

UEFA CLUB FINANCIAL CONTROL BODY
Adjudicatory Chamber

DECISION

in case

AC-03/2015

Professional Football Club CSKA AD

Composition of the chamber:

- **J. N. Cunha Rodrigues, Chairman**
- **L. Peila, Vice-chairman**
- **C. W. A. Timmermans, Vice-chairman**
- **C. Flint QC, Member**
- **A. Giersz, Member**

Nyon, 30 October 2015

PART I – Introduction

1. Unless otherwise stated, all references in this Decision to the *Procedural rules governing the UEFA Club Financial Control Body* (the “**Procedural Rules**”) shall be to the 2015 edition of such rules and all references to the *UEFA Club Licensing and Financial Fair Play Regulations* (the “**CL&FFP Regulations**”) shall be to the 2012 edition of such regulations.
2. On 16 September 2015, the acting Chief Investigator of the UEFA Club Financial Control Body (the “**CFCB**”) referred the case of Professional Football Club CSKA AD (“**CSKA**” or the “**Club**”) to the CFCB Adjudicatory Chamber.
3. In the present Decision, the CFCB Adjudicatory Chamber examines whether CSKA has failed to comply with the terms of a settlement agreement that it entered into with the acting CFCB Chief Investigator on 7 May 2015 (the “**Settlement Agreement**”) in accordance with Articles 14(1)(b) and 15 of the 2014 edition of the Procedural Rules.

PART II – Reference by the acting CFCB Chief Investigator

4. The Settlement Agreement was concluded after the acting CFCB Chief Investigator determined that CSKA had breached the CL&FFP Regulations.
5. Specifically, the acting CFCB Chief Investigator considered that the Club had failed to fulfil the break-even requirement set out in Articles 58 to 63 of the CL&FFP Regulations because it had an aggregate break-even deficit for the reporting periods ending in 2012, 2013 and 2014 which exceeded the acceptable deviation by two million, seven hundred thousand Euros (€2,700,000).
6. The CFCB Chairman did not request that the decision of the acting CFCB Chief Investigator to conclude the Settlement Agreement be reviewed by the CFCB Adjudicatory Chamber under Article 16(1) of the 2014 edition of the Procedural Rules.
7. No directly affected parties requested that the decision of the acting CFCB Chief Investigator to conclude the Settlement Agreement be reviewed by the CFCB Adjudicatory Chamber under Article 16(2) of the 2014 edition of the Procedural Rules.
8. Accordingly, the Settlement Agreement became final and binding.
9. Under Clause 4.1 of the Settlement Agreement, CSKA Sofia had to “*pay a financial contribution of EUR 200,000 to UEFA, such amount to be paid into the bank account indicated below by 30 June 2015 at the latest*” (the “**Financial Contribution**”).
10. As of 16 September 2015, CSKA had not paid the Financial Contribution.
11. Based on the above findings, on 16 September 2015, the acting CFCB Chief Investigator concluded that the Club had not complied with the terms of the Settlement Agreement and decided to refer the case to the CFCB Adjudicatory Chamber in accordance with Clause 8.1 of the Settlement Agreement and Article 15(4) of the 2014 edition of the Procedural Rules.
12. In this referral decision, the acting CFCB Chief Investigator suggested that an exclusion from at least one UEFA club competition should be imposed on the Club and stated that the Settlement Agreement should remain in force.

PART III – Jurisdiction of and Procedure before the CFCB Adjudicatory Chamber

13. The jurisdiction of the CFCB Adjudicatory Chamber is derived from Article 19(1) of the Procedural Rules, which provides that the CFCB Adjudicatory Chamber has competence to decide on cases referred to it by the CFCB Chief Investigator.
14. On 17 September 2015, the CFCB Chairman informed CSKA of the opening of the judgment stage in accordance with Article 19(3) of the Procedural Rules.
15. Pursuant to Article 20(1) of the Procedural Rules, CSKA was asked to submit its written observations by no later than 25 September 2015.
16. The Club made its written submission in accordance with this deadline (the “**Initial Observations**”).
17. On 29 September 2015, the CFCB Chairman requested additional information from CSKA in accordance with Article 23(1) of the Procedural Rules, such information to be provided by no later than 5 October 2015.
18. The Club did not submit the additional information in accordance with this deadline but did, on 6 October 2015, request an extension to the deadline. This request was granted by the CFCB Chairman in a letter dated 7 October 2015.
19. The Club provided the additional information in accordance with this new deadline (the “**Additional Observations**” and, together with the Initial Observations, the “**Observations**”).
20. The members of the CFCB Adjudicatory Chamber deliberated confidentially by correspondence and telephone, in accordance with Article 24 of the Procedural Rules, after the quorum of judges required by Article 25(1) of the Procedural Rules was attained.

