Grondona, and the amendment agreement of Mr Kattner by Blatter, Valcke, and Grondona on behalf of FIFA.
28. The right of Messrs Blatter, Valcke and Kattner to receive their respective bonuses depended on the fulfilment of ten criteria assessing the organizational success of the FIFA Confederations Cup Brazil 2013 and the organizational and financial success of the 2014 FIFA World Cup Brazil™. If the criteria concerning the FIFA Confederations Cup Brazil 2013 were met, thirty-five percent of the aggregate bonus amounts would be paid in December 2013. Similarly, if the criteria concerning the 2014 FIFA World Cup Brazil™ were met, the remaining amount (i.e., sixty-five percent of the aggregate bonus) would be paid in December 2014.
29. FIFA's bonus commitments to Mr Valcke under the 19 October 2011 amendment agreement were not disclosed as a related-party transaction in FIFA's 2011 and 2012 financial statements.
30. With respect to the bonuses of Messrs Valcke and Kattner, in its meetings of 3 October 2013 and 24 September 2014 the CSC confirmed that the criteria triggering such entitlements under the respective 2011 amendment agreements were satisfied. The bonus of Mr Kattner was therefore paid in December 2013 and December 2014. The bonus of Mr Valcke in connection to the 2014 FIFA World Cup Brazil™ (65% of the aggregate) was also paid in December 2014 (as per the 2011 amendment agreement). However, at Mr Valcke's express request, and upon Mr Kattner's approval, the bonus in connection to the FIFA Confederations Cup Brazil 2013 (35% of the aggregate) was paid to Mr Valcke in September 2013. In other words, the payment of the bonus was approved by Mr Kattner before the FIFA Compensation Sub-Committee could meet and confirm that the criteria triggering the bonus entitlement was met.
31. Neither the 2011 nor the 2012 FIFA financial statements contained provisions, accruals or liabilities for the bonuses of Messrs Blatter, Valcke and Kattner. This was confirmed by the Head of FIFA Finance & Accounting. The 2013 FIFA financial statements only recorded the bonuses in connection to the FIFA Confederations Cup Brazil 2013 paid to Messrs

Valcke, and Kattner (35% of the aggregate bonus amounts as per the 2011 amendment agreements) as “salaries”. The same applied to the bonuses in connection to the 2014 FIFA World Cup Brazil™ (65% of the aggregate bonus amounts) paid to Messrs Valcke, and Kattner, which were also reflected as “salaries” in the 2014 FIFA financial statements.

32. In March 2013, article 7.9.1 of the FIFA Internal Organisation Regulations was enacted. Through this provision, FIFA established the FIFA Compensation Sub-Committee. Its members were the Chairman of the FIFA Finance Committee, the Chairman of the FIFA Audit and Compliance Committee and one independent member.
33. On 1 January 2014, the FIFA Compensation Sub-Committee enacted the Compensation Policy, through which it set up internal rules that governed the remunerations of (1) the FIFA President, (2) the FIFA Secretary General, (3) members of the FIFA Executive Committee, and (4) key FIFA management. Article 6.2.2 of the mentioned policy confirmed the right of the FIFA President, FIFA Secretary General and FIFA Deputy Secretary General to receive annual ordinary and extraordinary bonus payments. Mr Valcke, as FIFA Secretary General, was entitled to receive bonus payments as follows:

“The FIFA Secretary General receives an annual bonus between 20% and 80% of his base salary based on annual performance. In addition, for playing a key role in the preparation and organisation of FIFA’s most important financial and strategic tournaments, the FIFA Confederations Cup (FCC) and the FIFA World Cup (FWC), the Secretary General receives a bonus in case of a successful staging of these competitions based on clear performance criteria. This bonus amounts to max. 58% for the [FIFA Confederations Cup] and 108% for the [FIFA World Cup] of his four-year base salary.”

34. In its first meeting on 3 October 2013, the FIFA Compensation Sub-Committee confirmed that the criteria has been met, thus, triggering the thirty-five percent bonus entitlements in relation to the 2013 FIFA Confederations Cup Brazil to be paid to Messrs Valcke and Kattner accordingly to their 19 October 2011’s amendment agreements.

3. Amendment agreements of 10 June 2014 in relation to the FIFA Confederations Cup Russia 2017 and the 2018 FIFA World Cup Russia™

35. On 10 June 2014, Messrs Valcke and Kattner entered into additional amendment agreements with FIFA in connection with the FIFA Confederations Cup Russia 2017 and the 2018 FIFA World Cup Russia™, which provided for a CHF 11 million bonus to Mr Valcke, and a CHF 4.5 million bonus to Mr Kattner. The amendment agreements were signed by the same persons as before on behalf of FIFA (Messrs Blatter and Grondona for Mr Valcke’s agreement, and Messrs Blatter, Valcke, and Grondona for Mr Kattner’s) and included criteria for the payment of the bonuses very similar to the previous 2011 amendment agreements. Once more, it appears that the relevant FIFA financial statements (in particular those for the year 2014) did not contain provisions, accruals, or liabilities for the bonuses of Messrs Valcke and Kattner, and that the FIFA Finance and FIFA Human Resources divisions were once more not informed of the bonus commitments.

4. Further employment contract conditions and private legal costs

36. According to the Final Report, Mr Valcke entered into further amendments to his employment agreement on 30 April 2011 (introducing severance clauses) and on 10 June 2011 (acceleration of bonus entitlements).
37. According to the Final Report, in connection with the preparation of his and Mr Kattner's 2011 amendment agreements, Mr Valcke obtained legal advice from a Zurich law firm specializing in employment law, [Law Firm 3]. The invoice for the services rendered by [Law Firm 3] amounted to CHF 9,715 and was issued to Mr Kattner's private home address. However, with Mr Valcke's approval, FIFA reimbursed Mr Kattner for the invoice.

c) Conclusions of the investigatory chamber

38. Following the careful analysis of the gathered information and documentation, the investigatory chamber concluded that Mr Valcke breached numerous provisions of the FCE 2012:
 - a) By engaging in conflict of interests while being the FIFA Secretary General and one of the key persons with regard to the stipulation and implementation of extraordinary bonus payments addressed to top FIFA officials, at the same time that, he was among the beneficiaries of such bonus payments;
 - b) By accepting an undue economic benefit of the total amount of CHF 30 million, split over the years 2010 to 2018, as a result of the conflict of interest created by the allocation and execution of extraordinary bonus payments between limited top-ranking FIFA officials;
 - c) By abusing his position within the FIFA's organization when authorizing a payment of CHF 9,714.95 as FIFA business expenses, knowing that, the same expense was issued for private legal advice services in favor of Messrs Kattner and Valcke and not FIFA;
 - d) By obtaining a private and undue financial benefit when approving the payment of CHF 9,714.95 as FIFA business expense, even though such payment intended to cover the services for Mr Valcke and Mr. Kattner's private legal advice; and,
 - e) By breaching his fiduciary duty towards FIFA when including contractual provisions in his employment agreement that were obviously only in the interest and benefit of the employee, Mr Valcke himself.
39. Based on the above considerations, the investigatory chamber concluded that Mr Valcke has breached articles 13 par. 4 (Abuse of position), 15 (Loyalty), 19 paras. 2 and 3 (Conflicts of interest) and 20 (Offering and accepting gifts or other benefits) of the 2012 FCE.

