



LEGAL DIVISION  
DISCIPLINARY AND INTEGRITY UNIT

# **CASE LAW**

## **Control, Ethics and Disciplinary Body & Appeals Body**

WE CARE ABOUT FOOTBALL

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Season 2015/2016  
January 2016 - June 2016

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## Foreword

EDUARDO

Dear Sir or Madam,

I am pleased to provide you with the case law of the UEFA Control, Ethics and Disciplinary Body and the UEFA Appeals Body for the period January - June 2016

According to Article 45 of the UEFA Disciplinary Regulations: "The UEFA administration publishes decisions issued by the disciplinary bodies. Where such a decision contains confidential information, the UEFA administration may decide, ex officio or at the request of either one of the parties or the disciplinary inspector, to publish an anonymised version."

This document contains the leading cases from the UEFA Control, Ethics and Disciplinary Body, as well as all of the decisions of the UEFA Appeals Body during this time period.

Yours faithfully,

**UEFA**



**Emilio García**  
**Head of Disciplinary and Integrity**

While you are looking through the document, if you wish to return to the contents page, please click on the 'Case Law' heading at the top of each page. Also, if you would like to skip to a specific case, please click on the name of the case in the table of contents and you will be taken directly to the case.

I hope this document is helpful for you and we remain at your disposal should you have any questions.



Control, Ethics and Disciplinary Body

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## Decision of 18 February 2016

Galatasaray A.Ş.

(stairways blocked; doping control issues)

### **Circumstances of the case**

On 8 December 2015, according to the official Delegate’s report for the match between Galatasaray A.Ş. and FC Astana, the stairways in stands 106, 107, 206 and 207 were blocked by Galatasaray’s supporters. Additionally, the Club’s player Buruk Yilmaz was selected for doping control, however, after the match had finished, he went to his team’s dressing room before reporting to the doping control station.

**Legal framework** Article 38 Safety and Security Regulations and to Article 7 of the UEFA Anti-Doping Regulations.

### **Decision**

The Control, Ethics and Disciplinary Body (hereinafter also as “CEDB”) decided with regard to the blocked stairways to fine Galatasaray A.Ş. €23,000. With regard to the anti-doping violation –not reporting immediately into the doping control station—, a fine of €5,000 should be imposed to the Galatasaray A.Ş. player Buruk Yilmaz.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Members:</u>	Antenen Jacques (SUI) Bonett Chris (MLT) Gea Tomás (AND) Larumbe Beain Kepa (ESP) Lorenz Hans (GER) Řepka Rudolf (CZE) Wolff Joël (LUX)

### **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the Control, Ethics and Disciplinary Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by



Galatasaray A.Ş. (the “**Club**”) in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

2. Briefly, the most relevant facts of this case can be summarised as follows:
  - According to the official Delegate’s report for the match between the Club and FC Astana on 8 December 2015, the stairways in stands 106, 107, 206 and 207 were blocked by Galatasaray AŞ’s supporters.
  - The Club’s player Buruk Yilmaz was selected for doping control, however, after the match had finished, he went to his team’s dressing room before reporting to the doping control station.

## II. The Respondent’s position

3. In its statements dated 15 and 21 December 2015, the Club:
  - States that the stairways were not blocked during the match and provides photographs taken during the match to support this opinion.
  - In order to explain the behaviour of Buruk Yilmaz, argues that he was demoralised because he had recently been selected for doping control at a different match and was disappointed with the result of the match.
  - Suggests that the doping control station is located opposite the Galatasaray A.Ş. dressing room and Buruk Yilmaz in fact only entered the vestibule of the dressing room (not the actual dressing room) for a short time in order to change his wet/dirty clothes, with the door open and in full view of the doping control officer.
4. The more detailed arguments made by the Club in support of its written submissions are set out below in so far as they are relevant.

## III. Merits of the Case

### A. UEFA’s competence

5. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (the “**DR**”), the Control, Ethics and Disciplinary Body is competent to deal with the case.
6. In light of the above, the UEFA Statutes, rules and regulations (in particular, the DR) are applicable to these proceedings.

### B. The blocking of stairs

#### *a) Applicable legal framework and general remarks*

7. According to Article 38 of the UEFA Safety and Security Regulations (the “**SSR**”):  
*“The match organiser must take measures to ensure that all public passageways, corridors, stairs, doors, gates and emergency exit routes are kept free of any obstructions, which could impede the free flow of spectators.”*
8. According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

*b) The responsibility of the club*

9. The purpose of the SSR is to maintain the safety and security of everyone present at the match (see Article 2 SSR).
10. In order to achieve this goal, the SSR contain several provisions concerning spectator control at the stadium.
11. The Control, Ethics and Disciplinary Body recalls that according to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.
12. In the present case, the Delegate’s official report for the match clearly states that:  
*“Stairways were blocked by home supporters behind the left goal (stands 106,107,206,207).”*
13. The evidence provided by the Club in its statement does not prove that this statement is inaccurate. In particular, the photographs submitted by the Club offer only momentary glimpses of isolated moments of the match in limited parts of the stadium. It cannot be concluded from the Club’s denial and these limited images that the Delegate’s report is inaccurate.
14. Accordingly, the accuracy of the official report has not been breached and the Club, as the host and match organiser, has violated Article 38 SSR and must be punished accordingly.

C. The obligation to report directly to the doping control office

*a) Applicable legal framework and general remarks*

15. According to Article 7 (1) of the UEFA Anti-Doping Regulations (the “**ADR**”), clubs participating in UEFA competitions undertake to assist UEFA in the implementation of its anti-doping programme.
16. According to Article 7 (4) ADR, every player and team representative must comply with any instructions given by the doping control officer.

17. According to Article 7 (5) ADR:

*"Every player designated to undergo a doping control:*

- a) is personally responsible for reporting immediately to the doping control station as notified (...);*
- b) is obliged to undergo any medical examination considered necessary by the DCO and to cooperate with the latter in this respect;*
- c) is obliged to provide a sample as directed by the DCO."*

18. According to Appendix F (17) ADR, the club concerned is responsible for ensuring that the players selected to undergo doping control are taken by the respective team representative to the doping control station straight from the pitch, as soon as the match is over.

*b) The responsibility of the club and the player*

19. The Control, Ethics and Disciplinary Body underlines that it is of utmost importance in order to ensure the functioning and efficiency of the UEFA anti-doping programme that clubs respect and follow the regulations and directives set out by UEFA and act diligently when implementing such regulations.

20. It is also crucial that every player who is selected to participate in doping control reports to the doping control station immediately - otherwise the *ratio legis* of Article 7 (5) (a) ADR and the accuracy and integrity of the testing procedure is undermined.

21. In its statements, the Club argues that Buruk Yilmaz was demoralised because he had recently been selected for doping control at a different match and was disappointed with the result of the match.

22. The Club also suggests that the doping control station is opposite the Galatasaray A.Ş. dressing room and Buruk Yilmaz in fact only entered the vestibule of the dressing room (not the actual dressing room) for a short time in order to change his wet/dirty clothes, with the door open and in full view of the doping control officer.

23. The Control, Ethics and Disciplinary Body deems that the above arguments put forward by the Club are not sufficient to mitigate the fact that Buruk Yilmaz did not report to the doping control station immediately after the match.

24. In this regard, the Control, Ethics and Disciplinary Body wishes to emphasise again that, in order to comply with Article 7 (5) (a) ADR, it is the player's obligation to immediately report to the doping control station. In this regard, it does not matter if the player is upset or frustrated. Nor does it matter if the player enters a room near to the doping control station and happens to be in view of the doping control officer. The regulations

are clear in this regard – players must immediately report to the doping control station, and Buruk Yilmaz did not.

25. Regarding the responsibility of the Club, it shall be recalled that clubs are responsible for ensuring that the players selected to undergo doping controls are taken by the respective team representative to the doping control station straight from the pitch as soon as the match is over in accordance with Appendix F (17) ADR. The Club was therefore responsible for making sure that Buruk Yilmaz went immediately to the doping control station, which he did not.
26. Bearing the above in mind, the Control, Ethics and Disciplinary Body considers that both the Club and the player Buruk Yilmaz shall be punished for violating the ADR.

#### **IV. The determination of the appropriate disciplinary measure**

27. Based on Article 17 DR, the Control, Ethics and Disciplinary Body determines the type and extent of the disciplinary measures to impose according to the objective and subjective elements of the case, taking account of any aggravating and mitigating circumstances.
28. With regard to the offence under the SSR, the Control, Ethics and Disciplinary Body took into account:
  - The Club's previous record, noting that the Club has been punished for insufficient organisation on several occasions.
  - The dangerous nature of the offence committed, noting that the blocking of stairways poses a serious threat to the health and safety of those present in the stadium.
29. With regard to the offences under the ADR, the Control, Ethics and Disciplinary Body has taken into consideration the fact that the Club and the player have no previous record from the last five years, however, given the nature of the infringements, this is not enough to justify a reduction in the punishment. The Control, Ethics and Disciplinary Body also took into account the seriousness of the offence committed, noting that every anti-doping violation is considered to be severe.
30. Consequently, the Control, Ethics and Disciplinary Body considers that a total fine of €23,000 should be imposed on the Club and a fine of €5,000 should be imposed on the player Buruk Yilmaz.

## Decision of 18 February 2016

Bayer 04 Leverkusen

(doping issues – whereabouts violation)

### **Circumstances of the case**

The present matter relates to the unannounced absence of the player Javier Hernandez from the Bayer 04 Leverkusen's training session on 19 November 2015. According to the information provided by the club to UEFA, the players were to train at the BayArena training venue that day, however when the UEFA Doping Control Officers arrived the player was not present at the training session. This absence had not been previously announced by the club. The player was feeling ill therefore did not participate in the scheduled training session but instead, rest in the club's hotel ("Lindner Hotel"). The Club holds that the Lindner Hotel should also be considered as part of the BayArena training venue.

**Legal framework** Article 7 and 8 of the UEFA Anti-Doping Regulations.

### **Decision**

The Control, Ethics and Disciplinary Body with the arguments provided by the UEFA Disciplinary Inspector concluded that the mere fact that the BayArena was mentioned in connection with the player's whereabouts cannot be regarded as sufficiently precise to fulfil the strict requirements as established in the ADR. Lindner Hotel constitutes specific whereabouts that cannot be included in the whole Stadium. Obtaining precise information about players' whereabouts therefore is considered as essential. Therefore, the CEDB considers as the adequate disciplinary measure to impose Bayer 04 Leverkusen a fine of €20,000.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Members:</u>	Antenen Jacques (SUI) Bonett Chris (MLT) Gea Tomás (AND) Larumbe Beain Kepa (ESP) Lorenz Hans (GER) Řepka Rudolf (CZE) Wolff Joël (LUX)

**I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the Control, Ethics and Disciplinary Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the club in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. Briefly, the most relevant facts of this case can be summarized as follows:
  - The present matter relates to the unannounced absence of the player Javier Hernandez (“the player”) from the Bayer 04 Leverkusen’s (“the club”) training session on 19 November 2015.
  - According to the information provided by the club to UEFA on 5 November 2015 regarding the team’s training schedule for the week of 16 until 22 November 2015, the club’s players were to train at the BayArena training pitches (the “Training Venue”) from Monday to Friday of that week.
  - When the UEFA Doping Control Officers (the “UEFA DCOs”) arrived to the club’s Training Venue on 19 November 2015, the player was not present at the training session. This absence had not previously been announced by the club.
  - The player had arrived to Leverkusen on that same morning, and felt ill. His club therefore allowed him to rest at the Lindner Hotel, which is part of the club’s stadium, the BayArena, from 12:30 to 16:45 on 19 November 2015.
  - Despite not being at the Training Venue upon arrival of the UEFA DCOs, the player submitted to the requested doping control at 16:45.

**II. The Respondent’s position**

3. The Club in its statements dated on 14 December 2015 and 16 March 2016 stated the following:
  - After arriving from the Mexican national team following several long flights, the player upon his return to Leverkusen informed the coaching staff that he would not participate in the scheduled training session but to rest in the club’s hotel (“Hotel Lindner”) instead.
  - The said hotel is located within the premises of the BayArena where also the Training Venue is located. The player was in his hotel room between 12:30 and 16:45.
  - The fact that the player’s absence from the training session was not reported to UEFA does not violate the UEFA Disciplinary and Whereabouts Regulations, given that the reported Whereabouts location of the player was stipulated as “BayArena / Training Venue” which not only features the stadium and the Training Venue itself, but also the hotel which is located directly within the stadium’s premises. This is clear already from the usage of the “/” between BayArena and Training Venue, which is commonly

- used as an “or” and which already shows that the player’s whereabouts were clear at all time.
- The fact that in the relevant report the player was marked as “absent – arriving from the airport” must be based on a misunderstanding, given that the player at the time the doping control was conducted was already in the hotel Lindner. Therefore, the said report is erroneous.
  - Moreover, when the representative of the club signed the relevant UEFA report, he was not provided with the first page which contained the relevant aforementioned erroneous stipulations. Said first page was only completed much later when all the tests had been finished. Therefore, based on the foregoing, the report cannot be regarded as correct and cannot bear any evidential value.
  - The club offered to the Doping Control Officers to immediately get the player and bring him to the doping control, which would have easily been possible within 5 minutes. However, the competent officers decided that it was okay that the testing on the player was only conducted at 16:45.
  - It is not acceptable to require a club to notify to UEFA every player movement within the stadium and training area, as such a strict application of the applicable regulations would put an appropriately strict obligation of clubs which is not foreseen by the relevant Regulations which are supposed to be relatively easy to comply with.
4. The more detailed arguments made by the club in support of its written submissions are set out below in as far as they are relevant.

### III. Merits of the Case

#### A. UEFA’s competence.

5. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (DR), the Control, Ethics and Disciplinary Body is competent to deal with the case.
6. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

#### B. The Whereabouts violation

##### *a) Applicable legal framework and general remarks*

7. Pursuant to Art. 13 of the UEFA Disciplinary Regulations (the “DR”), doping is punished in accordance with the UEFA Anti-Doping Regulations (the “ADR”) and the DR.
8. According to Art. 7.06 ADR, players from national associations and clubs participating in UEFA competitions must provide whereabouts information at UEFA’s request. The

ultimate responsibility for providing whereabouts information rests with each player. Teams and players in the UEFA out-of-competition testing pool are required to provide up-to-date whereabouts information and, in the case of teams, an up-to-date list of players if requested. Full details of whereabouts information requirements are given in Appendix E.

9. According to Appendix E, Articles 5-9 of the ADR:
  - (5) *When a team is part of the UEFA testing pool, it is responsible for collecting and forwarding to UEFA the whereabouts information of all its players registered to participate in the UEFA competition.*
  - (6) *Each player who is on a team that is part of the UEFA testing pool and who is registered to participate in a UEFA competition is responsible for informing his team if he will not participate in any team activity and for providing his team with complete and accurate whereabouts information. Notwithstanding the team's responsibility, the player is personally responsible for ensuring that complete and accurate whereabouts information is forwarded in time by the team to UEFA.*
  - (7) *Teams and their players must be present and available for testing at the times and locations indicated in the whereabouts information provided to UEFA.*
  - (8) *Whereabouts information must be accurate and up to date at all times. Should a team's or player's plans change from those originally indicated in their whereabouts information, the team must immediately send updates of all information required.*
  - (9) *Each of the following constitutes a team whereabouts violation:*
    - a) *Late, incomplete or inaccurate whereabouts information;*
    - b) *Absence of one to five players from a doping control conducted on the team;*
    - c) *Absence of six or more players from a doping control conducted on the team.*
10. Reference is further made to the content of the letter sent by UEFA on 4 September 2015 to clubs participating in the UEFA Champions League 2015/16, regarding the whereabouts requirements and out-of-competition testing, shall also be considered. This letter set out the pertinent anti-doping obligations of the clubs and players regarding out-of-competition testing.
  - b) *The responsibility of the club*
11. Regarding the responsibility of the club, it is undisputed that the player was not at the club's training session at the time the UEFA Doping Control Officers arrived for out-of-competition testing of its players.
12. The Control, Ethics and Disciplinary, after thorough analysis of the arguments which have been provided by the club, established that the most important question in this case was whether the Lindner Hotel can be considered as part of the "BayArena / Training Venue" or if it does not, the latter alternative possibly having the consequence that the



information about the player's whereabouts as it was provided by the club was inaccurate.

13. In this regard, the Control, Ethics and Disciplinary Body also acknowledged the arguments of the UEFA Ethics and Disciplinary Inspector, who had essentially argued in his report that even though the "BayArena" was included in the whereabouts information should not result in the whole stadium (i.e. not the Lindner Hotel) constituting the specific whereabouts of its players. In view of the fact that the applicable regulations establish the club's obligation to provide accurate whereabouts information, such information must clearly allow the UEFA Doping Control Officers, who are to perform out-of-competition testing, to easily confirm a player's presence at the designated location, which was not the case.
14. Taking into account the abovementioned arguments, the Control, Ethics and Disciplinary Body concurred with the arguments as they were provided by the UEFA Ethics and Disciplinary Inspector. The mere fact that the BayArena was mentioned in connection with the player's whereabouts cannot be regarded as sufficiently precise to fulfil the strict requirements as established in the ADR.
15. In this regard, the Control, Ethics and Disciplinary Body was convinced that in order to maintain its efforts to fight doping in order to uphold and preserve the ethics of sport, safeguard the physical health and mental integrity of football players and to ensure that all the competitors have an equal chance, obtaining precise information about players' whereabouts therefore have to be considered as essential.
16. In line with these considerations, Appendix E, Article 8 of the ADR hence clearly stipulates that "*whereabouts information must be accurate and up to date at all times*". This requirement has not been respected in this case by the club, which is why the Control, Ethics and Disciplinary Body came to the conclusion that the club has violated the ADR and in particular the Regulations regarding Whereabouts and must therefore be punished accordingly.

#### **IV. The determination of the appropriate disciplinary measure**

17. Based on Article 17 DR the Control, Ethics and Disciplinary Body determines the type and extent of the disciplinary measures to impose according to the objective and subjective elements of the case, taking account of any aggravating and mitigating circumstances. In the case of multiple offences, the punishment shall correspond to the most serious offence and be increased depending on the specific circumstances.
18. On a preliminary basis, UEFA takes this opportunity to emphasise the importance of its whereabouts system for the fight against doping. Only if all clubs handle their whereabouts information with the appropriate diligence and therefore respecting the whereabouts system, UEFA's fight against doping- which should also be in the interest of all clubs submitting themselves to the principles of fair play- can be effective and

successful. Therefore all infringements of any rules relating to the whereabouts system are considered to be severe.

19. In the present case, the Control, Ethics and Disciplinary Body identified and took into account the following concrete circumstances:
  - the seriousness of the offence committed;
  - the club's previous record: Bayer 04 Leverkusen has already been punished for whereabouts violations.
  
20. In the light of the above considerations, the Control, Ethics and Disciplinary Body deems that € 20'000 shall be deemed as the adequate disciplinary measure.

## Decision of 18 February 2016

PSV Eindhoven

(setting off of fireworks; stairways blocked)

### **Circumstances of the case**

On the PSV Eindhoven vs. PFC CSKA Moskva match played on 8 December 2015, some minutes prior to kick-off, a Bengal light burned in east stand, lower tier. This was detected by the Referee-observer. In the 78<sup>th</sup> minute of the match, a firecracker was seen in the east stand lower tier where the home-team supporters were seated. Moreover, fans were standing in the stairways and blocking them in sector W, east stand and sector U northeast corner, where the home-team supporters were seated.

**Legal framework** Article 16 (2) (c) DR and Article 38 Safety and Security Regulations.

### **Decision**

The Control, Ethics and Disciplinary Body concludes that even the efforts made by PSV Eindhoven, setting off fireworks is a serious offence because it can endanger the physical integrity of other spectators, officials and even the players on the pitch. For this reason, the use of pyrotechnic devices in stadiums is strictly forbidden. Applying the principle of strict liability, the club shall held liable for the conduct of its supporters, regardless of fault.

The CEDB considers that the club is responsible for any violation conducted by its supporters against the DR therefore decides to impose PSV Eindhoven a fine of €19'000.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Members:</u>	Antenen Jacques (SUI) Bonett Chris (MLT) Gea Tomás (AND) Larumbe Beain Kepa (ESP) Lorenz Hans (GER) Řepka Rudolf (CZE) Wolff Joël (LUX)

### **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the Control,

Ethics and Disciplinary Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the club in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

2. Briefly, the most relevant facts of this case, as established by the report of the UEFA match delegate, can be summarized as follows:
  - Some minutes prior to kick-off, a Bengal light burned in east stand, lower tier. This was detected by the Referee-observer. In the 78<sup>th</sup> minute of the match, a firecracker was seen in the east stand lower tier where the home-team supporters were seated.
  - Fans were standing in the stairways and blocking them in sector W, east stand and sector U northeast corner, i.e. where the home-team supporters were seated.

## II. The Respondent's position

3. The Club in its statements dated on 14 December 2015 stated the following:
  - Regarding the setting off of fireworks, the club stated that it did everything within its power to make sure that no fireworks could be brought into stadium, this with growing success compared to the past. However, it is simply not possible to find all fireworks as some are really small and cannot be detected by the stewards.
  - As to the blocking of stairways, the club argued that the stairways are only blocked when the club scores. Such celebrations usually last about two minutes before the supporters go back to their seats in order to follow the remainder of the match. Therefore, contrary to what the UEFA match delegate apparently indicates, the stairways were not permanently blocked, which is why the club does *"not agree with this so called incident"*.
4. The more detailed arguments made by the club in support of its written submissions are set out below in as far as they are relevant.

## III. Merits of the Case

### A. UEFA's competence.

5. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations, the Control, Ethics and Disciplinary Body is competent to deal with the case.
6. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

### B. The setting off of fireworks

#### a) *Applicable legal framework and general remarks*

7. According to Article 16 (2) of the UEFA Disciplinary Regulations (emphasis added):  
*"However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:*
- a) the invasion or attempted invasion of the field of play;*
  - b) the throwing of objects;*
  - c) the lighting of fireworks or any other objects;*
  - d) the use of laser pointers or similar electronic devices;*
  - e) the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;*
  - f) acts of damage;*
  - g) the disruption of national or competition anthems;*
  - h) any other lack of order or discipline observed inside or around the stadium."*
8. According to Article 8 of the UEFA Disciplinary Regulations, which stipulates the principle of 'strict liability', and Article 16 (2) of the UEFA Disciplinary Regulations, which builds on this principle, a club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.
9. According to Article 38 of the UEFA Disciplinary Regulations, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.
- b) The responsibility of the club*
10. Setting off fireworks is a serious offence because not only can it disrupt the orderly running of the match but also, and more importantly, it can endanger the physical integrity of the persons who are lighting the fireworks, other spectators, officials and even the players on the pitch. For this reason, the use of pyrotechnic devices in stadiums is strictly forbidden.
11. In the present case, some minutes prior to kick-off, one Bengal light burned in east stand, lower tier. This was detected by the Referee-observer. Furthermore, in the 78<sup>th</sup> minute of the match, a firecracker was seen in the east stand lower tier where the home-team supporters were seated. The setting-off of the said fireworks in the stadium was not disputed by the club.
12. Applying the principle of strict liability as described in Articles 8 and 16 (2) of the UEFA Disciplinary Regulations, the club shall be held liable for the conduct of its supporters, even if it is not at fault itself (emphasis added). Indeed, it has long been established in

case law that strict liability applies regardless of fault (in this regard, see page 12 of the Court of Arbitration for Sport case *CAS 2002/A/423 PSV Eindhoven*).

13. The Control, Ethics and Disciplinary Body considers that the club is responsible for any violation conducted by its supporters against the UEFA Disciplinary Regulations. It includes the setting off of fireworks in accordance to Article 16 (2) (c) of the UEFA Disciplinary Regulations as it has been confirmed by CAS award (*CAS 2013/A/3047 FC Zenit St. Petersburg vs Football Union of Russia*).
14. In light of the foregoing, PSV Eindhoven is to be held responsible for the improper conduct of its supporters in accordance with Article 16 (2) (c) of the UEFA Disciplinary Regulations and must be punished accordingly.

C. The blocking of stairways

15. According to Article 38 UEFA Safety and Security Regulations, the match organiser must take measures to ensure that all public passageways, corridors, stairs, doors, gates and emergency exit routes are kept free of any obstructions, which could impede the free flow of spectators.
16. According to Article 38 of the UEFA Disciplinary Regulations, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

a) *The responsibility of the association*

17. Here again, the Control, Ethics and Disciplinary Body recalls that according to Article 38 of the UEFA Disciplinary Regulations, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided. Consequently, the burden of proof relies on the Respondent in order to prove the contrary.
18. In the present case, home-team supporters were standing in the stairways and blocking them in sector W, east stand and sector U northeast corner.
19. It shall be reminded that UEFA based on the association's autonomy is entitled to regulate for the benefit of the safety of the spectators a norm that requires the organizer of a football match to keep the stairways free.
20. Further, Article 38 UEFA Safety and Security Regulations establishes that the match organiser must take measures to ensure that the public passageways are kept free of any obstruction which could impede the free flow of spectators. Here it shall be kept in mind that if the stairways are kept free, the evacuation of spectators is easier.
21. As stated above, according to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

22. Moreover, the Control, Ethics and Disciplinary Body took note that the club merely argued that the stairways were only blocked for short periods of time, thereby acknowledging that the reported blocking of stairways did in fact take place. Moreover, the Control, Ethics and Disciplinary Body took note of the fact that the club did not provide any documentary evidence which would break the accuracy of the report of the UEFA match delegate.
23. Bearing the above in mind, the Control, Ethics and Disciplinary Body deems that in view of the fact that the passageways were blocked during the match as stated by the delegate and admitted by the club, even though the blocking might have only occurred during not-extensive periods of time, the latter violated of Article 38 UEFA Safety and Security Regulations and needs to be punished accordingly.

#### **IV. The determination of the appropriate disciplinary measure**

24. Based on Article 17 of the UEFA Disciplinary Regulations the Control, Ethics and Disciplinary Body determines the type and extent of the disciplinary measures to impose according to the objective and subjective elements of the case, taking account of any aggravating and mitigating circumstances. In the case of multiple offences, the punishment shall correspond to the most serious offence and be increased depending on the specific circumstances.
25. Regarding the setting off of fireworks, the Control, Ethics and Disciplinary Body identified and took into account the following concrete circumstances:
- the seriousness and multiplicity of the offences committed;
  - the club's previous record: PSV Eindhoven has already been punished numerous times for the setting off of fireworks, i.e. for the exact same offence.
26. Regarding the blocking of stairways, the Control, Ethics and Disciplinary Body identified and took into account the following circumstances:
- The seriousness of the offences committed, noting that the blocking of stairways represents a significant threat to the health and safety of supporters and other persons in the stadium, while however also considering that said infringement might not have happened for extended periods of time;
  - The club's previous record: PSV Eindhoven has already been punished for the blocking of stairways numerous times.
27. In view of the above, the Control, Ethics and Disciplinary Body deemed a fine in the amount of € 19'000 to be the appropriate sanction for the above-mentioned violations of the UEFA Disciplinary Regulations.

## Decision of 18 February 2016

Sporting Clube de Portugal

(improper conduct of the team – 5 cards or more; setting off of fireworks)

### **Circumstances of the case**

On 10 December 2015, during the match between Sporting Clube de Portugal and Beşiktaş JK, five (5) players from Sporting Clube de Portugal were cautioned by the referee on seven (7) occasions. Additionally, three (3) crackers coming from the Home fan stands behind the goal were ignited during the match.

**Legal framework** Article 15 (4) and 16 (2) DR.

### **Decision**

The Control, Ethics and Disciplinary Body holds that the Club is responsible for any violation conducted by its supporters against the UEFA Disciplinary Regulations, including the use of pyrotechnic devices in stadiums and must be punished accordingly (Article 16 (2) (c) DR). Furthermore, conferring to article 15 (4) DR a sanction can be taken against an association or a club, if individual disciplinary sanctions have been imposed by the referee on at least five players during the match. Bearing the above in mind, the CEDB deems that a fine of €9'000 shall be deemed as the adequate disciplinary measure.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Members:</u>	Antenen Jacques (SUI) Bonett Chris (MLT) Gea Tomás (AND) Larumbe Beain Kepa (ESP) Lorenz Hans (GER) Řepka Rudolf (CZE) Wolff Joël (LUX)

### **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the Control, Ethics and Disciplinary Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the club



in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

2. Briefly, the most relevant facts of this case can be summarized as follows:
  - Three crackers coming from the home fan stands behind the goal were ignited during the match.
  - During the match, five players were cautioned by the referee.

## **II. The Respondent's position**

3. The Club in its statements dated on 15 December 2015, does not contest the fact that the above mentioned yellow cards were shown to the club.
4. Nevertheless, it notes that it cannot accept the yellow card showed against Paulo Andre Rodrigues insofar there was no fault done by the player which merited the mentioned caution. The referee was misled by the Beşiktaş player simulation of a fault.
5. Regarding the setting off of fireworks, the Club holds that no lighting nor smoke was viewed during the match. It is assumed that it was provoked by the home fans, however, there is reasonable doubt due to the fact that no smoke was seen and no pyrotechnics were used.
6. In case the Control, Ethics and Disciplinary Body assumes that these fireworks were ignited by the Club's supporters, the Respondent underlines that those fireworks exploded after having the team scored its goals which is to put in the context of a "life changing moment" due to a future qualification to next stage of the UEFA Europa League by the Club.
7. Finally, the Club stresses that its supporters behave properly during the entire match
8. The more detailed arguments made by the club in support of its written submissions are set out below in as far as they are relevant.

## **III. Merits of the Case**

### **A. UEFA's competence.**

9. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (DR), the Control, Ethics and Disciplinary Body is competent to deal with the case.
10. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

B. The improper conduct of supporters: the setting off of fireworks

a) *Applicable legal framework and general remarks*

11. According to Article 16 (2) DR (emphasis added):

*"However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:*

- a) the invasion or attempted invasion of the field of play;*
- b) the throwing of objects;*
- c) the lighting of fireworks or any other objects;*
- d) the use of laser pointers or similar electronic devices;*
- e) the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;*
- f) acts of damage;*
- g) the disruption of national or competition anthems;*
- h) any other lack of order or discipline observed inside or around the stadium."*

12. According to Article 8 DR, which stipulates the principle of 'strict liability', and Article 16 (2) DR, which builds on this principle, a club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.

13. According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

b) *The responsibility of the club*

14. Setting off fireworks is a serious offence because not only can it disrupt the orderly running of the match but also, and more importantly, it can endanger the physical integrity of the persons who are lighting the fireworks, other spectators, officials and even the players on the pitch. For this reason, the use of pyrotechnic devices in stadiums is strictly forbidden.

15. In the present case, three crackers coming from the home fan stands behind the goal were ignited during the match.

16. Applying the principle of strict liability as described in Articles 8 and 16(2) DR, the club shall be held liable for the conduct of its supporters, even if it is not at fault itself. Indeed, it has long been established in case law that strict liability applies regardless of fault (in this regard, see page 12 of the Court of Arbitration for Sport case *CAS 2002/A/423 PSV Eindhoven*).