PART IV – Applicable Rules and Regulations

21. The case concerns an alleged breach of the Settlement Agreement.
22. Article 2(2) of the CL&FFP Regulations lists UEFA’s financial fair play objectives:
 - a) *to improve the economic and financial capability of the clubs, increasing their transparency and credibility;*
 - b) *to place the necessary importance on the protection of creditors and to ensure that clubs settle their liabilities with players, social tax/authorities and other clubs punctually;*
 - c) *to introduce more discipline and rationality in club football finances;*
 - d) *to encourage clubs to operate on the basis of their own revenues;*
 - e) *to encourage responsible spending for the long term-benefit of football;*
 - f) *to protect the long-term viability and sustainability of European club football.”*

23. Articles 43(1)(a) and (f) of the CL&FFP Regulations state:

“The licence applicant must submit a legally valid declaration confirming the following:

- a) *It recognises as legally binding the statutes, regulations, directives and decisions of FIFA, UEFA, the UEFA member association and, if any, the national league as well as the jurisdiction of the Court of Arbitration for Sport (CAS) in Lausanne as provided in the relevant articles of the UEFA Statutes; ...*
- f) *It will abide by and observe the UEFA Club Licensing and Financial Fair Play Regulations; ...”*

24. Article 58 of the CL&FFP Regulations reads as follows:

¹ *Relevant income is defined as revenue from gate receipts, broadcasting rights, sponsorship and advertising, commercial activities and other operating income, plus either profit on disposal or player registrations or income from disposal of player registrations, excess proceeds on disposal of tangible fixed assets and finance income. It does not include any non-monetary items or certain income from non-football operations.*

² *Relevant expenses is defined as cost of sales, employee benefits expenses and other operating expenses, plus either amortization or costs of acquiring player registrations, finance costs and dividends. It does not include depreciation/impairment of tangible fixed assets, amortization/impairment of development activities, expenditure on community development activities, any other non-monetary items, finance costs directly attributable to the construction of tangible fixed assets, tax expenses or certain expenses from non-football operations.*

³ *Relevant income and expenses must be calculated and reconciled by the licensee to the annual financial statements and/or underlying accounting records, i.e. historic, current or future financial information as appropriate.*

⁴ *Relevant income and expenses from related parties must be adjusted to reflect the fair value of any such transactions.*

⁵ *Relevant income and expenses are further defined in Annex X.”*

25. Pursuant to Article 59(1) of the CL&FFP Regulations:

“A monitoring period is the period over which a licensee is assessed for the purpose of the break-even requirement. As a rule it covers three reporting periods:

- a) *the reporting period ending in the calendar year that the UEFA club competitions commence (hereinafter: reporting period T), and*
- b) *the reporting period ending in the calendar year before commencement of the UEFA club competitions (hereinafter: reporting period T-1), and*
- c) *the preceding reporting period (hereinafter: reporting period T-2)*

As an example, the monitoring period assessed in the licence season 2015/16 covers the reporting periods ending in 2015 (reporting period T), 2014 (reporting period T-1) and 2013 (reporting period T-2).”

26. Article 60 of the CL&FFP Regulations is worded as follows:

- ¹ *The difference between relevant income and relevant expenses is the breakeven result, which must be calculated in accordance with Annex X for each reporting period.*
- ² *If a licensee's relevant expenses are less than relevant income for a reporting period, then the club has a break-even surplus. If a club's relevant expenses are greater than relevant income for a reporting period, then the club has a breakeven deficit.*
- ³ *If a licensee's financial statements are denominated in a currency other than euros, then the break-even result must be converted into euros at the average exchange rate of the reporting period, as published by the European Central Bank.*
- ⁴ *The aggregate break-even result is the sum of the break-even results of each reporting period covered by the monitoring period (i.e. reporting periods T, T-1 and T-2).*
- ⁵ *If the aggregate break-even result is positive (equal to zero or above) then the licensee has an aggregate break-even surplus for the monitoring period. If the aggregate break-even result is negative (below zero) then the licensee has an aggregate break-even deficit for the monitoring period.*
- ⁶ *In case of an aggregate break-even deficit for the monitoring period, the licensee may demonstrate that the aggregate deficit is reduced by a surplus (if any) resulting from the sum of the break-even results from the two reporting periods prior to T-2 (i.e. reporting periods T-3 and T-4)."*