B. PROCEEDINGS BEFORE THE ADJUDICATORY CHAMBER

a) Opening of adjudicatory proceedings

40. On 29 September 2020, Mr Valcke was informed that the adjudicatory chamber had opened proceedings based on the investigatory chamber's Final Report, as per art. 68 par. 3 of the FCE.

b) Summary of Mr Valcke's written submission

41. On 13 November 2020, Mr Valcke provided the adjudicatory chamber with his statement of position. In the said document, Mr Valcke relied on the following arguments:
- a) The deadlines imposed were too short (one month and a half to provide his position) and unbalanced (the investigation took more than 4 years), which violated Mr Valcke's right to be heard and the legal principle of equality of arms.
 - b) The refusal to extend the deadlines granted to Mr Valcke, to the extent he deemed necessary to exercise his right to be heard, is due to the alleged control exerted unduly by FIFA over its Ethics Committee. This claim is reinforced by the fact that FIFA is a Party in three criminal cases filed against Mr Valcke and has been echoed by an information memorandum on football governance from the Committee on Culture, Science, Education and Media of the Parliamentary Assembly of the Council of Europe and dated 23 November 2017 (a document forwarded by Mr Valcke as an annex to his position).
 - c) By the same token, the investigations conducted by [Law Firm 1] and [Law Firm 2] are also tainted a lack of independence and impartiality. Although these investigations and the corresponding reports are considered unreliable, Mr Valcke argues that they have been taken as face value by the investigatory chamber in its Final Report.
 - d) Mr Valcke also pointed out the absence of statement from Mr Grondona, president of the Finance Committee at the time, who could have provided valuable information on the case.
 - e) Mr Valcke contested being an official bound by the FCE and highlighted that he never admitted that he was bound by it. On the contrary, he alleged that his working contract was governed by mandatory provisions of the Swiss Labor Law, to the exclusion of other regulations such as the FCE.
 - f) It was argued that under the principle of equality of arms Mr Valcke should be provided with the transcripts of all interviews conducted by the investigatory chamber, especially those of Messrs. Scala, Kattner and Pedrazzini.
 - g) Regarding the merits of the case, Mr Valcke rejected all the alleged violations of articles 13, 15, 19 and 20 of the 2012 FCE due to the decision from the Swiss authorities to close a case relating to similar facts. In that regard Mr Valcke submitted a decision of the Swiss Criminal Court dated 17 June 2019.
 - h) Moreover, Mr Valcke claimed that he never gave bonuses to himself nor was he involved in the process establishing such bonuses, decisions that were within the remit of his supervisors, Messrs Blatter and Grondona. Those bonuses were approved through an established process, involving the FIFA Compensation Sub-Committee (2013 FIFA Confederations Cup and FIFA 2014 World Cup in Brazil).
 - i) As for the alleged breaches of conflicts of interest, offering/receiving of gifts, and abuse of position, Mr Valcke claimed that he did not participate in the approval process deciding his bonuses, that such bonuses cannot be interpreted as gifts and that he did not commit any abuse of position.
 - j) With respect to the reimbursement of legal fees charged by [Law Firm 3], Mr Valcke considers that FIFA correctly paid for those costs and that he did not receive any undue advantage in relation to the legal services rendered.

- k) Addressing the amendments of his working contracts, Mr Valcke again asserted that no violation of the FCE was committed. Mr Valcke also called into question the competence that the Ethics Committee granted itself in assessing the appropriateness of the contractual relationship that FIFA has with its employees. The conclusion of long-term contracts was part of the broader financial planning of the organization following 4-year cycles and applicable to all directors. Those contracts as well as their respective amendments were all reviewed by [Law Firm 2], which never raised any issue regarding their duration or renewal.

II. CONSIDERATIONS OF THE ADJUDICATORY CHAMBER

A. COMPETENCE AND APPLICABLE LAW

a) Competence

42. Art. 30 of the FCE defines a primary (par. 1) and subsidiary (par. 2) competence of the FIFA Ethics Committee. According to the first paragraph of the said article, if the relevant conduct has been committed by an individual elected, appointed or assigned by FIFA to exercise a function, the Ethics Committee shall be entitled to investigate and judge the present matter.
43. At the time presently relevant, Mr Valcke was one of the highest ranking (appointed) officials within FIFA, as FIFA Secretary General.
44. In light of the above, the Ethics Committee is fully competent to investigate and adjudicate this case based on art. 30 par. 1.

b) Applicability of the FCE *ratione materiae*

45. The adjudicatory chamber notes that, according to the Final Report of the investigatory chamber on the present matter, there are several indications of potential improper conduct in terms of the FCE by Mr Valcke. In particular, during the investigations, possible violations of 13 par. 4 (Abuse of position), 15 (Loyalty), 19 paras. 2 and 3 (Conflicts of interest) and 20 (Offering and accepting gifts or other benefits) of the 2012 FCE. The factual circumstances raise, without any doubt, questions of potential misconduct in terms of the FCE.
46. Consequently, the FCE is applicable to the case according to art. 1 of the FCE (*ratione materiae*).

c) Applicability of the FCE *ratione personae*

47. According to art. 2 of the FCE, the Code shall apply, inter alia, to "officials", as per the definitions section in the FCE and FIFA Statutes.
48. By virtue of his position as FIFA Secretary General between 2007 and 2015, Mr Valcke was an official within the meaning of the definition given in the FCE and the FIFA Statutes during the period presently relevant.