17. Further, the arguments put forward by the club in the present case do not breach the accuracy of the official UEFA reports which expressly refer to the setting off of fireworks ignited by the home supporters and are presumed to be accurate under Article 38 DR.
18. This UEFA disciplinary body deems that the arguments put forward by the Club do not breach the accuracy of the UEFA delegate's report which clearly links the setting off of fireworks to the home supporters, referring in this regard to the exact location from which the crackers were ignited.
19. It follows that the Control, Ethics and Disciplinary Body is comfortably satisfied with the description given by the UEFA delegate in his report and considers that the infringement is to be allocated to the home supporters.
20. Conclusively, the Control, Ethics and Disciplinary Body holds that the above arguments are irrelevant as with regards to the clarification of the facts and the classification of the above-mentioned incident. The Club is responsible for any violation conducted by its supporters against the UEFA Disciplinary Regulations. It includes the setting off of fireworks in accordance to Article 16 (2) (c) DR.
21. In light of the foregoing, the Club is to be held responsible for the improper conduct of its supporters in accordance with Article 16 (2) (c) DR and must be punished accordingly.

C. The improper conduct of the team

*a) Applicable legal framework and general remarks*

22. According to Article 15 (4) DR a sanction can be taken against an association or a club, if individual disciplinary sanctions have been imposed by the referee on at least five players during the match.
23. According to Article 9 (1) DR decisions by the referee on the field of play are final and may not be reviewed by the UEFA disciplinary bodies.

*b) The responsibility of the club*

24. In the present case, five Sporting Clube de Portugal players were cautioned by the referee on seven occasions.
25. This UEFA Disciplinary Body recalls that according to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided. Consequently, the burden of proof relies on the Respondent in order to prove contrary, which has not been the case in hand.
26. Moreover, the Control, Ethics and Disciplinary Body recalls that according to Article 9 (1) DR, decisions by the referee on the field of play are final and may not be reviewed by the

UEFA disciplinary bodies. In this regard, the Club statements opposing the caution given by the referee to its players are irrelevant, being the decision of the referee in this context final and not to be contested.

27. Taking the above into account, the club is to be held responsible for the misconduct of their players and must be punished accordingly.

#### **IV. The determination of the appropriate disciplinary measure**

28. Based on Article 17 DR the Control, Ethics and Disciplinary Body determines the type and extent of the disciplinary measures to impose according to the objective and subjective elements of the case, taking account of any aggravating and mitigating circumstances. In the case of multiple offences, the punishment shall correspond to the most serious offence and be increased depending on the specific circumstances.
29. In the present case, the Control, Ethics and Disciplinary Body identified and took into account the following concrete circumstances:
- the seriousness and multiplicity of the offences committed;
  - the club's previous record: Sporting Clube de Portugal has already been punished for the improper conduct of its supporters and, in particular, for the setting off of fireworks;
  - the club's previous record: Sporting Clube de Portugal has already been punished for the improper conduct of the team.
30. In the light of the above considerations, the Control, Ethics and Disciplinary Body deems that €9'000 shall be deemed as the adequate disciplinary measure.

## Decision of 29 February 2016

Valencia CF Youth / Chelsea FC Youth

(protest – comp regulations)

### **Circumstances of the case**

The UEFA Youth League 2015/2016 match between Chelsea FC Youth and Valencia CF Youth on 23 February 2016 ended with a 1-1 draw after 90 minutes. During the following penalty shootout, the first penalty taken by the Valencia player Victor Ruiz Abril crossed the goal line before striking a stanchion and bouncing out. The referee and his assistant believed the ball had struck the post and ruled out the goal. Chelsea FC Youth went on to win the shootout 5-3. On 24 February 2016 Valencia CF Youth lodged a protest on the basis of an obvious error of the referee as defined by Article 9 of the UEFA Disciplinary Regulations in accordance to article 50 (1) (c) DR. Valencia CF Youth holds that “the penalty should have counted as the ball was clearly behind the goal line. The fact that the referee did not allow the goal violated Rule 10 of the FIFA Laws of the Game. Such circumstance had a decisive influence on the final result”.

**Legal framework** Article 48 (b) DR

### **Decision**

The Chairman of the Control, Ethics and Disciplinary Body dismissed the protest lodged by the club. According to Article 50 (2) DR, a protest is not admissible if it is lodged against a factual decision taken by the referee and that according to Article 9 (1) DR, decisions taken by the referee on the field of play are final and may not be reviewed by the UEFA disciplinary bodies. The referee has full authority to enforce the Laws of the Game. Moreover, the erroneous decision of the referee on the field of play did not lead to any disciplinary sanctions. The CEDB considers that the protest shall be declared inadmissible in accordance with Article 50 (2) (c) and Article 9 (1) DR.

Chairman: Partl Thomas (AUT)

### **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the Control, Ethics and Disciplinary Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the club in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. Briefly, the most relevant facts of this case can be summarized as follows:

The UEFA Youth League 2015/2016 match between Chelsea FC Youth and Valencia CF Youth on 23 February 2016 ended with a 1-1 draw after 90 minutes. During the following penalty shootout, the first penalty taken by the Valencia player Victor Ruiz Abril crossed the goal line before striking a stanchion and bouncing out. The referee and his assistant believed the ball had struck the post and ruled out the goal. Chelsea FC Youth went on to win the shootout 5-3.

## II. The Respondent's position

3. The Club in its statements dated on 24 February 2016 stated the following:
  - In accordance with Article 42.01 of the UEFA Youth League Regulations 2015/2016 and Article 49 of the UEFA Disciplinary Regulations, the club is entitled to lodge a protest, thereby contesting the final result of the match.
  - The fact that the ball was behind the goal line was confirmed by Chelsea FC Youth, the UEFA match delegate and the UEFA Referee Observer. It is therefore undisputed that the penalty should have counted.
  - The fact that the referee did not allow the goal despite the fact that the ball was clearly behind the goal line, violated Rule 10 of the FIFA Laws of the Game.
  - The fact that the goal did not only "consist of two upright posts" but also of two extra stanchions, violated Rule 1 of the FIFA Laws of the Game.
  - These circumstances constitute obvious violations of the referee which had a decisive influence on the final result of the match.
4. The more detailed arguments made by the club in support of its written submissions are set out below in as far as they are relevant.

## III. Merits of the Case

### A. UEFA's competence.

5. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations, the Control, Ethics and Disciplinary Body is competent to deal with the case.
6. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

### B. Admissibility of the protest

#### a) *Applicable legal framework*

7. In accordance with Article 50 (1) (c) of the UEFA Disciplinary Regulations, a protest is only admissible if it is based on an obvious error by the referee as defined by Article 9 of these regulations, in which case the protest may be directed only at the disciplinary consequences of the referee's obvious error.

8. According to Article 50 (2) of the UEFA Disciplinary Regulations, a protest is not admissible if it is lodged against a factual decision taken by the referee.
9. According to Article 9 (1) of the UEFA Disciplinary Regulations, decisions taken by the referee on the field of play are final and may not be reviewed by the UEFA disciplinary bodies.
10. According to Article 9 (2) of the UEFA Disciplinary Regulations, in cases where a decision by the referee involves an obvious error (such as mistaking the identity of the person penalised), only the disciplinary consequences of that decision may be reviewed by the disciplinary bodies.

*b) The case at hand*

11. In the case at hand, the referee by mistake thought that the relevant penalty had hit the post and bounced back onto the pitch, whereas the ball undisputedly had crossed the goal line.
12. First, the Chairman of the Control, Ethics and Disciplinary Body recalled that according to Article 50 (2) of the UEFA Disciplinary Regulations, a protest is not admissible if it is lodged against a factual decision taken by the referee and that according to Article 9 (1) of the UEFA Disciplinary Regulations, decisions taken by the referee on the field of play are final and may not be reviewed by the UEFA disciplinary bodies.
13. In view of the above, the Chairman of the Control, Ethics and Disciplinary Body emphasized that the 5<sup>th</sup> Law of the Game establishes that each match is controlled by a referee who has full authority to enforce the Laws of the Game in connection with the match to which he has been appointed.
14. Besides, Chairman of the Control, Ethics and Disciplinary Body recalled the standing practice is clear concerning decisions taken by the referee during the course of a match. In this regard, the Chairman of the Control, Ethics and Disciplinary Body in decisions rendered on 8 April 2013, 5 December 2005, 11 May 2009 and 28 February 2011 and lately the Appeals Body on 30 April 2014, considered that the decisions taken by the referee are not subject to re-examination, prevailing by that the authority of match officials mainly over incidents of sporting nature that may occur during the match.
15. In view of the above, taking into account the legal framework in the case at hand, the Chairman of the Control, Ethics and Disciplinary Body came to the conclusion that the question whether a ball was in front of behind the goal line is clearly a question of sporting nature which usually leads to a factual decision of a referee during the course of a match, just as e.g. questions regarding foul plays and the respective yellow and red cards.

16. Therefore, already based on the above, the Chairman of the Control, Ethics and Disciplinary Body came to the conclusion that the protest of the club is inadmissible.
17. However, quod non, turning further into Article 50 (1) (c) of the UEFA Disciplinary Regulations which refers to Article 9 of the UEFA Disciplinary Regulations, the Chairman of the Control, Ethics and Disciplinary Body held that both Articles tie in with an obvious error of a referee that needs to be established, the definition of which involves a strict and rigorous approach.
18. Yet, even if the referee would have committed such an obvious error, the legal consequence which is provided for in Article 9 (2) and 50 (1) (c) of the UEFA Disciplinary Regulations would only be directed at the disciplinary consequences of the referee's error without going any further. This means that the only legal consequence of these articles would be the retraction of a disciplinary sanction. This circumstance clearly shows that according to the UEFA Disciplinary Regulations, only such protests shall be declared admissible which might have led to erroneous disciplinary consequences, i.e. disciplinary sanctions as they are provided for in the UEFA Disciplinary Regulations. As an example, Article 9 (2) of the UEFA Disciplinary Regulations
19. In the case at hand, the erroneous decision of the referee on the field of play did quite evidently not lead to any disciplinary sanctions, as the only legal consequences of the denial of the penalty was that the club was not awarded with a goal. With this being established, the Chairman of the Control, Ethics and Disciplinary Body concluded that both Article 50 (1) (c) and Article 9 (2) of the UEFA Disciplinary Regulations are clearly not meant to deal with cases such as goals which have not been given due to the mistake of the referee. Therefore, the said provisions cannot be applied to the present case.
20. In the light of the above mentioned considerations, the Chairman of the Control and Disciplinary Body considers that the protest shall be declared inadmissible in accordance with Article 50 (2) (c) and 9 (1) of the UEFA Disciplinary Regulations. Therefore, the protest lodged by the club is dismissed.



## Decision of 29 February 2016

GNK Dinamo Youth / Matija Fintic  
(ineligible players)

### **Circumstances of the case**

On 10 December 2015, GNK Dinamo Youth player Matija Fintic was notified that following a third caution during the season, he was suspended to play the next UEFA Youth League match for which he would be otherwise eligible. During the following UEFA Youth League match, the GNK Dinamo Youth player Matija Fintic was included in the team sheet and participated in the match at the minute 84.

**Legal framework** Article 21 (2) UEFA Disciplinary Regulations.

### **Decision**

The Chairman of the Control, Ethics and Disciplinary Body decides to declare the UEFA Youth League 2015/2016 RSC Anderlecht Youth vs. GNK Dinamo Youth played on 23 February 2016 as forfeit. GNK Dinamo Youth is deemed to have lost the match 3:0. Moreover, the CECB decides that the GNK Dinamo Youth player Matija Fintic still has to serve one UEFA competition match suspension for which he would be otherwise eligible. In this regard, the club ensures that the player is informed personally of this decision.

Chairman: Partl Thomas (AUT)

### **I. Facts Of The Case**

21. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the Control, Ethics and Disciplinary Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the club in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
22. Briefly, the most relevant facts of this case can be summarized as follows:
- On 10 December 2015, GNK Dinamo Youth player Matija Fintic was notified that following a third caution during the season he was suspended to play the next UEFA Youth League match for which he would be otherwise eligible.
  - During the following UEFA Youth League match, the GNK Dinamo Youth player Matija Fintic was included in the team sheet and participated in the match at the minute 84.

## II. Submissions by the clubs

23. The GNK Dinamo Youth (hereinafter also as the “Club”) submitted a private agreement signed between RSC Anderlecht Youth and GNK Dinamo Youth on 25 February 2016 in which both parties accepted to play a new match of the UEFA Youth League Round 16 on a date defined with UEFA.
24. However, on 28 February 2016, RSC Anderlecht stated that it has taken note of the infringement committed and the disciplinary procedure initiated by UEFA. RSC Anderlecht stated also that it had no further comments, adding that it will accept a decision by the UEFA Disciplinary Body based on the UEFA Disciplinary Regulations.
25. The more detailed arguments made by the clubs in support of its written submissions are set out below in as far as they are relevant.

## III. Merits of the Case

### A. UEFA’s competence.

26. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (DR), the Control, Ethics and Disciplinary Body is competent to deal with the case.
27. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

### B. The ineligible player

#### *a) Applicable legal framework*

28. According to Article 41.02 UEFA Youth Regulations, in case of repeated cautions, a player is suspended for the next competition match after three cautions in three different matches, as well as following any subsequent odd-numbered caution (fifth, seventh, etc.).
29. According to Article 21 (2) DR, a match is declared forfeit if a player who has been suspended following a disciplinary decision participates in the match.

#### *b) The responsibility of the club*

30. In the case in hand, GNK Dinamo Youth player Matija Fintic was not eligible to play the UEFA Youth match against RSC Anderlecht Youth following a third caution in accordance with Article 41.02 UEFA Youth Regulations. This decision was notified on 10 December 2015.
31. The Control, Ethics and Disciplinary Body notes that the ineligibility of the player Matija Fintic for the above mentioned match has not been questioned by any of both clubs

32. This UEFA disciplinary body deems that there can be no doubt that the player was serving a suspension when it participated at the match and by doing so contravened both Article 41.02 UEFA Youth Regulations and Article 21 (2) DR.
33. In this context, the Club submitted an agreement between both clubs accepting to repeat the match.
34. However, the Control, Ethics and Disciplinary Body considers that there is no legal basis as to accept private agreements reached by clubs that may impact the organization of UEFA competitions. For obvious reasons the latter cannot have any effect on the UEFA competition at hand as these cannot change the substantive content of the UEFA Competitions Regulations and/or UEFA Disciplinary Regulations. It would empower clubs with competences which are not in their possession and would make these regulations depend on the will of the participants just by signing private agreements. This is obviously not reasonable nor acceptable.
35. It shall also be stressed that the exchange of wills in this private agreement is in conflict with RSC Anderlecht last communication of 28 February 2016. In such communication the RSC Anderlecht confirmed that it will accept a decision by the UEFA Disciplinary Body based on the UEFA Disciplinary Regulations. In this regard, this UEFA disciplinary body deems that RSC Anderlecht stepped aside from the private agreement it reached with the GNK Dinamo Youth on 25 February 2016 due to the fact that the only possible decision in the current factual and legal circumstances is that by means of the participation of the player Matija Fintic in the above mentioned match, the GNK Dinamo Youth infringed Article 41.02 UEFA Youth Regulations and Article 21 (2) DR.
36. Bearing all the above in mind, the Control, Ethics and Disciplinary Body considers that following this infringement the Club shall be punished accordingly.

#### **IV. The determination of the appropriate disciplinary measure**

37. Regarding the appropriate disciplinary measure against the Club, the Control, Ethics and Disciplinary Body draws the attention to the fact that Article 21 (2) DR already provides with an automatic and standard sanction towards players participating in a match who have been suspended following a disciplinary decision. According to this provision, the match is declared forfeit.
38. Consequently, this UEFA disciplinary body declares the UEFA Youth League 2015/2016 RSC Anderlecht Youth vs. GNK Dinamo Youth played on 23 February 2016 as forfeit. GNK Dinamo Youth is deemed to have lost the match 3:0.
39. Regarding the GNK Dinamo Youth player Matija Fintic, the Control, Ethics and Disciplinary Body deems that he still has to serve one UEFA competition match suspension for which he would be otherwise eligible.

40. In the light of the above considerations, the Control, Ethics and Disciplinary Body decides to declare the UEFA Youth League 2015/2016 RSC Anderlecht Youth vs. GNK Dinamo Youth played on 23 February 2016 as forfeit. GNK Dinamo Youth is deemed to have lost the match 3:0; and to suspend the GNK Dinamo Youth player Matija Fintic still has to serve one UEFA competition match for which he would be otherwise eligible.

## Decision of 17 March 2016

SC Braga

(inappropriate conduct of supporters)

### **Circumstances of the case**

According to the official reports from the Delegate and Security Officer for the match between FC Sion and SC Braga on 18 February 2016, SC Braga's supporters in the south stand of the stadium were observed to jump down to the sectors below them.

**Legal framework** Article 16 (2) UEFA Disciplinary Regulations.

### **Decision**

The Control, Ethics and Disciplinary Body deems that the lack of order/discipline inherent in the act of supporters moving from one sector to another is a serious offence. Such conduct is clearly contrary to all standards of orderly behaviour and poses a severe safety risk. Consequently, SC Braga is to be held responsible for the misconduct of its supporters and must be penalised with a €5,000 fine.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Members:</u>	Bonett Chris (MLT) Gea Tomás (AND) Larumbe Beain Kepa (ESP) Lorenz Hans (GER) Řepka Rudolf (CZE) Wolff Joël (LUX)

### **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the Control, Ethics and Disciplinary Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by SC Braga in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

2. According to the official reports from the Delegate and Security Officer for the match between FC Sion and SC Braga on 18 February 2016, SC Braga supporters in the south stand of the stadium were observed to jump down to the sectors below them.

## II. The Respondent's position

3. In its statement dated 23 February 2016, SC Braga:
  - denies *"the practice of such offence/incident"*;
  - states that it does not encourage or support improper behaviour;
  - says that it cannot control the behaviour of third parties;
  - suggests that security was FC Sion's responsibility; and
  - says that the behaviour did not result in any danger or damage.
4. The more detailed arguments made by SC Braga in support of its written submissions are set out below in so far as they are relevant.

## III. Merits of the Case

### A. UEFA's competence

5. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (the "**DR**"), the Control, Ethics and Disciplinary Body is competent to deal with the case.
6. In light of the above, the UEFA Statutes, rules and regulations (in particular the DR) are applicable to these proceedings.

### B. The improper conduct of supporters

#### a) *Applicable legal framework and general remarks*

7. According to Article 16 (2) DR (emphasis added):

*"However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:*

  - a) *the invasion or attempted invasion of the field of play;*
  - b) *the throwing of objects;*
  - c) *the lighting of fireworks or any other objects;*
  - d) *the use of laser pointers or similar electronic devices;*

- e) *the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;*
  - f) *acts of damage;*
  - g) *the disruption of national or competition anthems;*
  - h) *any other lack of order or discipline observed inside or around the stadium.*
8. According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.
- b) The responsibility of the club*
9. The lack of order/discipline inherent in the act of supporters moving from one sector to another is a serious offence because it can seriously endanger the safety and security of the perpetrators and also other people present at the match.
10. According to Article 8 DR, which stipulates the principle of 'strict liability', and Article 16 (2) DR, which picks up on this principle, a club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.
11. It has long been established in case law that strict liability applies regardless of fault. Accordingly, a club cannot therefore argue that it is not liable on the grounds that it did not commit any fault (see *CAS 2002/A/423 PSV Eindhoven*, page 12).
12. In the present case, according to the official reports for the match, SC Braga supporters jumped down to the sectors below them.
13. The Control, Ethics and Disciplinary Body deems that such incidents are obvious examples of a lack of order/discipline from SC Braga supporters in the stadium. Such behaviour is clearly contrary to all standards of orderly behaviour and poses a severe safety risk.
14. The club's arguments with regard to the incident are irrelevant since they do not breach the accuracy of the official reports.
16. Consequently, according to Article 16 (2) (h) DR, SC Braga is to be held responsible for the misconduct of its supporters and must be penalised accordingly.

#### **IV. The determination of the appropriate disciplinary measure**

15. Based on Article 17 DR, the Control, Ethics and Disciplinary Body determines the type and extent of the disciplinary measures to impose according to the objective and subjective elements of the case, taking account of any aggravating and mitigating circumstances.

16. In the present case, the Control, Ethics and Disciplinary Body took account of the following factor:
  - The dangerous nature of the offence committed, noting that this kind of behaviour threatens the safety and security of those present in the stadium.
17. Consequently, the Control, Ethics and Disciplinary Body considers that a fine of €5,000 should be imposed on SC Braga.



## Decision of 19 May 2016

Paris Saint-Germain

(stairways blocked – security / stadium)

### **Circumstances of the case**

During the UEFA Champions League match 2015/2016 played on 6 April 2016 between Paris Saint-Germain and Manchester City FC several stairways in the stadium were obviously congested by persistently standing Paris Saint-Germain spectators, and there were no free space for spectators in case of emergency evacuation.

**Legal framework** Article 38 Safety and Security Regulations.

### **Decision**

The Chairman of the Control, Ethics and Disciplinary Body came to the conclusion that the arguments provided by the club did not break the accuracy of the UEFA Security Officer's report, which is why Paris Saint-Germain as the host and match organiser violated Article 38 of the UEFA Safety and Security Regulations and must be punished accordingly. Therefore, the CEDB decides to fine Paris Saint-Germain for insufficient organization (blocking of stairways), €10'000.

Chairman: Partl Thomas (AUT)

### **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the Control, Ethics and Disciplinary Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the club in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. Briefly, the most relevant facts of this case, as established by the relevant reports of the UEFA Match Delegate and the UEFA Security Officer, can be summarized as follows:

Despite stewards made efforts in north stand lower, several stairways in both north and south ends (behind the goals) were obviously congested by persistently standing Paris Saint-Germain spectators, and there were no free space for spectators in case of emergency evacuation.

## II. The Respondent's position

3. The Club in its statements dated on 13 April 2016 stated the following:
  - The photos which were taken by the UEFA Security Officer do not reflect the reality of what actually happened, given that based on the angle the photos were taken from it only appears like the stairways have been blocked. However, when looking into the videos taken by the surveillance camera, it can be seen that the stewards had the situation under control at all time and that the relevant stairways were in fact free at all time.
  - The work of the stewards was reported as "very good and professional" in the relevant report, which confirms what was said above. Moreover, no incident was reported by the referee.
  - The club has a lot of respect for the relevant UEFA rules and made a huge effort to safeguard their application, this e.g. by deploying an additional number of stewards for the match.
4. The more detailed arguments made by the club in support of its written submissions are set out below in as far as they are relevant.

## III. Merits of the Case

### A. UEFA's competence.

5. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations, the Control, Ethics and Disciplinary Body is competent to deal with the case.
6. According to Article 23 (2) (b) of the UEFA Disciplinary Regulations, the Chairman of the Control, Ethics and Disciplinary Body could decide as judge sitting alone.
7. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

### B. Insufficient organization: blocking of stairways

#### *a) Applicable legal framework and general remarks*

8. According to Article 49 of the UEFA Safety and Security Regulations, any breach of the said regulations may be penalised in accordance with the UEFA Disciplinary Regulations.
9. As stated in Article 2 of the UEFA Safety and Security Regulations, the purpose of the regulations is to safeguard the safety and security of everyone present at a match. In order to achieve this, several provisions concerning spectator control are included in the regulations.

10. Of particular relevance for the present case is Article 38 of the UEFA Safety and Security Regulations which provides that *“the match organiser must take measures to ensure that all public passageways, corridors, stairs, doors, gates and emergency exit routes are kept free of any obstructions, which could impede the free flow of spectators.”*
11. Moreover, under Article 38 of the UEFA Disciplinary Regulations, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

*b) The responsibility of the club*

12. Under Article 2 of the UEFA Safety and Security Regulations, the purpose of the regulations is to maintain the safety and security of everyone present at the match. In order to achieve this goal the UEFA Safety and Security Regulations contain several provisions concerning spectator control at the stadium, including Article 38 of the UEFA Safety and Security Regulations.
13. It is well established that UEFA is entitled to put in place and enforce regulations aimed at protecting the safety of spectators, including the requirement that the organisers of football matches must keep stairways free of obstruction (in this regard, see the recent case of *CAS 2015/A/3926 FC Gelsenkirchen-Schalke 04 v UEFA*).
14. In the case at hand, according to the report of the UEFA Security Officer, several stairways in both north and south ends behind the goals were obviously congested by persistently standing Paris Saint-Germain spectators, and there were no free space for spectators in case of emergency evacuation.
15. The chairman subsequently took note of the video evidence which was provided by the club but after thorough analysis of the footage and after comparison of the video evidence with the photos which have been provided by the UEFA Security Officer, the Chairman concluded that in view of the fact that the video evidence merely shows a very short period of time, the allegation of the club that the stairways were in fact free at all time was not proven.
16. Consequently, the Chairman came to the conclusion that the arguments provided by the club did not break the accuracy of the UEFA Security Officer’s report, which is why Paris Saint-Germain as the host and match organiser violated Article 38 of the UEFA Safety and Security Regulations and must be punished accordingly.

**IV. The determination of the appropriate disciplinary measure**

17. Based on Article 17 of the UEFA Disciplinary Regulations, the Chairman of the Control, Ethics and Disciplinary Body determines the type and extent of the disciplinary measures to impose according to the objective and subjective elements of the case, taking account of any aggravating and mitigating circumstances. In the case of multiple offences, the

punishment shall correspond to the most serious offence and be increased depending on the specific circumstances.

18. In the present case, the Chairman of the Control, Ethics and Disciplinary Body identified and took into account the following:
  - The seriousness of the offences committed, noting that the blocking of stairways represents a significant threat to the health and safety of supporters and other persons in the stadium; and
  - The club's previous record: Paris Saint-Germain has already been punished for the blocking of stairways recently.
19. Based on the foregoing, the chairman of the Control, Ethics and Disciplinary Body decides that a fine in the amount of € 10'000 should be deemed the appropriate sanction.
20. Consequently, the chairman of the Control, Ethics and Disciplinary Body decides to fine Paris Saint-Germain €10'000.

## Decision of 19 May 2016

Liverpool FC

(illicit chants; setting off of fireworks; throwing of objects; crowd disturbances; late kick-off)

### **Circumstances of the case**

The Delegates for the UEFA Europa League matches between Liverpool FC and Manchester United FC on 10 March 2016 (the "First Leg") and on 17 March 2016 (the "Second Leg") reported that two "*smoke bombs*" were ignited by Liverpool FC supporters during the First Leg match and that two "*flares*" and three "*smoke bombs*" were ignited by Liverpool FC supporters during the second Leg match. During the Matches, several Liverpool FC supporters directed shouts and gestures at the Manchester United supporters which referred the Munich air disaster. Moreover, the Delegate for the Second Leg reported that some Liverpool FC supporters sang the chant "*Manchester is full of shit*" at Manchester United FC's supporters. Also, reported that the Liverpool FC players "*left tunnel 1'50" late due to late arrival of 2 Liverpool players*" which contributed to the kick-off being late by 2 minutes and 10 seconds.

In addition, the Delegate for the Second Leg reported that certain Liverpool FC supporters were involved in crowd disturbances. Specifically, at the end of the match, a number of Liverpool FC supporters entered a Manchester United FC sector to unfurl a banner and, after the match, "*fighting occurred with police officers*" in the parking area and "*Liverpool supporters were arrested*". Finally, and the Delegate reported that certain Liverpool FC supporters threw objects at Manchester United FC supporters (being parts of seats that they had torn out).

**Legal framework** Article 16 (2) DR and Article 11 (2) DR.

### **Decision**

The Control, Ethics and Disciplinary Body determines with regard to the Article 16 (2) (e) DR offences, that such shouts and gestures which target the victims of a tragedy are extremely offensive and utterly deplorable. Regarding to the insulting chants, even they are not as offensive and as provocative as the ones related to the Munich air disaster or the Hillsborough tragedy, they cannot be ignored by the CEDB. Therefore, Liverpool FC is to be held responsible for the various violations by its supporters of Article 16 (2) (e) DR and must be punished accordingly. Due to the gravity of the offenses when considered together, the CEDB consider that a fine of €40'000 is appropriate. Nonetheless, half of the mentioned fine (€20,000) shall be suspended for a probationary period of two (2) years.

Moreover, regarding Articles 16 (2) (b), (c) and (h) DR, the CEDB recalls that: (1) crowd disturbances and the throwing objects constitute a severe threat to the health and safety of those involved and also everyone else at the stadium and serious offences which are strictly forbidden; and (2) the use of fireworks during the Matches created a serious risk to the health and safety of everyone present and must be taken very seriously. Hence, the club is to be held responsible for the improper of its supporters, even if it might not be at fault itself and must be penalized accordingly. On this basis, the CEDB deems that a fine of €7,000 is the appropriate sanction in respect of the club's breaches of Articles 16 (2) (b), (c) and (h) DR. In addition, given the damage caused to Manchester United FC's stadium by Liverpool FC supporters, it is only

right that Liverpool FC compensate Manchester United FC for any necessary repair work that had to be carried out.

Finally, with regard to Article 11 (2) (g) DR, the late kick-off offence has been admitted by the club, resulting on serious damage to the competition and UEFA's commercial activities, as well as to the image of the competition. Hence, the CEDB decides that a fine in the amount of €10,000 is appropriate for this offence.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairman:</u>	Berzi Sándor (HUN)
<u>Members:</u>	Antenen Jacques (SUI) Larumbe Beain Kepa (ESP) Lorenz Hans (GER) Wolff Joël (LUX)

## I. Facts Of The Case

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body (the "**CEDB**") on the basis of the official reports, the written submissions, the exhibits filed, and the statements produced in the course of the CEDB proceedings.
2. Whilst the CEDB has considered all of the facts, allegations, legal arguments and evidence submitted in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
3. The most relevant facts of this case can be summarised as follows:
  - the Delegate for the UEFA Europa League match between Liverpool FC and Manchester United FC on 10 March 2016 (the "**First Leg**") reported that two "*smoke bombs*" were ignited by Liverpool FC supporters during the match;
  - the Delegate for the UEFA Europa League match between Manchester United FC and Liverpool FC on 17 March 2016 (the "**Second Leg**" and, together with the First Leg, the "**Matches**") reported that two "*flares*" and three "*smoke bombs*" were ignited by Liverpool FC supporters;
  - during the Matches, several Liverpool FC supporters directed shouts and gestures at the Manchester United supporters which referenced the Munich air disaster;
  - the Delegate for the Second Leg reported that some Liverpool FC supporters sang the chant "*Manchester is full of shit*" at Manchester United FC's supporters;
  - the Delegate for the Second Leg reported that the Liverpool FC players "*left tunnel 1'50" late due to late arrival of 2 Liverpool players*" which contributed to the kick-off being late by 2 minutes and 10 seconds (the additional 20 seconds being attributable to a delay in playing the anthems through no fault of Liverpool FC);

- the Delegate for the Second Leg reported that certain Liverpool FC supporters were involved in crowd disturbances (specifically, at the end of the match, a number of Liverpool FC supporters entered a Manchester United FC sector to unfurl a banner and, after the match, *“fighting occurred with police officers”* in the parking area and *“Liverpool supporters were arrested”*); and
- the Delegate for the Second Leg reported that certain Liverpool FC supporters threw objects at Manchester United FC supporters (being parts of seats that they had torn out).