27. Article 63 of the CL&FFP Regulations provides that:

- ¹ *The break-even requirement is fulfilled if no indicator (as defined in Article 62(3)) is breached and the licensee has a break-even surplus for reporting periods T-2 and T-1.*
- ² *The break-even requirement is fulfilled, even if an indicator (as defined in Article 62(3)) is breached, if:*
 - a) *the licensee has an aggregate break-even surplus for reporting periods T-2, T-1 and T; or*
 - b) *the licensee has an aggregate break-even deficit for reporting periods T-2, T-1 and T which is within the acceptable deviation (as defined in Article 61) having also taken into account the surplus (if any) in the reporting periods T-3 and T-4 (as defined in Article 60(6)).*
- ³ *The break-even requirement is not fulfilled if the licensee has an aggregate break-even deficit for reporting periods T-2, T-1 and T exceeding the acceptable deviation (as defined in Article 61) having also taken into account the surplus (if any) in the reporting periods T-3 and T-4 (as defined in Article 60 (6))."*

28. Paragraph 4 of Part D of Annex IX of the 2015 edition of the CL&FFP Regulations states that:

“If the licence applicant (or the registered member of the UEFA member association which has a contractual relationship with the licence applicant within the meaning of Article 12) or any parent company of the licence applicant included in the reporting perimeter is/was seeking protection or has received/is still receiving protection from its creditors pursuant to laws or regulations within the 12 months preceding the licence season then the licence must be refused. For the avoidance of doubt the licence must also be refused even if the concerned entity is no longer receiving protection from its creditors at the moment the licensing decision is taken.”

29. Article 14(1) of the Procedural Rules provides that:

“¹ At the end of the investigation, the CFCB chief investigator, after having consulted with the other members of the investigatory chamber, may decide to:

- a) dismiss the case; or*
- b) conclude, with the consent of the defendant, a settlement agreement; or*
- c) apply, with the consent of the defendant, disciplinary measures limited to a warning, a reprimand or a fine up to a maximum amount of € 100,000; or*
- d) refer the case to the adjudicatory chamber.”*

30. Article 15 of the Procedural Rules states that:

“¹ Settlement agreements pursuant to Article 14(1)(b) shall take into account, in particular, the factors referred to in Annex XI of the UEFA Club Licensing and Financial Fair Play Regulations. Such agreements may be deemed appropriate in circumstances which justify the conclusion of an effective, equitable and dissuasive settlement without referring the case to the adjudicatory chamber.

² Settlement agreements may set out the obligation(s) to be fulfilled by the defendant, including the possible application of disciplinary measures and, where necessary, a specific timeframe.

³ If a defendant proves that it has fulfilled the obligations set out in a settlement agreement in advance of the established timeframe, the CFCB chief investigator may, on reasoned request by the defendant, decide to amend the terms of the settlement agreement for the following sporting season.

⁴ The CFCB chief investigator monitors the proper and timely implementation of the settlement agreement.

⁵ If a defendant fails to comply with the terms of a settlement agreement, the CFCB chief investigator shall refer the case to the adjudicatory chamber.”

31. Under Article 27 of the Procedural Rules:

“The adjudicatory chamber may take the following final decisions:

- a) to dismiss the case; or*
- b) to accept or reject the club’s admission to the UEFA club competition in question; or*
- c) to impose disciplinary measures in accordance with the present rules; or*
- d) to uphold, reject, or modify a decision of the CFCB chief investigator.”*

32. Under Article 28 of the Procedural Rules:

“The adjudicatory chamber determines the type and extent of the disciplinary measures to be imposed according to the circumstances of the case.”

