



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2014/A/3533 Football Club Metallurg v. UEFA**

## **ARBITRAL AWARD**

**delivered by the**

## **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

Sole Arbitrator: **Mr Manfred Nan**, Attorney-at-law, Arnhem, the Netherlands

**in the arbitration between**

**FOOTBALL CLUB METALLURG**, Donetsk, Ukraine

Represented by **Mr E.A. Gayduk**, General Director, **Mr Vadym Shymko**, Head of Legal, and  
**Mr Maksym Padalka**, Lawyer, Football Club Metallurg, Donetsk, Ukraine

as Appellant

**and**

**UNION DES ASSOCIATIONS EUROPÉENNES DE FOOTBALL (UEFA)**, Nyon,  
Switzerland

Represented by **Mr Julien Zylberstein**, Legal Counsel, **Dr Emilio Garcia Silvero**, Head of  
Disciplinary & Integrity, and **Mr Andrew Mercer**, Lawyer, UEFA, Nyon, Switzerland

as Respondent

## I. THE PARTIES

1. Football Club Metallurg (hereinafter: the “Appellant” or “Metallurg”) is a professional football club in Ukraine, currently playing in the “Association of Ukrainian professional football clubs “PREMIER-LEAGUE””, the first division of professional football leagues in Ukraine (hereinafter: the “UPL”). Metallurg is a member of the Ukraine Football Federation (hereinafter: the “UFF”), which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter: “FIFA”) and the Union des Associations Européennes de Football.
2. The Union des Associations Européennes de Football (hereinafter: the “Respondent” or “UEFA”) is the confederation in charge of football in Europe, working with and acting on behalf of Europe's national football associations.

## II. FACTUAL BACKGROUND

3. The elements set out below are a summary of the most relevant facts, as established on the basis of the parties’ written submissions in the course of the proceedings and the hearing. 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 20 December 2013, the Adjudicatory Chamber of the UEFA Club Financial Control Body (hereinafter: the “UEFA CFCB”) found that Metallurg had breached the UEFA Club Licensing & Financial Fair Play Regulations (hereinafter “UEFA CL&FFP Regulations”) because it had overdue payables towards other football clubs in the amount of EUR 200,000 as of 30 June 2013 and of EUR 890,000 as of 30 September 2013. On this basis, the Adjudicatory Chamber of the UEFA CFCB issued a decision (hereinafter the “CFCB Decision”) with the following operative part:

*“1. FC Metalurg [sic] has breached Articles 65(1) and 65(8) of the CL&FFP Regulations.*

*2. To exclude FC Metalurg from participating in the next UEFA club competition for which it would otherwise qualify on its results or standing in the next three seasons (i.e. the 2014/15, 2015/16 and 2016/16 [sic] seasons) unless the club is able to prove by 31 January 2014 that it has paid the amounts that were identified as overdue payables on 30 September 2013 (i.e. eight hundred and ninety thousand euros (€890,000).*

*3. To impose a fine of eighty thousand Euros (€80,000) on FC Metalurg.*

[...]

*6. This decision is final and shall be notified to:*

*a) FC Metalurg;*

[...]

*This Decision may be appealed in writing before the Court of Arbitration for Sport ('CAS') in accordance with Article 25(2) of the Procedural Rules and Articles 62 and 63 of the UEFA Statutes. [...]"*

5. Metallurg did not file an appeal with CAS against the CFCB Decision.
6. On 14 January 2014, Metallurg concluded an amicable agreement with Hrvatski Športski Klub Zrinjski Mostar (hereinafter: "Zrinjski"), a professional football club from Mostar, Bosnia and Herzegovina, and one of the two creditors of Metallurg. This amicable agreement determines, *inter alia*, the following:

*"Article 1*

*Both parties are agreeing that current debt of [Metallurg] towards [Zrinjski] is 190.000,00 EURO [...].*

*Article 4*

*Both parties are mutually agreeing that [Metallurg] will pay the main debt from Article 1, interests on main debt and the cost of deposit [Zrinjski] made towards FIFA Arbitrary Chamber for costs of arbitering [sic] [Zrinjski's] demand, to [Zrinjski] in six (6) installments [sic], and under conditions that:*