## II. The Respondent’s position

4. By way of summary, in its statements dated 18 March 2016, 18 April 2016 and 12 May 2016, Liverpool FC:
  - admits liability for all of the charges brought against it;
  - with regard to the offences under Article 16 (2) (e) of the UEFA Disciplinary Regulations (the **“DR”**), states that it considers the references to the Munich air disaster to be *“utterly inexcusable”*;
  - also with regard to the offences under Article 16 (2) (e) DR, states that it considers the chant *“Manchester is full of shit”* to be relatively benign, commonplace and only mildly offensive;
  - with regard to the throwing of objects and crowd disturbances offences under Articles 16 (2) (b) and (h) DR, notes that: (i) such incidents occurred in a highly charged atmosphere at a match between local rivals and against the background of very serious provocation from Manchester United supporters (notably certain illicit chants during the Matches and also in the build-up to the Second Leg which referenced the Hillsborough tragedy); (ii) the Second Leg was an away fixture for Liverpool FC and, accordingly, it was more difficult for it to control its supporters; (iii) it has a generally good previous disciplinary record and these offences were just a *“one-off aberration”* arising in the context of a local derby match; and (iv) the incidents involved only a small number of its supporters;
  - with regard to the crowd disturbances offence involving Liverpool FC supporters entering the Manchester United FC sector, suggests that the relevant Liverpool supporters in the home sector did not act violently or aggressively;
  - with regard to the crowd disturbances offence involving Liverpool FC supporters fighting in the parking area after the Second Leg, suggests that there is no direct evidence to prove that the fighting and arrests involving Liverpool FC supporters occurred;
  - with regard to the throwing of objects offence, suggests that only a small number of Liverpool FC supporters were involved;
  - with regard to the fireworks offence under Article 16(2)(c) DR, suggests that: (i) this behaviour was provoked and not serious; (ii) in respect of the Second Leg, it was the fault of Manchester United FC that the fireworks were able to enter the stadium; (iii) there were only a small number of incidents; (iv) the fireworks were not thrown and

- the match was not disrupted; and (v) it has now put in place additional security measures to deal with such problems; and
- with regard to the late kick-off offence under Article 11 (2) (g) DR, explains that two of its players were late leaving the toilet and, whilst this is not acceptable, suggests that: (i) the offence was not serious because the club was not trying to gain any tactical advantage; (ii) the delay was minor; and (iii) the late kick-off was not solely attributable to the club.
5. The more detailed arguments made by Liverpool FC are set out below in so far as they are relevant.

### III. Merits of the Case

#### A. UEFA's competence

6. Pursuant to Article 52 DR, the CEDB is competent to deal with this case.
7. In light of the above, the UEFA Statutes, rules and regulations (in particular the DR) are applicable to these proceedings.

#### B. The illicit shouts, gestures and chants

##### a) *Applicable legal framework and general remarks*

8. According to Article 16 (2) DR (emphasis added):
- "However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:*
- i) the invasion or attempted invasion of the field of play;*
  - j) the throwing of objects;*
  - k) the lighting of fireworks or any other objects;*
  - l) the use of laser pointers or similar electronic devices;*
  - m) the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;*
  - n) acts of damage;*
  - o) the disruption of national or competition anthems;*
  - p) any other lack of order or discipline observed inside or around the stadium."*
9. According to Article 8 DR, which stipulates the principle of strict liability, and Article 16 (2) DR, which builds on this principle, a club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.



10. According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

*b) The responsibility of the club*

11. The CEDB notes that Liverpool FC has admitted that its supporters sang “Manchester is full of shit” during the Second Leg, as was noted in the Delegate’s report.
12. The club also admits that during the Matches several Liverpool FC supporters directed shouts and gestures at the Manchester United supporters which referenced the Munich air disaster.
13. It is noted that that these incidents have been confirmed by the analysis of a UEFA Ethics and Disciplinary Inspector.
14. The CEDB takes this opportunity to recall that it cannot allow football matches organised by UEFA to become forums for people to promote offensive and provocative opinions that are not fit for a sports event.
15. Accordingly, any breaches of Article 16 (2) (e) DR must be taken very seriously.
16. With regard to the shouts and gestures, the members of the CEDB are deeply saddened to have to consider a case involving acts which target the victims of a tragedy. Shouts, gestures, messages, etc. with this aim are extremely offensive and utterly deplorable, especially when directed at the supporters of the club who has suffered the tragedy. Further, given the context of a match between fierce rivals, the shouts and gestures used during the Matches clearly provoked the opposition supporters. This is disturbing.
17. With regard to the chanting, the phrase “Manchester is full of shit” is clearly insulting and, in the context of the Second Leg, provocative to Manchester United FC and its supporters. It might not be as offensive and provocative as shouts/chants relating to the Munich air disaster or the Hillsborough tragedy, but it is still offensive and provocative and so cannot be ignored by the CEDB.
18. On the basis of the foregoing and in light of the wording of Articles 8 and 16 (2) DR, the CEDB considers that Liverpool FC is to be held responsible for the various violations by its supporters of Article 16 (2) (e) DR and must be punished accordingly.

C. The improper conduct of supporters: the throwing of objects

*a) Applicable legal framework and general remarks*

19. According to Article 16 (2) DR (emphasis added):

“However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:

- a) *the invasion or attempted invasion of the field of play;*
- b) *the throwing of objects;*
- c) *the lighting of fireworks or any other objects;*
- d) *the use of laser pointers or similar electronic devices;*
- e) *the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;*
- f) *acts of damage;*
- g) *the disruption of national or competition anthems;*
- h) *any other lack of order or discipline observed inside or around the stadium.”*

- 20. According to Article 8 DR, which stipulates the principle of strict liability, and Article 16 (2) DR, which builds on this principle, a club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.
- 21. According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

*b) The responsibility of the club*

- 22. The CEDB notes that the club admits that its supporters threw objects, as was noted in the Delegate’s report.
- 23. The CEDB recalls that throwing objects is a serious offence because not only can it disrupt the orderly running of the match but also, more importantly, it can endanger the physical integrity of those attending the match (i.e. other spectators, officials and even the players on the pitch). For this reason, throwing objects is strictly forbidden.
- 24. The CEDB notes that the present case is particularly disturbing because the Liverpool FC supporters caused damage to the Manchester United FC stadium in order to secure objects to throw. This is an unwholesome incident of hooliganism.
- 25. The club’s claim that only a small number of its supporters were involved does not detract from the highly serious nature of the offence.
- 26. Also, applying the principle of strict liability, the club cannot escape liability simply because the Second Leg was an away fixture. This is irrelevant.
- 27. In light of the foregoing and according to Article 16 (2) DR, the club is to be held responsible for the misconduct of its supporters and must be penalised accordingly.

D. The improper conduct of supporters: crowd disturbances

a) *Applicable legal framework and general remarks*

28. According to Article 16 (2) DR (emphasis added):

*"However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:*

- a) the invasion or attempted invasion of the field of play;*
- b) the throwing of objects;*
- c) the lighting of fireworks or any other objects;*
- d) the use of laser pointers or similar electronic devices;*
- e) the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;*
- f) acts of damage;*
- g) the disruption of national or competition anthems;*
- h) any other lack of order or discipline observed inside or around the stadium."*

29. According to Article 8 DR, which stipulates the principle of strict liability, and Article 16 (2) DR, which builds on this principle, a club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.

30. According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

b) *The responsibility of the club*

31. The Delegate for the Second Leg reported that certain Liverpool FC supporters were involved in crowd disturbances. Notably, at the end of the match, a number of Liverpool FC supporters entered a Manchester United FC sector to unfurl a banner and, after the match, *"fighting occurred with police officers"* in the parking area and *"Liverpool supporters were arrested"*.

32. The CEDB notes that Liverpool FC admits that a number of its supporters entered a Manchester United FC sector and unfurled a banner.

33. The club suggests that these Liverpool supporters did not act violently or aggressively and that this should be taken into account, however, the CEDB does not consider this to be relevant. It is clear that some supporters wrongfully entered the home sector and this represents a serious threat to safety and security. Such behaviour is provocative and

creates massive challenges for security at the match. Even if the perpetrators themselves do not act aggressively, there are inherent risks to such behaviour.

34. The CEDB notes that that the club considers that it has not been presented with any direct evidence to prove that the fighting and arrests involving Liverpool FC supporters in the parking area after the Second Leg actually occurred. The club does, however, say that it would admit the allegation if direct evidence was provided.
35. In this regard, the CEDB stresses that, according to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.
36. In the opinion of the CEDB, the club's claim that there is no direct evidence is not enough to breach the accuracy of the Delegate's report which clearly states that "*fighting occurred with police officers and Liverpool supporters were arrested*" after the Second Leg.
37. In addition to the two incidents discussed above, the throwing of objects by Liverpool FC supporters must also be considered to be another example of the general disorderly behaviour and lack of discipline of Liverpool FC supporters during the Second Leg and is therefore relevant to the charges under Article 16 (2) (h) DR.
38. Applying the principle of strict liability, the club cannot escape liability simply because the Second Leg was an away fixture. This is irrelevant.
39. On the basis of the foregoing and in light of the wording of Articles 8 and 16 (2) DR, Liverpool FC is to be held responsible for the lack of order and discipline of its supporters and must be punished accordingly.

E. The improper conduct of supporters: the setting off of fireworks

a) *Applicable legal framework and general remarks*

40. According to Article 16 (2) DR (emphasis added):  
*"However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:*
  - a) *the invasion or attempted invasion of the field of play;*
  - b) *the throwing of objects;*
  - c) *the lighting of fireworks or any other objects;*
  - d) *the use of laser pointers or similar electronic devices;*
  - e) *the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;*

- f) *acts of damage;*
- g) *the disruption of national or competition anthems;*
- h) *any other lack of order or discipline observed inside or around the stadium.”*

- 41. According to Article 8 DR, which stipulates the principle of strict liability, and Article 16 (2) DR, which builds on this principle, a club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.
- 42. According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

*b) The responsibility of the club*

- 43. Setting off fireworks is a serious offence because not only can it disrupt the orderly running of the match but also, more importantly, it can endanger the physical integrity of those lighting the fireworks, other spectators, officials and even the players on the pitch. For this reason, the use of pyrotechnic devices in stadiums is strictly forbidden.
- 44. During the Matches, seven fireworks in total were ignited by Liverpool FC supporters.
- 45. This was reported by the Delegates for the Matches and has also been admitted by the club.
- 46. It has long been established in case law that strict liability applies regardless of fault. As a matter of fact, a club cannot therefore argue that it is not liable on the grounds that it did not commit any fault (see *CAS 2002/A/423 PSV Eindhoven*, page 12).
- 47. Applying the principle of strict liability, it is unacceptable for the club to attempt to pass the burden of responsibility for the fireworks offences committed by its supporters in the Second Leg onto Manchester United FC. Accordingly, the CEDB has disregarded this argument.
- 48. The club's arguments that there were only a small number of incidents, that the fireworks were not thrown and that the match was not disrupted by the fireworks are also irrelevant when assessing whether or not breaches of Article 16 (2) (c) DR occurred at the Matches.
- 49. Consequently, based on the foregoing and according to the wording of Article 16 (2) DR, Liverpool FC is to be held responsible for the misconduct of its supporters and must be penalised accordingly.

F. Improper conduct: the late kick-off

*a) Applicable legal framework and general remarks*

- 50. According to Article 11 (2) (g), a breach of the DR is committed by anyone who is responsible for a late kick-off.

51. According to Article 8 DR, a club that is bound by a rule of conduct laid down in UEFA's statutes or regulations may be subject to disciplinary measures and directives if such a rule is violated as a result of the conduct of one of its members, players, officials or supporters and any other person exercising a function on behalf of the member association or club concerned, even if the club concerned can prove the absence of any fault or negligence.

*b) The responsibility of the club*

52. The Delegate for the Second Leg reported that the Liverpool FC players "*left tunnel 1'50" late due to late arrival of 2 Liverpool players*" which contributed to the kick-off being late by 2 minutes and 10 seconds (the additional 20 seconds being attributable to a delay in playing the anthems through no fault of Liverpool FC).

53. This late kick-off offence has been admitted by the club.

54. It needs to be borne in mind that any delay to the kick-off time at a UEFA Europa League match might lead to serious negative consequences for the relationship of UEFA and its commercial/broadcast partners.

55. Further, respect needs to be paid to the nature of the UEFA Europa League as one of UEFA's premier club competitions. In this regard, any behaviour that might tarnish the image of this major competition (such as late kick-offs) cannot be accepted and must be punished accordingly.

56. In the present case, the fact that two Liverpool FC players were late returning from the toilet is clearly unacceptable. This behaviour led to a delay of 1 minute and 50 seconds. This is a significant amount of time, not minimal as the club claims. That another problem added a further 20 seconds onto the total delay cannot detract from the significant problems caused by the Liverpool FC players' late arrival in the tunnel. It is also irrelevant if the club was not seeking to gain a tactical advantage - the long delay that was caused by Liverpool FC stands for itself in this matter.

57. Consequently, the club shall be held responsible for the breach of Article 11 (2) (g) DR and shall be sanctioned accordingly.

**IV. The determination of the appropriate disciplinary measure**

58. Based on Article 17 DR, the CEDB determines the type and extent of the disciplinary measures to impose according to the objective and subjective elements of the case, taking account of any aggravating and mitigating circumstances. In the case of multiple offences, the punishment shall correspond to the most serious offence and be increased depending on the specific circumstances.

59. With regard to the Article 16 2 (e) DR offences:

- the CEDB wishes to stress the highly offensive and provocative nature of the shouts and gestures relating to the Munich air disaster. Such behaviour is completely unacceptable, particularly when directed at the very supporters who have suffered the tragedy;
  - further, such shouts and gestures were performed at two matches and the incidents were widely publicised in the media. Not only does this broaden the impact of the offence caused, but it also reflects particularly badly on UEFA, the competition and Liverpool FC (being one of the most well supported teams in the world); and
  - the chant *"Manchester is full of shit"* is also objectionable, particularly because it is provocative in the context of a high pressure match.
60. The gravity of these offences when considered together cannot be ignored. Accordingly, the CEDB considers that a fine of €40,000 is appropriate.
61. That said, UEFA recognises the efforts taken by Liverpool FC to control its supporters, the particular challenges of such a high profile match between local rivals, the unfortunate provocation by Manchester United FC supporters (who sang chants relating to the Hillsborough tragedy) and also Liverpool FC's lack of previous records for illicit chanting, gestures, etc. On this basis, half of the abovementioned fine (€20,000) shall be suspended for a probationary period of two (2) years.
62. With regard to the crowd disturbances and the throwing of objects, the CEDB notes that this kind of behaviour represents a severe threat to the health and safety of those involved and also everyone else at the stadium. Further, such hooliganism reflects badly on football as a whole.
63. Similarly, the use of fireworks during the Matches created a serious risk to the health and safety of everyone present and must be taken very seriously. The club's previous record of fireworks offences has also been taken into account.
64. The dangers of such behaviour (crowd disturbances, throwing objects and the lighting of fireworks) and the unwholesome light that it casts on the competition, the club, UEFA and football generally cannot be ignored. Such behaviour is truly disgraceful and has no place in football stadia.
65. That said, the CEDB has considered the fact that the Liverpool FC supporters may have been provoked in a highly charged and emotional atmosphere – although, the CEDB stops short of suggesting that provocation on any grounds can be used to defend hooliganism.
66. On this basis, the CEDB deems that a fine of €7,000 is the appropriate sanction in respect of the club's breaches of Articles 16 (2) (b), (c) and (h) DR.
67. In addition, given the damage caused to Manchester United FC's stadium by Liverpool FC supporters, it is only right that Liverpool FC compensate Manchester United FC for any necessary repair work that had to be carried out.

68. Regarding the late kick-off offence, the CEDB draws attention to the serious disruption that such offences cause to the competition and UEFA's commercial activities, as well as the fact that such offences reflect badly on the image of the competition. The club's previous records of late-kick off offences have also been taken into account.
69. Based on the foregoing, the CEDB decides that a fine in the amount of €10,000 is appropriate for this offence. This has been set in accordance with the standing practice of the CEDB.
70. Consequently, the CEDB decides:
1. With regard to the illicit chants, to fine Liverpool FC €40,000. Half of this fine (€20,000) is suspended for a probationary period of two (2) years.
  2. With regard to all of the other incidents, to fine Liverpool FC €17,000.
  3. In addition, Liverpool FC is ordered to contact Manchester United FC within 30 days for the settlement of the damages caused by its supporters.



## Decision of 19 May 2016

Manchester United FC

(Illicit chants; stairways blocked; throwing of objects; crowd disturbances)

### **Circumstances of the case**

During the UEFA Europa League match between Liverpool FC and Manchester United FC on 10 March 2016 (the "First Leg") and the UEFA Europa League match between Manchester United FC and Liverpool FC on 17 March 2016 (the "Second Leg") Manchester United FC supporters sang chants at the Liverpool FC supporters which referenced the Hillsborough and Heysel stadium disasters (including "*murderers, murderers*" and "*stand up if you're murderers*"). Moreover, the Delegate for the Second Leg reported that certain stairways were blocked during the match and that certain Manchester United supporters were involved in crowd disturbances and the throwing of objects (being parts of seats).

**Legal framework** Article 16 (2) DR and Article 38 Safety and Security Regulations.

### **Decision**

The Control, Ethics and Disciplinary Body determined with regard to the violations in Article 16 (2) (e) DR that such violent chants are extremely provocative and offensive thus they are unacceptable. Consequently the CEDB deems appropriate to fine Manchester United FC €40,000. Even so, half of this fine (€20,000) is suspended for a probationary period of two (2) years.

With regard to the crowd disturbances and the throwing of objects, this Disciplinary Body considers the club responsible for the general disorderly behaviour and lack of discipline of its supporters and must be punished accordingly. As a result of the club's breaches of Articles 16 (2) (b) and (h) DR, the CEDB decides that a fine of €10,000 is the appropriate sanction.

In addition, Manchester United FC as the host and match organizer is responsible for breaching Article 38 SSR, as failing to obey the requirement of keeping the stairways free of obstruction. As a result of this incident, the CEDB decides to impose Manchester United FC a fine of €8,000.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairman:</u>	Berzi Sándor (HUN)
<u>Members:</u>	Antenen Jacques (SUI)
	Larumbe Beain Kepa (ESP)
	Lorenz Hans (GER)
	Wolff Joël (LUX)

### **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body ("**CEDB**") on the basis of the official reports, the

written submissions, the exhibits filed and the statements produced in the course of the CEDB proceedings.

2. While this UEFA disciplinary body has considered all of the facts, allegations, legal arguments and evidence submitted in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
3. The most relevant facts of this case can be summarised as follows:
  - during the UEFA Europa League match between Liverpool FC and Manchester United FC on 10 March 2016 (the "**First Leg**") and the UEFA Europa League match between Manchester United FC and Liverpool FC on 17 March 2016 (the "**Second Leg**" and, together with the First Leg, the "**Matches**"), Manchester United FC supporters sang chants at the Liverpool FC supporters which referenced the Hillsborough and Heysel stadium disasters (including "*murderers, murderers*" and "*stand up if you're murderers*");
  - the Delegate for the Second Leg reported that certain stairways were blocked during the match; and
  - the Delegate for the Second Leg reported that certain Manchester United supporters were involved in crowd disturbances and the throwing of objects (being parts of seats).

## II. The Respondent's position

4. By way of summary, in its statements dated 18 April 2016 and 12 May 2016, Manchester United FC:
  - admits that its supporters sang chants during the Matches which referenced the Hillsborough and Heysel stadium disasters;
  - with regard to the charge of illicit chanting, suggests that various mitigating factors should be taken into consideration (notably the extensive preparations undertaken by Manchester United FC ahead of the Matches, the positive comments received from officials regarding its preparations and the joint efforts of Manchester United FC and Liverpool FC in such a challenging environment);
  - considers that the charge of throwing objects should be treated separately from the charge of crowd disturbances;
  - accepts that a small number of its supporters were involved in a disturbance;
  - with regard to the charge of crowd disturbances, suggests that various mitigating factors should be taken into consideration by the CEDB (notably that its supporters were provoked, that its stewards contained the situation quickly, that it has no previous records in this area and that its security preparations were of a high standard);
  - denies that its supporters threw objects and provides various statements to support this claim;
  - suggests that the Delegate did not have a clear line of vision of the incident;

- with regard to the charge of throwing objects, suggests that if the CEDB considers that Manchester United FC supporters did throw objects then the CEDB should take various mitigating factors into consideration (notably that only a small number of supporters could have been involved in the incident, that its supporters were provoked, that its stewards contained the problems quickly, that it has no previous records in this area and that its security preparations were of a high standard);
  - suggests that the allegation of blocked stairways could only relate to Liverpool FC supporters, not Manchester United FC supporters;
  - suggests that the Delegate did not have a clear line of vision of the blocked stairways;
  - denies that it has breached Article 38 of the UEFA Safety and Security Regulations (the “SSR”); and
  - with regard to the blocked stairways, suggests that if the CEDB considers that Manchester United FC did breach Article 38 of the SSR then the CEDB should take various mitigating factors into consideration (notably that it has no previous records in this area and that its security preparations were of a high standard).
5. The more detailed arguments made by Manchester United FC are set out below in so far as they are relevant.

### III. Merits of the Case

#### A. UEFA’s competence

6. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (the “DR”), the CEDB is competent to deal with this case.
7. In light of the above, the UEFA Statutes, rules and regulations (in particular the DR and SSR) are applicable to these proceedings.

#### B. The illicit chants

##### a) *Applicable legal framework and general remarks*

8. According to Article 16 (2) DR (emphasis added):

*“However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:*

- a) *the invasion or attempted invasion of the field of play;*
- b) *the throwing of objects;*
- c) *the lighting of fireworks or any other objects;*
- d) *the use of laser pointers or similar electronic devices;*

- e) the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;
- f) acts of damage;
- g) the disruption of national or competition anthems;
- h) any other lack of order or discipline observed inside or around the stadium.”

9. According to Article 8 DR, which stipulates the principle of ‘strict liability’, and Article 16 (2) DR, which builds on this principle, a club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.

*b) The responsibility of the club*

- 10. The CEDB notes that Manchester United FC has admitted that its supporters sang the relevant chants at the Matches.
- 11. It is further noted that that this has been confirmed by audio/video evidence, as analysed in the report of the UEFA Ethics and Disciplinary Inspector.
- 12. The CEDB takes this opportunity to recall that it cannot allow football matches organised by UEFA to become forums for people to promote offensive and provocative opinions that are not fit for a sports event.
- 13. Accordingly, any breaches of Article 16 (2) (e) DR must be taken very seriously.
- 14. The members of the CEDB are deeply saddened to have to consider a case involving chants which target the victims of football tragedies. Chants like “murderers, murderers” and “stand up if you’re murderers” are deplorable. Further, given the context of a match between fierce rivals, they are clearly designed to provoke aggression. This is disturbing.
- 15. On the basis of the foregoing and in light of the wording of Articles 8 and 16 (2) DR, the CEDB considers that Manchester United FC is to be held responsible for the violation by its supporters of Article 16 (2) (e) DR and must be punished accordingly.

C. The improper conduct of supporters: the throwing of objects

*a) Applicable legal framework and general remarks*

16. According to Article 16 (2) DR (emphasis added):

“However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:

- a) the invasion or attempted invasion of the field of play;

- b) *the throwing of objects;*
  - c) *the lighting of fireworks or any other objects;*
  - d) *the use of laser pointers or similar electronic devices;*
  - e) *the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;*
  - f) *acts of damage;*
  - g) *the disruption of national or competition anthems;*
  - h) *any other lack of order or discipline observed inside or around the stadium.”*
17. According to Article 8 DR, which stipulates the principle of ‘strict liability’, and Article 16 (2) DR, which build on this principle, a club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.
18. According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.
- b) The responsibility of the club*
19. The CEDB recalls that throwing objects is a serious offence because not only can it disrupt the orderly running of the match but also, more importantly, it can endanger the physical integrity of those attending the match (i.e. other spectators, officials and even the players on the pitch). For this reason, throwing objects is strictly forbidden.
20. The Delegate for the Second Leg reported that certain Manchester United supporters were involved in throwing objects (being parts of seats).
21. According to the principle of ‘strict liability’, a club is to be held responsible for the improper conduct of its supporters even if it might not be at fault itself.
22. The CEDB notes that the club denies that its supporters threw objects and that the club speculates that the Delegate did not have a clear line of vision of the incident.
23. According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.
24. In the opinion of the CEDB, none of the evidence presented by the club is sufficient to breach the accuracy of the official Delegate’s report which specifically states that Manchester United FC supporters threw parts of seats at Liverpool FC supporters.

25. Consequently, according to Article 16 (2) (b) DR above, the club is to be held responsible for the misconduct of its supporters and must be penalised accordingly.

D. The improper conduct of supporters: crowd disturbances

a) *Applicable legal framework and general remarks*

26. According to Article 16 (2) DR (emphasis added):

“However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:

- a) *the invasion or attempted invasion of the field of play;*
- b) *the throwing of objects;*
- c) *the lighting of fireworks or any other objects;*
- d) *the use of laser pointers or similar electronic devices;*
- e) *the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;*
- f) *acts of damage;*
- g) *the disruption of national or competition anthems;*
- h) *any other lack of order or discipline observed inside or around the stadium.*”

27. According to Article 8 DR, which stipulates the principle of ‘strict liability’, and Article 16 (2) DR, which build on this principle, a club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.

28. According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

b) *The responsibility of the club*

29. The Delegate for the Second Leg indicated that some Manchester United supporters were involved in a crowd disturbance after being provoked by Liverpool FC supporters.

30. According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

31. The CEDB notes that Manchester United FC admits that a disturbance involving its supporters did occur, although it suggests that this was minor.

32. In the opinion of the CEDB, the scale of the crowd disturbance is irrelevant when assessing whether or not a breach of Article 16 (2) (h) DR occurred on this occasion.

33. It is clear that, according to the Delegate's report and the club's own admission, a crowd disturbance involving Manchester United FC supporters did in fact occur. The fact that only a small number of Manchester United supporters may have been involved does not change this fact.
34. In addition, this incident was not the only example of the Manchester United supporters' lack of order and discipline during the match – they also threw seats at the Liverpool supporters, as considered above.
35. It is noted that Manchester United FC suggests that the charge of crowd disturbances should be considered separately from the charge of throwing objects (which it denies, as discussed above).
36. However, in the opinion of the CEDB, it would be nonsensical to only consider the throwing of objects under Article 16 (2) (b) DR. Clearly such behaviour must also be considered under Article 16 (2) (h) DR as another example of the general disorderly behaviour and lack of discipline of Manchester United FC supporters during the Second Leg.
37. On the basis of the foregoing and in light of the wording of Articles 8 and 16 (2) DR, Manchester United FC is to be held responsible for the lack of order and discipline of its supporters and must be punished accordingly.

E. Insufficient organisation: blocking of stairways

a) *Applicable legal framework and general remarks*

38. According to Article 49 SSR, any breach of the SSR may be penalised in accordance with the DR.
39. As stated in Article 2 SSR, the purpose of the regulations is to safeguard the safety and security of everyone present at a match. In order to achieve this, several provisions concerning spectator control are included in the regulations.
40. Of particular relevance for the present case is Article 38 SSR which provides that (emphasis added) *"the match organiser must take measures to ensure that all public passageways, corridors, stairs, doors, gates and emergency exit routes are kept free of any obstructions, which could impede the free flow of spectators."*
41. Moreover, under Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

*b) The responsibility of the club*

42. Under Article 2 SSR, the purpose of the regulations is to maintain the safety and security of everyone present at the match. In order to achieve this goal, the SSR contain several provisions concerning spectator control at the stadium (including Article 38 SSR).
43. It is well established that UEFA is entitled to put in place and enforce regulations aimed at protecting the safety of spectators, including the requirement that the organisers of football matches must keep stairways free of obstruction (in this regard, see the recent case of *CAS 2015/A/3926 FC Gelsenkirchen-Schalke 04 v UEFA*).
44. In the case at hand, according to the report of the Delegate, certain stairways were blocked during the Second Leg.
45. The CEDB notes that the match organiser (in this case Manchester United FC) must take measures to ensure that all public passageways, corridors, stairs, doors, gates and emergency exit routes are kept free of any obstructions, which could impede the free flow of spectators. It does not matter if it was Manchester United supporters or Liverpool FC supporters who were blocking the stairways during the Second Leg. The obligation on the match organiser under the SSR as regards the blocking of stairways is clear.
46. In the opinion of the CEDB, none of the evidence presented by the club is sufficient to breach the accuracy of the official Delegate's report which specifically states that stairways were blocked during the match.
47. Bearing the above in mind, Manchester United FC as the host and match organiser violated Article 38 SSR and must be punished accordingly.

**IV. The determination of the appropriate disciplinary measure**

48. Based on Article 17 DR, the CEDB determines the type and extent of the disciplinary measures to impose according to the objective and subjective elements of the case, taking account of any aggravating and mitigating circumstances. In the case of multiple offences, the punishment shall correspond to the most serious offence and be increased depending on the specific circumstances.
49. With regard to the chanting, the CEDB wishes to stress the highly offensive and provocative nature of the chants. Such behaviour is completely unacceptable, particularly when directed at the very supporters who have suffered the tragedies.
50. Further, such chants were performed at two matches and the incidents were widely publicised in the media. Not only does this broaden the impact of the offence caused, but it also reflects particularly badly on UEFA, the competition and Manchester United FC (being one of the most well supported teams in the world).



51. In the opinion of the CEDB, the gravity of these offences cannot be ignored. Accordingly, the CEDB considers that a fine of €40,000 is appropriate.
52. That said, UEFA recognises the efforts taken by Manchester United FC to control its supporters and the particular challenges of such a high profile match between local rivals. On this basis, half of the abovementioned fine (€20,000) shall be suspended for a probationary period of two (2) years.
53. With regard to the crowd disturbances and the throwing of objects, the CEDB notes that this kind of behaviour represents a severe threat to the health and safety of those involved and also everyone else at the stadium. Further, such hooliganism reflects badly on football as a whole.
54. Whilst the CEDB recognises that the Manchester United FC supporters may have been provoked, as well as acknowledging the efforts undertaken by Manchester United FC and the fact that it has no previous records in this area, the dangers of such behaviour and the unwholesome light that it casts on the competition, the club, UEFA and football generally cannot be ignored. Such behaviour is truly disgraceful.
55. Consequently, the Control, Ethics and Disciplinary Body deems that a fine of €10,000 is the appropriate sanction in respect of the club's breaches of Articles 16 (2) (b) and (h) DR.
56. Regarding the blocking of stairways, the CEDB took into account the seriousness of the offence committed, noting that the blocking of stairways represents a significant threat to the health and safety of supporters and other persons in the stadium. Whilst the CEDB recognises the efforts undertaken by Manchester United FC, it has to be remembered that the obligations in the SSR are of the utmost importance for the safety of all persons present at the match and any breaches of these rules must be punished strongly. The consequences of failing to comply with Article 38 SSR can, after all, potentially be very serious.
57. Based on the foregoing, the CEDB decides that a fine in the amount of €8,000 is appropriate for this offence.
58. Consequently, the CEDB decides:
  1. With regard to the illicit chants, to fine Manchester United FC €40,000. Half of this fine (€20,000) is suspended for a probationary period of two (2) years.
  2. With regard to all of the other incidents, to fine Manchester United FC €18,000.

## Decision of 19 May 2016

The Football Association of Wales

(racism, other discriminatory conduct and propaganda; insulting acts)

### **Circumstances of the case**

On 29 March 2016, during the European Under-21 Championship 2017 match between Romania and Wales, the referee for the match reported that, after the game had finished, the Welsh player Joshua Yorwerth verbally abused one of the assistant referees. The player called the assistant referee, amongst other things, a “ *fucking faggot* ”. The player was very aggressive. The Football Association of Wales (the “FAW”) admits that the said player used such language, even he ignored the deplorable nature of the word “faggot”, but denies that the assistant referee was the target of the abuse.

**Legal framework** Article 14 DR, Article 15 (1) DR and Article 38 DR.

### **Decision**

The fight against discrimination is a high priority for UEFA. UEFA has a policy of zero tolerance towards discrimination on and off the pitch. Any discriminatory conduct is considered a serious offence under the DR and shall be punished with severe sanctions.