49. Consequently, at the time the relevant actions and events occurred, and in view of Mr Valcke's position in football at the time, the FCE applies to the official according to art. 2 of the FCE (*ratione personae*).

d) Applicability of the FCE *ratione temporis* and *lex mitior*

50. The relevant facts described in previous sections of this decision occurred between 1 December 2010 and 10 June 2014, at a time when the 2009 and 2012 editions of the FIFA Code of Ethics were in force.
51. With regard to the applicability of the FCE in time, art. 3 of the FCE stipulates that the (current) FCE shall apply to conduct whenever it occurred, unless a more favorable provision was in force at the time of the facts (principle of *lex mitior*).
52. In the present case, the legal provisions of the respective articles are deemed equivalent in the various editions of the FCE (i.e. 2009, 2012, 2018, 2019, and 2020).
53. In this context, following the relevant case law and jurisprudence, the adjudicatory chamber notes that the spirit and intent of the 2009 - 2020 editions of the FCE are duly reflected in the below articles of the FCE, which contain equivalent provisions:
- Art. 15 of the FCE (Duty of loyalty) has a corresponding provision in the 2009 edition of the Code (art.9), as well as in the 2012, 2018 and 2019 editions (art. 15)
 - Art. 19 of the FCE (Conflicts of interest) has a corresponding provision in the 2009 edition of the Code (art.5), as well as in the 2012, 2018 and 2019 editions of the Code (art.19);
 - Art. 20 (Offering and accepting gifts or other benefits) has a corresponding provision in the 2009 FCE (art. 10), as well as in the 2012, 2018 and 2019 editions (art. 20);
 - Art. 25 (Abuse of position) has a corresponding position in the 2009 edition of the Code (art. 3 par. 3), in the 2012 FCE (art. 13 par. 4), as well as in the 2018 and 2019 editions (art. 25).
54. In consideration of all the above, the adjudicatory chamber concludes that the different FCE editions cover the same offence.

Lex mitior

55. The principle of *lex mitior* foresees that the accused should benefit from the most favorable law, imposing the lesser penalty.
56. With respect to the breaches of general duties (art. 13), duty of loyalty (15), conflicts of interest (art. 19) and offering and accepting gifts or other benefits (art. 20), the adjudicatory chamber takes note that the 2009 FCE and 2012 FCE do not foresee any minimum or maximum sanction for the aforementioned provisions. However, the 2018, 2019 and current FCE stipulate a minimum fine of CHF 10,000 as well as a general maximum ban for a duration of two years for the infringements of arts. 15, 19 and 20 FCE. Therefore, it would appear that the current FCE would be more favorable to the accused.

57. Consequently, the material rules of the current (2020) FCE are applicable to the case, according to art. 3 of the FCE (*ratione temporis*), and in accordance with the principle of *lex mitior*.

B. PROCEDURAL ISSUES

a) Recusal of the chairperson of the adjudicatory chamber

58. On 9 October 2020, Mr Valcke filed an objection against Mr Skouris, chairperson of the adjudicatory chamber as well as any other member of the adjudicatory chamber, the author of the Final Report and any other person involved in the investigation proceedings.
59. Art. 35 par 5 provides that the chairperson of the relevant chamber shall decide whether any such claim is valid if the member in question has not declined to participate of his own accord. If the objection is against the chairperson, the chairperson or the deputy chairperson of the FIFA Appeal Committee shall decide.
60. On 15 October 2020, the Mr Thomas Bodström, chairperson of the FIFA Appeal Committee, informed Mr Valcke and the adjudicatory chamber of his decision to reject the request(s) for recusal.
61. The Appeal Committee notified its full decision on 18 November 2020 and explained, *inter alia*, that the appellant failed to demonstrate that the conditions for a recusal (as set under art. 35 par. 2 of the FDC) were met. The decision also recalled that, in line with art. 34 par. 4 of the FCE, objections can only be filed against individuals, not at the Ethics Committee as a whole.

b) Recusal of other members of the adjudicatory chamber

62. As mentioned above, the motion for recusal filed by Mr Valcke against the chairperson of the adjudicatory chamber was also meant to be an objection against, *inter alia*, any other member of the adjudicatory chamber.
63. Concerning the participation of Mr Al Kamali (and Mr Skouris) in the Panel deciding this case in addition to the previous case of Mr Kattner (Adj. ref. no. 26/2019), reference is made to art. 35 par. 2 let. d. The aforementioned provision states that a member of the Ethics Committee shall decline to participate in any investigation or adjudicatory proceedings if the member has already dealt with the case in a different function other than his function as a member of the Ethics Committee.
64. First, the case concerning Mr Kattner was a different case independent from the present proceedings. This is because, although it concerned similar facts, the accused was a different person (i.e., Mr Kattner) and the Ethics Committee did not prosecute/sanction Mr Valcke in that previous case.
65. Second, the members of the Panel who decided the Kattner case were not involved in that case in a different function other than their respective functions as members of the Ethics Committee, since it was precisely an Ethics case.
66. Regarding the recusal *en bloc* against any other member of the adjudicatory chamber, the author of the Final Report and any other person involved in the investigation proceedings, the Chairperson of the adjudicatory chamber considers, in line with the

aforementioned decision of the Appeal Committee, that none of the conditions set in art. 35 was met and thus the request shall be dismissed.

67. Based on the above and the conditions set out in art. 35 of the FCE, the chairperson considers that there are no grounds warranting the recusal of any member of the adjudicatory chamber.

C. ASSESSMENT OF POTENTIAL ETHICS VIOLATIONS

a) Possible violation of art. 15 of the FCE (Duty of loyalty)

1. Wording of the relevant provision

68. The relevant article reads as follows:

"1. Persons bound by this Code shall have a fiduciary duty to FIFA, the confederations, associations, leagues and clubs.

2. Violation of this article shall be sanctioned with an appropriate fine of at least CHF 10,000 as well as a ban on taking part in any football-related activity for a maximum of two years."

2. Persons involved

69. The first requirement set out in art. 19 par. 1 of the FCE is that the person acting must be bound by the FCE. As already shown, Mr Valcke was at the relevant time a football official, and as such, a person bound by the FCE. Therefore, the first element is met in the present case.

3. Fiduciary duty

70. The second element establishes a "fiduciary duty" on persons bound by the FCE to various bodies (FIFA, the confederations, associations, leagues and clubs).
71. In general terms, a fiduciary duty is defined as a legal obligation by which one person (the fiduciary) must protect and promote the interests of another (the beneficiary). Conversely, a breach of fiduciary duty occurs when someone who is placed in a position of trust, acts in a way that is detrimental to the interests of the beneficiary or is likely to damage its reputation.
72. Is it established that Mr Valcke, as FIFA Secretary General, held a position of trust and was therefore expected to act with loyalty towards FIFA, as well as ethically, when performing his function.
73. The Panel found that Mr Valcke has violated his fiduciary duties towards FIFA in connection with the following conduct.
74. First, regarding the extension of the duration of his employment contracts, it must be reminded that such alterations took place shortly before the FIFA presidential election at the end of May 2011. At that time, Mr Blatter was running against Mr Mohammed Bin Hamman and it was uncertain whether Mr Blatter was going to be re-elected as president of FIFA. The modifications of the duration of the employment contracts, which were signed by Mr Blatter, suggest that Mr Valcke was trying to ensure his position as FIFA

Secretary General, or at least, Mr Valcke was trying to secure a financial benefit in the event of a change of leadership at the top of FIFA.