33. Article 29(1) of the Procedural Rules provides the following scale of disciplinary measures that may be imposed on a club (being a defendant who is not an individual):

- “a) warning,*
- b) reprimand,*
- c) fine,*
- d) deduction of points,*
- e) withholding of revenues from a UEFA competition,*
- f) prohibition on registering new players in UEFA competitions,*
- g) restriction on the number of players that a club may register for participation in UEFA competitions, including a financial limit on the overall aggregate cost of the employee benefits expenses of players registered on the A-list for the purposes of UEFA club competitions,*
- h) disqualification from competitions in progress and/or exclusion from future competitions,*
- i) withdrawal of a title or award.”*

34. According to Article 29(3) of the Procedural Rules, such disciplinary measures may be combined.

PART V – Factual and Legal Appreciation by the CFCB Adjudicatory Chamber

35. Having examined the evidence, in particular the findings of the acting CFCB Chief Investigator, the CFCB Adjudicatory Chamber determines that the Club has failed to comply with the terms of the Settlement Agreement since it did not pay the Financial Contribution by the relevant deadline.

36. This breach of the Settlement Agreement has not been disputed by the Club.
37. For completeness, it should be noted that the Club acknowledges in Clause 2 of the Settlement Agreement that it has breached the break-even requirement.
38. In addition, in Clause 8.1 of the Settlement Agreement, the Club acknowledges that if it fails to comply with the Settlement Agreement then the case will be referred to the CFCB Adjudicatory Chamber in accordance with Article 15 of the Procedural Rules.
39. In the Initial Observations, CSKA acknowledges that it is “...aware of the disciplinary penalties for failing to follow the decisions of FIFA, UEFA and BFU...”.
40. Based on the information provided by the Club in the Observations, the CFCB Adjudicatory Chamber accepts that, pursuant to an order of the Sofia City Court dated 2 October 2015, the Club is deemed to have been insolvent since 31 December 2014 and is currently subject to formal insolvency proceedings.
41. In light of the foregoing, the CFCB Adjudicatory Chamber concludes that the Club shall be considered to have been insolvent on 7 May 2015, which was the date on which it entered into the Settlement Agreement, and on 30 June 2015, which was the deadline for payment of the Financial Contribution.

PART VI – Disciplinary Measures

42. The CFCB Adjudicatory Chamber stresses the importance of the objectives of UEFA’s financial fair play rules which aim to protect the integrity and smooth running of the UEFA club competitions and to achieve financial fair play in the UEFA club competitions, in particular by improving the economic and financial capability of the clubs, increasing the transparency and credibility of the clubs, protecting creditors, encouraging the clubs to operate on the basis of their own revenues (i.e. to “break-even”) and protecting the long-term viability and sustainability of European football.
43. In this regard, it must be remembered that the break-even requirement is the cornerstone of UEFA’s financial fair play initiative. As explained in the Joint statement by European Commission Vice-President Joaquín Almunia and UEFA President Michel Platini of 21 March 2012:

“The central principles of FFP (namely, that clubs should “live within their own means” or “break even”) is based on the notion that football related income should at least match football related expenditure. No business can lay solid foundations for the future by continually spending more than it earns, or reasonably could expect to earn. Thus, the “break even” rule reflects a sound economic principle that will encourage greater rationality and discipline in club finances and, in so doing, help to protect the wider interests of football.”
44. In the present case, the Club was found to have breached this crucial requirement and, in what essentially constituted a second chance, was given the opportunity to bring itself into compliance with UEFA’s regulations through the conclusion of a settlement agreement.
45. As a general principle, the declaration of a club’s insolvency by a national court has no bearing on the imposition of disciplinary measures by the CFCB Adjudicatory Chamber. Such a declaration in no way restricts the nature of the measures that can be imposed on a club, nor does it require the CFCB Adjudicatory Chamber to suspend its proceedings against a club or to suspend the imposition of any disciplinary measures.