In the present case, the Control, Ethics and Disciplinary Body finds clear that the player’s behaviour can be considered a breach of both Article 14 and Article 15 (1) DR, therefore, decides to suspend the Football Association of Wales player Joshua Yorwerth from participating in all UEFA club and national team competition matches for which he would be otherwise eligible until 31 December 2016. Furthermore, the Control, Ethics and Disciplinary Body warns the FAW to increase their efforts to prevent its players from using such discriminatory language. It is frankly surprising and alarming that the player Joshua Yorwerth was not aware that the term “*faggot*” is discriminatory.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Members:</u>	Antenen Jacques (SUI) Bonett Chris (MLT) Gea Tomás (AND) Larumbe Beain Kepa (ESP) Lorenz Hans (GER) Řepka Rudolf (CZE) Wolff Joël (LUX)

## I. Facts Of The Case

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the Control, Ethics and Disciplinary Body proceedings. While this UEFA disciplinary body has considered all of the facts, allegations, legal arguments and evidence submitted by The Football Association of Wales (the "**FAW**") in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. Briefly, the most relevant facts of this case can be summarised as follows:
  - The referee for the match between Romania and Wales on 29 March 2016 reported that, after the game had finished, the Welsh player Joshua Yorwerth verbally abused one of the assistant referees.
  - The player called the assistant referee, amongst other things, a "*fucking faggot*".
  - The player was very aggressive.

## II. The Respondent's position

3. In its statement dated 5 April 2016 (which includes a statement from the player), the FAW:
  - Accepts that the player used the phrase "fucking faggot".
  - Claims that these words were directed by the player at his teammates, not the assistant referee.
  - Suggests that the player's language may have been misconstrued by the referee because of the close proximity.
  - Claims that the player did not understand the meaning of the word "faggot" at the time.
  - Suggests that, once he was informed of the meaning, he accepts that it is unacceptable.
4. The more detailed arguments made by the FAW in support of its written submissions are set out below in so far as they are relevant.

## III. Merits of the Case

### A. UEFA's competence

5. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (the "**DR**"), the Control, Ethics and Disciplinary Body is competent to deal with the case.
6. In light of the above, the UEFA Statutes, rules and regulations (in particular the DR) are applicable to these proceedings.

B. The discriminatory conduct

a) *Applicable legal framework and general remarks*

7. Article 3 DR makes it clear that players are subject to the DR and UEFA's disciplinary powers.
8. Article 14 DR is entitled "*Racism, other discriminatory conduct and propaganda*".
9. Under Article 14 (1) DR;  
  
*"Any person under the scope of Article 3 DR who insults the human dignity of a person or group of persons on whatever grounds, including skin colour, race, religion or ethnic origin, incurs a suspension lasting at least ten matches or a specified period of time, or any other appropriate sanction."*
10. Under Article 15 (1) DR:  
*"The following suspensions apply for competition matches: (...)*  
*(d) suspension for three competition matches or a specified period for insulting any match official;"*
11. According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

b) *The responsibility of the player*

12. The fight against discrimination is a high priority for UEFA. UEFA has a policy of zero tolerance towards discrimination on and off the pitch. Any discriminatory conduct is considered a serious offence under the DR and shall be punished with severe sanctions.
13. In the present case, the referee's official report for the match states that, in the tunnel after the match, the Welsh player Joshua Yorwerth acted aggressively towards one of the assistant referees and also verbally abused him using the phrase "*fucking faggot*".
14. The player admits that he used such language but denies that the assistant referee was the target of the abuse.
15. The name "*faggot*" is a well-known offensive and derogatory term used against male homosexuals. It is clearly discriminatory and 'homophobic' in nature. Use of such language by football players, coaches, fans and other persons is totally unacceptable.
16. The player's purported ignorance of the deplorable nature of the word "*faggot*" is irrelevant for the purposes of this case.

17. Further, it is clear from the context of the incident, the player's general aggressive behaviour and the fact that he added the word "*fucking*" to his outburst that he intended to severely offend.
18. The referee reports that the assistant referee was the target of the abuse. Applying Article 38 DR, facts contained in official UEFA reports are presumed to be accurate.
19. The Control, Ethics and Disciplinary Body notes that none of the evidence provided by the FAW breaches the accuracy of the referee's report with regard to identifying the target of the abuse.
20. On this basis, the Control, Ethics and Disciplinary Body concludes that the conduct perpetrated by the player Joshua Yorwerth violated Articles 15(1) and 14 DR and must be punished accordingly.

#### **IV. The determination of the appropriate disciplinary measure**

21. Based on the foregoing, it is clear that the player's behaviour can be considered a breach of both Article 14 and Article 15 (1) DR.
22. However, given the clear discriminatory nature of the conduct/language, the Control, Ethics and Disciplinary Body is in doubt that this offence must be considered under the more serious heading of Article 14 DR.
23. Under Article 18 DR, the relevant disciplinary body is entitled to take the disciplinary measure to be imposed for the most serious of the relevant offences and increase it accordingly.
24. Under Article 14 (1) DR, a suspension lasting at least ten matches or a specified period of time can be imposed.
25. The Control, Ethics and Disciplinary Body draws attention to the fact that following the implementation of the 2013 edition of the DR (and as subsequently confirmed again in the 2014 edition of the DR), UEFA's fight against discriminatory behaviour entered a new era. This has resulted in more severe sanctions being imposed in respect of discriminatory conduct.
26. Applying Article 17 (3) DR, sanctions imposed under Article 14 DR be only be modified in "*exceptional circumstances*".
27. In the present case, the Control, Ethics and Disciplinary Body does not accept that any of the arguments put forward by the FAW qualify as exceptional circumstances.
28. On this occasion, the player used an extremely well-known and discriminatory term. This is admitted by the player.

29. The Control, Ethics and Disciplinary Body notes that, even if the assistant referee was not the target of the abuse, use of this language is completely unacceptable at football matches (and elsewhere). It does not matter who the target was in the context of Article 14 DR.
30. The seriousness of such an offence cannot be overstated.
31. Accordingly, bearing in mind the above considerations, the Control, Ethics and Disciplinary Body decides that the player Joshua Yorwerth shall be suspended from participating in all UEFA club and national team competition matches for which he would be otherwise eligible until 31 December 2016.
32. Further, the Control, Ethics and Disciplinary Body warns the FAW that it should increase its efforts to prevent its players from using such discriminatory language. It is frankly surprising and alarming that the player Joshua Yorwerth was not aware that the term "*faggot*" is discriminatory.
33. The Control, Ethics and Disciplinary Body hereby decides:
  1. To suspend the Football Association of Wales player Joshua Yorwerth from participating in all UEFA club and national team competition matches for which he would be otherwise eligible until 31 December 2016.
  2. The association ensures the player is informed personally of this decision.

## Decision of 19 May 2016

Belarus Football Association - Sergei Shostak

(doping)

### **Circumstances of the case**

On 10 December 2015, in a match between the national teams of the Croatia Football Federation and the Belarus Football Federation played at the FIFA Futsal World Championship 2016 Main Qualifying Round, the player Sergei Shostak ("the player") was selected for a doping control, in which a urine sample with the reference number n°3319813 ("the sample") was taken. On the Supplementary Doping Control Form (D2) for the sample, the player declared having taken the medications Berotec and Budesonid.

The player admitted to having taken the abovementioned substances and stated that he did not wish for his "B" sample to be analysed. On 14 March 2016, the player submitted an application for a "Therapeutic Use Exemption" ("TUE") for the use of Fenoterol. Said application contained a statement of the player's doctor who stated that his diagnosis was for bronchial asthma and that the player required the use of Berotec (which contains Fenoterol) in a daily inhaled dose of 200mcg, as well as Budesonide in the same dosage and frequency.

**Legal framework** Article 13 DR, Article 8 (1) Anti-Doping Regulations.

### **Decision**

Chairman of the Control, Ethics and Disciplinary Body ordered that the Belarus Football Federation player Sergei Shostak had to be suspended from participating in any football related activity for a period of six months.

Chairman: Partl Thomas (AUT)

### **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the Control, Ethics and Disciplinary Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the player in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. On 10 December 2015, in a match between the national teams of the Croatia Football Federation and the Belarus Football Federation played at the FIFA Futsal World Championship 2016 Main Qualifying Round, the player Sergei Shostak ("the player") was selected for a doping control, in which a urine sample with the reference number n°3319813 ("the sample") was taken.

3. On the Supplementary Doping Control Form (D2) for the sample, the player declared having taken the medications Berotec and Budesonid.
4. The Player's A Sample was analysed by the WADA-accredited "Laboratoire Suisse d'Analyse du Dopage" (the "Laboratory") in Switzerland. The sample analysis resulted in an Adverse Analytical Finding ("AAF") for the prohibited substance "Fenoterol", a specified substance pertaining to the category S3. Beta-2-agonists of the WADA Prohibited List.
5. On 25 January 2016, the player informed UEFA that he had been diagnosed with "asthma with prevalence of allergic component" in 2012, having been treated under the supervision of a specialist since then with Fenoterol, Budosenid and Berotec (which contains Fenoterol). Moreover, the player informed UEFA that he only mentioned his condition to his coach and team doctor once they had arrived in Croatia preparing for the match.
6. The player admitted to having taken the abovementioned substances and stated that he did not wish for his "B" sample to be analysed.
7. On 14 March 2016, the player submitted an application for a "Therapeutic Use Exemption" ("TUE") for the use of Fenoterol. Said application contained a statement of the player's doctor who stated that his diagnosis was for bronchial asthma and that the player required the use of Berotec (which contains Fenoterol) in a daily inhaled dose of 200mcg, as well as Budesonide in the same dosage and frequency.
8. On that same date, the "UEFA TUE Committee" approved the Player's TUE for Fenoterol in the requested dose, noting that the player was also using Budosenide 200mcg once daily. This TUE is valid for four years, from 14 March 2016 until 13 March 2020.
9. On 4 April 2016, disciplinary proceedings were opened against the player for alleged doping offences in accordance with Article 8.01 of the UEFA Anti-Doping Regulations in conjunction with Article 13 of the UEFA Disciplinary Regulations.

## **II. Merits of the Case**

### **A. UEFA's competence.**

10. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations, the Control, Ethics and Disciplinary Body is competent to deal with the case.
11. In accordance with Article 23 (2) (a) of the UEFA Disciplinary Regulations, the Chairman of the Control, Ethics and Disciplinary Body was taking the decision as judge sitting alone.
12. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.



B. The doping offence

a) *Applicable legal framework and general remarks*

13. According to Article 9.01 Anti-Doping Regulations,

*Suspension for presence, use, attempted use, or possession of a prohibited substance or a prohibited method The period of suspension for a first violation under paragraph 2.01a (presence of a prohibited substance or its metabolites or markers), 2.01b (use or attempted use of a prohibited substance or prohibited method) or 2.01f (possession of a prohibited substance or prohibited method) is as follows, subject to any reduction or suspension of this period pursuant to paragraph 10.01, 10.02 or 10.03.*

a) *The period of suspension is four years if:*

- i. the anti-doping rule violation does not involve a specified substance (unless the player or other person can establish that it was not intentional); or*
- ii. the anti-doping rule violation involves a specified substance and UEFA can establish that it was intentional.*

b) *If paragraph a) does not apply, the period of suspension is two years.*

c) *As used under paragraphs 9.01 and 9.02, the term “intentional” is meant to identify those players who cheat. The term, therefore, requires that the player or other person engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an adverse analytical finding for a substance which is only prohibited in-competition is rebuttably presumed to be “not intentional” if the substance is a specified substance and the player can establish that the prohibited substance was used out-of-competition.*

14. According to Article 10 Anti-Doping Regulations,

*10.01 Lifting the period of suspension where there is no fault or negligence if a player or other person establishes in an individual case that he bears no fault or negligence, then the otherwise applicable period of suspension is lifted.*

*10.02 Reducing the period of suspension based on no significant fault or negligence*

*a) Reducing suspensions for violations of paragraph 2.01a (presence of prohibited substance or its metabolites or markers), 2.01b (use or attempted use of a prohibited substance or method), or 2.01f (possession of a prohibited substance or prohibited method) involving specified substances or contaminated products.*

*i) Specified substances*

*Where the anti-doping rule violation involves a specified substance, and the player or other person can establish no significant fault or negligence, then the minimum sanction is a reprimand and no period of suspension and the maximum sanction two years of suspension, depending on the player or other person's degree of fault.*

15. According to Article 3 Anti-doping Regulations,

*UEFA has the burden of establishing that an anti-doping rule violation has occurred. The standard of proof is whether UEFA has established an antidoping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. Where a player or other person alleged to have committed an anti-doping rule violation has the burden of rebutting a presumption or establishing specified facts or circumstances, the standard of proof is the balance of probability.*

16. According to Article 4.03 Anti-Doping Regulations,

*"For purposes of the application of Articles 9, 10 and 11, all prohibited substances are considered as specified substances, except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. The category of specified substances does not include prohibited methods."*

17. According to Art. 7.01 of the 2015/16 Regulations of the UEFA European Qualifying Competition for the 2016 FIFA Futsal World Cup:

*"Doping is forbidden and is a punishable offence. In case of anti-doping rule violations, UEFA will instigate disciplinary proceedings against the perpetrators and take the appropriate disciplinary measures in accordance with the UEFA Disciplinary Regulations and UEFA Anti-Doping Regulations. This may include the imposition of provisional measures. "*

*b) The responsibility of the player*

18. First and foremost, the Chairman of the Control, Ethics and Disciplinary Body recalled that the presence of the prohibited substance was detected as a result of an adverse analysis on the player on 10 December 2015 by the A analysis and the player did not contest these results, i.e. did not request the analysis of the B sample.
19. The Chairman of the Control, Ethics and Disciplinary Body subsequently noted that Fenoterol is a specified substance pertaining to the category S3. Beta-2-agonists of the WADA Prohibited List.
20. Likewise, the Chairman of the Control, Ethics and Disciplinary Body confirms the fact that the player does not challenge the Adverse Analytical Finding and thus does not contend that an anti-doping violation has occurred pursuant to article 2.01 (a) of the UEFA Anti-Doping Regulations. Therefore, the presence of a violation of the UEFA Anti-Doping Regulations by the player is undisputed.
21. The Chairman of the Control, Ethics and Disciplinary Body further recalled that on 14 March 2016, the player submitted an application for a Therapeutic Use Exemption (TUE) for the use of Fenoterol which was approved by the UEFA TUE Committee regarding the usage of Fenoterol in the requested dose. The Chairman of the Control, Ethics and Disciplinary Body finally recalled that the said TUE is valid for four years, from the date of its issuance on 14 March 2016 until 13 March 2020.
22. With this being established, the Chairman of the Control, Ethics and Disciplinary Body deemed that due to the fact that the player was tested positive on the specified substance Fenoterol on 10 December 2015 as established in Article 2-01 (a) of the UEFA Anti-Doping Regulations, without being in possession of a valid TUE at the time of the testing as required by Article 5.01 of the UEFA Anti-Doping Regulations, bearing in mind that the relevant TUE was only requested by the player and issued by the UEFA TUE Committee after the testing of the player, the player has committed a doping rule violation in the sense of Article 9.01 (b) of the UEFA Anti-Doping Regulations in conjunction with Article 2-01 (ii) of the UEFA Anti-Doping Regulations.

### **III. The determination of the appropriate disciplinary measure**

23. It shall be recalled that for prohibited substances as it is Fenoterol, the period of suspension shall be two years, in accordance with Art. 9.01 (b) of the UEFA Anti-Doping Regulations, subject to any reduction or suspension of this period pursuant to Article 10.01, 10.02 or 10.03 of the UEFA Anti-Doping Regulations.
24. However, after stating that paragraph 10.03 of the UEFA Anti-Doping Regulations was not applicable to the case at hand, the Chairman of the Control, Ethics and Disciplinary Body subsequently concluded that in order to determine the appropriate disciplinary sanction, it needed to determine whether there was an absence of fault on the player's part, or whether there was an absence of significant fault or negligence.

25. In this regard, the Chairman of the Control, Ethics and Disciplinary Body referred to Appendix C of the UEFA Anti-Doping Regulations which defines the concepts of “no fault or negligence” and “no significant fault or negligence”, and stipulates a mandatory condition for these to be considered.
26. Appendix C of the UEFA Anti-Doping Regulations stipulates that in order to prove that there was no fault or negligence or no significant fault or negligence, respectively, the player has to establish how the prohibited substance Fenoterol entered his system. As it was stated by the UEFA Ethics and Disciplinary Inspector, by including the medication Berotec containing the substance Fenoterol in his Supplementary Doping Control Form (D2), the prescription for this medicine made by his doctor starting in 2012 and the player’s acknowledgement that he had been taking Berotec since then, the Chairman of the Control, Ethics and Disciplinary Body agreed with the arguments of the UEFA Ethics and Disciplinary Inspector that the player has sufficiently discharged his burden of proving the origin of the prohibited substance found in his samples.
27. However, as to the actual degree of fault or negligence, the Chairman of the Control, Ethics and Disciplinary Body was also convinced that the player has not fully complied with his duty of care and has not taken all reasonably necessary steps to ensure that a prohibited substance did not enter his body which is obvious, given that the player has been taking Fenoterol to treat his asthma as from 2012 without ever requesting a TUE for the use of the substance and only applying for the relevant TUE on 14 March 2016 which would have clearly been the player’s obligation as it is established in Article 5.01 of the UEFA Anti-Doping Regulations. Consequently, as this was clearly not a case of “no fault or negligence”, Art. 10.01 of the UEFA Anti-Doping Regulations is therefore not applicable.
28. Hence, in accordance with Art. 10.02 (a) (i) of the UEFA Anti-Doping Regulations, the player has to expect a sanction which is between a reprimand and two years of suspension for the presence of a specified substance in his samples.
29. In order to determine the concrete sanction for the player within this span, and in order to assess whether the player’s degree of fault or negligence was significant, normal or light, bearing in mind the legal principles and the criteria established by the CAS (cf. CAS 2013/A/3327 Marin Cilic v. International Tennis Federation, paragraphs 69-70), the Chairman of the Control, Ethics and Disciplinary Body took into account the following specific and individual mitigating circumstances:
  - The player took the medication which ultimately contained Fenoterol upon a doctor’s prescription from 2012 in order to treat his asthmatic disease he was suffering from. This circumstance is backed by the fact that the player’s application for a TUE was accepted by the UEFA TUE Committee.
  - The player never attempted to hide the use of Fenoterol as he expressly declared Berotec on his Supplementary Doping Control Form (D2).

30. In view of the above, recalling again the principles of the CAS regarding the question whether the negligence of the player was light, normal or significant, the Chairman of the Control, Ethics and Disciplinary Body concluded that the player's negligence in the present case was light, which could generally lead to a sanction of four months, this if it was the "standard" light degree of fault.
31. However, the Chairman of the Control, Ethics and Disciplinary Body also recalled the following aggravating circumstances:
- Despite the fact that the player has been using the prohibited substance since 2012, he did not ask for a TUE to use Fenoterol until 14 March 2016, i.e. until after the adverse analytical result of his samples taken in December 2015.
  - The player did not consult with his doctors regarding the content of the medication prescribed to him in order to make sure that the treatment prescribed to him did not include any prohibited substances, which does not speak for a careful due diligence which can be expected from a professional football player.
  - The player did not notify the coaching or medical staff of the Belarus national futsal team about his condition or the treatment which he had been undergoing and did neither inform them about the medication he was taking.
32. Consequently, the Chairman of the Control, Ethics and Disciplinary Body came to the conclusion that due to the aggravating circumstances which are stated above, the present case does not constitute a case of a "standard" light degree of fault and hence deemed that a suspension of 6 months was the adequate and appropriate sanction for the player.
33. Therefore, the Chairman of the Control, Ethics and Disciplinary Body orders that the Belarus Football Federation player Sergei Shostak to be suspended from participating in any football related activity for a period of six (6) Months.



Appeals Body

unicredit

## Decision of 2 February 2016

FC Schalke 04

(crowd disturbances; setting off of fireworks)

### **Circumstances of the case**

On 5 November 2015, FC Schalke 04 played an UEFA Europa League match against AC Sparta Praha. As established by the report of the UEFA Match Delegate, in the 33<sup>rd</sup> minute of the match, supporters of Schalke 04 located on sector H84 tried to tear down the fence towards the empty sector H85 for 2-3 minutes without success. In addition, before and during the match, many Bengal flares were ignited by the FC Schalke 04 supporters.

**Legal framework** Article 16 (2) DR.

### **Decision**

On its decision of 19 November 2015 the Control, Ethics and Disciplinary Body considered that FC Schalke 04 was responsible following the principle of strict liability enshrined in both Article 8 and 16 DR and fined the latter €35'000.

The Appeals Body decides that the appeal lodged by the appeal lodged by FC Schalke 04 is declared inadmissible. Consequently, the UEFA Control, Ethics and Disciplinary Body's decision of 19 November 2015 is confirmed.

<u>Chairman:</u>	Pedro Tomás (Spain)
<u>Vice-chairman:</u>	Michael Maessen (Netherlands)
<u>Members:</u>	Ivaylo Ivkov (Bulgaria) Gianluca D'Aloja (Italy)

### **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body's decision of 22 October 2015 (the "Decision"), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. On 5 November 2015, FC Schalke 04 played an UEFA Europa League match against AC Sparta Praha.

3. Briefly, the most relevant facts of this case, as established by the report of the UEFA match delegate, can be summarized as follows:
  - The crowd disturbances
    - In the 33rd minute of the match, supporters of Schalke 04 located on sector H84 tried to tear down the fence towards the empty sector H85 for 2-3 minutes without success.
    - After the match, the head of Schalke 04 security explained that the reason for the incident was that the host-club's security allegedly tried to take a flag away from one of the Schalke 04 supporters.
    - Also after the match, the head of police which was responsible for the security of the match explained that one of the Schalke 04 supporters climbed the fence between sectors H84 and H 85 and tried to take away the flag from another Schalke 04 supporter, located at sector H 86.
    - According to a statement of the police, this was leading to clashes between the visiting Schalke 04 supporters. This event was witnessed by the UEFA match delegate in the video control room.
  - The setting off of fireworks by the Schalke 04 supporters
    - Before kick-off: about 20 Bengal flares. First minute of the match: 1 Bengal flare. 20th minute of the match: between 8 and 9 flares. 47th minute of the match: 5-6 Bengal flares. 47th minute of the match: about 6-7 Strobel lights. 86th minute of the match: 6 Bengal flares.
4. On 19 November 2015 the Control, Ethics and Disciplinary Body considered that Appellant was responsible following the principle of strict liability enshrined in both Article 8 and 16 DR and fined the latter 35'000€.
5. The decision without grounds was notified to the Club on 23 November 2015.
6. On 1 December 2015, the motivated decision was sent to Appellant.

## **II. Summary of the proceedings before the Appeals Body**

7. On 9 December 2015, FC Schalke 04 sent the statement of appeal and the appeal brief against the Control, Ethics and Disciplinary Body's decision of 19 November 2015.
8. In its statements, the Appellant, essentially, argued the following:
  - Appellant requests the disciplinary proceedings to be reopened due to an internal organizational failure which has impeded the Club to exercise its right to appeal the decision of the Control, Ethics and Disciplinary Body in a timely manner.
  - The reason was mainly that the person responsible to submit the statement of appeal failed to do so as she did not follow the order addressed to her in this sense.
  - Reopening disciplinary proceedings is a well-established mechanism in the European legal context which foresees that the person may exercise its fundamental right as to



be heard before a tribunal. In this sense the German jurisprudence has backed up this approach (BFH decision of 03.11.2010).

- Briefly, Appellant holds that due to the fact that the order to send the statement of appeal was clearly addressed to a person who is reliable, the confidence in that the said statement of appeal would be submitted should justify the reopening of disciplinary proceedings, being such bureaucratic failure not to be used against the Appellant's right to appeal.
- The above is also established according to the Appellant in the light of Article 46 DR which contemplates the conditions on reopening of disciplinary proceedings,

9. On 26 January 2016, the UEFA ethics and disciplinary inspector submitted his reply to the appeal, requesting that it be rejected and the costs charged accordingly.

### **III. Hearing**

10. No hearing was held.

### **IV. Appeals Body Competence and Admissibility of the Appeal**

11. Article 24 (4) DR states as follows: "The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body."
12. The Appeals Body notes that the statement of the appeal and the appeals brief, were submitted out of the deadline established in Article 53 (2) DR. This extent has not been disputed by Appellant.
13. However, Appellant claims at this point that such failure was committed by mistake by a reliable person who did not follow the clear order of submitting the statement of appeal within the deadline established by the UEFA DR. Appellant concludes that this situation shall not act against the right of Appellant to appeal the case at hand.
14. However, Article 53 (5) DR clearly establishes that if deadlines contemplated in this same provision, mainly those in Article 53 (2) and (3) DR, are not observed, the chairman declares the appeal inadmissible.
15. Appellant was not able to bring forward any grounded argument that may lead to consider that an event or circumstance beyond the control of Appellant occurred in this case. Administrative failures based on an improper internal communication between the staff of the club and the lawyers hired by the latter remains in the scope of responsibility of Appellant and stays there. It is therefore not possible to make UEFA co-responsible for a negligent behaviour of the club's representatives. It cannot be deemed as a reasonable argument the fact that the Appellant's administrative organisation was not up to the task. In this regard, the Appeals Body considers that the wording of Article 53 (5) DR is clear insofar if deadlines are not observed the appeals is declared inadmissible.

16. In the case at hand, deadlines have not been observed, which was also admitted by Appellant, being the legal consequence to declare the appeal inadmissible.
17. Furthermore, Appellant intent to reopen the disciplinary proceedings is also infructuous as it is merely trying to bend Article 46 DR to its interest.
18. According to Article 46 (1) DR, on request, the competent disciplinary body reopens proceedings where a party or UEFA claims to have new and substantial facts or evidence that it was unable to provide before the decision became effective.
19. Briefly it contemplates mainly those situations in which substantial facts or evidence related to the proceedings have come to light. The fact that the secretary of the Club was not diligent following the order addressed to her by the management and/or the lawyers of the Club has no relation to the merits of the case as it does not add any new facts or evidence to it.
20. Consequently, the above argument is also without merit and the request has to be rejected.

**V. Costs**

21. The allocation of the costs of proceedings before the Appeals Body depends on the outcome of those proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated to the various parties or borne by UEFA. The appeal fee is either deducted from the costs of proceedings or reimbursed (Article 44 (2) DR).
22. It is considered justified to charge all of the costs of this case to the appellant, whose appeal is rejected on all counts.
23. Consequently, the costs of the proceedings are € 1'000 (minus the appeal fee).

## Decision of 2 February 2016

Football Federation of Ukraine  
(illicit banner)

### **Circumstances of the case**

On 22 October 2015, the Football Federation of Ukraine played a European Women's Championship 2017 match against the Romanian Football Association. The UEFA delegate reported that the flag of the Organization of Ukrainian Nationalists was demonstrated for the whole duration of the match at the opposite side of the main stand.

**Legal framework** Article 16 (2) DR.

### **Decision**

On 19 November 2015 the ad-hoc Chairman of the Control, Ethics and Disciplinary Body considered that such message is not fit for a sports event, like the one in question and therefore violates article 16 (2) (e) DR. As a result, the Football Federation of Ukraine was punished with a €5'000 fine.

The Appeals Body decides that the appeal lodged by Football Federation of Ukraine is dismissed. Consequently, the UEFA Control, Ethics and Disciplinary Body's decision of 19 November 2015 is confirmed.

<u>Chairman:</u>	Pedro Tomás (Spain)
<u>Vice-chairman:</u>	Michael Maessen (Netherlands)
<u>Members:</u>	Ivaylo Ivkov (Bulgaria) Rainer Koch (Germany) Gianluca D'Aloja (Italy)

### **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body's decision of 22 October 2015 (the "Decision"), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. On 22 October 2015, the Football Federation of Ukraine played a European Women's Championship 2017 match against the Romanian Football Association.

3. Briefly, the most relevant facts as established by the UEFA delegate report at this match can be summarized as follows:
  - The flag of the Organisation of Ukrainian Nationalists was demonstrated for the whole duration of the match at the opposite side of the main stand.
4. No statements were submitted by the Appellant before the Control, Ethics and Disciplinary Body.
5. On 19 November 2015 the Control, Ethics and Disciplinary Body considered that such a message is not fit for a sports event, like the one in question and therefore violates article 16 (2) (e) DR. The Association was punished € 5'000 fine.
6. The Decision with grounds was notified to the appellant on 14 December 2016.

## **II. Summary of the proceedings before the Appeals Body**

7. On 17 December 2015, Football Federation of Ukraine announced its intention to appeal against the Decision.
8. On 22 December 2015, the Appellant filed its grounds for appeal. In its statements, the Appellant, essentially, argued the following:
  - a. The Football Federation of Ukraine is of the opinion that the delegate report of the match was prejudged and inaccurate in giving the estimation of the facts.
  - b. The "red-and-black flag" by itself is a traditional symbol (and part of the flags/symbols) of several Ukrainian regions and territories especially popular in the West of Ukraine where the match took place.
  - c. Moreover, red and black colours and flags are widely used as official symbols of the Ukrainian football clubs playing in the main leagues (such as, for example, FC "Yolyn" Lutsk or FC "Zorya" Luhansk).
  - d. Historical analysis also shows that from the period of the formation of Cossacks republics on the territory of Ukraine black-and-red flag together with the blue and yellow flag has been widely used for identification of Ukrainian state.
9. On 27 January 2016, the UEFA ethics and disciplinary inspector submitted his reply to the appeal, requesting that it be rejected and the costs charged accordingly.

## **III. Hearing**

10. No hearing was held.

#### **IV. Appeals Body Competence and Admissibility of the Appeal**

11. Article 24 (4) DR states as follows: “The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body.”
12. Appellant lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
13. It follows that the Appeals Body has competence to decide on the present Appeal and that the Appeal is admissible. The Appeals Body may therefore consider its merits and can therefore re-examine the case in full, both factually and legally (Article 58 (2) DR).

#### **V. Legal Considerations Of The Appeals Body**

##### A. The legal framework.

14. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (DR), the Control, Ethics and Disciplinary Body is competent to deal with the case.
15. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

##### B. In the case in hand

16. The Appeals Body appreciates that the case at hand has to be put together with the difficult question on what is or isn't fit for a sport's event.
17. The UEFA delegate of the given match reported that flag of the Organisation of Ukrainian Nationalists was demonstrated for the whole duration of the match at the opposite side of the main stand.
18. With this being established, the Appeals Body recalled that the presence of the flag remained undisputed during the course of these procedures and only the interpretation of it is under scrutiny and the centre of discussion.
19. The Appeals Body recalls that according to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate, and, in this regard emphasized that the aforementioned provision is not applicable to the FARE report and recalled, as it was also stated by the appellant, that UEFA does not leave it to FARE to legally qualify the facts reported and does not necessarily feel bound by its assessment of them.
20. The Appeals Body further concluded that the question whether a banner is illicit in accordance with Article 16 (2) (e) DR needs to be analysed from an objective standpoint

and looking at the particular circumstances of the relevant situation which must be assessed. In this regard, it is not necessary that a flag subjectively intends to have a message which is not fit for a sports event, as it is only necessary to appear inappropriate to an objective observer.