75. Such contractual provision was detrimental and contrary to FIFA's interests. First, because it was binding FIFA to long-term contracts with employees, and not any employee, but the FIFA Secretary General. Second, because it exposed FIFA to significant financial burdens in the event that these contracts were to be terminated, even for just cause. In this light, the long-term nature of the employment contracts appears to have been mainly in the interest of the employees concerned rather than FIFA's.
76. Moreover, the provision for a wage guarantee even in the event of termination for good cause makes it clear that the amendments to the employment contracts were formulated unilaterally for the only benefit of certain high-ranking employees.
77. In addition, it is worth mentioning that Mr Valcke also breached his fiduciary duty when approving the reimbursement for expenses made by Mr Kattner for the legal advice rendered by [Law Firm 3]. That is because Mr Valcke could not ignore that it was not a FIFA-related expense and that it should have been paid directly by him and Mr Kattner, the sole beneficiaries of these legal services. This behavior is a breach of loyalty in the sense that Messrs Valcke and Kattner intentionally misrepresented FIFA in their relationship with a third party ([Law Firm 3]) to further their own private interests.
78. In light of all the above considerations, the Panel found that Mr Valcke has breached his fiduciary duty towards FIFA. He put his interests before those of FIFA when he established a mechanism of self-serving bonuses and when he used the organization's funds to cover personal legal expenses.

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

1. Wording of the relevant provision

79. Art. 19 of the FCE reads as follows:

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

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

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

4. Violation of this article shall be sanctioned with an appropriate fine of at least CHF 10,000 as well as a ban on taking part in any football-related activity for a maximum of two years. In serious cases and/or in the case of repetition, a ban on taking part in any football-related activity may be pronounced for a maximum of five years."

2. Persons involved

80. The first requirement set out in art. 19 par. 1 of the FCE is that the person acting must be bound by the FCE. As already shown, Mr Valcke was at the relevant time a football official, and as such, a person bound by the FCE. Therefore, the first element is met in the present case.

3. Performance of duties

81. The second constitutive element of art. 19 par. 1 of the FCE concerns the duties the official would perform, and which could be affected by a conflict of interest. Although the provision does not contain an exhaustive list of such duties, it does specifically mention the preparation of or participation in the taking of a decision.
82. In the present case, in his position as FIFA Secretary General, Mr Valcke would perform a number of important administration-related duties, notably he took part in the decision approving bonuses for other FIFA high-ranking officials, including Messrs. Blatter, Kattner and Grondona. He also signed an expense form for reimbursement by FIFA of the legal fees charged by [Law Firm 3], a law firm, for services rendered to Mr Kattner and himself.
83. On 25 November 2010, by a letter issued by Messrs Blatter and Valcke Mr Grondona was awarded with USD 1 million for his contribution in the success of the 2010 FIFA World Cup South Africa, even though Mr Grondona was already granted with USD 200,000.00 bonus as a member of the FIFA Executive Committee for the same reason.
84. The contracts granting the bonuses were only known and executed among a handful of people within FIFA: Messrs Valcke, Blatter, Grondona and Kattner. Mr Valcke was a signatory party on all the amendments made to Messrs Blatter's and Kattner's employment contracts, (amendments dated 1 December 2010, 30 April 2011, 19 October 2011, 3 October 2013 and 10 June 2014). Likewise, Mr Valcke's amendments were authorized by Messrs Blatter and Grondona (amendments dated 1 December 2010, 30 April 2011, 19 October 2011 and 10 June 2014).

4. Secondary interests

85. According to art. 19 par. 1 of the FCE, secondary interests include gaining any possible advantage for the persons bound by the Code themselves or related parties.
86. In the present case, the 2010 and 2011 amendment agreements of Mr Valcke, which provided for the bonuses (in relation to the 2010 FIFA World Cup South Africa, the FIFA Confederations Cup 2013 and the 2014 FIFA World Cup Brazil), were signed by Mr Blatter (FIFA President) and Mr Grondona (Chairman of the Finance Committee) on behalf of FIFA (as foreseen by art. 24.6.2 of the FOR). In other words, Mr Valcke's aforementioned bonuses were determined and ratified solely by Mr Blatter and Mr Grondona, the persons whose bonuses Mr Valcke approved.

87. Of course, it can be said that in general all employees can gain advantages through their normal employment salaries and yearly bonuses (which could qualify as secondary interests) which are also approved by their superiors. However, there are several specific circumstances that render the situation of Mr Valcke different.
88. First, even though the relevant bonuses received by Messrs Blatter, Valcke and Kattner were based on (amended) employment agreements signed in 2010 and 2011, these were not normal, yearly benefits, but rather exceptional ones related to (and depending on) the 2010 and 2014 World Cups and the 2013 Confederation Cup, unique competitions taking place at specific points in time.
89. Second, the amount of the bonuses was very substantial (CHF 9 million for the 2010 bonuses and CHF 10 million for the 2011 bonuses and 11 million as per the 2014 amendments).
90. Third, with respect to the 2010 bonuses, no specific criteria or conditions were mentioned in the relevant amendment agreements, the fulfilment of which would allow for the payment of such. In other words, the payment of Mr Valcke's 2010 bonus of CHF 9 million depended solely on the signature of Mr Blatter on the amendment agreement.
91. Fourth, even if the 2011 bonuses were theoretically subject to the fulfilment of specific criteria, it is not clear who or what body was in charge of such assessment. As mentioned previously, in the case of Mr Valcke's bonus, the 2013 instalment of CHF 3,500,000 was paid to him before the CSC could determine that the criteria concerning the organizational success of the FIFA Confederations Cup Brazil 2013 were met. Therefore, it appears that the fulfilment of the criteria pertaining to the 2011 bonuses was rather a procedural formality than a *sine qua non* condition.
92. Fifth, and more importantly, there is no indication that other FIFA officials (senior or not) received any exceptional bonuses related to the 2010 FIFA World Cup South Africa, the FIFA Confederations Cup 2013 and the 2014 FIFA World Cup Brazil, that could be comparable in terms of the amounts, legal basis or (lack of) criteria to the ones received by Messrs Blatter, Valcke and Kattner (the top three of FIFA's management).
93. In summary, it appears that the 2010, 2011, and 2014 bonuses of Mr Valcke approved by Mr Blatter and Grondona and accelerated by Mr Kattner were special and different from the normal FIFA yearly bonuses (which Mr Valcke kept perceiving in addition/separately), represent a financial advantage, and would constitute secondary interests. It is thus established that Mr Valcke had secondary interests in relation to the extraordinary bonuses he accepted or received, which represented financial advantages gained in the relevant period.

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

94. In general, bonuses have several purposes, including the rewarding of the employee's activity and positive results over a past period, as well as incentivizing such employee to perform at the same level or higher in the future.
95. In the present case, the question is whether the relevant bonuses received by Mr Valcke in relation to the 2010 FIFA World Cup South Africa; the FIFA Confederations Cup 2013

and the 2014 FIFA World Cup Brazil; and the 2017 FIFA Confederations Cup Russia and the 2018 FIFA World Cup Russia, had a nefarious effect on the performance of his duties.