- *The first 35.000,00 EURO installment will be paid until 31 of January 2014;*
  - *The second 35.000,00 EURO installment will be paid until 28 of February 2014;*
  - *The third 35.000,00 EURO installment will be paid until 31 of March 2014;*
  - *The fourth 35.000,00 EURO installment will be paid until 30 of April 2014;*
  - *The fifth 35.000,00 EURO installment will be paid until 31 of May 2014, and*
  - *The sixth installment which is composed from 15.000,00 EURO on the main debt, 9.000,00 EURO of interest on main debt and the 5.000,00 CHF cost of deposit [Zrinjski] made towards FIFA Arbitrary Chamber for costs of arbitering on [Zrinjski's] demand, [Metallurg] is scheduled to pay until at least 30 of June 2014."*
7. On 23 January 2014, Metallurg concluded an amicable agreement with Asociatia Club Fotbal Gloria 1922 (hereinafter: "Gloria 1922"), a professional football club from Bistrita, Romania, and one of the two creditors of Metallurg. This amicable agreement determines, *inter alia*, the following:

*"Article 1*

*Both parties are agreeing that the current debt of [Metallurg] towards [Gloria 1922] is 724,164 EURO.*

*Article 3*

*Both parties are mutually agreeing that [Metallurg] will pay the debt from Article 1 in 6 (six) installments [sic] and under conditions as follow:*

- *The first 115.000 EURO installment will be paid until the 31th of January 2014.*
- *The second 115.000 EURO installment will be paid until the 28<sup>th</sup> of February 2014.*
- *The third 115.000 EURO installment will be paid until the 31th of March 2014.*
- *The fourth 115.000 EURO installment will be paid until the 30<sup>th</sup> of April 2014.*
- *The fifth 115.000 EURO installment will be paid until the 31th of May 2014.*
- *The sixth 149.164 EURO installment will be paid until the 30th of June 2014."*

8. In January 2014, Metallurg paid Zrinjski and Gloria 1922 the first instalment in accordance with the agreements signed.
9. On 27 February 2014, the Investigatory Chamber of the UEFA CFCB conducted an examination of the evidence submitted by Metallurg and concluded that only EUR 150,000 of the relevant overdue payables had been paid by the deadline of 31 January 2014. Payment of the remaining EUR 740,000 had only been deferred and such amount had therefore not been paid by 31 January 2014.
10. On 13 March 2014, the Adjudicatory Chamber of the UEFA CFCB rendered an Order (hereinafter: the "Appealed Decision"), with the following operative part:

*"a. The exclusion provided for in the [CFCB Decision] shall take effect immediately and, consequently, FC Metalurg [sic] is excluded from participating in the next UEFA club competition for which it would otherwise qualify on its results or standing in the next three seasons (i.e. the 2014/15, 2015/16 and 2016/17 seasons).*

*b. This Order is final.*

*In accordance with Article 25(2) of the Procedural Rules and Articles 62 and 63 of the [UEFA Statutes], this Order may be appealed in writing before the Court of Arbitration for Sport. [...]"*