21. According to Article 1 (1) of the UEFA Statutes, UEFA is a private Swiss association entered in the register of companies under the terms of Article 60 et seq. of the Swiss Civil Code. The same article emphasises that UEFA shall be neutral, politically and religiously. This general principle accomplished in the first article of the UEFA Statutes is fully in line with the statutory objectives of this association, which prevails in Article 2 (1) (b), *inter alia*, that the objectives of UEFA shall be to: “promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason”.
22. Under this legal context, the UEFA disciplinary bodies had developed over the years a long standing case law as regards the use of “illicit” banners at European football stadiums. In this regard, the UEFA disciplinary bodies have considered that football stadiums are not the right place to display political, religious and ideological or any other messages that are not fit for sport events. In the eyes of the UEFA disciplinary bodies, the relevant factor in each case is the relationship between the potential message and the football match and how the said potential message can be understood not only by the home and away supporters at the stadium also by the objective viewers on television. This principle is even more relevant in a competition like the UEFA Champions League, which is followed by millions of supporters all around the world by different platforms.
23. It shall also be recalled that the above approach, which must be considered coherent and fully in line with the UEFA statutory objectives, the UEFA disciplinary bodies have considered banners in breach of Article 16 (2) (e) DR in a longstanding and consistent jurisprudence (e.g. in the disciplinary cases 26795, 26275, 26594, 26524), featuring banners with a similar and therefore comparable, sometimes even less impactful contents.
24. Taking the above into account, the case in hand presents some elements that lead this UEFA disciplinary body to conclude to its comfortable satisfaction that the displayed banner was not fit for a sport’s event.
25. Appellant suggests that “red-and-black flag” by itself is a traditional symbol (and part of the flags/symbols) of several Ukrainian regions. Such flag shall be especially popular in the West of Ukraine where the match took place. Moreover, it stresses that red and black colours and flags are widely used as official symbols of the Ukrainian football clubs playing in the main leagues (such as, for example, FC “Yolyn” Lutsk or FC “Zorya” Luhansk). Finally, from an historical point of view it shows that from the period of the formation of Cossacks republics on the territory of Ukraine black-and-red flag together with the blue and yellow flag has been widely used for identification of Ukrainian state.

26. Nonetheless, this UEFA disciplinary body cannot obviate the conflict lived nowadays in Ukraine, in which different political fronts are clashing. In such a context, symbols become more significant and the sensitivity linked to them is more evident. Consequently, it needs to be impeded that banners which may content from an objective and reasonable perspective a message connected to the political situation of this country, may enter the stadiums.
27. As stated above, it was in fact an objective and reasonable observer who concluded that the banner in question was not fit for the above mentioned match. The UEFA official report established that indeed this banner appertained to the Organisation of Ukrainian Nationalists, which as a matter of fact is obviously not fit for a sport's event.
28. Appellant having the burden of proof to breach the presumption of accuracy of the UEFA official report has not submitted any evidence that indeed could contest the fact that this banner had this political background. It suggests that the said banner is commonly used in given territory of Ukraine and gives some historical background of the latter, which under the Appeals Body's view do not contradict the fact that it has a preeminent political background, e. g when Appellant cites the Cossack's republic.
29. Further, the Appeals Body notes that FARE on the request of the Appellant established that "their display may be regarded as signs of far right presence at a stadium and require attention for possibly discriminatory abuse by those who display them inside the stadium. The symbols or flag themselves do not pose the danger but rather the message that is communicated by their display, who is displaying them and the context of use".
30. This, contrary to the assertion of Appellant, is another factor to be taken into consideration in the extent that the conclusion reached by the UEFA official was not inappropriate. This banner could have even being attached to a far right and discriminatory behaviour by the UEFA disciplinary bodies, which would have triggered the application of Article 14 DR and the consequences contemplated in it, i.e. partial closure, match behind closed doors, etc.
31. Bearing the above in mind, this UEFA Appeals Body is comfortable satisfied with the conclusion that the banner was at least not fit for a sport's event, if not to be linked to another type of behaviour contemplated in the UEFA DR having harsher disciplinary consequences against the Association.
32. It therefore remains for the Appeals Body to examine whether the Control, Ethics and Disciplinary Body respected the regulations and legal principles, in particular those of legality and proportionality, or whether it abused its power of discretion to fine the appellant €5'000.

C. Determination of the disciplinary measure

33. It is the Appeals Body's constant practice to consider the Control, Ethics and Disciplinary Body's power of discretion to have been abused or exceeded if the first-instance body

bases its decision on untrue or erroneous elements, does not apply fundamental legal principles, considers irrelevant facts or does not consider essential circumstances whose evaluation is compelling. In the opinion of the ad-hoc Chairman of the Appeals Body, none of this applies here.

34. In this regard, the Appeals Body recalled that the appeal of the appellant was only directed against the question whether the banner under scrutiny had met and therefore violated the requirements of Article 16 (2) (e) DR, whereas it was not directed against the sanction itself and against its proportionality.
35. In view of the above, the Appeals Body is of the opinion that the Control, Ethics and Disciplinary Body neither abused nor exceeded its broad powers of discretion. Given the moderate amount by which the appellant was fined, the decision of the Control, Ethics and Disciplinary Body decision complies with the principles of legality – to the extent of its power of appreciation – and proportionality.
36. On the basis of the above, the Chairman of the Appeals Body has no option but to uphold the initial decision and reject the appeal.

#### **VI. Costs**

37. The allocation of the costs of proceedings before the Appeals Body depends on the outcome of those proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated to the various parties or borne by UEFA. The appeal fee is either deducted from the costs of proceedings or reimbursed (Article 44 (2) DR).
38. It is considered justified to charge all of the costs of this case to the appellant, whose appeal is rejected on all counts.
39. Consequently, the costs of the proceedings are €1'000 (minus the appeal fee).



## Decision of 2 February 2016

FC Dynamo Kyiv

(crowd disturbances; stairways blocked; racist behaviour)

### **Circumstances of the case**

Disciplinary proceedings were opened against FC Dynamo Kyiv for incidents related to crowd disturbances, blocking of stairways and racist behaviour occurred during the UEFA Champions League 2015/2016 match FC Dynamo Kyiv vs. Chelsea FC played on 20 October 2015.

**Legal framework** Article 16 (2) DR and Article 14 DR.

### **Decision**

On 24 November 2015, the Control, Ethics and Disciplinary Body decided that the racist behaviour of the Football Club Dynamo Kyiv's supporter had been established, and that the Club was responsible for the improper conduct of its supporters in accordance with Article 16 (2) (h) DR and, finally, that Football Club Dynamo Kyiv as the host and match organizer violated Article 38 UEFA Safety and Security Regulations. Consequently the CEDB ordered the Football Club Dynamo Kyiv to play their next three (3) UEFA competition matches as host club behind closed doors. The third match is suspended for a probationary period of three (3) years and imposed a fine of €100'000.

The Appeals Body decides that the identical request lodged by the parties is accepted. Consequently, the UEFA Control, Ethics and Disciplinary Body's decision of 24 November 2015 is amended as follows: to order the Football Club Dynamo Kyiv to play one (1) UEFA competition match as host club behind closed doors. As the club has already played one match behind closed doors during the UEFA Champions League 2015/2016 match Football Club Dynamo Kyiv vs. Maccabi Tel-Aviv FC played on 9 December 2015, the club has already served this sanction; and to fine FC Dynamo Kyiv €50'000.

Chairman: Mr. Pedro Tomás (Spain)

Vice-chairman: Mr. Michael Maessen (Netherlands)

Members: Mr. Ivaylo Ivkov (Bulgaria)  
Dr. Rainer Koch (Germany)  
Mr. Gianluca D'Aloja (Italy)

### **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body's decision of 25 November 2015 (the "Decision"), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in

the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

2. On 22 October, disciplinary proceedings were opened against Dynamo Kyiv for incidents related to crowd disturbances, blocking of stairways and racist behaviour occurred during the UEFA Champions League 2015/2016 match FC Dynamo Kyiv vs. Chelsea FC played on 20 October 2015.
3. On 27 October 2015, due to the amount and the seriousness of the incidents the Control, Ethics and Disciplinary Body (hereinafter also as "CEDB") decided to appoint an UEFA ethics and disciplinary Inspector to conduct an investigation with regard to the facts of the said proceedings.
4. On 9 November 2015, the Ethics and Disciplinary Inspector submitted his report.
5. On 13 November 2015, the ethics and disciplinary Inspector submitted a new report on the incidents referred above based on the appearance of a witness testimony in relation to possible racist behaviours undertaken by the Dynamo Kyiv supporters.
6. Briefly, the most relevant facts established by the UEFA ethics and disciplinary Inspector in his report are to be summarized as follows:
  - a. Regarding the crowd disturbances, clashes between supporters of the home team occurred in the sectors of the home team. In this context, a crutch was used during the clashes to beat a person, so that a life-threatening character of the incident may be on hand.
  - b. Regarding the blocking of stairways, during the whole match, stairways were blocked partly between sectors 21-23 and 23-25 of the home team supporters. Between the sectors 41-43, 43-45 and 45-47 of the home team ultra-supporters, the stairways remained blocked entirely.
  - c. Regarding the racist incidents, a group of home team supporters performed a right hand Nazi salute while chanting "Ukraine above all". In addition, a banner with the writing "White Boys Club" was used, belonging to a far-right FCDK supporters group as a reference to exclusively "white" composition of Dynamo Kyiv supporters.
  - d. Finally, at around 30 minutes after the kick-off of the 1st half, some fans started moving from the Block 21 of the home team supporters, where "Rodychi", a group of Dynamo Kyiv supporters were seated, through the crowd in Block 19 to reach four black fans in the middle of the block. The black fans were physically attacked. This attack has been conducted accompanied by verbal expressions of "White Power".
7. On 23 November 2015, the Appellant submitted its reply to the ethics and disciplinary inspector's report. In substance, Appellant held before the first instance that there is no

evidential proof of the racist background of the brawl, no value is to be attributed the words of one person, who anonymously, hides his face on a TV show, that there were no and currently are no formal or informal organization which aims to discriminate people based on skin colour, mainly the name "White Boys Club" is rooted solely in the history of Dynamo, being white the main colour of the main kit of the team, that the alleged performance of the Nazi salute by home supporters are in fact natural energetic gestures of different nature of hands, fists or fingers directed forward, thus supporting and/or stimulating the team to go ahead, take or hold the ball, etc. and, finally, regarding the crowd disturbances no sufficient grounds for the disturbance of having a life threatening component or being of extremely heavy nature are to be deducted.

8. On 24 November 2015, the Control, Ethics and Disciplinary Body decided that the racist behaviour of the Football Club Dynamo Kyiv' supporter had been established, that the Club was responsible for the improper conduct of its supporters in accordance with Article 16 (2) (h) DR and, finally, that Football Club Dynamo Kyiv' as the host and match organizer violated Article 38 UEFA Safety and Security Regulations.
9. Consequently the Control, Ethics and Disciplinary Body ordered the Football Club Dynamo Kyiv to play their next three (3) UEFA competition matches as host club behind closed doors. The third match is suspended for a probationary period of three (3) years and imposed a fine of 100'000€.
10. On 25 November 2015, the decision without grounds of the Control, Ethics and Disciplinary Body was notified to the Club.
11. On 1 December 2015, the decision with grounds was notified to the Club.

## **II. Summary of the proceedings before the Appeals Body**

12. On 4 December 2015, Football Club Dynamo Kyiv announced its intention to appeal against the Decision.
13. On 10 December 2015, the Appellant filed its grounds for appeal. In its statements, the Appellant, essentially, argued the following:
  - a. Briefly, Appellant holds that the attack on one black spectator and pushing aside another one, who tried to lead him out of the crowd, occurred exclusively out of hooliganism motives, namely because this victim took pictures of the first fight- strictly "white" fight, and perpetrators wanted to destroy his telephone as an evidence of their identity; he just happened to be black. A white person could be in his shoes.
  - b. The CEDB conclusion to the contrary – on racist motives of the fight – is actually based on the only one alleged evidence (statement of TV show anonymous participant), controversial source of information which bases on an independent journalist investigation turned out to be provocateur; although not bound by police findings. CEDB ignored them completely without any valid reasons.

- c. The other alleged racist episode – “performance of Nazi salute” – as regards gestures was not established as what is commonly known as Nazi salute even by CEDB itself, which called it something “resembling NS”.
  - d. The racist colouring was added artificially to stimulate gestures, because of allegedly “racist context” of chanting, accompanied by the chant “Ukraina ponad vse” mistakenly interpreted as reflecting dominance of Ukraine over other countries. If correctly translated it appears to be a widely spread slogan in Ukraine patriotic, revealing only love and devotion to Ukraine and nothing else.
  - e. CEDB disregarded the social-historical context of this slogan, which unites everyone in Ukraine during ongoing despicable military aggressions against this country.
  - f. Furthermore, the CEDB groundlessly attributed “life-threatening” nature to the regrettable episode of hooliganism (which indeed took place). It based this conclusion on the episode of alleged situation wherein “crutch was used against someone laying on the ground...surrounded by other spectators, beaten by them and endorsing a brutal squash with a crunch of another one [thus] suffering obviously a direct threat to his life as no possible defence is to be expected from someone in the victim’s position”. No such incident is to be seen on the video provided by FARE and it never took place. Crutch belonged to an invalid who got into dispute about his occupied seat with other spectator, which started the fight. As such the crutch is no more dangerous than a fist or booted leg of a strong person;
  - g. Most importantly according to the answer given by the medical emergency clinic “Boris”, which was providing medical services at the match, no heavy injuries were caused during the incident and none of them seem to be caused by specific object. Same conclusion has been confirmed by police enquires.
14. On 5 January 2016, the UEFA ethics and disciplinary inspector submitted his reply to the appeal, requesting that the appeal shall partially admitted and, in particular, that FC Dynamo Kyiv is ordered to play one match behind closed doors and €50’000 fine.

### **III. Hearing**

15. On 2 February 2016, a hearing was held.
16. The Chairman of the Appeals Body opened the appeal hearing, noted the presence of the Appellant and the UEFA Ethics and Disciplinary Inspector.
17. Afterwards, the Chairman explained the procedure to be followed. He reminded the parties of the composition of the Appeals Body and told them that everything they and the Appeals Body said during the hearing would be recorded. No objection was raised.
18. The floor was given to the parties, who, in substance, reiterated the arguments given in their written pleadings and developed and maintained their requests.

19. No hearing was held, as the appellant did not request it; therefore, the proceedings will be conducted in writing only.

#### **IV. Appeals Body Competence and Admissibility of the Appeal**

20. Article 24 (4) DR states as follows: “The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body.”
21. Appellant lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
22. It follows that the Appeals Body has competence to decide on the present Appeal and that the Appeal is admissible. The Appeals Body may therefore consider its merits and can therefore re-examine the case in full, both factually and legally (Article 58 (2) DR).

#### **V. Legal Considerations Of The Appeals Body**

##### **A. The legal framework.**

23. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (DR), the Control, Ethics and Disciplinary Body is competent to deal with the case.
24. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

##### **B. The identical request by the parties**

25. First and foremost, it shall be remarked that the Appellant and the ethics and disciplinary inspector have agreed to submit an identical request as regards the outcome of this case.
26. According to Article 34 (5) DR, the requests of the parties and the ethics and disciplinary inspector are identical, the disciplinary bodies may consider ruling in accordance with those requests.
27. Before entering into the question about the feasibility of such request, this UEFA disciplinary body deems necessary to brief analyse some particularities surrounding the different infringements pressed against the Appellant.
28. Regarding the racist allegations, it shall be outlined that the ethics and disciplinary inspector changes before the Appeals Body his original position sustained before the Control, Ethics and Disciplinary Body.

29. The fact that the main witness is absent and, hereby, the procedure lacks of a crucial testimony in relation to the first brawl directed against four black persons, has been decisive to change the position of the ethics and disciplinary inspector. Summarily, it is not possible to confirm at this stage if in fact during the violent incident addressed against these four spectators “white power” chants were addressed, which finally would have change the nature of the attack.
30. This UEFA disciplinary body complies with the above and with the Appellant’s approach in that without this evidence there is no element that leads from an objective and reasonable perspective to conclude that the brawl had any racial roots.
31. Regarding the other alleged racist incidents, the Appeals Body is comfortable satisfied with the explanations given by the Appellant and the ethics and disciplinary inspector insofar the gestures are rather to be connected with a patriotic purpose and the banners are to be connected to an historical fan group of the club which uses the colour white as a reference to the colour of the jerseys wore by the team at football matches.
32. Finally, regarding both crowd disturbances, the one mentioned above involving the four black spectators and the other one involving a person laying on the ground violently beaten up by several spectators, one of those using a crutch against the latter, this UEFA disciplinary body has no doubt in that both are of a great serious nature.
33. The highly violent and aggressive behaviour of the FC Dynamo supporters is clearly to be appreciated from the video footage. It draws a highly concerning picture, which as a matter of fact the Appellant cannot hide behind arguments focused on the question about the life threatening character of some of the actions of their supporters. There is no question about that the behaviour of these supporters violated Article 16 (e) DR and that the Club shall be punished accordingly.
34. The Appeals Body has also no doubt whatsoever that the violent behaviour of the Appellant’s supporters had a life threatening component against the targeted persons, mainly the one laying on the ground. It shall be taken into account that the person laying on the ground was surrounded by several persons who kicked him in a highly violent manner.
35. The fact that a crutch was used as a weapon is also an important element to be taken into account. Consequently, even if the use of the term “life threatening” appears to be shocking there is no question about the fact that in the light of the video footage indeed such behaviour could have had fatal consequences for the victim laying on the ground.
36. The above, in combination with the first brawl, which involved several other supporters and the fact that the four persons needed to flea due to the violent and aggressive attitude of the perpetrators, are also important factors that have been considered by this UEFA disciplinary body.

37. In addition, the attention should be focused on the attitude of the security responsible during the crowd disturbances. There is no reaction coming from the latter in both conflictive situations. This is a worrying figure, not only because people were beaten up in an extraordinarily manner, but also because there was no sign in the attitude of the security personnel and stewards which may deduct that they would oppose to such behaviour.
38. All the above considerations lead this UEFA Appeals Body to conclude that there is no factor that may impede to accept the identical request submitted by the parties during the hearing. This Appeals Body is inclined to accept it, even assuming that the incidents occurred during the match are of a great serious nature and a different and more harsher sanction could may also be appropriate.
39. Consequently, the Control, Ethics and Disciplinary Body's decision of 24 November 2015 is amended as follows:
  1. To order the Football Club Dynamo Kyiv to play one (1) UEFA competition match as host club behind closed doors. As the club has already played one match behind closed doors during the UEFA Champions League 2015/2016 match Football Club Dynamo Kyiv vs Maccabi Tel-Aviv FC played on 9 December 2015, the club has already served this sanction.
  2. To fine FC Dynamo Kyiv €50.000.

## **VI. Costs**

40. The allocation of the costs of proceedings before the Appeals Body depends on the outcome of those proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated to the various parties or borne by UEFA. The appeal fee is either deducted from the costs of proceedings or reimbursed (Article 44 (2) DR).
41. It is considered justified to charge all of the costs of this case to the appellant, whose appeal is rejected on all counts.
42. Consequently, the costs of the proceedings are €4'000.

## Decision of 2 February 2016

ACF Fiorentina / Roncaglia Facundo

(act of violence against opponent)

### **Circumstances of the case**

In substance, according to the report of the referee, in the 26<sup>th</sup> minute of the UEFA Europa League 2015/16 match between FC Basel 1893 and ACF Fiorentina (“the Appellant”) on 26 November 2015, the Appellant’s player wearing number 32, Roncaglia Facundo Sebastian (“the player”), was sent off for violent conduct. The player used his elbow to hit the face of the FC Basel 1893 player Breel Donald Embolo (“the opponent player”). The opponent player who was hit on the face continued to play after treatment.

**Legal framework** Article 15 (1) DR

### **Decision**

In its decision of 10 December 2015, the Control, Ethics and Disciplinary Body considered that the act of the player, as described by the referee above, constitutes an assault under the terms of Article 15 (1) (e) of the UEFA Disciplinary Regulations. As a result, the CEDB decided to suspend the player for five (5) UEFA competition matches for which he would be otherwise eligible.

The appeal lodged by ACF Fiorentina is partially admitted. Consequently, the UEFA Control, Ethics and Disciplinary Body’s decision of 10 December 2015 is amended as follows: to suspend the ACF Fiorentina player Roncaglia Facundo Sebastian for four (4) UEFA competition matches for which he would be otherwise eligible.

<u>Chairman:</u>	Pedro Tomás (Spain)
<u>Vice-chairman:</u>	Michael Maessen (Netherlands)
<u>Members:</u>	Ivaylo Ivkov (Bulgaria) Rainer Koch (Germany) Gianluca D’Aloja (Italy)

### **I. Facts of the case**

1. The elements set out below are a summary of the main relevant facts, as established by the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body on 10 December 2015 (the “Decision”), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings,



it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

2. In substance, according to the report of the referee, in the 26<sup>th</sup> minute of the UEFA Europa League 2015/16 match between FC Basel 1893 and ACF Fiorentina (“the Appellant”) on 26 November 2015, the Appellant’s player wearing number 32, Roncaglia Facundo Sebastian (“the player”), was sent off for violent conduct. The player used his elbow to hit the face of the FC Basel 1893 player Breel Donald Embolo (“the opponent player”). The opponent player who was hit on the face continued to play after treatment.
3. In its decision of 10 December 2015, the Control, Ethics and Disciplinary Body considered that the act of the player, as described by the referee above, constitutes an assault under the terms of Article 15 (1) (e) of the UEFA Disciplinary Regulations. As a result, the Control, Ethics and Disciplinary Body decided to suspend the player for five (5) UEFA competition matches for which he would be otherwise eligible.
4. The Decision with grounds was notified to the Appellant on 6 January 2016.

## **II. Summary of the proceedings before the Appeals Body**

5. On 9 January 2016, the Appellant announced its intention to appeal against the Decision.
6. The grounds for appeal, submitted on 14 January 2016, and the arguments of the Appellant contained therein, can be summarized as follows:
  - The Appellant argues that the referee’s report is inaccurate.
  - The ball was in play when the incident happened and the player was in possession of the ball. The player tried to defend the ball from the opponent player of FC Basel 1893, which is why the act for which the player is charged was not unnecessary and irrational.
  - The whole scene must be regarded while taking into account the competitive momentum and competitive spirit of the match, which needs to significantly mitigate the possible seriousness of the player’s conduct.
  - The opponent player fouled the player before the incident occurred by grabbing the player’s shirt, pulling, tugging and withholding him. The holding of the opponent player was so intense that the player even lost his balance and had to try to recover it and free himself from the holding of the opponent player.
  - As the player was trying to regain balance, he held his arms in a 180° angle from his body, what needs to be considered a normal movement. Thereby, he hit his opponent with the tip of his elbow, by accident when he had to make a sudden move of his arms and elbow in order to free himself from the opponent player’s grip.
  - The player when he came into contact with his opponent, did not touch him with his elbow but only with the humerus, which cannot be considered particularly dangerous.

- The opponent player could resume to play and was not really injured. Moreover, the referee was quite far away from the incident (approximately 20m) and did not have perfect view on the scene.
  - The sanction was disproportionate.
  - The act of the player was considered an assault, for which the standard sanction is three matches. Therefore, the 5 match suspension which was imposed and which is the standard sanction for a serious assault, is disproportionate since no special circumstances could be taken into account which would justify the augmentation to such a harsh sanction for what is only a “normal assault”.
  - The Appellant refers to other decisions of the Control, Ethics and Disciplinary Body in which elbows have been thrown and in which lower and less severe sanctions had been imposed on the respective players.
7. On 22 January 2016, the UEFA Ethics and Disciplinary Inspector submitted her reply to the appeal, requesting that it be rejected and the costs charged accordingly.

### **III. Hearing**

8. No hearing was held, since the Appellant requested that the proceedings be conducted in writing only and the Appeals Body did not raise any objection to this request.
9. The Appeals Body examined the entire case file, in particular the challenged decision, the grounds for appeal and the Ethics and Disciplinary Inspector’s reply to the appeal, on 2 February 2016.

### **IV. Appeals Body Competence and Admissibility of the Appeal**

10. Article 24 (4) of the UEFA Disciplinary Regulations states as follows: “The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body.”
11. Pursuant to Articles 52 and 57 (b) of the UEFA Statutes, as well as Articles 22 and 24 of the UEFA Disciplinary Regulations, the Appeals Body is competent to deal with the case.
12. On 14 January 2016, the Appellant lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
13. It follows that the Appeals Body has competence to decide on the present Appeal and that the Appeal is admissible. The Appeals Body may therefore consider its merits and can therefore re-examine the case in full, both factually and legally (Article 58 (2) of the UEFA Disciplinary Regulations).

**V. Legal Considerations Of The Appeals Body**

A. The legal framework.

14. According to Article 15 (1) (e) of the UEFA Disciplinary Regulations, suspension for three (3) competition matches or a specified period for assaulting another player present at the match.
15. According to Article 38 of the UEFA Disciplinary Regulations, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

B. In the case in hand

16. It remained undisputed during these procedures that in the 26<sup>th</sup> minute of the match, the player was sent off by the referee with a red card, following an incident during the course of which the player's arm collided with the face of his opponent player.
17. The Control, Ethics and Disciplinary Body considered the foul play by the player as an assault, considering that the player placed the physical well-being of his opponent in danger, thereby endangering the safety of his opponent.
18. As to the merits of the case, the Appeals Body took into account the arguments of the Appellant and recalled that the main question and issue in the case at hand regards the interpretation of the incident as to the how and why the player's arm collided with the opponent player.
19. In this regard, the Appeals Body recalled the arguments of the Appellant who had essentially argued that the player did not want to hit or hurt the player as he merely tried to free himself from the jersey-grabbing of the opponent in order to regain his balance, while defending the ball against the opponent. Moreover, the Appeals Body recalled that the Appellant had argued that the player did not touch the opponent with his elbow but only with the humerus, which is why the action of the player cannot be considered particularly dangerous.
20. The Appeals Body also took note of the screenshots of the relevant incident which were provided by the Appellant, while also taking note of the video footage of the incident which was provided by the UEFA Ethics and Disciplinary Inspector, in order to get a comprehensive view on the scene at hand. In this regard and on a preliminary basis, the Appeals Body wanted to stress that obviously images and photos of an incident can be helpful in order to assess it. However, as regards the legal assessment and interpretation of a foul play, the Appeals Body noted that in view of the explosiveness and the high speed of football matches, particularly when a collision between two players has to be analysed as to a potential brutality or danger inherent to a foul play, the photos by themselves were not sufficient to come to a comprehensive conclusion. Therefore, while of course also carefully taking note of the photos and the explanations provided by the

Appellant, the Appeals Body considered the video footage as vital in order to correctly assess the case.

21. In this context, after thorough analysis of the documentary evidence at hand, the Appeals Body came to the conclusion that the act of the player in fact constituted an assault in accordance with Article 15 (1) (e) of the UEFA Disciplinary Regulations.
22. The Appeals Body on the one hand acknowledged that the player was indeed trying to defend the ball against the opponent player, the latter at this occasion grabbing, holding and pulling the jersey of the player. However, on the other hand, the Appeals Body could not concur with the interpretation given by the Appellant as regards the subsequent moments and in particular regarding the moment when the player threw back his arm and hit the opponent player with it.
23. The Appeals Body was convinced that this move of the arm was not performed in order to regain balance, as such an attempt to regain balance would certainly not require such a rapid and brutal move. Moreover, as it can be clearly established from the video footage, the player had already freed himself from the grip of the opponent player and was already running freely and in perfect balance. Quite contrary to what the Appellant had stated, the player, after looking where the opponent player was, even slightly changed the direction of his run and swung his arm in a completely unnatural and unnecessary manner. From this sequence alone it can be established that the only intention of the player was, for whatever reason, be it frustration or anger because of the jersey-grabbing by the opponent, to hit the latter.
24. Furthermore, the Appeals Body did not agree with the allegation of the Appellant that the player only hit his opponent with the *humerus* and not the elbow. After analysis of the video footage, the Appeals Body concluded that it rather looks like the opponent player was struck with both the elbow and the *humerus*. In any case, by throwing back his arm in such a violent manner, the player at least mindfully assented and accepted that the opponent player could suffer serious injuries, as it was totally up to chance and in any way a matter of centimetres whether the opponent player was hit with the elbow or "only" with the *humerus*.
25. As it was stated by the referee and emphasized by the Appellant, the opponent player was not injured and could continue to play after short medical treatment. However, the Appeals Body stressed that such circumstance has no influence on the legal assessment of whether the act of a player constitutes an assault or not. Moreover, as it was already established above, the act of the player could have easily led to a serious injury of the opponent player who was hit directly in the face, i.e. a very delicate and sensitive part of the body.
26. In view of the foregoing, the Appeals Body referred to the established jurisprudence of the UEFA disciplinary bodies who have stipulated a number of times that any act committed with direct or oblique intention through which the physical or psychological well-being of the referee, a player or any other person present at a match is harmed or

threatened, before, during or after the game, constitutes serious unsporting conduct classified under the general term “assault” in accordance with Article 15 (1) (e) of the UEFA Disciplinary Regulations.

27. In view of the Appeals Body, and as it was also shortly mentioned by the Control, Ethics and Disciplinary Body in its decision (cf. par. 7 *in fine*), it could have even been justified to classify the act of the player as a serious assault as there would have certainly been good arguments to regard the act as a particularly serious attack. However, given that the first instance body described the act of the player as an assault and in view of the fact that no cross-appeal was lodged by the UEFA Ethics and Disciplinary Inspector, the Appeals Body ultimately agreed with the interpretation given by the Control, Ethics and Disciplinary Body.
28. Consequently, it therefore remains for the Appeals Body to examine whether the Control, Ethics and Disciplinary Body respected the regulations and legal principles, in particular those of legality and proportionality, or whether it abused its power of discretion by suspending the player for five UEFA competition matches for which he would be otherwise eligible.

C. Determination of the disciplinary measure

29. It is the Appeals Body’s constant practice to consider the Control, Ethics and Disciplinary Body’s power of discretion to have been abused or exceeded if the first-instance body bases its decision on untrue or erroneous elements, does not apply fundamental legal principles, considers irrelevant facts or does not consider essential circumstances whose evaluation is compelling.
30. In this context, the Appeals Body came to the conclusion that the Control, Ethics and Disciplinary Body exceeded its broad powers of discretion since its decision did not fully comply with the principles of legality and proportionality.
31. In this regard, the Appeals Body recalled the Appellant’s argument that the disciplinary measure which was imposed by the Control, Ethics and Disciplinary Body in the first instance was disproportionate, as the standard or minimum sanction for assaults in accordance with Article 15 (1) (e) of the UEFA Disciplinary Regulations is only a three match suspension, whereas the Control, Ethics and Disciplinary Body directly imposed a five match suspension without naming any special circumstances which would justify such an augmentation.
32. After having established this, the Appeals Body referred to the content of Article 15 (1) (g) of the UEFA Disciplinary Regulations which stipulates the provisions regarding acts of “serious assault” and recalled that the Control, Ethics and Disciplinary Body did not reason that the act of the player constituted a “serious assault” but only a regular assault in accordance with Article 15 (1) (e) of the UEFA Disciplinary Regulations. The standard sanction for a serious assault is a five-match suspension, i.e. the same sanction which the Control, Ethics and Disciplinary Body has imposed on the Appellant for the “regular assault” in the case at hand.

33. The Appeals Body concluded that the Control, Ethics and Disciplinary Body has not given sufficient reason why it jumped from a three-match suspension directly to a five-match suspension, which makes the disciplinary measure disproportionate as the Decision merely refers to the particular brutal behaviour of the player without any further explanations, which, in view of the Appeals Body, is not sufficient to justify such a drastic augmentation of the disciplinary measure to five matches.
34. However, the Appeals Body nonetheless agreed with the Control, Ethics and Disciplinary Body in the sense that the behaviour of the player exceeds the degree of unlawfulness of a normal or regular assault as the player, by deliberately throwing his arm into the face of his opponent, certainly put the opponent player's physical well-being in danger. Therefore, the Appeals Body deemed that a four-match suspension is the appropriate disciplinary measure to be imposed on the player.
35. On the basis of the above, the Appeals Body decided to partially uphold the Appeal of the Appellant and to amend the decision of the Control, Ethics and Disciplinary Body accordingly, i.e. to suspend the player for four (4) UEFA competition matches for which he would be otherwise eligible.