96. The Panel considers that, the fact that his bonuses (of a significant amount) directly (and solely) depended on the signatures of Messrs Blatter and Grondona, could have made Mr Valcke feel indebted or beholden to them, which affected his integrity and independence in performing his duties.
97. This aspect is obvious from the particular circumstances of the case: the amendment agreements of 2010 were all prepared and signed at the same time, by the same group – the FIFA President, Secretary General and Deputy Secretary General – the most senior officials of FIFA. Messrs Blatter and Valcke signed, on behalf of FIFA, the agreements of Mr Kattner (both) and Mr Valcke (only Mr Blatter), while the contract of Mr Blatter was signed by Mr Valcke and the chairman of the FIFA Finance Committee (Mr Grondona), who would separately also receive a bonus of CHF 1 million. The 2011 agreements were very similar and signed by the same persons. Additionally, the 2010 agreements did not provide for any specific criteria or conditions for the payment of the relevant bonuses, while it is not clear who was in charge of assessing the fulfilment of the criteria set in the 2011 agreements.
98. This particular situation, in the opinion of the Panel, led to the persons involved creating a very restricted and vicious circle of dependency and complicity that is probably best depicted by the relation between Mr Kattner and Mr Valcke.
99. After being granted and approved a CHF 9 million bonus in December 2010 by Messrs Blatter and Valcke, bonus that would be effectively paid in four equal instalments in the months of December 2010, 2011, 2012 and 2013, Mr Valcke contacted Mr Kattner, on two occasions (in 2011 and 2013) in relation to the payments of his bonus. Mr Valcke directly requested Mr Kattner for an acceleration of his 2011 part of his bonus (related to the 2010 FIFA World Cup South Africa) of an amount of CHF 2,250,000, as well as of his 2013 bonus instalment (related to the FIFA Confederations Cup 2013) of an amount of CHF 3,500,000. The two amounts, which were due to be paid to Mr Valcke in December 2011 and December 2013 respectively, were transferred to his account in February 2011 and September 2013, with and due to Mr Kattner's involvement and Mr Valcke's insistent requests.
100. In the case of the 2011 bonus payment, the amount was transferred ten months prior to its official due date, without any official reason or explanation. While Mr Kattner conditioned the early payment on an authorization from the FIFA President (who had approved and signed Mr Valcke's bonus on behalf of FIFA), there is no evidence in the file that such authorization was given by Mr Blatter in February 2011. In other words, Mr Valcke (the FIFA Secretary General), who had only two months prior approved the bonus of Mr Kattner (the FIFA Deputy Secretary General and Mr Valcke's subordinate), asked the latter for a favor – to be paid his bonus with a significant advance of ten months, and Mr Kattner, as Director of FIFA Finance and Administration, ensured the payment was made in just two days.
101. In the case of the 2013 bonus, the violation of the established procedure went even further. Although being aware that the payment of Mr Valcke's bonus (as well as his own) was conditioned by the fulfilment of several criteria in relation to the organizational success of the FIFA Confederations Cup 2013, and that such assessment would be made

by the CSC at its meeting in October 2013, Mr Kattner assured Mr Valcke the bonus would be paid in September 2013. Furthermore, in order to have a legal basis for the accelerated payment, a subordinate of Mr Kattner (the Director of FIFA Human Resources & Services) prepared a Memo entitled "Advance withdrawal of the bonus «FIFA Confederations Cup Brasil 2013» for Mr Jérôme Valcke" which specified that the criteria from Mr Valcke's 2011 amendment agreement were complied with, and that consequently the corresponding part of the bonus could be paid to him. In other words, at the direct request of Mr Valcke, Mr Kattner ensured that the 2013 bonus would be paid to the former on the basis of an assessment of the relevant applicable criteria made by his subordinate and approved by himself, before the CSC could take a decision on the matter.

102. In view of the above, the Panel is of the opinion that Mr Valcke's conduct in the aforementioned instances in 2011 and 2013, was not in line with the relevant ethics regulations. In particular, Mr Valcke's ability to perform his duties as General Secretary was influenced by secondary interests. These secondary interests prevented Mr Valcke from performing his duties with integrity and in an independent and purposeful manner.
103. When approaching Mr Kattner in February 2011 and September 2013 with a request for an accelerated payment of his bonuses and while approving Mr Kattner's bonuses within the same period, Mr Valcke should have realized that this situation would entail an existing or potential conflict of interests and should have immediately stopped from asking the payments.

6. Danger that a conflict of interests affects the performance of duties

104. Paragraph 3 of art. 19 of the FCE expands the definition of a conflict of interests to situations in which there is a danger of a conflict of interests (arising). This means that such a conflict does not have to be concrete or potential, but merely represent a risk, for art. 19 of the FCE to be applicable.
105. In the present case, even if Mr Valcke had not realized the existing or potential conflict of interest arising from the aforementioned situations, he should have taken into account the risk he was exposing himself to. It is clear to the Panel that the performance of Mr Valcke's duties as General Secretary was, at the very least, in danger of being affected by a conflict of interest (approving a significant and extraordinary bonus directly for Mr Kattner during the same period as the requests for advanced payments). This danger should have been apparent also to Mr Valcke, when requesting that Mr Kattner authorize the payment of his bonuses.

7. Disclosure and notification

106. According to art. 19 par. 3 of the FCE, officials who may find themselves in a situation in which the performance of their duties might be affected by an existing, potential or even the danger of a conflict of interest are not only obliged to not perform such duties, but also to disclose and notify the relevant conflict of interest to their respective organization.
107. Therefore, in the present case Mr Valcke should have disclosed/notified the conflict of interest that was (potentially) influencing the performance of his duties regarding his approval of the bonuses of Messrs. Blatter, Grondona and Kattner.
108. However, from the content of the case, no evidence indicates that Mr Valcke discussed such conflict of interest with any official or body of FIFA. In particular, there is no proof

that Mr Valcke sought advice from, or at least informed, the Ethics Committee on the matter, a simple action that may have averted the present proceedings.