11. The grounds of the Appealed Decision were communicated on the same date, determining, *inter alia*, the following:

- *“The CFCB Adjudicatory Chamber records that FC Metallurg was only able to prove that it had paid part of the relevant overdue payables by the 31 January 2014 deadline, i.e. a total of one hundred and fifty thousand Euros (EUR 150.000). FC Metallurg’s evidence showed that the club’s obligations to pay the majority of the relevant overdue payables had simply been deferred, not paid. This is not enough to satisfy the Condition which expressly required proof that the overdue payables, in the amount of eight hundred and ninety thousand Euros (EUR 890.000), had been paid by 31 January 2014.*
- *In this regard, the CFCB Adjudicatory Chamber stresses that the 31 January 2014 deadline relates only to FC Metallurg’s payment or non-payment of the relevant amounts (in the context of the satisfaction of the Condition). Accordingly, it is not necessary or relevant to consider whether the amounts identified as overdue payables under Annex VIII of the CL&FFP Regulations as at 30 September 2013 were still overdue as at 31 January 2014, since such amounts had already been proven to be overdue as at 30 September 2013 (as per the Decision). The Condition clearly required the club to prove that all of the relevant overdue payables had been paid in full by the club by no later than 31 January 2014 (i.e. that the obligations to pay had ceased to exist, in any form, as at 31 January 2014). In this context, any deferral agreements reached by FC Metallurg and its creditors subsequent to 30 September 2013 are irrelevant when establishing whether or not the club had complied with the Condition.*
- *The CFCB Adjudicatory Chamber acknowledges that the provisions of Annex VIII of the Regulations allow clubs to take account of certain deferred payment obligations when calculating their overdue payables under Articles 49, 50, 65 and 66 of the CL&FFP Regulations (i.e. payables are not considered overdue if a club is able to prove that it has entered into a deferral agreement with the relevant creditor(s) to extend the deadline for payment of such payables beyond the relevant deadline set by the CL&FFP Regulations). However, this does not mean that the CFCB Adjudicatory Chamber is bound by these provisions when it attaches specific conditions to a suspended disciplinary measure imposed against a club. Indeed, in such cases, conditions which merely require clubs to defer part of all of the relevant overdue payables would not serve as a sufficient deterrent to discourage clubs from breaching the CL&FFP Regulations.*
- *It follows that, in the present case, FC Metallurg failed to pay the relevant overdue payables by the deadline set by the CFCB Adjudicatory Chamber in the Decision.”*

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

12. On 21 March 2014, Metallurg filed its Statement of Appeal with the Court of Arbitration for Sport (hereinafter: “CAS”), in accordance with Article R48 of the CAS Code of

Sports-related Arbitration (hereinafter: the “CAS Code”). In this submission, Metallurg requested the CAS Court Office to assign the arbitration to a Sole Arbitrator and nominated Mr Manfred Nan, Attorney-at-law in Arnhem, the Netherlands, as arbitrator.

13. On 4 April 2014, UEFA confirmed its agreement to Metallurg’s request to assign the arbitration to a Sole Arbitrator and confirmed to have no objection to the appointment of Mr Nan.
14. On 1 April 2014, Metallurg filed its Appeal Brief, in accordance with Article R51 of the CAS Code. Metallurg challenged the Appealed Decision and confirmed its request for relief, submitted in the Statement of Appeal, as follows:

*“To annul the Decision of the Adjudicatory Chamber of UEFA Club Financial Control Body dated March 13, 2014.”*

15. On 7 April 2014, Metallurg insisted on a hearing to be held.
16. On 10 April 2014, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the parties were informed that the Panel appointed to decide the above-referenced case had been constituted as follows:

➤ Mr Manfred Nan, Attorney-at-law in Arnhem, the Netherlands, as Sole Arbitrator.

17. On 28 April 2014, UEFA filed its Answer, in accordance with Article R55 of the CAS Code, whereby it requested the CAS to decide as follows:

*“On the grounds set out above, UEFA respectfully requests CAS to dismiss the appeal and to order payment by the Appellant of all costs of the arbitration as well as a contribution towards legal costs suffered by UEFA.”*

18. On 1 May 2014, UEFA informed CAS that it was of the opinion that an award could be rendered on the basis of the parties’ written submissions, but that it would not object should Metallurg request an oral hearing.
19. On 22 May 2014, the CAS Court Office informed the parties that the Sole Arbitrator, pursuant to Article R57 of the CAS Code, had decided to hold a hearing on 3 July 2014.
20. On 24 and 27 June 2014 respectively, Metallurg and UEFA duly signed and returned copies of the Order of Procedure.
21. On 3 July 2014, a hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed that they had no objection to the constitution and composition of the Panel.
22. In addition to the Sole Arbitrator and Mr Christopher Singer, Counsel to the CAS, the following persons attended the hearing:

a) For the Appellant:

- 1) Mr Shymko Vadym, Head of Legal;
- 2) Mr Padalka Maksym, Lawyer;
- 3) Mr Gaponov Roman, Interpreter.

b) For the Respondent:

- 1) Mr Julian Zylberstein, Legal Counsel;
- 2) Mr Andrew Mercer, Lawyer.