## **VI. Costs**

36. The allocation of the costs of proceedings before the Appeals Body depends on the outcome of those proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated to the various parties or borne by UEFA. The appeal fee is either deducted from the costs of proceedings or reimbursed (Article 44 (2) of the UEFA Disciplinary Regulations).
37. It is considered justified to charge all of the costs of this case to the Appellant, whose appeal is only partially upheld.
38. In this case, since these proceedings were conducted by the Appeals Body with a Panel of five members, the costs of the proceedings are €1'000.

## Decision of 12 May 2016

PAOK FC

(stairways blocked; climbing segregation nets)

### **Circumstances of the case**

Following the UEFA Europa League match between PAOK FC and Borussia Dortmund on 10 December 2015, the Delegate and Security Officer reported that PAOK FC supporters had blocked the stairways and climbed up on the segregation nets. Disciplinary proceedings were opened against PAOK FC on 11 December 2015.

**Legal framework** Article 16 (2) DR

### **Decision**

In its decision of 18 February 2016, the Control, Ethics and Disciplinary Body concluded that PAOK FC should be held responsible for the improper conduct of its supporters under Article 16 (2) (h) of the UEFA Disciplinary Regulations and decided to impose a fine of €25,000.

The appeal lodged by the PAOK FC is rejected. Consequently, the UEFA Control, Ethics and Disciplinary Body's decision of 18 February 2016 is upheld.

<u>Chairman:</u>	Pedro Tomás (Spain)
<u>Vice-chairmen:</u>	Michael Maessen (Netherlands) Levent Bıçakcı (Turkey)
<u>Members:</u>	João Leal (Portugal) Barry W Bright (England)

### **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body on 18 February 2016 (the "**Decision**"), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings.
2. Whilst the Appeals Body has considered all of the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
3. Following the UEFA Europa League match between PAOK FC and Borussia Dortmund on 10 December 2015, the Delegate and Security Officer reported that PAOK FC supporters had blocked the stairways and climbed up on the segregation nets.

4. Disciplinary proceedings were opened against PAOK FC on 11 December 2015 and the Control, Ethics and Disciplinary Body convened on 18 February 2016 to decide the case. The Decision with grounds was notified to PAOK FC on 10 March 2016.
5. In the Decision with grounds, the Control, Ethics and Disciplinary Body concluded that PAOK FC should be held responsible for the improper conduct of its supporters under Article 16 (2) (h) of the UEFA Disciplinary Regulations (the “DR”) and decided to impose a fine of €25,000.

## II. Summary of the proceedings before the Appeals Body

6. On 11 March 2016, PAOK FC announced its intention to appeal against the Decision.
7. On 21 March 2016, PAOK FC filed its grounds for appeal.
8. In its statement, PAOK FC argued that:
  - a. the Control, Ethics and Disciplinary Body wrongly took into account the fact that PAOK FC supporters blocked stairways during the match; and
  - b. the measure imposed in the Decision was disproportionate.
9. On 4 April 2016, the UEFA Ethics and Disciplinary Inspector submitted his reply to PAOK FC’s appeal, requesting that it be rejected and the costs charged accordingly.

## III. Hearing

10. Neither PAOK FC nor the UEFA Ethics and Disciplinary Inspector requested a hearing. Consequently, the Appeals Body rendered its decision based on the written statements submitted by the parties.
11. The Appeals Body examined the entire case file, in particular the Decision with grounds, the grounds for appeal and the UEFA Ethics and Disciplinary Inspector’s reply to the appeal, on 12 May 2016.
12. The parties’ arguments are set out and examined below, in so far as they are relevant to the decision.

## IV. Appeals Body Competence and Admissibility of the Appeal

13. Article 24 (4) DR states as follows:

*“The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body.”*



14. PAOK FC lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
15. It follows that the Appeals Body has competence to decide on the present appeal and that the appeal is admissible. The Appeals Body may therefore consider its merits and can therefore re-examine the case in full, both factually and legally, in accordance with Article 58 (2) DR.

## V. Legal Considerations Of The Appeals Body

### A. The legal framework

16. According to Article 8 DR, a club that is bound by a rule of conduct laid down in UEFA's Statutes or regulations may be subject to disciplinary measures and directives if such a rule is violated as a result of the conduct of one of its members, players, officials or supporters and any other person exercising a function on behalf of the club concerned, even if the club concerned can prove the absence of any fault or negligence.
17. Under Article 16 (2) DR (emphasis added):  
*"However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:*
  - a) *the invasion or attempted invasion of the field of play;*
  - b) *the throwing of objects;*
  - c) *the lighting of fireworks or any other objects;*
  - d) *the use of laser pointers or similar electronic devices;*
  - e) *the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;*
  - f) *acts of damage;*
  - g) *the disruption of national or competition anthems;*
  - h) *any other lack of order or discipline observed inside or around the stadium."*

18. According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

### B. In the case in hand

19. According to the official reports of both the Delegate and the Security Officer, PAOK FC supporters climbed up on the segregation nets. Also according to such reports, the PAOK FC supporters blocked stairways. Photographic evidence of such behaviour was also provided.

20. In this regard, the Appeals Body notes that under Article 38 DR, the facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.
21. Accordingly, in the present case, it fell on PAOK FC to prove that the official reports were inaccurate.
22. In its statement, however, PAOK FC does not provide any such proof. Instead, it simply describes the efforts it took to prepare for the match and questions why the Control, Ethics and Disciplinary Body took into account the fact that PAOK FC supporters blocked stairways as part of its general consideration of crowd disorder/lack of discipline.
23. In the opinion of the Appeals Body, such arguments are irrelevant, since they do not breach the accuracy of the official UEFA reports which, as stated above, are very clear on the fact that fans were climbing on the segregation nets.
24. With regard to the matter of the blocked stairways, the Appeals Body wishes to stress that, in its opinion, the Control, Ethics and Disciplinary Body was entitled to consider this fact as it further adds to the consideration of the disorder and improper conduct of the PAOK FC fans at the match. The fact that charges were not brought (or could not be brought) against PAOK FC in respect of blocked stairways does not preclude a disciplinary body from considering these acts in the general context of the disorder and lack of discipline shown by PAOK FC fans.
25. Consequently, the Appeals Body has no reason to call into question the accuracy of the referee's report and shares the conclusion of the Control, Ethics and Disciplinary Body in the Decision with grounds that PAOK FC should be held responsible for the improper conduct of its supporters under Article 16 (2) (h) DR.

C. Determination of the disciplinary measure

26. It is the Appeals Body's consistent practice to consider the Control, Ethics and Disciplinary Body's power of discretion to have been abused or exceeded if the first-instance body bases its decision on untrue or erroneous elements, does not apply fundamental legal principles, considers irrelevant facts or does not consider essential circumstances whose evaluation is compelling. In the opinion of the Appeals Body, none of this applies here.
27. The Appeals Body is of the opinion that the Control, Ethics and Disciplinary Body neither abused nor exceeded its broad powers of discretion in taking the Decision.
28. The Decision complies with the principles of legality and proportionality.
29. The Control, Ethics and Disciplinary Body rightly identified and took into account the seriousness of the offence committed, the dangerous nature of the offence committed and PAOK FC's previous record. The Appeals Body sees no evidence that the Control, Ethics and Disciplinary Body's powers of discretion has been abused or exceeded here.

30. Accordingly, the Chairman of the Appeals Body has no option but to uphold the Decision and reject the appeal.

**VI. Costs**

31. The Appeals Body decides at its own discretion how to allocate the costs of proceedings.
32. The appeal fee is either deducted from the costs of proceedings or reimbursed (in accordance with Article 44 (2) DR).
33. On this occasion, it is considered justified to charge all of the costs of this case to the Appellant, less the appeals fee which has already been paid.
34. In the present case, the costs of proceedings are €1,000.

## Decision of 12 May 2016

FC Viktoria Plzen

(stairways blocked; illicit banner)

### **Circumstances of the case**

According to the official Delegate’s report for the match between FC Viktoria Plzen (the “Club”) and Villarreal CF on 10 December 2015, certain stairways in sectors P2 and P3 were blocked by FC Viktoria Plzen’s supporters; and also during the match, a banner was displayed by FC Viktoria Plzen’s supporters bearing the message “AC - AB” (meaning “All Cops Are Bastards”).

**Legal framework** Article 38 SSR and Article 16 (2) DR.

### **Decision**

In its Decision of 18 February 2016, the Control, Ethics and Disciplinary Body concluded that the Club had breached Article 38 of the UEFA Safety and Security Regulations and Article 16 (2) (e) of the UEFA Disciplinary Regulations. On this basis, the Control, Ethics and Disciplinary Body decided to fine the Club €28,000.

The Appeals Body decides that the appeal lodged by FC Viktoria Plzen is rejected. Consequently, the UEFA Control, Ethics and Disciplinary Body’s decision of 18 February 2016 is upheld.

<u>Chairman:</u>	Pedro Tomás (Spain)
<u>Vice-chairman:</u>	Levent Bıçakcı (Turkey)
<u>Members:</u>	João Leal (Portugal) Barry W Bright (England)

### **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body on 18 February 2016 (the “**Decision**”), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings.
2. Whilst the Appeals Body has considered all of the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
3. The most relevant facts of this case can be summarised as follows:

- a. according to the official Delegate's report for the match between FC Viktoria Plzen (the "**Club**") and Villarreal CF on 10 December 2015, certain stairways in sectors P2 and P3 were blocked by FC Viktoria Plzen's supporters; and
  - b. also during the match, a banner was displayed by FC Viktoria Plzen's supporters bearing the message "AC - AB" (meaning "All Cops Are Bastards").
4. Disciplinary proceedings were opened against the Club on 11 December 2015 and the Control, Ethics and Disciplinary Body convened on 18 February 2016 to decide the case. The Decision with grounds was notified to the Club on 10 March 2016.
  5. In the Decision with grounds, the Control, Ethics and Disciplinary Body concluded that the Club had breached Article 38 of the UEFA Safety and Security Regulations (the "**SSR**") and Article 16 (2) (e) of the UEFA Disciplinary Regulations (the "**DR**"). On this basis, the Control, Ethics and Disciplinary Body decided to fine the Club €28,000.

## II. Summary of the proceedings before the Appeals Body

6. On 11 March 2016, the Club announced its intention to appeal against the Decision.
7. On 15 March 2016, the Club filed its grounds for appeal.
8. In its statement:
  - a. the Club argues that the measure imposed was too severe;
  - b. the Club makes no comment on the illicit banner and suggests that this was only a minor offence; and
  - c. with regard to the blocked stairways, the Club argues that the stairways were not blocked and that the photos of the incident are inconclusive due to fog.
9. On 4 April 2016, the UEFA Ethics and Disciplinary Inspector submitted her reply to the Club's appeal. In this report, she:
  - a. agrees that the photos of the blocked stairways are blurry (due to fog) and do not confirm the Delegate's assertion, however, she also notes that the Club admits to not being able to prove that the stairways were kept free during the match and so it hasn't proved that the Delegate's report was inaccurate; and
  - b. considers that the Club's efforts to control its supporters were not taken into account by the Control, Ethics and Disciplinary Body as mitigating factors and, in light of this, recommends that the imposed sanction be reduced to €24,000.

## III. Hearing

10. Neither the Club nor the UEFA Ethics and Disciplinary Inspector requested a hearing. Consequently, the Appeals Body rendered its decision based on the written statements submitted by the parties.

11. The Appeals Body examined the entire case file, in particular the Decision with grounds, the grounds for appeal and the UEFA Ethics and Disciplinary Inspector's reply to the appeal, on 12 May 2016.
12. The parties' arguments are set out and examined below, in so far as they are relevant to the decision.

#### **IV. Appeals Body Competence and Admissibility of the Appeal**

13. Article 24 (4) DR states as follows:  
*"The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body."*
14. The Club lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
15. It follows that the Appeals Body has competence to decide on the present appeal and that the appeal is admissible. The Appeals Body may therefore consider its merits and can therefore re-examine the case in full, both factually and legally, in accordance with Article 58 (2) DR.

#### **V. Legal Considerations Of The Appeals Body**

##### **A. The legal framework**

16. According to Article 49 SSR, any breach of the SSR may be penalised in accordance with the DR.
17. As stated in Article 2 SSR, the purpose of the regulations is to safeguard the safety and security of everyone present at a match. In order to achieve this, several provisions concerning spectator control are included in the regulations.
18. Of particular relevance for the present case is Article 38 SSR which provides that *"the match organiser must take measures to ensure that all public passageways, corridors, stairs, doors, gates and emergency exit routes are kept free of any obstructions, which could impede the free flow of spectators."*
19. According to Article 16 (2) (e) DR, clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:  
*"...the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature."*

20. The Appeals Body also notes that, under Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

B. In the case in hand

21. According to the official Delegate's report for the match certain stairways were blocked by the Club's supporters and a banner was displayed by the Club's supporters bearing the message "AC - AB" (meaning "All Cops Are Bastards").

22. Under Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

23. With regard to the blocked stairways, the Club argues that they were not blocked and suggests that the photos are inconclusive due to fog, however, these arguments are not enough to breach the accuracy of the official Delegate's report which clearly states that the stairways were blocked. Indeed, the Club even admits that it cannot prove that the stairways were kept free during the match. The presence of fog on the photo does not disprove the accuracy of the Delegate's clear written statement based on his eyewitness account.

24. With regard to the illicit banner, the Club has presented no evidence in this regard. In the opinion of the Appeals Body, the official report (and accompanying photographs) clearly prove that the banner was displayed. Further, the message "AC – AB" is well known as being an anti-police statement and is clearly of a provocative/offensive (and possibly political) nature which has no link to the match or football generally. Such a message is obviously not fit for a sports event and violates Article 16 (2) (e) DR.

25. Consequently, the Appeals Body has no reason to call into question the accuracy of the Delegate's report on either of the incidents and shares the conclusion of the Control, Ethics and Disciplinary Body in the Decision with grounds that the Club breached Article 38 SSR and Article 16 (2) (e) DR.

C. Determination of the disciplinary measure

26. It is the Appeals Body's consistent practice to consider the Control, Ethics and Disciplinary Body's power of discretion to have been abused or exceeded if the first-instance body bases its decision on untrue or erroneous elements, does not apply fundamental legal principles, considers irrelevant facts or does not consider essential circumstances whose evaluation is compelling. In the opinion of the Appeals Body, none of this applies here.

27. The Appeals Body is of the opinion that the Control, Ethics and Disciplinary Body neither abused nor exceeded its broad powers of discretion in taking the Decision.

28. The Decision complies with the principles of legality and proportionality.

29. With regard to the offence under the SSR, the Control, Ethics and Disciplinary Body rightly identified and took into account the dangerous nature of the offence committed and the Club's previous record.
30. Regarding the illicit banner, the Control, Ethics and Disciplinary Body rightly took into account the offensive/provocative (and possibly political) nature of the message which expressly targets the police, and also the Club's previous record.
31. The Appeals Body sees no evidence that the Control, Ethics and Disciplinary Body's powers of discretion has been abused or exceeded here. Indeed, the two offences together paint a serious picture of very poor behaviour by supporters at a football match.
32. The various points raised by the Club as purported 'mitigating factors' (for example, communicating messages via the PA system, increasing the number of its stewards and liaising with police) are not exceptional and, in the opinion of the Appeals Body, the Club has gone no further than any club should go to encourage the good behaviour of its supporters.
33. Accordingly, the Chairman of the Appeals Body has no option but to uphold the Decision and reject the appeal.

#### **VI. Costs**

34. The Appeals Body decides at its own discretion how to allocate the costs of proceedings.
35. The appeal fee is either deducted from the costs of proceedings or reimbursed (in accordance with Article 44 (2) DR).
36. On this occasion, it is considered justified to charge all of the costs of this case to the Appellant, less the appeals fee which has already been paid.
37. In the present case, the costs of proceedings are €1,000.



## Decision of 12 May 2016

Football Association of Serbia

(illicit banner; throwing of objects)

### **Circumstances of the case**

In substance, according to the report of the UEFA match delegate, at the time that the match started, in the upper terrace just in front of the VIP area, the supporters of the Serbian Football Association (“the Appellant”) displayed a non-formal flag showing the Kosovo as a part of Serbia. According to the same report, in the same terrace over of the VIP area, the Appellant’s supporters displayed another flag of the “old Russia”, i.e. of the former Soviet Union.

It was furthermore established that in the 24<sup>th</sup> minute of the match, when the Russian team goal keeper was getting a medical care, coins were thrown to the pitch, whereas in the 43<sup>rd</sup> minute of the match, a mini-ball was thrown to the pitch, both times by the Appellant’s supporters.

**Legal framework** Article 38 SSR and Article 16 (2) DR.

### **Decision**

In its decision of 17 March 2016, the Control, Ethics and Disciplinary Body considered that the flags displayed by the Appellant’s supporters constituted illicit banners which were not fit for a sports event and therefore fell under the scope of Article 16 (2) (e) of the UEFA Disciplinary Regulations, whereas the throwing of the coins and the mini-ball constituted a violation of Article 16 (2) (b) of the UEFA Disciplinary Regulations. As a result, the Control, Ethics and Disciplinary Body decided to fine the Appellant €13’000.

The Appeals Body decides that the appeal lodged by the Football Association of Serbia is rejected. Consequently, the UEFA Control, Ethics and Disciplinary Body’s decision of 17 March 2016 is upheld.

<u>Chairman:</u>	Pedro Tomás (Spain)
<u>Vice-chairmen:</u>	Michael Maessen (Netherlands) Levent Bıçakcı (Turkey)
<u>Members:</u>	João Leal (Portugal) Barry W Bright (England)

## **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body on 17 March 2016 (the “Decision”), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts,

allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

2. In substance, according to the report of the UEFA match delegate, at the time that the match started, in the upper terrace just in front of the VIP area, the supporters of the Serbian Football Association (“the Appellant”) displayed a non-formal flag showing the Kosovo as a part of Serbia. According to the same report, in the same terrace over of the VIP area, the Appellant’s supporters displayed another flag of the “old Russia”, i.e. of the former Soviet Union.
3. It was furthermore established that in the 24<sup>th</sup> minute of the match, when the Russian team goal keeper was getting a medical care, coins were thrown to the pitch, whereas in the 43<sup>rd</sup> minute of the match, a mini-ball was thrown to the pitch, both times by the Appellant’s supporters.
4. In its decision of 17 March 2016, the Control, Ethics and Disciplinary Body considered that the flags displayed by the Appellant’s supporters constituted illicit banners which were not fit for a sports event and therefore fell under the scope of Article 16 (2) (e) of the UEFA Disciplinary Regulations, whereas the throwing of the coins and the mini-ball constituted a violation of Article 16 (2) (b) of the UEFA Disciplinary Regulations. As a result, the Control, Ethics and Disciplinary Body decided to fine the Appellant €13’000.
5. The Decision with grounds was notified to the Appellant on 30 March 2016.

## **II. Summary of the proceedings before the Appeals Body**

6. On 31 March 2016, the Appellant lodged its intention to appeal the first instance decision in relation to the sanction imposed on it for the displaying of illicit banners and the throwing of objects.
7. On 4 April 2016, the Appellant submitted its appeal brief. In substance, the Appellant admitted the occurrence of the reported incidents and did not dispute the factual circumstances of the case.
8. However, the Appellant argued that the amount of the fine was too high and inappropriate in relation to the stated infringement, this in view of the enormous effort the association made in connection with the organization of the event.
9. Consequently, the Appellant requests that the decision of the Control, Ethics and Disciplinary Body is overturned with regard to the amount of the fine.

## **III. Hearing**

10. No hearing was held, since the Appellant requested that the proceedings be conducted in writing only and the Appeals Body did not raise any objection to this request.

11. The Appeals Body examined the entire case file, in particular the challenged decision, the grounds for appeal and the UEFA Ethics and Disciplinary Inspector's reply to the appeal, on 12 May 2016.
12. The parties' arguments are set out and examined below, in so far as they are relevant to the decision.

#### **IV. Appeals Body Competence and Admissibility of the Appeal**

13. Article 24 (4) of the UEFA Disciplinary Regulations states as follows: "The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body."
14. The Appellant lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
15. It follows that the Appeals Body has competence to decide on the present appeal and that the appeal is admissible. The Appeals Body may therefore consider its merits and can therefore re-examine the case in full, both factually and legally (Article 58 (2) of the UEFA Disciplinary Regulations).

#### **V. Legal Considerations Of The Appeals Body**

##### The banners and the throwing of objects

##### A. The legal framework.

16. According to Article 16 (2) of the UEFA Disciplinary Regulations, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match: (b) the throwing of objects and, (e) the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature.
17. According to Article 38 of the UEFA Disciplinary Regulations, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

##### B. In the case in hand

18. To begin with, the Appeals Body recalled that neither the presence of the banners under scrutiny and their illicit nature nor the throwing of objects by its supporters were disputed by the Appellant.

19. The Appeals Body further concluded that the first instance Control, Ethics and Disciplinary Body did correctly assess the circumstances of the case in its decision and correctly concluded that the behaviour of the Appellant's supporters regarding the displaying of the banners under scrutiny violated Article 16 (2) (e) of the UEFA Disciplinary Regulations as they were not fit for a sports event.
20. Moreover, the Appeals Body was convinced that the Control, Ethics and Disciplinary Body equally correctly assessed the facts of the case in its decision with regard to the throwing of objects and coherently concluded that the behaviour of the Appellant's supporters and the throwing of coins and the mini-ball violated Article 16 (2) (b) of the UEFA Disciplinary Regulations.
21. In view of the fact that the factual circumstances of the case and the related violations of the UEFA Disciplinary Regulations remained undisputed during the course of the proceedings, it therefore remained for the Appeals Body to examine whether the Control, Ethics and Disciplinary Body respected the regulations and legal principles, in particular those of legality and proportionality, or whether it abused its power of discretion to fine the Appellant € 13'000.

C. Determination of the disciplinary measure

22. It is the Appeals Body's constant practice to consider the Control, Ethics and Disciplinary Body's power of discretion to have been abused or exceeded if the first-instance body bases its decision on untrue or erroneous elements, does not apply fundamental legal principles, considers irrelevant facts or does not consider essential circumstances whose evaluation is compelling. In the opinion of the Appeals Body, none of this applies here.
23. In this regard, the Appeals Body recalled that the appeal of the Appellant was only directed against the proportionality of the fine in the amount of € 13'000, as it was imposed on the Appellant by the Control, Ethics and Disciplinary Body.
24. Bearing in mind the above, the Appeals Body further took note of the reply of the UEFA Ethics and Disciplinary Inspector who has made reference to previous decisions of the UEFA disciplinary bodies for similar violations of the UEFA Disciplinary Regulations. In this context, the Appeals Body took note that that the UEFA Ethics and Disciplinary Inspector deemed the sanction of €13'000 to be appropriate and proportionate, taking into account the specifics of the case as well as the established jurisprudence of the UEFA disciplinary bodies in similar cases.
25. In view of the above, the Appeals Body on a preliminary basis emphasized again that it was not its obligation to put its own assessment in place of the legal assessment of the Control, Ethics and Disciplinary Body, recalling that at this stage of the proceedings the Appeals Body only had to establish whether that the Control, Ethics and Disciplinary Body has abused or exceeded its broad powers of discretion when determining the disciplinary sanction against the Appellant.

26. However, after reviewing the explanations and legal deliberations of the Control, Ethics and Disciplinary Body in the first instance proceedings, the Appeals Body is of the opinion that the Control, Ethics and Disciplinary Body neither abused nor exceeded its broad powers of discretion. Given the moderate amount by which the Appellant was fined, comparing said amount with the sanctions in its previous decisions for similar cases and infringements of the UEFA Disciplinary Regulations, the decision of the Control, Ethics and Disciplinary Body decision complies with the principles of legality – to the extent of its power of appreciation – and proportionality.
27. On the basis of the above, the Appeals Body has no option but to uphold the initial decision and reject the appeal.

#### **VI. Costs**

28. The allocation of the costs of proceedings before the Appeals Body depends on the outcome of those proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated to the various parties or borne by UEFA. The appeal fee is either deducted from the costs of proceedings or reimbursed (Article 44 (2) of the UEFA Disciplinary Regulations).
29. It is considered justified to charge all of the costs of this case to the Appellant, whose appeal is rejected on all counts.
30. In this case, since these proceedings were conducted by the Appeals Body with a Panel of five members, the costs of the proceedings are €1'000.

## Decision of 12 May 2016

GNK Dinamo Zagreb – Arijan Ademi  
(doping)

### **Circumstances of the case**

On 16 September 2015, following a match between GNK Dinamo, and Arsenal FC in Zagreb, the GNK Dinamo player Arijan Ademi (hereinafter also referred to as “the Player”) provided an urine sample to UEFA. On 7 October 2015, the Player was notified of an Adverse Analytical Finding for stanozolol metabolites in the sample provided by him on 16 September 2015. These results were provided by the WADA accredited “Laboratoire Suisse d’Analyse du Dopage” (CHUV), Lausanne laboratory. Stanozolol is a substance prohibited at all times, listed by WADA under S1. Anabolic Agents 1. Anabolic Androgenic Steroids (AAS) a. Exogenous AAS. Stanozolol is not a specified substance.

**Legal framework** Article 13 DR.

### **Decision**

In its Decision of 19 November 2015, the CEDB suspended the Player from participating in any football-related activity for a period of four (4) years.

The Appeals Body decided that the appeal lodged by the GNK Dinamo player Arijan Ademi has to be rejected. Consequently, the UEFA Control, Ethics and Disciplinary Body’s decision of 19 November 2015 has been upheld.

<u>Chairman:</u>	Pedro Tomás (Spain)
<u>Vice-chairmen:</u>	Michael Maessen (Netherlands) Levent Bıçakcı (Turkey)
<u>Members:</u>	João Leal (Portugal) Barry W Bright (England)

### **I. Facts of the case**

#### A. Procedure before the Control, Ethics and Disciplinary Body

1. On 16 September 2015, following a match between GNK Dinamo, and Arsenal FC in Zagreb, the GNK Dinamo player Arijan Ademi (hereinafter also referred to as “the Player”) provided an urine sample to UEFA.
2. On 7 October 2015, the Player was notified of an Adverse Analytical Finding for stanozolol metabolites in the sample provided by him on 16 September 2015. These results were provided by the WADA accredited “Laboratoire Suisse d’Analyse du Dopage” (CHUV), Lausanne laboratory.

3. Stanazolol is a substance prohibited at all times, listed by WADA under S1. Anabolic Agents 1. Anabolic Androgenic Steroids (AAS) a. Exogenous AAS. Stanazolol is not a specified substance. The standard sanction contemplated for this kind of substances is four years in accordance to Article 9.01 ADR.
4. Also on 7 October 2015, the Control, Ethics and Disciplinary Body decided to provisionally suspend the player Arijan Ademi from participating in any football related activity for 30 days in accordance with Article 42 of the UEFA Disciplinary Regulations.
5. On 20 October 2015, the Player was notified that the B-sample analysis confirmed the result of the A-sample for stanazolol metabolites. These results were also provided by the WADA accredited Lausanne laboratory.
6. On 21 October 2015, disciplinary proceedings were opened against the player for alleged doping offences in accordance with Article 13 DR.
7. On 6 November 2015, the Control, Ethics and Disciplinary Body decided to extend 15 days the validity of the provisional suspension imposed to the GNK Dinamo player Arijan Ademi.
8. Following the above disciplinary proceedings opened against the Player, a hearing was held on 19 November 2015.
9. In its Decision of 19 November 2015, the CEDB suspended the Player from participating in any football-related activity for a period of four (4) years.
10. On 7 December 2015, The Player notified the UEFA administration his declaration of appeal against the decision the UEFA Control, Ethics and Disciplinary Body ("CEDB") dated 19 November 2015 (the "Decision"), within the time limit established in the UEFA Disciplinary Regulations ("DR").

B. First submissions: Appeal, appeal brief and reply to the appeal

11. The Player submitted the grounds of his appeal on 14 December 2015, also within the regulatory time limit foreseen in the DR:
  - The Player stresses that he has intermittently suffered chronic pain in his lower back during the past year and a half, receiving treatment from his club doctors. An MRI taken in February 2015 revealed that he suffers from "multilevel chronic discopathy".
  - In September 2015, the Player attended the health center of Croatian physiotherapist Mr. Branimir Vajda to find a possible treatment for his back problem. Mr. Vajda advised the Player to take an over-the-counter dietary supplement called "Megamin / Megacomplex". The Player bought the product from Mr. Vajda at his center.
  - Before taking the "Megamin" product, the Player checked its content and did not identify any possible issue regarding prohibited substances. The Appellant also asked

a senior doctor at his club, Dr. Hrvoje Sojat, to verify that he could take the “Megamin” product, and the latter confirmed that no prohibited substance was mentioned amongst the ingredients.

- The Appellant submits that the intake of contaminated “Megamin” product is, on a balance of probability, the most probable cause for the presence of stanozolol in his urine sample provided after the Match.
- The Player stresses that the supplements given by the Club to the Croatian NADO had been sent to the Seibersdorf laboratory in Austria (WADA accredited laboratory). However, the Croatian NADO was not willing to authorise this laboratory to perform the testing but wrote to UEFA in order for such authorisation to be granted.
- The Player claims that, while UEFA has not accepted to have the “Megamin” product analysed by a WADA-accredited laboratory, he had instructed the Croatian Veterinary Institute to perform a preliminary analysis, which confirmed that the “Megamin” product used by the Player had been contaminated with stanozolol. However, the Croatian Veterinary Institute was not authorized according to its accreditation to issue certificates of analysis for food supplements.

12. On 5 January 2016, the Ethics and Disciplinary Inspector (EDI) submitted its reply to the appeal within the time limits:

- It is undisputed by the parties that, according to Art. 2.01(a) of the UEFA Anti-Doping Regulations (hereinafter, the “ADR”), an ADR violation has been committed by the Player.
- The Player has not provided any evidence that the “Megamin” product which he took was contaminated with stanozolol. In fact, he merely alleges that the “Megamin” product had been analyzed by the Croatian Veterinary Institute, who had supposedly found that it contained that prohibited substance. However, not only does he not provide any evidence of the results of such analysis to these proceedings, but he also conveniently claims that this was not possible because that laboratory is not authorized to issue certificates of analysis of food supplements.
- Even if one were to accept that the “Megamin” product was analyzed by the Croatian Veterinary Institute and the result was that the Megamin allegedly taken by the Player was contaminated with stanozolol (quod non), the Ethics and Disciplinary Inspector also questions the validity of the test carried out by that laboratory, insofar as it is not a WADA-accredited laboratory and no evidence has been provided that the testing process followed by the Croatian Veterinary Institute complies with the International Standards for Laboratories and for Testing. It shall be reminded that, pursuant to Art. 3.02(b) ADR, only WADA-accredited laboratories and other laboratories approved by WADA are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories.
- In any event, the fact that the Player was supposedly the only one of his teammates to use Megamin is not sufficient in itself to prove that the “Megamin” product was contaminated with stanozolol.
- Summarily, the player has not sufficiently proven, on a balance of probabilities, that the source of the stanozolol found in his urine samples was the “Megamin”



supplement that he took. Even if he had done so, the Ethics and Disciplinary Inspector holds that the degree of fault or negligence of the Player in the present matter is absolute, and it therefore cannot justify a reduction of the standard four-year suspension foreseen in the ADR.