8. Conclusion

109. After examining all the relevant facts of the matter, the Panel considers that Mr Valcke found himself in at least two situations in which a conflict of interest affected (or at the very least there was a danger that it could affect) the performance of his duties. These two situations occurred in February 2011 and September 2013, when he asked Mr Kattner, his direct subordinate, to make advanced payments of his bonuses (related to the 2010 FIFA World Cup South Africa and the FIFA Confederations Cup 2013, respectively). Moreover, the accelerated payment authorized by Mr Kattner in September 2013 (based on a Memo drafted by one of Mr Kattner's subordinates and addressed to him) was made before the CSC could assess whether the relevant criteria for the payment of such bonus, according to the 2011 amendment agreement, were fulfilled.
110. Moreover, the Panel finds that the process of awarding extraordinary bonuses to Messrs Blatter, Valcke and Kattner (in particular those in relation to the 2010 FIFA World Cup South Africa, the FIFA Confederations Cup 2013, the 2014 FIFA World Cup Brazil, the 2017 FIFA Confederations Cup Russia and the 2018 FIFA World Cup Russia) through the 2010, 2011 and 2014 amendment contracts was conducted in a manner that is not compatible with ethics and the FCE. In particular, the Panel considers that, through their conduct, the three most senior officials of FIFA (President, Secretary General and Deputy Secretary General) gave the appearance of creating a vicious circle, approving and authorizing the payment of extremely significant amounts of bonuses among themselves, either without any kind of oversight or with a formal endorsement from the CSC which apparently amounted to a mere formality (given the fact that Mr Valcke's 2013 bonus was paid before the CSC could assess the fulfilment of the relevant criteria).
111. In view of the above, the Panel considers that in relation to the bonus payments, Mr Valcke is found to have violated art. 19 of the FCE.

c) Possible violation of art. 20 of the FCE (Offering and accepting gifts or other benefits)

1. Wording of the relevant provision

112. Art. 20 provides as follows:

1. *"Persons bound by this Code may only offer or accept gifts or other benefits to and from persons within or outside FIFA, or in conjunction with intermediaries or related parties as defined in this Code, where such gifts or benefits:*
 - a) *have symbolic or trivial value;*
 - b) *are not offered or accepted as a way of influencing persons bound by this Code to execute or omit an act that is related to their official activities or falls within their discretion;*
 - c) *are not offered or accepted in contravention of the duties of persons bound by this Code;*
 - d) *do not create any undue pecuniary or other advantage; and*
 - e) *do not create a conflict of interest. Any gifts or other benefits not meeting all of these criteria are prohibited."*

2. If in doubt, gifts or other benefits shall not be accepted, given, offered, promised, received, requested or solicited. In all cases, persons bound by this Code shall not accept, give, offer, promise, receive, request or solicit from anyone within or outside FIFA, or in conjunction with intermediaries or related parties as defined in this Code, cash in any amount or form. If declining the gift or benefit would offend the giver on the grounds of cultural norms, persons bound by this Code may accept the gift or benefit on behalf of their respective organisation and shall report it and hand it over, where applicable, immediately thereafter to the competent body. "

2. Persons involved

113. The first requirement set out in art. 19 par. 1 of the FCE is that the person acting must be bound by the FCE. As already shown, Mr Valcke was at the relevant time a football official, and as such, a person bound by the FCE. Therefore, the first element is met in the present case.

3. Gift or other benefits

114. With regard to the term "gift or other benefit", the adjudicatory chamber considers that this refers to pecuniary or any other advantage, any kind of betterment or advancement of economic, legal or personal, material or non-material nature (cf., by way of analogy, Andreas Donatsch et al. [eds.], StGB Kommentar, 19th ed., 2013, preliminary observations on art. 322ter-322octies, N 8; Günter Stratenwerth and Wolfgang Wohlers, Schweizerisches Strafgesetzbuch, Handkommentar, 3rd ed., 2013, N 4 on art. 322ter).

115. The Panel found that Mr Valcke has violated the prohibition of offering and accepting gifts or benefits by granting and receiving illegitimate bonuses as well as undue legal services.

Extraordinary bonuses

116. In the present case, it is undisputed that the extraordinary bonuses received by Mr Valcke, for a total of CHF 30 million, represented financial benefits. The same goes for the bonuses of Messrs Blatter, Grondona and Kattner, most of which were approved by Mr Valcke (and thus offered to these officials).

117. As shown above, the bonuses approved by and given to a small group at the top of FIFA's organization were extraordinary and illegitimate. For Mr Valcke these bonuses amounted to:

- CHF 9 million: Extraordinary bonus related to the 2010 FIFA World Cup South Africa.
- CHF 10 million: Extraordinary bonus in connection to the 2013 FIFA Confederations Cup Brazil and the 2014 FIFA World Cup Brazil.
- CHF 11 million: Extraordinary bonus related to the 2017 FIFA Confederations Cup Russia and the 2018 FIFA World Cup Russia.

Undue payment of private legal costs

118. Mr Valcke also received undue benefits when he authorized a payment as FIFA business expense for the legal advice provided by [Law Firm 3], when the private nature of such services was known to him and only benefited Messrs Kattner and himself. In that instance, Mr Valcke obtained an undue benefit amounting to CHF 9,714.

119. In the present case, it is undisputed that the extraordinary bonuses accepted or received by Mr Valcke, for a total of CHF 30 million, represented financial benefits. The same goes for the payment by FIFA of his and Mr Kattner's personal legal fees amounting to CHF 9,714.

4. Exceptions set out in art. 20 par. 1 let. a to e of the FCE

120. Not every kind of gift or other benefit, however, falls under the scope of art. 20 par. 1 of the FCE. Rather, it is necessary, for a violation of that provision to occur, that the relevant benefit does not meet the criteria set out in art. 20 par. 1 let. a to e of the FCE. In particular, a gift or benefit cannot be accepted if it has more than a mere symbolic or trivial value (let. a). Similarly, the other conditions of art. 20 par. 1 (let. b to e) must also be fulfilled – cumulatively – in order for the gift or benefit to be accepted as such by the beneficiary.

121. The relevant extraordinary bonuses and payments approved, offered, accepted and/or received by Messrs Blatter, Valcke, Grondona and Kattner between 2010 and 2014 (as well as the other ones planned according to the 2014 amendment agreement) cannot reasonably be considered a symbolic or trivial advantage, regardless of whether they are taken individually (i.e., for each official, namely CHF 23 million for Mr Blatter, CHF 30 million for Mr Valcke, CHF 11,5 million for Mr Kattner and USD 4,583,333 for Mr Grondona) or collectively in the amount of approximately CHF 69 million.

122. Furthermore, as it was explained previously, Mr Valcke was fully aware that his amended employment contracts were signed by Messrs Blatter and Grondona, who approved his extraordinary bonuses, and that Mr Kattner was implementing the payment of such bonuses to him. At the same time, Mr Valcke had, in his capacity as FIFA General Secretary, the authority to sign and approve, on behalf of FIFA the amended employment agreements and related bonuses of Messrs Blatter, Grondona and Kattner. This situation and awareness clearly influenced Mr Valcke's performance of his duties and the execution of the acts related to his official activities, namely the signing and approving of the relevant agreements and bonuses, as well as created a conflict of interest, as established in the relevant section above.

123. Moreover, as FIFA General Secretary and an official bound by the FCE and in accordance with article 13 paras. 3 and 4 of the said code, Mr Valcke had to be aware of the impact of his conduct on FIFA's reputation, and should have therefore behaved in a dignified and ethical manner and acted with complete credibility and integrity at all times. Additionally, Mr Valcke was obliged to refrain from any activity or behavior that might give rise to the appearance or suspicion of improper conduct. By signing (on behalf of FIFA) employment agreements and approving extraordinary bonuses for the benefit of Messrs Blatter, Grondona and Kattner, as well as by accepting bonuses approved or implemented by the latter officials, to the amount of CHF 30 million, Mr Blatter has given rise to suspicion of improper conduct and consequently has acted in contravention of his duties as provided in article 13 paras. 3 and 4 of the FCE 2019.