23. 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 counterparty and the Sole Arbitrator.
24. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the manner in which the procedure was conducted and that their right to be heard had been respected.
25. The Sole Arbitrator confirms that he carefully heard and took into account all of 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

26. The submissions of Metallurg, in essence, may be summarized as follows:
  - Metallurg argues that *“according to the [CFCB Decision], FC Metallurg was provided with a period till January 31, 2014 to confirm settlement of its financial obligations. In other words, this refers to the liabilities that have become already due”*.
  - Although Metallurg confirms that it had overdue payables in a total amount of EUR 890,000 on 30 September 2013, it argues that it satisfied the conditions set out in the CFCB Decision, because it entered into two deferral agreements with its creditors on 14 and 23 January 2014 respectively, allowing it to pay EUR 150,000 on or before 31 January 2014 and allowing it to pay the remaining balance of EUR 740,000 between 28 February 2014 and 30 June 2014.
  - Metallurg submits that it satisfied the conditions set out in the CFCB Decision, because it only required payment of amounts that had become overdue by 31 January 2014. Metallurg points out that it paid the amount due on 31 January 2014 and that the remaining outstanding amount of EUR 740,000 was not overdue on 31 January 2014, because the deferred dates for payment only arose after 31 January 2014.
  - Metallurg accentuates that it was *“not ready to settle the relevant overdue payables being apparently quite substantial”* and submits that *“the Club’s investors did not provide for such expense items in the budget of the Club”*.

- Metallurg argues that in spite of the “*complicated social and political environment having established in Ukraine. Starting from November 2013 [...]*”, it paid the first instalments in accordance with the terms of the deferral agreements.
- Metallurg submits that it “*has taken all the best efforts in order to comply duly with the [CFCB Decision]. Complicated social and political environment, financial problems suffered [...] and encouragement of the creditor clubs afford grounds to consider the [CFCB Decision] as very tough [...]. Application of the sport sanctions can bring into challenge further financing of the club on the part of the investors. This can also affect timely fulfilment of the Amicable Agreement terms. We accept as reasonable and fair the sanction in the form of fine amounting to 80.000 Euro having been applied to the Club in the [CFCB Decision]. FC Metallurg agrees completely with such sanction and is not going to contest it*”.

27. The submissions of UEFA, in essence, may be summarized as follows:

- The UEFA CL&FFP Regulations were specifically enacted to ensure fair play within the UEFA club competitions by improving the economic and financial capability of clubs, increasing their transparency and ensuring that clubs punctually settle their liabilities with players, social/tax authorities and other clubs.
- UEFA submits that Metallurg does not deny that it had overdue payables in the amount of EUR 890,000 as per 30 September 2013, nor did it contest the CFCB’s imposition of the disciplinary measures.
- UEFA argues that the CFCB Decision, which became final and binding, - as relevant - excluded FC Metallurg from participating in the next UEFA club competition for which it would otherwise qualify in the next three European football seasons (*i.e.* the 2014/15, 2015/16, 2016/17 seasons) “*unless the amounts identified as overdue payables as at 30 September 2013 (i.e. EUR 890,000) were paid in full by 31 January 2014*”.
- UEFA submits that Metallurg only paid EUR 150,000 by 31 January 2014 and that the payment of the remaining amount of EUR 740,000 had been deferred, which “*was not enough to satisfy the condition which expressly required proof that all the overdue payables, in the amount of EUR 890,000, had been paid by 31 January 2014*”.
- UEFA stresses that “*the current proceedings shall be limited to the [Appealed Decision], and in particular to the Appellant’s satisfaction of the Condition imposed by means of the [CFCB Decision], since FC Metallurg decided not to lodge appeal against the latter decision*”.
- UEFA accentuates that the question is not whether any payments were due or overdue as at 31 January 2014. The condition was set by reference to amounts which were identified as being overdue as of 30 September 2013 and the



condition could only be satisfied if such amounts were paid in full by 31 January 2014. Only deferral agreements concluded before 30 September 2013 could have been taken into account.