- C. Products analysed by a WADA accredited laboratory: Institute of Biochemistry German Sport University Cologne (the “Cologne laboratory”)
13. On 18 December 2015, the Chairman of the UEFA Appeals Body decided that the products declared in the Doping Control Form of 16 September (i.e the exact ones and the equivalent), including all those mentioned in the appeal brief, are to be sent to the WADA accredited laboratory, the Institute of Biochemistry German Sport University Cologne, Germany (hereinafter also as “Cologne laboratory”). It additionally imposed a number of conditions as regards the information to be provided by the player such as the quantity and in which frequency the player took those products, how he took them and for how long. In addition, this UEFA disciplinary body fixed the deadline to send the products to the said laboratory on 22 December 2015.
  14. On 22 December 2015, the player applied for an extension of the deadline to send the above mentioned products. The products mentioned on the Doping Control Form had been sent to the RIKILT laboratory in the Netherlands for testing (not accredited by WADA). Testing had not yet finalised, which means that the products were – for the time being – not available to be sent forthwith to the Cologne laboratory.
  15. On 3 January 2016, the Chairman of the Appeals Body agreed to extend the deadline until 5 January 2016.
  16. On 5 January 2016, the player applied again for an extension of the deadline due to the fact that obtaining sealed containers of the products was difficult.
  17. On 6 January 2016, the Institute of Biochemistry German Sport University Cologne informed the Appeals Body that it received on 5th of January the nutritional supplement Megamin med (one open container and one closed container) from the sender GNK Dinamo Zagreb and submitted the following observations:
    - The closed container contains only yellow coloured capsules;
    - The open container contains yellow coloured and transparent capsules. The LOT number and expiry date of the closed container is written on the cap: LOT: 1390715 EXP: 07.2017. The LOT number and expiry date of the open container is illegible because it was smeared.
  18. On 7 January 2016 and regarding the rest of products to be sent from the RIKILT laboratory in the Netherlands, the Chairman of the Appeals Body agreed to extend the deadline until 11 January 2016.

19. On 11 January 2016, the player sent the required information as requested by the Chairman of the Appeals Body on 18 December 2016. In a separate letter, the Player listed the products sent to the Cologne laboratory and gave some explanations about their origin. Summarily, the products sent to the Cologne laboratory were "Ultrasport", "BCAA" and the "Megamin" product. In relation to the "Megamin" product the Player explained that an open and unsealed container (the one analysed by the Croatian Veterinary Institute) had been sent to the RIKILT laboratory in the Netherlands, which would after the analysis send them to the German laboratory. Furthermore, the Player explained also that on 4 January 2016 the remaining "Megamin" product used by him before the game (i.e those sent to the Croatian NADO, submitted by the latter to the Seibersdorf in Austria and sent back to the Player) were also sent to the Cologne laboratory.
20. On 12 January 2016, the Appeals Body was notified that the Institute of Biochemistry German Sport University Cologne received two plastic sachets capsules and tablets. The sachets were labeled with self-made labels: PROFI BCAA MEGA CAPS. 300 kapsula OLIMP LABORATORIES Sp. Z O. O.; Ngawczynya 109 c39-200 Debica, batch numb.- 00161214 and Ultrasport TCS tab. 90 tab. sunmoon Biotech co. Ltd. JinChi Road., LuYang Economy, Development Zone, Hefei, Anhui, China, Tel. 0086-551-4270627, batch numb.-131126.
21. On 13 January 2016, the Chairman of the Appeals Body decided that solely the sealed/closed products relating to Megamin sent to the German laboratory on 4 January 2016 and received on 6 January 2016 were to be analysed.
22. On 25 January 2016, the Cologne laboratory submitted its results stating that no stanozolol was detected. The Chairman of the Appeals Body informed that any statement to the above, as well as any evidence was to be submitted before Friday 29 January 2016 at 12:00 at the latest.
  - D. Second submissions: Results of the analysis of the WADA accredited laboratory (the "Cologne laboratory") and RIKILT results
23. On 29 January 2016, the Player submitted his position on the results of the Institute of Biochemistry German Sport University Cologne (also referred as "Cologne laboratory") sent on 25 January 2016, as well as included information and comments on the results undertaken by the RIKILT laboratory of Netherlands. Summarily, he stated as follows:
  - Regarding the RIKILT testing results, the player underlined that the said laboratory expressed that *"for both Megamin med products we found also suspect peaks for stanozolol in one replicate (in total four replicates were analysed). In all four replicates a significant peak is present before stanozolol elutes. However when performing cochromatography. It's clear that the earlier eluting peak is no stanozolol"*.
  - Regarding the results of the Cologne laboratory the Player holds that they seem to confirm RIKILT's findings - this extent not been explained by the Player.
  - The player informed that he was willing to perform further analysis of the products he took. Notably the "Megamin" product and, in particular, to ask RIKILT to review

the documentation package issued by the Lausanne Laboratory for his urinary analysis and to compare the metabolites found in his urine with the peak identified by RIKILT when analysing "Megamin" in order to see if the presence of the prohibited metabolites may be explained by the substance that caused such peak. The Player holds that the same could be done with the documentation package to be issued by the Cologne laboratory for which he applies that the Cologne laboratory be invited to provide UEFA with the full documentation package of the analysis of the Megamin product. The Player also contemplated further analyses of other batches of "Megamin" product in order to know whether all batches of such products are similar or not.

24. On 29 January 2016, the Ethics and Disciplinary Inspector submitted his position in relation to the results of the Institute of Biochemistry German Sport University Cologne sent on 25 January 2016:

- It is compulsory that the Player establishes how the prohibited substance, stanozolol, entered his system.
- The report of the Cologne laboratory confirms that the "Megamin" product taken by the Player was not contaminated with stanozolol. Therefore, on a balance of probabilities, not only is it not demonstrated that the Player took a contaminated supplement, but in fact, it has been proven that the "Megamin" product, which is the only one that the Player claims was allegedly contaminated, was actually not contaminated
- In relation to the other products taken by the Player, even when he has not claimed their possible contamination as a source of the stanozolol found in his samples, no sufficient evidence exists that would lead to consider such a theory. In fact, the Player has rejected that the other supplements besides the "Megamin" product would be contaminated.
- Because the conclusions reached in relation to the origin of the prohibited substance found in the Player's system automatically exclude the application of Art. 10.02 DR, it is impossible, and therefore unnecessary, to establish the Player's degree of fault or negligence when the origin of the stanozolol has not been established

E. Further analysis requested by the player

25. On 1 February 2016, the Chairman of the Appeal Body granted the player until 25 February 2016 to proceed with all the analysis that he may consider as necessary in accordance to his statements of 29 January 2016 and to send any conclusions that may derive from them also by the same date. In addition and in relation to the full documentation package of the results sent to the Cologne laboratory, the Chairman of the Appeals Body did not consider necessary to request, at that stage of the proceedings, the said documentation to the laboratory. Finally, Appellant was again required to submit the official certificate of the RIKILT laboratory before Wednesday 3 February 2016 at 12:00h at the latest.

26. On 3 February 2016, the player sent certificates of analysis issued on 2 February 2016 by the RIKILT laboratory. The player stressed that the laboratory failed to identify stanozolol in the products provided by the club and for this reason, further analyses were in process. The following conclusions were certified by the RIKILT laboratory:
  - 2 Megamin med, open container (RIKILT Sample Number: RIK0392328 and RIKILT Sample Number: RIK0392328): no stanozolol detected
  - Ultrasport Tcs, 4x yellow tabs, (RIKILT Sample Number: RIK0392329): : no stanozolol detected
  - Siberian Ginseng (RIKILT Sample Number: RIK0392325): : no stanozolol detected
  - Cordyceps (RIKILT Sample Number: RIK0392326): : no stanozolol detected
27. On 24 February 2016, the player informed that the additional analyses performed by the RIKILT Laboratory were still not completed. He added that suspicious results were again detected in the “screening” assay, but confirmation still needed to be made. Therefore, the player requested an extension until Monday 21 March 2016 of the deadline granted to the Appellant to submit to UEFA the results of any additional analyses.
28. On 1 March 2016, the Chairman of the Appeals Body granted the extension of the deadline to submit the result of the additional analysis.
29. On 7 March 2016, the player Arijan Ademi instructed the AEGIS laboratory in the USA to perform additional testing of the “Megamin” product, notably in order to try to identify any substance, similar to Stanozolol, whose ingestion may result in the presence of stanozolol metabolites. To that effect, the “Megamin” product sent to Cologne should be forwarded to this laboratory.
30. On 16 March 2016, the Chairman of the Appeals Body informed the parties that it had requested the Cologne laboratory to submit the full documentation package in relation to the results given by this institute on the products analysed. In addition and following the request of the player Arijan Ademi sent on 7 March, it instructed the German laboratory that the Megamin product should be sent to the AEGIS laboratory in the USA.
31. On 21 March 2016, the player was requested to submit the exact address of the AEGIS laboratory in the USA. Furthermore, the parties were informed that in relation to the full documentation package requested from the Cologne laboratory, said institute denied this request on the basis that laboratories are not obliged to submit the full documentation package of negative results in accordance with the WADA Code. Finally, the Chairman of the Appeals Body requested the player to submit any relevant document or information as regards the analysis undertaken by the AEGIS laboratory in the USA by no later than 25 April 2016.
32. On 21 March 2016, the player sent the exact address of the AEGIS laboratory in the USA as well as the confirmation that this laboratory received the “Megamin” product from the laboratory in Cologne.

33. However, on 30 March 2016, UEFA informed the parties that the above-mentioned product was sent from Cologne laboratory (a confirmation email was sent by this laboratory to UEFA on this same date, 30 March 2016, including the tracking number). It follows that there has been some confusion from the side of the Player in relation to the sender of the "Megamin" product shipped on 21 March 2016 to the AEGIS laboratory.
34. On 25 April 2016, the Player sent the results of the additional analysis. He also attached as some information given by these laboratories about the state and number of the products upon their arrival to the laboratories and prior to the analysis.
35. According to the RIKILT Laboratory, two samples were received on 10 February 2016, noting that: *Both samples were not received in a sealed bag. The Megacomplex caps a 60 should contained 60 pills packed in blisters of 10 each in a cardboard box. The box received contained 3 blisters with 10 pills each (i.e. half of what it should have contained; sample RIK0397490). The box was not sealed. Megacomplex caps a 120 box contained a sealed (unopened) pot and should contain 120 pills (the exact quantity wasn't determined; sample RIK0397491).*
36. Both of the above products were analysed separately by the RIKILT laboratory, producing the following results:
- In sample RIK0397490 in full scan mode a peak with an accurate mass of m/z 329.2588 was detected (theoretical mass of Stanozolol is m/z 329.25874) at the retention time where stanozolol elutes (4.11minutes). Applying fragmentation experiments of the selected mass of stanozolol (m/z 329.25874) results in product ions with exact mass of m/z 81.049; m/z 95.0856 and m/z 121.1013 (all three are known product ions of stanozol). The deviation of the calculated exact mass was below 1 ppm.
  - In sample RIK0397491 in full scan mode no peak was detected with an accurate mass comparable to the exact mass of stanozolol.
37. Regarding the AEGIS laboratory the following results were reported by the Appellant:
- Results 1: Aegis Analytical Laboratories received a white box containing an unsealed white plastic bottle, both labeled: "megamin med MEGACOMPLEX® DODATAK PREHRANI" Imprinted on the bottle: LOT: 1390715 EXP: 07.2017 The bottle contained 107 clear capsules with tan powder inside. The contents of 10 capsules were homogenized and analyzed for stanozolol. The result was negative for "stanozolol".
  - Results 2: Aegis Analytical Laboratories received a white box containing a sealed white plastic bottle, both labeled: "megamin med MEGACOMPLEX® DODATAK PREHRANI" Imprinted on the bottle: LOT: 1350915 EXP: 09.2017. The bottle contained 120 clear capsules with brown powder inside. Contents of 10 the capsules were homogenized and analyzed for stanozolol. The result was negative for "stanozolol".
  - Results 3: Aegis Analytical Laboratories received two silver blister packs, both labeled: "MEGACOMPLEX" LOT: 1260515 EXP: 05.2017. Each blister pack contained

10 capsules for a total of 20 capsules, all containing brown powder. Of the 20, 16 blister seals appeared intact and identical; the capsule contents of 8 of these within intact seals were combined, homogenized and assigned sample identifier 4565219. This pooled set was tested for stanozolol. The result was negative for "stanozolol".

- Result 4: Aegis Analytical Laboratories received two silver blister packs, both labeled: "MEGACOMPLEX" LOT: 1260515 EXP: 05.2017. Each blister pack contained 10 capsules for a total of 20 capsules, all containing brown powder. Of the 20, 4 blister seals appeared damaged; the capsule contents within these damaged cells were combined, homogenized and assigned sample identifier 4565220. This pooled set was tested for stanozolol. The result was positive for "stanozolol".

F. Third submissions: Analysis undertaken by the RIKILT and AEGIS laboratories

38. In the letter attached to the findings of the analysis of the RIKILT and the AEGIS laboratories sent on 25 April 2016, the Player made the following comments:

- Two separate and independent laboratories. RIKILT in the Netherlands and AEGIS in the United States have confirmed the presence of stanozolol in the product "Megamin";
- The Player requests that UEFA states prior to the hearing that Appellant has proven on a balance of probability how the substance entered his body. i.e. by the use of the Megamin product and that his ingestion of stanozolol was not intentional. Therefore, the sanction must be a maximum of two (2) years.
- The Player concludes that his sanction could be lowered to as little as a reprimand from two (2) years depending on his degree of fault

39. On 29 April 2016, the Chairman of the Appeals Body informed the parties that in relation to the letter sent by the player Arijan Ademi on 25 April 2016 and the request made by the latter, the UEFA disciplinary body would re-examine the case from both a factual and a legal perspective (Article 58 (2) DR) on the occasion of the hearing to be held on 12 May 2016. No decision on any particular aspect related to these proceedings would be taken by the Appeals Body prior to that date. In addition and in accordance with Article 37 DR, the Appeals Body summoned Dr. Hans Geyer, Deputy Head Institute of Biochemistry Center for Preventive Doping Research (the Cologne laboratory) to give his expert opinion in the case of reference during the hearing to take place on 12 May 2016.

40. On 2 May 2016, the Ethics and Disciplinary Inspector submitted his report on the additional analysis undertaken by the Player.

- The only truly reliable analysis of the Megamin product is the one carried out by the WADA-accredited Cologne Laboratory, which determined that the supplement does not contain any stanozolol.
- The RIKILT Lab and the AEGIS Lab are not WADA-accredited. The results of the analyses performed by these laboratories are therefore not presumed accurate or to have been carried out in accordance with the relevant

International Standards approved by WADA, and they shall, in principle, be dismissed.

- In any event, the analyses performed by the RIKILT and the AEGIS laboratories on some Megamin products, which resulted in a positive finding of stanozolol are absolutely invalid and shall be disregarded. These particular products were sent to the respective laboratories by the Appellant or by persons instructed directly by the Appellant to do so, in unsealed and even damaged containers, which clearly subjected them to external manipulation and/or contamination either prior to or during their transport to the laboratories. In fact, even if such manipulation and/or contamination has not occurred, the mere fact that the products arrived to these laboratories unsealed and even damaged is sufficient to render their analyses null.
- If the results of the analyses of the RIKILT Lab and the AEGIS Lab are to be taken into consideration (quod non), only the analyses of the Megamin products which arrived sealed to these laboratories (i.e., the Sealed Container and the Sealed Bottle, not subject to external manipulation or contamination) and of the Cologne Bottle (though unsealed, it was sent directly by the WADA-Accredited Cologne Laboratory complying with the relevant protocols) are to be considered valid. The analyses of the contents of these products found no presence of stanozolol.

### **III. Hearing before the Appeals Body**

41. On 12 May 2016, a hearing was held at UEFA Headquarters in Nyon.
42. The Chairman of the Appeals Body opened the appeal hearing, noted the presence of the Appellant and the UEFA Ethics and Disciplinary Inspectors.
43. The floor was given to the parties, who, in substance, reiterated the arguments given in their written pleadings and developed and maintained their requests.
44. The Player himself had the opportunity to present his case before the Appeals Body. He insisted on his innocence based on the fact that he took a contaminated product without involving any significant fault.
45. In particular, from the side of Appellant three witnesses participated at the hearing. In substance, Mr Hrvroje Sojat, a senior the team doctor, underlined that he heard that the player had a private fitness coach, that he wanted to take the product "Megamin" for which the player wanted his opinion, and that he had checked the content of this product and realized that there was nothing figuring on the ingredients that would be against the WADA Code, which he also confirmed with other colleagues. Furthermore, Mr Vajda, physiotherapist and private coach, was called to clarify the reasons why he recommended the product "Megamin", to the player i.e to treat the back pain suffered by the player. Mr Vajda explained that he bought this product over the counter in a pharmacy, that the product is not directed to increase the performance of athletes and that he has recommended and given the product to other athletes who never have tested positive

after using this product. Finally, Mr Tomislav Cerovecki, team doctor, intervened to explain the chain of custody of the product sent to the laboratories AEGIS and RIKILT. He explained that he bought several samples of the product "Megamin" guided by the expiration date of the original bottle used by the player - the LOT number of this bottle was illegible. Once he purchased the samples, he sent one bottle to the AEGIS laboratory and one to the RIKILT laboratory. In addition, he exposed that he purchased one package of the product "Megamin" containing six blisters: three blisters were sent to RIKILT and two blisters to AEGIS, the club keeping one in Zagreb. The reason for removing the blisters and sending them loosely was that this particular sample with this particular LOT number was the last existing one. M Cerovecki pointed out that he contacted the company producing the product "Megamin" to get information about the product "Megamin" and to enquire if "stanozolol" was used to produce it. The answer was, according to Mr Cerovecki, that the company does not use "stanozolol" to produce any of their products, including the "Megamin" product.

46. In a last instance, the expert summoned by the Chairman of the Appeals Body, Dr Hans Geyer of the Institute of Biochemistry of the Cologne laboratory had the opportunity to participate via phone conference. The expert answered the different questions posed to him by the members of the Appeals Body and the parties. The expert explained that the accreditation of WADA does not cover nutritional supplements which are however covered with the ISO 17025 certification. This certification is given also to other non-accredited laboratories which he knows is the case for RIKILT and AEGIS. In addition, he explained that in a case of contamination of the product, different concentrations of the prohibited substance would likely be present in other pills of the same container, even below the standard analysis level. Furthermore, Dr Geyer stated that boxes with the same badge number and expiry date would most likely also be contaminated in such cases. Regarding the positive analysis of opened containers, external manipulation of the capsules cannot be excluded, being the process of introducing this substance in capsules quite simple as the instruments for that purpose are available in every pharmacy. He also explained why the RIKILT laboratory did not find stanozolol in its first analysis, excluding hereby the fact that stanozolol was present in that product. The doctor also stated that the concentration detected in the Lausanne laboratory is extremely low which can be the consequence of a high intake of this substance months before the doping control or a low ingestion days before the test, which would result in the concentration found in the urine. With such a low concentration it is uncertain the time and dose of the intake. However, the contamination theory cannot be discarded being the concentration consistent, even if the said concentration should have been a little bit higher. Also, the knowledge to link concentration of contamination with urine in the levels showed in this case is an information only certain people possess. To the questions of Appellant about the likelihood of a situation in which a contaminated product is at stake and another one in which capsules and blisters have both been manipulated, the expert stressed that taking into account that he is not a pharmacist, the scenario of contamination may be more plausible. He however insisted on the fact that manipulation cannot be excluded and expressed his concerns about the fact that no blisters were sent in first place to his institute for its analysis and questions the reasons why they were submitted in a later stage of the proceedings. Additionally, the expert put forward the case of the Bulgarian



weightlifting in which a similar concentration was found in a case linked to “Tribulus Terrestris” was in line with the one found in the “Megamin” product. Asked about a scenario in which contamination of Tribulus Terrestris and the product “Megamin” are at stake, the expert concluded that Tribulus Terrestris scenario is more plausible. Dr Geyer also explained that stanozolol is used to speed up recovery processes due to its muscle building effect.

#### IV. Applicable legal framework

47. According to Article 9 UEFA Anti- Doping Regulationsn (ADR):

*Suspension for presence, use, attempted use, or possession of a prohibited substance or a prohibited method*

*The period of suspension for a first violation under paragraph 2.01a (presence of a prohibited substance or its metabolites or markers), 2.01b (use or attempted use of a prohibited substance or prohibited method) or 2.01f (possession of a prohibited substance or prohibited method) is as follows, subject to any reduction or suspension of this period pursuant to paragraph 10.01, 10.02 or 10.03.*

*a) The period of suspension is four years if:*

- i) the anti-doping rule violation does not involve a specified substance (unless the player or other person can establish that it was not intentional); or*
- ii) the anti-doping rule violation involves a specified substance and UEFA can establish that it was intentional.*

*b) If paragraph a) does not apply, the period of suspension is two years.*

*c) As used under paragraphs 9.01 and 9.02, the term “intentional” is meant to identify those players who cheat. The term, therefore, requires that the player or other person engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an adverse analytical finding for a substance which is only prohibited in-competition is rebuttably presumed to be “not intentional” if the substance is a specified substance and the player can establish that the prohibited substance was used out-of-competition.*

48. According to Article 10 ADR:

*a) Reducing suspensions for violations of paragraph 2.01a (presence of prohibited substance or its metabolites or markers), 2.01b (use or attempted use of a prohibited substance or method), or 2.01f (possession of a prohibited substance or prohibited method) involving specified substances or contaminated products.*

*(...)*

- ii) Contaminated products*

*In cases where the player or other person can establish no significant fault or negligence and that the detected prohibited substance came from a contaminated product, then the minimum sanction is a reprimand and no period of suspension and the maximum sanction two years of suspension, depending on the player's or other person's degree of fault.*

49. Consequently, for applying the reduction contemplated in Article 10 ADR two conditions need to be fulfilled:

- a) The detected prohibited substance came from a contaminated product.
- b) The player bears no significant fault or negligence, as defined in Appendix C ADR.

50. The burden and standard of proof are established in accordance with Article 3.01 ADR:

*UEFA has the burden of establishing that an anti-doping rule violation has occurred. The standard of proof is whether UEFA has established an antidoping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. Where a player or other person alleged to have committed an anti-doping rule violation has the burden of rebutting a presumption or establishing specified facts or circumstances, the standard of proof is the balance of probability.*

## **V. In the case in hand**

### **A. The violation of the UEFA Anti-Doping Regulations**

51. The UEFA Appeals Body notes that the examination of the case at hand departs from the fact that a doping violation took place in accordance with Article 2 ADR. This extent has been confirmed by the parties.

52. Briefly, the player accepts that the substance was found in his body and that it constitutes a violation in accordance to Article 2.01 ADR. However, he contests the fact that this violation shall be acknowledged as an infringement of Article 9.01 UEFA Anti-doping Regulations and that the player shall be imposed a sanction of 4 years. In substance, the player holds that the prohibited substance entered his body by ingestion of a contaminated product in the sense of Article 10 ADR.

53. Taking the above into account, the Appeals Body understands that the question here is to assess if the player's violation falls under Article 9.01 UEFA Anti-doping Regulations (ADR) which provides a minimum sanction of four years or is to be endorsed under Article 10 UEFA ADR, mainly the one designed for contaminated products, which foresees a reduction of the above mentioned sanction, a maximum sanction of two years, depending on the level of fault of the player.

54. As stated above, for applying the reduction contemplated in Article 10.01 ADR two conditions need to be fulfilled:

- a) The detected prohibited substance came from a contaminated product.
- b) The player bears no significant fault or negligence

55. Consequently, the Appeals Body notes that the reduction applied for by the player is only possible if he has been able to prove that in fact the prohibited substance entered his body by means of a contaminated product.

B. The supplement theory

56. The Appeals Body reminds that according to CAS 2011/A/2384 and 2386 and in light of the jurisprudence of the Swiss Federal Tribunal, the likelihood of alleged alternative scenarios having occurred is to be taken into account when determining whether the Athlete has established, on a balance of probabilities that the source he is alleging of entry into his system of the Prohibited Substance is the more likely (see CAS 2009/A/1930 and CAS 2011/A/2384)

57. Bearing the above in mind, this UEFA disciplinary body notes that the expert Professor Hans Geyer from the laboratory of Cologne was asked if any of the other products taken by the Player have been linked recently to doping cases and, specifically to stanozolol. Professor Hans Geyer's answer was clear in relation to the product "Tribulus Terrestris" which had been linked to a recent doping case by the Bulgarian weightlifting team, rightly for the use of stanozolol, which ended up in a ban against the whole team.

58. At this occasion the Appellant informed the expert that according to the documentation submitted by the RIKILT laboratory stanozolol was not detected on the product "Tribulus Terrestris".

59. According to the doping control form filled in by the player the day he was tested after the above mentioned match, he had taken the following products: Minerals, Megamin, Tribulus Terrestris and BCAA.

60. It is the Player's theory that the prohibited substance "stanozolol" entered his body by means of the ingestion of the product "Megamin" which he stresses was contaminated. The product "Megamin", argues the player, is the only product taken by him not provided by the team doctor, Dr Zekic to his other teammates. This theory is also backed by the fact that ten players were tested on 16 October 2015, soon after the Appellant, and none of them returned an Adverse Analytical Finding. The player here again holds that it is evident that the supplements provided by Dr Zekic (which were being provided to all players in the team) could not have been contaminated, i.e Minerals, Tribulus terrestris and BCAA. Therefore, on a balance of probability, the supplement that was taken only by the Appellant and not the rest of his team, the dietary supplement Megamin, was the most plausible explanation for the presence of stanozolol in the Player's system.

61. The Appeals Body notes that the conclusion that "Megamin" is the only product taken by the Player from different from the other ten players who did not return with an Adverse Analytical Finding, is only corroborated by the team doctor's own statements.

Nevertheless, this UEFA Disciplinary Body is willing to accept this extent due to the lack of any other piece of evidence in the case file that may contest this fact and in the use of the standard of proof of balance of probabilities.

62. In addition, this UEFA Appeals Body notes that there is no connection between the list of products listed in the player's doping control form of 16 September 2016 and the one listed and sent by the Player to the Cologne laboratory. For instance, the product "Tribulus Terrestris" has not been sent as such to the RIKILT laboratory, but instead the one called Ultrasport TcS, which amongst other components such as Cordyceps and Shilajit, also contains "Tribulus Terrestris".
63. This UEFA disciplinary body notes that on 3 February 2016, Appellant sent the certifications of its first analysis of the above mentioned products. Being true that RIKILT concluded that no stanozolol was detected in the product Ultrasport TCS, the one containing the substance "Tribulus Terrestris" (see for instance: RIKILT Sample Number: RIK0392329) as well as on Cordyceps, which is also one of the components of Ultrasport TCS (see for instance: RIKILT Sample Number: RIK0392326), the same outcome was determined for an opened container, not sealed for the product of "Megamin" (see for instance: RIKILT Sample number: RIK0392328).
64. In this context, Appellant still insisted on the contamination theory of the product "Megamin", mainly because allegedly the "Megamin" product was the one taken by the Player and not by his teammates and because RIKILT stated that "*Megamin med products we found also suspect peaks for stanozolol in one replicate*". Notwithstanding this and according to the case file (see Exhibit 40 of Appellant) this same laboratory stated that "*the product Cordyceps is found suspected for the presence of stanozolol*", but for this particular case no further analysis were made.
65. Furthermore, the team doctor, M Cerovecki, in his testimony stated that he had contacted the company producing the "Megamin" product in Croatia and inquired if there is any possibility that the "Megamin" product could be contaminated with the substance stanozolol. The company, in words of the team doctor, discarded this possibility as no product of this manufacturer is produced with stanozolol.
66. Bearing all the above in mind, this UEFA disciplinary body cannot understand why Appellant gave more credit to the theory of the contamination of the product "Megamin" in a context in which similar statements have been addressed towards another product, here Cordyceps, contained in Ultrasport TCS and directly linked to "Tribulus Terrestris". The Appeals Body deems that, in principle, this theory seems to be more plausible than the theory based on the product "Megamin".
67. Nevertheless, this UEFA Appeals Body is prepared to evaluate the only theory put forth by the player (Megamin contamination) mainly because the Ethics and Disciplinary Inspector has not opposed to it, even after raising some doubts as to whether a different supplement could have been a possible source. Because it is the Appellant's burden of

proving the origin of the prohibited substance, the Appeals Body will therefore only consider whether the only theory submitted by the player is correct or not.

68. .

C. WADA accredited laboratories and non WADA Accredited laboratories

69. In the course of the current proceedings, four different laboratories have issued results on analysis undertaken on the product "Megamin": RIKILT, AEGIS, Croatian Veterinary Institute and Institute of Biochemistry of Cologne. Only the latter is a WADA accredited laboratory.

70. A clarification shall be made on the question about the reliability and preponderance of results coming from different laboratories, one being a WADA accredited while the others not. This Appeals Body notes that there has been some confusion about a possible preponderance of WADA accredited laboratories results over non-WADA Accredited laboratories in cases also for the analysis of nutritional supplements.

71. Briefly and as confirmed by the expert Dr Geyer, WADA accredited laboratories are those laboratories that meet the criteria specified by the International Standard for Laboratories and its related technical documents as well as with the standards that must be met for the production of valid test results and evidentiary data. However, the accreditation of WADA does not cover the analysis of nutritional supplements which is done by means of the certification ISO 17025. The said certification can be granted to other laboratories as it is the case for the RIKILT and AEGIS laboratories. Consequently, the validity of results coming different laboratories, like in this case the Institute of Biochemistry of Cologne, and other reputed laboratories, like RIKILT and AEGIS, insofar the certification of these laboratories is accepted, are equally valid.

72. Regardless from the fact that a veterinarian laboratory does not seem the most appropriate institute to address the problematic of this particular case, this Appeals Body cannot rely on the results of the Croatian Veterinary Institute due to the fact that no certification on nutritional analysis can be rendered by this institute, for which the assessment of the validity of the results is crucial.

73. Briefly, the Appeals Body deems that the results, both positive and negative, provided by the laboratories AEGIS, RIKILT and the Cologne laboratory, are equally valid. It is the task of the Appeals Body under these premises to confront the different results and to check their authenticity, here to examine the existing specific circumstances which may shed light on the question about the contamination of the product "Megamin".

D. Equivalent products and the chain of custody

74. To recapitulate, the Player sustains that three different results from three different laboratories, i.e RIKILT, AEGIS and Croatian Veterinarian Institute, have confirmed that

indeed “stanozolol” was present in the product Megamin. This shall, according to the Appellant, definitely confirm the contamination theory of the product “Megamin”.