124. With respect to the calculation and overall nature of the extraordinary bonuses approved and received by Mr Valcke, the following considerations should be made.

125. First, it can be seen from the final report and relevant supporting evidence that the determination of the bonuses was not the result of a clean and orderly decision-making process carried through by an independent and specialized corporate body that was

adequately protecting the interests of FIFA, but rather the result of secret decisions taken by an inner circle of FIFA senior management containing very general and broad concepts such as the success of the FIFA World Cups.

126. Even after March 2013, when the FIFA Compensation Sub-Committee was established, it merely adopted in written form of what had de facto been established by Messrs Blatter, Valcke and Kattner three years before and had been put into practice since that time.
127. Moreover, as previously mentioned, Messrs Blatter, Valcke and Kattner ensured that the approval and payment of their respective bonuses was made as discreetly as possible, avoiding any attempts at transparency towards the FIFA Executive Committee and the FIFA Congress, the responsible bodies for approving FIFA's annual accounts, as well as towards the internal FIFA administration. Although the bonus payments were approved all at once, they were then paid in yearly instalments and recorded as "salaries" in the annual accounts of FIFA, which only showed the total salaries paid by FIFA during a year, without any specific information. The payment in instalments also avoided the inclusion of the entire bonus amounts in FIFA's financial figures for the respective year, which would have been discovered during the relevant audit of the organization. To the same purpose, it appears that Mr Kattner kept different versions of the amendment contracts of Messrs Blatter, Valcke and his own. Those versions were in substance identical to the signed versions of the 1 December 2010 contract, with the only difference that all references to work performed in connection with the 2010 FIFA World Cup South Africa were removed, leaving the employee's "exceptional services" as the sole justification for the bonuses.
128. All of the above elements indicate that the gifts and benefits received and offered/approved by Mr Valcke, in the form of extraordinary benefits created undue pecuniary advantages for himself and Messrs Blatter, Grondona and Kattner.

5. Conclusion

129. In the light of the foregoing, the adjudicatory chamber finds that Mr Valcke has breached art. 20 par. 1 of the FCE by accepting and receiving extraordinary bonuses in the amount of CHF 30 million, signed, approved or implemented by Messrs Grondona, Blatter and Kattner, and by concomitantly approving/offering extraordinary bonuses for Messrs Valcke, Grondona and Kattner (through the signing of the amendment employment contracts of the respective officials, on behalf of FIFA).

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

1. Wording of the relevant provision

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

2. Violation of this article shall be sanctioned with an appropriate fine of at least CHF 10,000 as well as a ban on taking part in any football-related activity for a minimum of two years. The sanction shall be increased accordingly where the person holds a high position in football, as well as in relation to the relevance and amount of the advantage received."

130. The Panel will proceed now to analyze the elements of the violation of abuse of position, as defined at art. 25 of the FCE, and in relation to the conduct of Mr Valcke.

2. Persons involved

131. As already established, at the time relevant for his conduct in relation Mr Valcke was FIFA's General Secretary, and thus an official bound by the FCE in line with art. 2 of the FCE. Therefore, the first element is met in the present case.

3. Take advantage of their position

132. Mr Valcke took advantage of his position within the FIFA's organization by authorizing a payment of CHF 9,714.95 as a FIFA business expenses, knowing that, the same expense was issued for private legal advice services in favor of Mr Kattner and himself, not FIFA.

4. For private aims or gains

133. Mr Valcke had a private interest in making FIFA pay for his and Mr Kattner's private legal costs amounting to CHF 9,714.95.

5. Conclusion

134. Overall, and in light of the considerations and findings above, the adjudicatory chamber holds that Mr Valcke, by his conduct presently relevant, has violated arts. 15 (Duty of loyalty), 19 (Conflict of interests), 20 (Offering and accepting gifts or other benefits) and art. 25 (Abuse of position) of the FCE.

D. SANCTIONS AND DETERMINATION OF SANCTIONS

135. According to art. 6 par. 1 of the FCE, the Ethics Committee may pronounce the sanctions described in the FCE, the FIFA Disciplinary Code, 2019 edition ("FDC") and the FIFA Statutes.

136. When imposing a sanction, the adjudicatory chamber shall take into account all relevant factors in the case, including the nature of the offense, the offender's assistance and cooperation, the motive, the circumstances, the degree of the offender's guilt, the extent to which the offender accepts responsibility and whether the person mitigated his guilt by returning the advantage received (art. 9 par. 1 of the FCE). It shall decide the scope and duration of any sanction (art. 9 par. 3 of the FCE).

137. When evaluating, first of all, the degree of the offender's guilt, the seriousness of the violation and the endangerment of the legal interest protected by the relevant provisions of the FCE need to be taken into account. In this respect, it is important to note that Mr Valcke held one of the highest positions in football in the world and, as such, had a responsibility to serve as a role model. Mr Valcke has to be considered an experienced football official, based on his extensive background both in terms of his various mandates and in terms of years of activity. Yet, his conduct revealed a pattern of blunt disrespect for core values of the FCE, violating several of the code's provisions.

138. Furthermore, Mr Valcke was not found guilty of an act of negligence, but of deliberate actions on the part of the accused, who was fully aware of the amount of all the relevant bonuses of Messrs Blatter, Grondona and Kattner when approving them, as well as his own bonuses and of the fact that his own bonuses were being approved by Messrs Blatter

and Grondona. In this respect, it should also be noted that the accused was free at all times to break off the intended acts and thus to avoid the endangerment or violation of the protected legal interest. In view of these circumstances, the accused's degree of guilt must be regarded as serious and his behavior as inexcusable.