- UEFA argues that the willingness of creditors to defer payments cannot be viewed as mitigating circumstances, nor is the financial state of Metallurg or the social and political unrest in Ukraine.
- UEFA emphasizes that the CFCB Decision was proportionate and that there is no room for Metallurg to challenge the proportionality of the suspended exclusion.

#### V. ADMISSIBILITY

28. The appeal was filed within the deadline of 10 days set by Article 62(3) of the UEFA Statutes (2012 edition). The appeal complied with all other requirements of Article R48 of the CAS Code, including payment of the CAS Court Office fee.
29. It follows that the appeal is admissible.

#### VI. JURISDICTION

30. The jurisdiction of the CAS, which is not disputed, derives from Article 62(1) of the UEFA Statutes which determines that “[a]ny decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration” and Article R47 of the CAS Code. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.
31. It follows that CAS has jurisdiction to decide on the present dispute.

#### VII. APPLICABLE LAW

32. The Appealed Decision was issued by UEFA. Article 63(3) of the UEFA Statutes 2012 states that “[...] proceedings before the CAS shall take place in accordance with the [CAS Code].”
33. Article R58 of the CAS Code provides the following:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, 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.”*

34. Whereas Metallurg does not refer to the rules and regulations it deems applicable, UEFA maintains that UEFA's regulations are primarily applicable and Swiss law complementary, as UEFA is domiciled in Switzerland.
35. In the absence of an explicit choice of law by the parties, the Sole Arbitrator finds that the various UEFA regulations are primarily applicable since the present dispute has arisen from an alleged disciplinary violation under the rules of UEFA, particularly the UEFA CL&FFP Regulations. Subsidiarily, in the absence of a choice of law by the parties in the present case, Swiss law is to be applied should the need arise to fill a possible gap in the various regulations of UEFA as Switzerland is the country in which UEFA is domiciled.

## VIII. MERITS

### A. The Main Issues

36. The Sole Arbitrator observes that the main issues to be resolved are:

- i. What is the subject matter of this appeal?
- ii. Did Metallurg satisfy the Condition as set out in the CFCB Decision?
- iii. If not, what are the consequences thereof?

#### *i. What is the subject matter of this appeal?*

37. The Sole Arbitrator observes that the UEFA CFCB found that Metallurg had breached Articles 65(1) and 65(8) of the UEFA CL&FFP Regulations because it had overdue payables towards other football clubs in the amount of EUR 200,000 as of 30 June 2013 and of EUR 890,000 as of 30 September 2013.
38. As a result, the UEFA CFCB, *inter alia*, excluded Metallurg from participating in the next UEFA club competition for which it would otherwise qualify on its results or standing in the next three seasons, "*unless the club is able to prove by 31 January 2014 that it has paid the amounts that were identified as overdue payables on 30 September 2013 (i.e. eight hundred and ninety thousand euros (€890,000))*" (hereinafter: the "Condition").
39. The Sole Arbitrator notes that Metallurg not only did not dispute the overdue payables towards other football clubs in the amount of EUR 890,000 as of 30 September 2013, but also accepted the CFCB Decision by not filing an appeal to CAS. At the hearing, Metallurg confirmed that it had accepted the CFCB Decision and both parties agreed that the CFCB Decision became final and binding as per 1 January 2014 at the latest.
40. The Sole Arbitrator recognizes that the sole task for the UEFA CFCB leading up to the Appealed Decision was to analyse whether Metallurg complied with the Condition imposed in the final and binding CFCB Decision. In line with CAS jurisprudence (CAS 2012/A/2850, §7.10, with further references to CAS 2004/A/1008 and CAS 2008/A/1610) the Sole Arbitrator underlines that the object of an appeal cannot extend beyond the scope of the decision challenged.