46. In this regard, reference is made to paragraph 8.9 of the Court of Arbitration for Sport (“CAS”) decision in the case of *Aris Football Club v FIFA (CAS 2013/A/3321)*, which provides that “[t]he mere fact that a party has been declared subject to insolvency proceedings by a national State Court does therefore not necessarily imply that proceedings must be closed”.
47. On this basis, any decisions of the CFCB Adjudicatory Chamber regarding the admission of a club to, or the exclusion of a club from, UEFA’s club competitions, must be taken by the CFCB Adjudicatory Chamber in accordance with UEFA’s rules and regulations.
48. To exempt a club from disciplinary measures entirely or to suspend the imposition of disciplinary measures on a club because it has become insolvent would not only be wholly inconsistent with the objectives of UEFA’s financial fair play rules (as detailed above), but would also constitute unequal treatment with regard to the other participating clubs.
49. The CFCB Adjudicatory Chamber has made it clear in a number of cases that UEFA’s financial fair play rules are underpinned by the principle that all of the clubs that compete in UEFA’s club competitions must be treated equally (in this regard, see paragraph 51 of case *AC-01/212, Malaga CF* and paragraph 47 of case *AC-06/2014, Panevėžio Futbolo Klubas Ekranas*).
50. Indeed, this principle is expressly stated in the CL&FFP Regulations, with Article 53(2) providing that in carrying out its responsibilities the CFCB must ensure the “*equal treatment of all licensees*”.
51. Further, this concept has also been reinforced by CAS, for example in paragraph 58 of the CAS decision in case *Club Rangers de Talca v FIFA (CAS 2011/A/2646)* which states that a situation where clubs in bankruptcy enjoy the privilege of bankruptcy proceedings while the other clubs participating in the same competition are forced to honour their commitments in full and in a timely manner represents an “*inequity of treatment and opportunities*” which is “*clearly against the essential principles of the so-called lex sportiva*”.
52. The principle of equal treatment has particular importance in relation to the break-even requirement because a breach of this requirement may directly affect the competitive position of a club, to the detriment of the vast majority of clubs who comply with UEFA’s financial fair play requirements.
53. The CFCB Adjudicatory Chamber notes that the Club would not, under Paragraph 4 of Part D of Annex IX of the 2015 edition of the CL&FFP Regulations, currently be eligible to be granted a licence to participate in UEFA’s club competitions and, given its current status as an amateur lower-division club in Bulgaria, is unlikely to qualify for a UEFA club competition in the near future, even if it was. The possibility of the Club qualifying for UEFA’s club competitions may, however, not be entirely excluded.
54. Moreover, the deterrent effect of disciplinary measures imposed in respect of breaches of the financial fair play rules, as well as the importance of the objectives and fundamental principles of UEFA’s regulations, cannot be ignored.
55. In light of the foregoing, the CFCB Adjudicatory Chamber considers an exclusion from the next UEFA club competition for which CSKA would otherwise qualify in the next two (2) seasons (i.e. the 2016/2017 and 2017/2018 seasons) to be an appropriate penalty.

56. Neither the imposition of this disciplinary measure, nor these disciplinary proceedings, are to be suspended because of the Club's insolvency. This Decision is not taken against the Club's creditors – indeed, UEFA's financial fair play rules aim to protect creditors and encourage clubs to operate on the basis of their own revenues, as stated above. Any hypothetical interference with the economic value of a club cannot be prioritised in circumstances where a club has breached the core underlying principles of UEFA's financial fair play regime, including the established principle of equal treatment amongst clubs.
57. The CFCB Adjudicatory Chamber observes that, according to Clause 9.2 of the Settlement Agreement, the Settlement Agreement shall not expire at the end of the Settlement Regime (as defined in the Settlement Agreement) in situations where "*new measures*" have been initiated because of a breach by the Club of the Settlement Agreement.
58. The imposition of an exclusion on the Club in this Decision must be considered to be a new measure and, accordingly, the CFCB Adjudicatory Chamber determines that the Settlement Agreement shall cease to have effect as of the date of this Decision.
59. For the avoidance of doubt, the intention is that the exclusion imposed in this Decision should only apply to the UEFA Champions League and the UEFA Europa League.

PART VII – Operative part

60. The CFCB Adjudicatory Chamber hereby decides:

- 1. CSKA has failed to comply with the terms of the Settlement Agreement.**
- 2. To exclude CSKA from participating in the next UEFA club competition for which it would otherwise qualify in the next two (2) seasons (i.e. the 2016/2017 and 2017/2018 seasons).**
- 3. The Settlement Agreement shall cease to have effect as of the date of this Decision.**
- 4. This Decision is final and shall be notified to:**
 - a) CSKA;**
 - b) the Bulgarian Football Union;**
 - c) the CFCB Investigatory Chamber; and**
 - d) the UEFA Administration.**

61. This Decision may be appealed in writing before CAS in accordance with Article 34(2) of the Procedural Rules and Articles 62 and 63 of the UEFA Statutes. According to Article 62(3) of the UEFA Statutes, the time limit for an appeal to CAS is ten days from the receipt of this Decision.



J. N. Cunha Rodrigues
CFCB Chairman

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