139. As for the motive, it is clear that Mr Valcke was pursuing his own personal and financial interests. In particular, from the extraordinary bonuses stemming from the 2010, 2011 and 2014 amendment agreements, Mr Valcke would be granted and obtain extremely high pecuniary advantages of CHF 30 million, on top of his normal salary and yearly contractual bonus.
140. In any case, the Panel notes that Mr Valcke has not expressed, at any point during these proceedings, awareness of wrongdoing or remorse for his actions (a circumstance that is suited to mitigate the culpability of an offender, according to the case law of FIFA's judicial bodies). To the contrary, he explicitly claimed not to have violated any provision of the FCE in his position.
141. To sum up, the adjudicatory chamber deems that the guilt of Mr Valcke in the present case is extremely serious, and virtually no aspects are suited to mitigate the degree of his guilt.
142. With regard to the type of sanction to be imposed on Mr Valcke, the adjudicatory chamber deems – in view of the particularly serious nature of his misconduct – only a ban on taking part in any football-related activity is appropriate in view of the inherent, preventive character of such sanction in terms of potential subsequent misconduct by the official. In the light of this, the adjudicatory chamber has chosen to sanction Mr Valcke by banning him from taking part in any football-related activity (art. 7 par. 1(j) of the FCE; art. 56 par. 2(f) of the FIFA Statutes; art. art. 6 par. 2 lit. c) of the FDC).
143. With regard to the scope and duration of a ban (see art. 9 par. 2 and 3 of the FCE), the adjudicatory chamber points out that, where art. 25 par. 2 of the FCE (abuse of position) does not establish a maximum, art. 19 par. 4 of the FCE (Conflicts of interests) does – to the extent of five years, in serious cases and/or in the case of repetition (which are both applicable in the present matter). Moreover, art. 11 of the FCE foresees that, where more than one breach has been committed, the sanction other than monetary sanctions shall be based on the most serious breach, and increased as appropriate, depending on the specific circumstances. In this respect, the Panel notes that, in the 2018 edition of the FCE, art. 11 has a slightly different content, providing that, in case of concurrent infringements, “the sanction other than monetary sanctions shall be based on the most serious breach, and increased **up to one third** as appropriate, depending on the specific circumstances” (emphasis added). In view of the above, and in line with the principle of *lex mitior*, the Panel has decided to apply the most favorable version for the FCE with respect to the calculation of the sanction of Mr Valcke, meaning that art. 11 of the 2018 edition of the FCE would be applicable.
144. In the present case, the Panel considers that, while all breaches are serious (or rather extremely serious), the principal violation committed by Mr Valcke was that of offering and accepting of gifts and other benefits.
145. In view of the above, and in accordance with the content of art. 11 of the FCE 2018 and art. 20 par. 4 of the FCE, the adjudicatory chamber concludes that, in the present case,

the duration of the ban to be imposed is limited to the maximum sanction of five years, increased by its third (20 months), which equals six years and eight months.

146. In the present case, and after having taken into account all relevant factors of the case as outlined above (cf. par. 181 *et seq.* above), the adjudicatory chamber deems a ban on taking part in any football-related activity (administrative, sports or any other) at national and international level for a period of six years and eight months to be appropriate for the violation of art. 15, 19, 20 and 25 of the FCE committed by Mr Valcke. In view of the fact that the previous ban from taking part in any football-related activity imposed on Mr Valcke has not yet been purged, the present ban will only start deploying effects upon the expiry of the previous one (on 8 October 2025).
147. Furthermore, the adjudicatory chamber is of the opinion that the imposition of a ban on taking part in any football-related activity is not sufficient to sanction the misconduct of Mr Valcke adequately, in particular given the gravity of the matter and the significant financial gain involved. Hence, the adjudicatory chamber considers that the ban imposed on Mr Valcke should be completed with a fine.
148. The amount of the fine shall not be less than CHF 300 and not more than CHF 1,000,000 (art. 6 par. 2 of the FCE in conjunction with art. 6 par. 4 of the FDC). Furthermore, art. 20 par. 3 of the FCE stipulates a financial sanction, represented by a minimum fine of CHF 10,000, and that any amount unduly received shall be included in the calculation of the fine.
149. In the case at hand – taking into account the circumstances of the case (in particular the extremely prominent official positions held by Mr Valcke in association football, as well as the enormous amounts that were accepted, received or approved/offered by him in the relevant period, for a total of approximately CHF 69 million), the adjudicatory chamber determines that only the maximum fine of CHF 1,000,000 would be appropriate. Accordingly, Mr Valcke shall pay a fine of CHF 1,000,000.
150. Finally, art. 20 par. 3 of the FCE provides that, in addition to the fine, the gift or benefit unduly received should be returned, if applicable. Therefore, Mr Valcke should return to FIFA the amount of all the relevant extraordinary bonuses unduly received in relation to the amended employment agreements signed in the period 2010 - 2014.

E. PROCEDURAL COSTS

151. The procedural costs are made up of the costs and expenses of the investigation and adjudicatory proceedings (art. 54 of the FCE).
152. Mr Valcke has been found guilty of violations of arts. 15, 19, 20, and 25 of the FCE and has been sanctioned accordingly. The adjudicatory chamber deems that no exceptional circumstances apply to the present case that would justify deviating from the general principle regarding the bearing of the costs. Thus, the adjudicatory chamber rules that Mr Valcke shall bear the procedural costs (art. 56 par. 1 of the FCE).
153. In the present case, the costs and expenses of the investigation and the adjudicatory proceedings add up to [...].

154. According to art. 57 of the FCE, no procedural compensation shall be awarded in proceedings conducted by the Ethics Committee. Consequently, Mr Valcke shall bear his own legal and other costs incurred in connection with these proceedings.

III. DECISION OF THE ADJUDICATORY CHAMBER

1. Mr Jérôme Valcke is found guilty of having infringed arts. 15 (Duty of loyalty), 19 (Conflict of interests), 20 (Offering and accepting gifts or other benefits) and art. 25 of the FCE (Abuse of position).
2. Mr Valcke is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for six years and eight months, in accordance with art. 7 par. 1 lit. j) of the FIFA Code of Ethics in conjunction with art. 6 par. 2 lit. c) of the FIFA Disciplinary Code. The aforementioned ban shall start after the expiration (on 8 October 2025) of the ban previously imposed on Mr Valcke that is currently being purged.
3. Mr Valcke shall pay a fine in the amount of CHF 1,000,000 within 30 days of notification of the present decision.
4. Mr Valcke shall pay costs of these proceedings in the amount of [...] within 30 days of notification of the present decision.
5. Mr Valcke shall bear his own legal and other costs incurred in connection with the present proceedings.
6. This decision is sent to Mr Valcke. A copy of the decision is sent to the chairperson of the investigatory chamber, Ms Maria Claudia Rojas.

NOTE RELATED TO THE FINANCIAL SANCTION:

The payment of the fine and costs of the proceedings can be made either in Swiss francs (CHF) to account no. [...] or in US dollars (USD) to account no. [...], with reference to case no. "Adj. ref. no. 8/2020 (E16-00018)" in accordance with art. 7 let. e) of the FIFA Code of Ethics.

NOTE RELATED TO THE PUBLICATION:

The public may be informed about the reasons for any decision taken by the Ethics Committee. In particular, the chairperson of the adjudicatory chamber may decide to publish the decision taken, partly or in full, provided that the names mentioned in the decision (other than the ones related to the party) and any other information deemed sensitive by the chairperson are duly anonymized (cf. article 36 of the FIFA Code of Ethics).

NOTE RELATED TO THE APPEAL PROCEDURE:

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

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Mr Vassilios Skouris
Chairperson of the adjudicatory chamber
FIFA Ethics Committee