41. As such, the Sole Arbitrator is abstained from considering requests of Metallurg regarding whether the suspended sanction imposed by means of the CFCB Decision is too harsh, disproportional and/or has not followed UEFA precedents.
42. As a result, the subject matter of this appeal is limited to the scope of the Appealed Decision, in particular to the assessment of whether Metallurg satisfied the Condition set out in the Appealed Decision in order to prevent the suspended sanction to be imposed on it.

*ii. Did Metallurg satisfy the Condition as set out in the CFCB Decision?*

43. Whereas Metallurg admits that it did not pay the amount of EUR 890,000 to the creditors by 31 January 2014, it argues that because of the two deferral agreements there were no overdue payables anymore on 31 January 2014. On this basis, Metallurg maintains that it satisfied the Condition, because it was only required to pay the amounts that had become due by 31 January 2014. Metallurg points out that it paid the amounts due on 31 January 2014 and that the outstanding amount of EUR 740,000 had not yet become due by 31 January 2014, because the deadlines for the deferred payments only ended after 31 January 2014.
44. Metallurg purports that according to the CFCB Decision it was provided with a period until 31 January 2014 to confirm the settlement of its financial liabilities. Metallurg maintains that “[...] *this refers to the liabilities that have become already due! [...] the clubs reached an agreement to settle the NEW terms for fulfilment of obligations. In other words, this refers to the liabilities that have not yet become due*”.
45. UEFA underlines that the CFCB Decision contained a Condition which provided Metallurg with the possibility to prevent it from being excluded “*from participating in the next UEFA club competition for which it would otherwise qualify on its results or standing in the next three seasons (i.e. the 2014/15, 2015/16 and 2016/17 seasons)*” by paying the amounts identified as overdue payables as at 30 September 2013 (i.e. EUR 890,000) in full by 31 January 2014, which it did not.
46. UEFA accentuates that the question is not whether any payments were due or overdue at 31 January 2014. The Condition was set by reference to amounts which were identified as being overdue as of 30 September 2013 and the Condition could only be satisfied if such amounts were paid in full by 31 January 2014. Only deferral agreements concluded before 30 September 2013 could have been taken into account.
47. The Sole Arbitrator finds that the wording, the language and the meaning of the Condition is irrefutably clear and requires Metallurg to prove that it paid in full by 31 January 2014 the identified overdue payables in the amount of EUR 890,000 and that compliance with this Condition was the only way to prevent the suspended sanction from being exercised.
48. In continuation, the Sole Arbitrator turns his attention to the evidence adduced by Metallurg and observes that Metallurg relies on the following two amicable agreements:
  - The first one with Zrinjski, entered into on 14 January 2014, with regard to overdue payables in the amount of EUR 190,000.

- The second one with Gloria 1922, entered into on 23 January 2014, with regard to overdue payables in the amount of EUR 724,164.<sup>1</sup>
49. The Sole Arbitrator notes that, at the hearing, the parties agreed that the evidence adduced by Metallurg (the two deferral agreements) proves that Metallurg paid EUR 150,000 by 31 January 2014 and that the payment of the remaining amount of EUR 740,000 had been deferred.
50. The Sole Arbitrator notes that the Condition makes no reference to the possibility to prevent enforcement of the suspended sanction by deferring the identified overdue payables, nor is this possibility contemplated in the UEFA CL&FFP Regulations.
51. The Sole Arbitrator observes that Annex VIII(2)(b) of the UEFA CL&FFP Regulations determines the following:
- “Payables are not considered as overdue, within the meaning of these regulations, if the licence applicant/licensee (i.e. debtor club) is able to prove by 31 March (in respect of Article 49 and 50) and by 30 June and 30 September (in respect of Article 65 and 66) respectively that: [...] b) it has concluded an agreement which has been accepted in writing by the creditor to extend the deadline for payment beyond the applicable deadline [...]”*
52. The Sole Arbitrator finds that whereas this provision is relevant to assess whether an amount is overdue on a certain date or not, it is not relevant to assess whether an amount previously identified as overdue payable is paid on a certain date. The Condition does not only refer to the overdue payables as of 30 September 2013, it refers specifically to the amount of EUR 890,000. It is therefore not relevant whether the amount of EUR 890,000 could still be qualified as “overdue payable” on 31 January 2014, it just had to be paid by such date.
53. Insofar as Metallurg maintains that the Condition should have included an option to defer the payment of EUR 890,000 or that the sanction to be applied in case the Condition is not complied with is disproportionate, the Sole Arbitrator finds that this falls outside the scope of the present appeal arbitration proceedings; if Metallurg wanted to challenge these issues it should have filed an appeal with CAS against the CFCB Decision.
54. In view of the above, particularly taking into account that it is undisputed that by 31 January 2014, Metallurg did not pay in full the amount that was identified as overdue payable on 30 September 2013 by means of the CFCB Decision, the Sole Arbitrator finds that Metallurg did not satisfy the Condition set in the CFCB Decision.

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<sup>1</sup> The Sole Arbitrator observes that the two deferral agreements have a total value of EUR 914,164, which is higher than the amount of overdue payables as at 30 September 2013. The Sole Arbitrator however finds that this difference is not relevant for the outcome of the present appeal arbitration proceedings.

*iii. If not, what are the consequences thereof?*

55. Although it is in principle established that Metallurg did not comply with the Condition, triggering the imposition of the suspended sanction, below the Sole Arbitrator will examine whether the non-compliance of Metallurg with the Condition can be justified by any means.
56. In this respect, Metallurg argues that due to financial problems and the problematical social and political environment in Ukraine it was impossible to pay the full amounts to foreign clubs by 31 January 2014.
57. Regarding the alleged financial problems, Metallurg accentuates in its submissions that it was “*not ready to settle the relevant overdue payables being apparently quite substantial*” and submits that “*the Club’s investors did not provide for such expense items in the budget of the Club*”.
58. UEFA submits that Metallurg’s reference to the social and political situation in Ukraine has no bearing in this case. UEFA points out that although it may well be the case that this situation made it difficult for Metallurg to make overseas payments, Metallurg actually managed to pay EUR 150,000 in January 2014. UEFA argues that the real reason that such payments were not made was because Metallurg did not have the money. UEFA stresses that the alleged circumstances do not establish a “*force majeure*”.
59. The Sole Arbitrator notes that – as recognized in Swiss law and CAS jurisprudence - financial problems or the lack of financial means of a club cannot be invoked as a justification for the non-compliance with an obligation (CAS 2005/A/957, §56; CAS 2006/A/1110, §43).
60. The Sole Arbitrator adheres to the definition of *force majeure* given by a previous CAS panel:

*“Force majeure, indeed, implies an objective rather than a personal impediment, beyond the control of the “obliged party”, that is unforeseeable, that cannot be resisted, and that renders the performance of the obligation impossible (CAS 2002/A/388, Ülker Sport v. Euroleague, published in Digest of CAS Awards III 2001-2003, p. 516 ff.) In addition, the conditions for the occurrence of force majeure are to be narrowly interpreted, since force majeure introduces an exception to the binding force of an obligation.”*
61. In light of such definition, the Sole Arbitrator finds that the situation invoked by Metallurg cannot be described as a case of *force majeure*. Although having understanding for the difficult situation in Ukraine, the Sole Arbitrator finds that the conditions for the occurrence of *force majeure* are not satisfied since the “*problematical social and political environment in Ukraine*” did apparently not prevent Metallurg from paying its creditors an amount of EUR 150,000. Although Metallurg contended at the occasion of the hearing that these payments were emergency payments through an offshore company because foreign currency payments from Ukraine to clubs outside Ukraine were technically impossible, the Sole Arbitrator finds that by means of these emergency payments Metallurg complied with the deferral agreements it had concluded with its creditors,

thereby showing that, objectively, the debtor was not prevented from performing its payment obligations because of the problematical social and political environment in Ukraine.

62. In addition, the alleged difficulties in making bank transfers from Ukraine to clubs outside Ukraine due to the complicated situation of the country cannot justify, in the Sole Arbitrator's view, the non-compliance with the Condition, especially when those difficulties are not supported by concrete evidence. In order to satisfy this burden Metallurg should have presented evidence during these proceedings as to why it (be it through an off shore company) was able to pay an amount of EUR 150,000, but not the entire amount of EUR 890,000. In this respect, the Sole Arbitrator feels himself comforted by a CAS award where it was held that "*it shall be stated that the mere reference to a general situation of troubles in a concrete place is not enough to justify a breach on the basis of exceptional circumstances as the force majeure. The party asking for its application shall duly identify and accredit which specific and precise fact prevented it to perform a certain activity*" (CAS 2008/A/1621, §62).
63. To the contrary, and in accordance with UEFA's position, the Sole Arbitrator finds that it appears that Metallurg (by means of emergency payments through an offshore company) could have paid the full amount of EUR 890,000 to its creditors by 31 January 2014 if enough money would have been available. However, as mentioned in its Appeal Brief, Metallurg argues that "*the Club's investors did not provide for such expense items in the budget of the Club*". Therefore, the Sole Arbitrator is of the opinion that the failure of Metallurg to timely satisfy the Condition was caused by reasons falling within Metallurg's sphere of responsibility.
64. The Sole Arbitrator finds that Metallurg is responsible for not complying with the Condition set in the CFCB Decision and that, as such, the Adjudicatory Chamber of the UEFA CFCB rightly decided that the Condition was not complied with and concluded to impose the suspended sanction contemplated in the CFCB Decision on Metallurg by means of the Appealed Decision.
65. Consequently, the Sole Arbitrator finds that the Adjudicatory Chamber of the UEFA CFCB rightly decided in its Appealed Decision that Metallurg must be excluded from participating in the next UEFA club competition for which it would otherwise qualify on its results or standing in the next three seasons (*i.e.* 2014/15, 2015/16 and 2016/17 seasons).

## **B. Conclusion**

66. Based on the foregoing, and after taking into due consideration all the evidence produced and all the arguments made, the Sole Arbitrator finds that:
  - i. The subject matter of this appeal is limited to the scope of the Appealed Decision, in particular to the assessment of whether Metallurg satisfied the Condition set out in the Appealed Decision.
  - ii. Metallurg did not satisfy the Condition set in the CFCB Decision

- iii. The Adjudicatory Chamber of the UEFA CFCB rightly decided in its Appealed Decision that Metallurg must be excluded from participating in the next UEFA club competition for which it would otherwise qualify on its results or standing in the next three seasons (*i.e.* 2014/15, 2015/16 and 2016/17 seasons).

67. Any further claims or requests for relief are dismissed.

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## IX. COSTS

68. Article R65.1 of the CAS Code provides that:

*"This Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body."*

69. Article R65.2 of the CAS Code stipulates the following:

*"Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of the CAS are borne by CAS."*

*Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.- without which CAS shall not proceed and the appeal shall be deemed withdrawn. (...)"*

70. Article R65.3 of the CAS Code determines that:

*"Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties."*

71. Since the present appeal is lodged against a decision of an exclusively disciplinary nature rendered by an international federation, no costs are payable to the CAS by the parties beyond the Court Office fee of CHF 1,000 paid by Metallurg prior to the filing of its Statement of Appeal, which is in any event retained by the CAS.

72. Pursuant to Article R65.3 of the CAS Code and in consideration of the complexity and the outcome of the proceedings as well as the conduct and the financial resources of the parties, in particular the fact that UEFA was not represented by external Counsel, the Panel rules that each party shall bear its own expenses incurred in connection with these arbitration proceedings.

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## **ON THESE GROUNDS**

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

1. The appeal filed by Football Club Metallurg on 21 March 2014 against the decision of the Adjudicatory Chamber of the UEFA Club Financial Control Body of 13 March 2014 is dismissed.
2. The decision of the Adjudicatory Chamber of the UEFA Club Financial Control Body of 13 March 2014 is confirmed.
3. This award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Football Club Metallurg, which is retained by CAS.
4. Each party shall bear its own costs and expenses incurred in connection with these arbitration proceedings.
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 9 September 2014