75. Doubts have been raised by the Ethics and Disciplinary Inspector on the reliability of these results insofar every positive result of these laboratories have been connected to a breach of the chain of custody, i.e potentially affected by external manipulation, and even a different format of the products as those used by the player. Furthermore, the Ethics and Disciplinary Inspector notes that all those products sealed and closed without any possible external interference have resulted in a negative result, which shall in a standard of balance of probabilities prove that the product “Megamin” was never contaminated.
76. In this regard, the Appeals Body deems appropriate to highlight the importance of keeping evidence solid and safe from external interference in the chain of custody in cases involving laboratory analysis. Authentication or identification of real evidence refers to the requirement of proving that an item of evidence is genuine, i.e., that it is what its proponent claims it to be. In the investigation and preparation of a case, crucial evidence may have passed through several parties' possession. The transfer may have occurred prior to the event in issue (product liability cases); or the transfer itself may be the precise event in issue (sale of dangerous drugs); or the transfer may have occurred after the event in issue (chemical analysis of blood or drug samples). Each transfer affords, however, the possibility of accidental or willful alteration of the item. There may be a potential loss of ability to positively prove that the item offered in evidence was the item or an equivalent involved in the transaction in question (*Chain of custody requirements in admissibility of evidence*, Michael B. Anderson).
77. Taking the above into account, the Appeals Body needs to assess the authenticity of the different results provided by the three intervening laboratories.
  - a. Cologne laboratory results
78. It shall be recalled that the Chairman of the UEFA Appeals Body decided on 18 December 2015 that all products declared in the Doping Control Form of 16 September 2015, as well as those included in the appeal brief, were to be sent to the Cologne institute. In particular, the player was requested to send the equivalent product, i.e same batch number and same expiry date and sealed/new. On top of that, the Chairman of the Appeals Body imposed a number of conditions as regards the information to be provided by the player such as the quantity and the frequency he took those products, how he took them and for how long.
79. Bearing the above in mind and once the products were sent to the Cologne laboratory, the Chairman of the Appeals Body decided that solely the sealed/closed product of “Megamin” sent to the Institute of Biochemistry Center for Preventive Doping Research of the German Sport University Cologne by GNK Dinamo Zagreb (i.e LOT: 1390715 EXP: 07.2017) was to be analysed.

80. Here, the decision was taken on the basis that, first, the player, who has the burden of proof, excluded the other products from being contaminated, and, therefore, no reason existed to proceed to their analysis. And, second, only the named "Megamin" product (LOT: 1390715 EXP: 07.2017) which arrived closed and sealed had most likely not been subject to external manipulation, therefore offering a more reliable analytical result.
81. The result of the Cologne institute was that no stanozolol was detected in the above mentioned product.
82. The Appeals Body wishes to take this opportunity to stress the importance it had for this UEFA disciplinary body to analyse an equivalent product. Equivalent products pass same producing processes, i.e. same instruments and procedures, and will in a case of contamination and on a balance of probabilities also be contaminated, even if the concentration level of each sample may differ from one to the other. This extent has been confirmed by the expert Professor Hans Geyer in his oral testimony.
83. It shall be noted that in order to get an equivalent product the batch number and expiry date are utmost important. It shall be kept in mind that the batch number and expiry date indicate that for this specific lot the same instruments and procedures were used. Transferred to the case in hand and as is in fact the case, it would mean that those "Megamin" products with the same batch number and expiry date would have also been contaminated, unless proven otherwise.
84. Also important in this regard is the fact that even being the result positive it would also be necessary to confront the concentration of the substance in the product and the one of the player's urine in relation with the frequency of intakes. This would clarify if the presence of the doping substance in the player's system was due to an involuntary or a voluntary intake. That is also the reason why the player was requested to provide this information in the course of these proceedings.
85. Turning back to the case in hand, it shall be recalled that the Player admitted in the course of the proceedings that the batch number of the pot he took and sent to the Cologne laboratory was illegible. This was confirmed by the Cologne laboratory when it received the products sent by the player and during the hearing. Only one closed and sealed product with the same expiry date was sent to the Cologne laboratory.
86. The Appeals Body regrets that one of the conditions imposed on the player, to provide a version of the product with the same lot number, has not been fulfilled. The closest product to the one actually taken by the player the closed and sealed container with the same expiry date, which this UEFA disciplinary body ordered to to be analyzed. Remarkably, the result of this analysis, as stated above, being negative for stanozolol..
87. However and in this context, the Appeals Body has no doubt that in a context in which conditions have been imposed aimed at analysing a product equivalent to the one originally taken by the player and in which there was no breach of the chain of custody,

the result of the Cologne laboratory gives a strong indication that in fact the product "Megamin" was not contaminated with stanozolol.

b. RIKILT and AEGIS laboratory results

i. Preliminary remarks on the analysis of blisters of the product "Megamin"

88. According to the different analysis undertaken by the different laboratories, it appears that the substance "stanozolol" was detected only in the blister's format of the product "Megamin" and never in the plastic containers/pots of this product, the latter of which, it shall be underlined, is the exact same format used by the player as admitted by himself during these proceedings.
89. In relation to the authenticity of the analysis of pills contained in blisters by the RIKILT and AEGIS laboratories, this UEFA Appeals Body shares the concerns raised by the expert on the reasons why blisters of the product "Megamin" were never sent to the Institute of Biochemistry of Cologne for its analysis. The Appellant argued in the course of these proceedings and at the hearing, that this was because they were not allowed to contact the Cologne laboratory directly.
90. However, on 18 December 2015, the Appellant was requested to send the original products and their equivalent to this laboratory, i.e the product with the same batch number and expiry date as the original. No blisters were sent to the Cologne laboratory and the format of the original product used by the player resulted to be a plastic container/pot.
91. Therefore, it comes as a surprise to this UEFA disciplinary body that at the current stage of the proceedings a new format of the product "Megamin" has been sent to be analysed by both the RIKILT and AEGIS laboratories. Again, the format differs from the original used by the player.
92. Also significant is the impetuosity showed by Appellant in that these blisters had to be analysed by these laboratories even at the risk of breaching the chain of custody by opening the package, removing the blisters and allegedly distributing them amongst the AEGIS (two blisters), the RIKILT (three blisters) and the club (1 blister). Mr Cerevesky, during the hearing stated that it needed to be done this way because no other equivalent samples were to be found of these blisters with the same LOT number and with expiry date which served as guidance to chase the closest product to the original one.
93. The Appeals Body expresses high concerns about the sudden appearance of these blisters in these appeals proceedings, when the player has at all times acknowledged that the "Megamin" which he consumed was in a container/pot and not in blisters, as well as for the reasons behind the removal of these blisters from their original package. Apart from the fact that the format differs consistently from the one admitted to have been taken by the player, the issue of the expiry date is also highly unclear: According to the



report of the Cologne laboratory on the analysis of the product “Megamin” sent on 25 January 2016, the expiry date of the equivalent product with the LOT number 1390715 was 7.2017, while the expiry date of the blisters with LOT number 1260515 is 5.2017. These blisters, which have appeared for the first time at this stage, therefore do not have the same expiry date as the sealed “Megamin” pot analysed by the Cologne laboratory, which is supposed to be the equivalent of the one consumed by the player.

94. Regarding the question of manipulation, Appellant inferred also during the hearing and with the purpose of proving the authenticity of the analysis of the blisters, that sealed blisters are less probable to be manipulated than open containers. This, while being an obvious conclusion, shall nevertheless be put together with another obvious statement: closed and sealed containers are less probable to be manipulated than blisters, even less when blisters have been allegedly removed from their original package and distributed amongst different actors. The latter distribution not being supported by any piece of evidence and merely by the statements of an interested party. Notwithstanding this and as stated above, it is a clear breach of the integrity of the chain of custody due to the simple fact that the original product containing six blisters arrived with half of the blisters to the RIKILT laboratory and two loose blister packages without the original box were sent to the AEGIS laboratory. It is not the purpose of this UEFA disciplinary body to cast doubts on any of the individuals intervening in these proceedings, but it is undeniable that, as explained above, a breach of the chain of custody like the one at hand impacts the authenticity of the final results of the analysis.
95. Furthermore, during the hearing, the Appellant’s lawyers repeatedly insisted for the expert, Dr. Geyer, to answer their question about what is more plausible: the contaminated theory, which according to his own statements was possible, or the capsules being removed from the blisters, manipulated, put back inside the blisters and sealed later on.
96. Besides the fact that the question was asked in a highly suggestive and intensive manner, this UEFA Appeals Body cannot accept the simplistic conclusion given by the Appellant about the fact that the expert concluded that the contamination theory of the product “Megamin” is more probable than the manipulation theory of the blisters. First, it is the UEFA Appeals Body’s competence, and not the expert’s, to decide which theory is more plausible on a balance of probabilities. Second, the options given by Appellant to the expert avoid referencing the fact that four different analysis on closed and sealed containers, even one that had been opened, resulted in no stanozolol being detected. It shall be recalled that the format used by the player was a plastic container/pot and not in blister format. Third and remarkably, the first direct conclusion of Dr Geyer when asked about this case was indeed that in a scenario of contamination, another product, “Tribulus Terrestris”, would have been the best option. Fourth, Dr Geyer also explained that the process to contaminate a product, i.e introducing a substance inside a capsule, is easy and within reach, being the required instruments sold in every pharmacy. Fifth, as stated by the expert, he is not a pharmacist and therefore the complexity of the process of introducing the exact concentration of a substance in a capsule is not within the scope of his knowledge. Sixth, the question also referred to the complexity of introducing a

contaminated capsule in a blister and to seal it, is also not within the scope of knowledge of a chemist like Dr Geyer..

97. Finally, the Appeals Body wishes to stress that its main concerns arise from the existence of the blisters without any reliable explanation as to why they appeared at this stage of the proceedings, and why the Appellant chose this new format of "Megamin", which as stated several times above differs from the one admittedly used by the player. The Appeals Body cannot disregard that this new element (blister packaging) brought to its attention, is easier to manipulate than a sealed and closed product. It is not satisfactory under any standard of proof, that Appellant insisted in analysing these blisters by two different laboratories at the risk of breaching the chain of custody, as it is the case, without any clear reason for that, and based merely on a very convenient situation in which no other samples of this product with the same LOT number and expiry date were allegedly to be found. In particular, this is even less convincing in a context in which some expiry dates do not correspond to others, and in which none of the five different samples of the container/pot format present traces of stanozolol, let alone if strictly taking into account the closed and sealed products of "Megamin" on which no doubt can be cast about a possible external manipulation.
98. The positive results are not sustained and their authenticity cannot be put at the same level as that of the closed and sealed containers of the "Megamin" product due to the fact that an external agent manipulated at least the package containing this product, altering the chain of custody which in this kind of cases plays a major role.
99. All of it, in a situation in which again very conveniently the LOT number and the expiry date are either unknown, extinct or differ from one example to the other. In this context, it is also remarkable that relevant information which would allow a better assessment of the results are missing, while other aspects of this case remain simply incomprehensible, like for instance the fact that Appellant in a sort of stroke of luck found only sample from a different format than the one he had taken (a blister instead of a pot), brought it to the laboratories for analysis, and in the last minute found a product containing stanozolol. All of this in the hope that the Appeals Body would disregard the fact that in the case of the analysis of those blisters, the integrity of the chain of custody was altered.
100. Briefly, this particular situation raises enormous doubts about the reliability of the authenticity of the blisters in relation to the question of the contamination of the product "Megamin" and is definitely not to be put at the same level as the evidence deriving from those results connected to closed and sealed containers which are less probable of being subject of external manipulation, are of the same format as the product used by the player and for this reason a more reliable.
101. The Appeals Body will, nevertheless, analyses the results of the RIKILT and AEGIS laboratories on the "Megamin" product and will revert to the above considerations every time it may be necessary.

ii. The RIKILT laboratory results

102. This laboratory has been approached twice by the Player. First, the laboratory stated that *"for both Megamin med products we found also suspect peaks for stanozolol in one replicate (in total four replicates were analysed). In all four replicates a significant peak is present before stanozolol elutes. However when performing cochromatography. It's clear that the earlier eluting peak is no stanozolol"*. It follows that for the first analysis the result was negative. In this regard and according to the certification of the RIKILT laboratory (RIKILT Sample Number: RIK0392328 ) this result was given for the analysis of an opened and unsealed container, most likely the one used by the player himself.
103. Consequently, this UEFA Appeals Body confirms the fact that no stanozolol was detected on the product "Megamin". No stanozolol was even detected in an open pot of the product "Megamin", which for obvious reasons may have been subject to external manipulation. This UEFA Appeals Body notes, here again, that it is difficult to understand why in this context the Player insisted in analysing the product "Megamin" while others such as "Cordyceps" also presented suspicions of being contaminated and no straight conclusion was drawn by the RIKILT in that analysis.
104. Regarding the second analysis undertaken by the RIKILT laboratory, the laboratory received the product "Megamin" in two different formats: package of blisters (60-capsule) and a pot (120-capsules). Remarkably the package of blisters, not sealed, contained three out of the six blisters supposed to be in the package. The pot was closed and sealed. The result given by the RIKILT laboratory reflected that the results of the sealed and closed pot were negative for stanozolol while the package of blisters containing three out of six blisters was positive.
105. It is the Appeals Body's conviction that the authenticity of the positive result for stanozolol cannot be completely verified due to the fact, as stated in previous paragraphs, that a package not sealed containing half of the blisters included in this format has obviously been subject to external manipulation, i.e at least the package was opened and three blisters were removed. This adulterates the final result of the laboratory.
106. In addition, the fact that a negative result for stanozolol is connected to a closed and sealed pot, which is indeed the format used by the player in accordance with his own statements, leads this UEFA disciplinary body to discard the positive result, or at least not to grant it the same authenticity as to those products in which external manipulation is excluded, i.e the sealed and closed pot.

c. AEGIS laboratory results:

107. According to the documents provided by the Appellant in relation to the analysis undertaken by AEGIS laboratory, tests on two white boxes sealed and closed containers resulted in no stanozolol detection (Result 1 and 2). Furthermore, regarding the blisters, tests on capsules contained in four damaged blisters seals resulted in the detection of

stanozolol (Result 4), while remarkably tests on the other capsules contained in undamaged blisters and in the rest of blisters no such substance was detected (Result 3).

108. In substance and bearing the above in mind, only one positive result was established by the AEGIS laboratory on the product "Megamin" (Result 4) and this exclusively on capsules coming from damaged blister seals. The result of the analysis of the rest of the capsules from the same blister and coming from undamaged blister seals was negative (Result 3). In addition, as stated above, the laboratory received two silver blisters out of six supposedly contained in a blister pack of the product "Megamin", i.e two loose samples of "Megamin" blisters.
109. It is the Appeals Body's view, here again, that the authenticity of the positive result has not been verified in the sense that the chain of custody has also been breached in relation to the results of the AEGIS laboratory. In substance, and as expressed above, out of four different results only one resulted positive for stanozolol. This result derived from a product which may have been subject to external manipulation due to the fact that the capsules containing the prohibited substance came from damaged blister seals, resulting, at the same time, negative for the other capsules contained in the rest of undamaged blister seals, as well as for those capsules contained in the other blister package sent to the AEGIS laboratory.
110. These factors have not been properly explained by Appellant in the course of these proceedings in a manner in which the breach of the chain of custody could be justified or proven not to be the case. Additionally, two blisters arrived to the AEGIS laboratory unsealed, and not in their original package, which could eventually help identify or link the blisters to the "Megamin" product. The short reference printed on the blisters is insufficient to directly connect these to the product "Megamin". However, this Appeals Body, even tending to accept that those blisters may belong to a "Megamin" package, deems that it is undeniable that someone took those two blisters out of the package and sent them to the AEGIS laboratory, which is obviously to be considered an inappropriate external manipulation which has an impact on the authenticity of the evidence.
111. Finally, the Appeals Body cannot deviate from the fact that all of the analysis undertaken on capsules coming from sealed and unopened pots of the product "Megamin" were negative. This UEFA disciplinary body recalls that this format was the one used by the player according to his own submissions.

#### E. Global assessment of the merits

112. It is the view of the Appeals Body that the Player was unable to satisfy any of the conditions imposed by the UEFA Anti-doping Regulations in order to apply for the reduction of the standard disciplinary measure of four years contemplated in Article 9.01 and/or 10.01 ADR.
113. As stated above, this UEFA disciplinary body is surprised that no attempt was done by the player to rely on a different theory from the one based on the contamination of the

product “Megamin”. From an objective and reasonable perspective, and *prima facie*, this UEFA disciplinary body considers that an alternative theory, such as one based on the use of the product containing “Tribulus terrestris”, Ultrasport TcS, which has been already linked in the past to stanozolol would have been more appropriate than the one raised by the player. It shall be recalled that one of its components, “Cordyceps” presented suspicious levels in this respect as established by the RIKILT laboratory. This, in a context in which the GNK Dinamo’s team doctor has stated that when contacting the company producing “Megamin” the latter confirmed that “stanozolol” is not used in any of their line of products, and in which “Megamin” has never been in the front line for a doping case. The player’s theory based on the fact that “Megamin” product was the only different product from those taken by his teammates is not satisfactory, as no piece of evidence has been brought to the attention of the UEFA disciplinary body proving that this in fact was the case, and is mainly based on the team’s doctor statements, who is an interested party.

114. Nonetheless, this UEFA disciplinary body has accepted to proceed with the analysis of the merits of this case, granting the player the benefit of the doubt insofar the sustainability of this theory and taking into account as well that the Ethics and Disciplinary Inspector has not raised any opposition or put forth any other theory regarding possible contamination. It shall be reminded that, while other contamination scenarios could be possible, the player has only put forth “Megamin” contamination as a possibility, and that it is his burden, and not UEFA’s, to prove that he took a contaminated supplement.
115. In this regard, as stated above, whilst the negative results on sealed and closed products are completely reliable, those others positive test results are seriously impacted by breaches of the chain of custody, which at the end of the day impacts the authenticity of these results in the sense expressed in previous paragraphs, and they in any case refer to a format of “Megamin” (blisters) not taken by the player. It follows that the contamination theory of the product “Megamin” has not been proven in a standard of balance of probabilities.
116. Consequently, the UEFA Appeals Body deems therefore that the player has not been able to prove how the substance entered his body in accordance to Article 9 and/or 10 ADR and, in particular, the player has not proven that the presence of stanozolol in his system was due to the intake of a contaminated supplement.

## **VI. Determination of the disciplinary measure**

117. It is the Appeals Body’s constant practice to consider the Control, Ethics and Disciplinary Body’s power of discretion to have been abused or exceeded if the first-instance body bases its decision on untrue or erroneous elements, does not apply fundamental legal principles, considers irrelevant facts or does not consider essential circumstances whose evaluation is compelling. In the opinion of the Chairman of the Appeals Body, none of this applies here.

118. The Appeals Body is of the opinion that the Control, Ethics and Disciplinary Body neither abused nor exceeded its broad powers of discretion. Its decision complies with the principles of legality – to the extent of its power of appreciation – and proportionality.
119. Briefly, the player did not prove how the substance entered his body, this being a mandatory condition in order to apply a reduction of the standard sanction of four years in accordance to Article 9.01 ADR, or a further reduction as contemplated in Article 10 ADR.
120. On the basis of the above, the Appeals Body has no option but to uphold the initial decision and reject the appeal.

#### **VII. Costs**

121. The allocation of the costs of proceedings before the Appeals Body depends on the outcome of those proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated to the various parties or borne by UEFA. The appeal fee is either deducted from the costs of proceedings or reimbursed (Article 44.2 DR).
122. It is considered justified to charge all of the costs of this case to the appellant, whose appeal is rejected on all counts.
123. In this case, since these proceedings were conducted by the Chairman of the Appeals Body, as judge sitting alone, the costs will be lower than if a Panel with three or five members is constituted. Consequently, the costs of the proceedings are € 3000.

## Decision of 12 May 2016

RSC Anderlecht Youth

(direct red card)

### **Circumstances of the case**

In substance, according to the report of the referee, in the 92<sup>nd</sup> minute of the match between RSC Anderlecht Youth (“the Appellant”) and FC Barcelona Youth, the RSC Anderlecht Youth player wearing number 16, Mangala Orel (“the player”), was sent off for violent conduct because he “kicked with his hand/elbow the opponent.”

**Legal framework** Article 15 (1) DR.

### **Decision**

In its decision of 17 March 2016, the Control, Ethics and Disciplinary Body considered that the act of the player constitutes an assault under the terms of Article 15 (1) (e) of the UEFA Disciplinary Regulations. As a result, the Control, Ethics and Disciplinary Body decided to suspend the player for three (3) UEFA competition matches for which he would be otherwise eligible.

The ad-hoc chairman of the Appeals Body decides that the appeal lodged by RSC Anderlecht is rejected. Consequently, the UEFA Control, Ethics and Disciplinary Body’s decision of 17 March 2016 is confirmed.

Ad-hoc Chairman: João Leal (Portugal)

### **I. Facts of the case**

1. The elements set out below are a summary of the main relevant facts, as established by the ad-hoc chairman of the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body on 17 March 2016 (the “Decision”), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the ad-hoc chairman of the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. In substance, according to the report of the referee, in the 92<sup>nd</sup> minute of the match between RSC Anderlecht Youth (hereinafter: “the Appellant”) and FC Barcelona Youth, the Appellant’s player wearing no. 16, Mangala Orel (hereinafter: “the player”), was sent off for violent conduct because he “kicked with his hand/elbow the opponent.”
3. In its decision of 17 March 2016, the Control, Ethics and Disciplinary Body considered that the act of the player, as described by the referee above, constitutes an assault under the terms of Article 15 (1) (e) of the UEFA Disciplinary Regulations. As a result, the Control,

Ethics and Disciplinary Body decided to suspend the player for three (3) UEFA competition matches for which he would be otherwise eligible.

4. The Decision with grounds was notified to the Appellant on 23 March 2016.

## **II. Summary of the proceedings before the Appeals Body**

5. On 25 March 2016, the Appellant announced its intention to appeal against the Decision.
6. The grounds for appeal, submitted on 3 April 2016, and the arguments of the Appellant contained therein, can be summarized as follows:
  - The photos which were provided by the Appellant show how the player keeps his full body behind the opponent player the whole time. This even forces him to by slightly turning his back to the player and taking a more leaning position while running. Due to this movement, the opponent player uses his body to create a shield between the ball and the player, preventing the latter to capture the ball. During the action it can be seen how the player reacts to this by moving his right arm between himself and the opponent player's back and lifting it from a lower to a higher position. This is a normal reaction to create distance whereby the leaning shield loses its effect. The player's left arm is not used during the action.
  - The Appellant refers to other decisions of the Control, Ethics and Disciplinary Body in which elbows have been thrown and in which lower and less severe sanctions had been imposed on the respective players.
  - All of the images clearly show in detail the movement made by the player. This movement is clearly not a kick or even an attempted kick. It is solely a smart way of using your body to set yourself free in an action where the opponent player uses his body evenly smart to shield off the ball.
  - This action can always be interpreted in different ways, but the Appellant doesn't see any reason to have this action interpreted as a kick, which is however the reason for the sanction and the possible further consequences.
  - Although he participated in all matches with only once being replaced before the end of the match, the player did not receive one yellow or red card. This clearly shows the player's fair attitude on the pitch.
  - The Appellant is convinced that the circumstances of the specific case as clearly shown by the images in addendum to this writing together with the clean history of the player during all previous UEFA Youth League matches this season, are solid mitigating circumstances.
  - Therefore, the Appellant is convinced it has all the necessary elements to plead for a mitigation of sentence in order to reach a reduction of the sanction to a one match suspension.
7. On 7 April 2016, the UEFA Ethics and Disciplinary Inspector submitted her reply to the appeal, requesting that it be rejected and the costs charged accordingly.



### **III. Hearing**

8. On 12 April 2016, a hearing was held via videoconference in accordance with Article 34 (7) of the UEFA Disciplinary Regulations.
9. The ad-hoc chairman of the Appeals Body opened the appeal hearing, noted the presence of the Appellant and the UEFA Ethics and Disciplinary Inspector.
10. Afterwards, the ad-hoc chairman of the Appeals Body explained the procedure to be followed. He reminded the parties of the composition of the Appeals Body and told them that everything which is said during the hearing would be recorded. No objection was raised.
11. The floor was given to the parties, who, in substance, reiterated the arguments given in their written pleadings and developed and maintained their requests.

### **IV. Appeals Body Competence and Admissibility of the Appeal**

12. Article 24 (4) of the UEFA Disciplinary Regulations states as follows: “The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body.”
13. Article 24 (3) (a) of the UEFA Disciplinary Regulations stipulates the following: “The chairman of the Appeals Body, one of its vice-chairmen or one of its members acting as ad-hoc chairman may take a decision as judge sitting alone in urgent cases.”
14. In view of the fact that the Appellant’s next match in the UEFA Youth League Semi-Final was already scheduled for 15 April 2016, the case had to be regarded as urgent. Therefore, the ad-hoc chairman of the Appeals Body was competent to deal with the case as judge sitting alone.
15. On 3 April 2016, the Appellant lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
16. It follows that the Appeals Body has competence to decide on the present Appeal and that the Appeal is admissible. The ad-hoc chairman of the Appeals Body may therefore consider its merits and can therefore re-examine the case in full, both factually and legally (Article 58 (2) of the UEFA Disciplinary Regulations).

### **V. Legal considerations of the ad-hoc chairman of the Appeals Body**

#### **A. The legal framework.**

17. According to Article 15 (1) (e) DR suspension for three (3) competition matches or a specified period for assaulting another player present at the match.

18. According to Article 38 of the UEFA Disciplinary Regulations, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

B. In the case in hand

19. It remained undisputed during these procedures that in the 26<sup>th</sup> minute of the match, the player was sent off by the referee with a red card, following an incident during the course of which the player collided with the opponent player.

20. The Control, Ethics and Disciplinary Body considered the foul play by the player as an assault, considering that the player placed the physical well-being of his opponent in danger, thereby endangering the safety of his opponent.

21. As to the merits of the case, the ad-hoc chairman of the Appeals Body took into account the arguments of the Appellant and of the UEFA Ethics and Disciplinary Inspector, and recalled that the main question and issue in the case at hand regards the interpretation of the incident as to the if, how and why the player collided with the opponent player.

22. In this regard, the ad-hoc chairman of the Appeals Body also took note of the video and the photos of the relevant incident which were provided by the Appellant, as well as of the statements the player himself made during the hearing, in order to get a comprehensive view on the scene at hand.

23. On a preliminary basis, the ad-hoc chairman of the Appeals Body agreed with the argument of the Appellant that his action can always be interpreted in different ways. However, the ad-hoc chairman of the Appeals Body likewise stressed that especially in cases where different and even contradictory interpretations can be made in relation to an incident, the interpretation of the incident by the referee as it has been established in the relevant report has the upmost importance and bears a critical evidential value. These considerations and the inherent principle is also manifested in Article 38 of the UEFA Disciplinary Regulations where it is stipulated that facts contained in official UEFA reports are presumed to be accurate. Base on the foregoing, the ad-hoc chairman of the Appeals Body emphasized that is therefore the obligation of the Appellant to provide proof of a possible inaccuracy of the relevant report.

24. In this context, the ad-hoc chairman of the Appeals Body recalled the details of the relevant incident and, after thorough analysis of the video evidence, on the one hand acknowledged that the opponent player did indeed use his body to create a shield between the ball and the player, preventing the latter to capture the ball. The ad-hoc chairman further agreed with the interpretation of the Appellant that during this aforementioned action, the player reacted by moving his right arm between himself and the opponent player's back and lifting it from a lower to a higher position.

25. However, and this is where the ad-hoc chairman of the Appeals Body disagreed with the arguments provided by the Appellant, this move of the arm by the player could not be regarded as a normal reaction in order to create distance or for whatever the player really intended to achieve. After again taking into account the explanations and comments of the Appellant in relation to the relevant video and photo evidence, the ad-hoc chairman of the Appeals Body was convinced that the player swiped his arm through the face of the opponent player which by itself already constitutes a violent and dangerous play which could have caused serious injuries.
26. The ad-hoc chairman of the Appeals Body was further convinced that this move of the arm was not performed in order to create distance between the opponent player, as such an attempt would certainly not required such a rapid and dangerous move.
27. Consequently, after thorough analysis of the documentary evidence at hand, the ad-hoc chairman of the Appeals Body came to the conclusion that the Appellant did not manage to break the accuracy of the referee's report. It therefore stands that the act of the player in fact constituted an assault in accordance with Article 15 (1) (e) of the UEFA Disciplinary Regulations.
28. Consequently, it therefore remains for the ad-hoc chairman of the Appeals Body to examine whether the Control, Ethics and Disciplinary Body respected the regulations and legal principles, in particular those of legality and proportionality, or whether it abused its power of discretion by suspending the player for five UEFA competition matches for which he would be otherwise eligible.

C. Determination of the disciplinary measure

29. It is the Appeals Body's constant practice to consider the Control, Ethics and Disciplinary Body's power of discretion to have been abused or exceeded if the first-instance body bases its decision on untrue or erroneous elements, does not apply fundamental legal principles, considers irrelevant facts or does not consider essential circumstances whose evaluation is compelling.
30. In view of the fact that the action of the player did in fact constitute an assault in the sense of Article 15 (1) (e) of the UEFA Disciplinary Regulations which provides for a minimum suspension of three matches, the ad-hoc chairman of the Appeals Body is of the opinion that by imposing a three-match suspension on the player, the Control, Ethics and Disciplinary Body neither abused nor exceeded its broad powers of discretion and hence complied with the principles of legality – to the extent of its power of appreciation – and proportionality.
31. On the basis of the above, the ad-hoc chairman of the Appeals Body has no option but to uphold the initial decision and reject the appeal.

**VI. Costs**

32. The allocation of the costs of proceedings before the Appeals Body depends on the outcome of those proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated to the various parties or borne by UEFA. The appeal fee is either deducted from the costs of proceedings or reimbursed (Article 44 (2) of the UEFA Disciplinary Regulations).
33. It is considered justified to charge all of the costs of this case to the Appellant, whose appeal is rejected.
34. In this case, since these proceedings were only conducted by the ad-hoc chairman of the Appeals Body, this only via videoconference, the costs of the proceedings are €1'000.

## Decision of 1 June 2016

KS Skënderbeu

(Admission criteria)

### **Circumstances of the case**

Since 2010, the UEFA Betting Fraud Detection System (BFDS) has identified more than 50 matches involving KS Skënderbeu where the results were allegedly manipulated for betting purposes. With this background and amidst the different activities implemented by UEFA aimed at combatting match fixing activities world-wide, UEFA held meetings with the Albanian authorities during 2013 and 2014. Parallel to that, UEFA has continued to closely monitor the behaviour of KS Skënderbeu and the betting markets related to its matches.

Following the Albanian domestic season 2015/2016, KS Skënderbeu has the sporting merit to be qualified to the UEFA Champions League 2016/2017, in application of the relevant UEFA Regulations.

On 4 May 2016, the UEFA Ethics and Disciplinary Inspectors informed the UEFA General Secretary that following investigations on the Albanian club KS Skënderbeu's, they had found sufficient evidence to support the instigation of disciplinary proceedings against KS Skënderbeu, including the reports from the UEFA Betting Fraud Detection System which confirm that a number of matches involving this club have been fixed to the financial benefit of numerous individuals who placed bet on the outcome of many games. Subsequently, they asked the UEFA General Secretary that upon upcoming reception of KS Skënderbeu's Admissions Criteria Form for the 2016/17 UEFA club competitions, the case of this club is referred to the UEFA Control, Ethics and Disciplinary Body pursuant to Art. 4.07 UCL Regulations, so that it can consider the final report of their investigation and issue formal decision on KS Skënderbeu's admission to the UCL 2016/17

**Legal framework** Article 4 (7) UCL regulation edition 2016/17.

### **Decision**

On 1 June 2016, the UEFA Appeals Body decided that KS Skenderbëu was not eligible to play the UEFA Champions League competition 2016/2017.

Chairman: Pedro Tomás (Spain)

Members: Michael Maessen (Netherlands)  
Barry Bright (England)

## **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Appeals Body on the basis of the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence

submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

2. Since 2010, the UEFA Betting Fraud Detection System (BFDS) has identified more than 50 matches involving KS Skënderbeu where the results were allegedly manipulated for betting purposes.
3. With this background and amidst the different activities implemented by UEFA aimed at combatting match fixing activities world-wide, UEFA held meetings with the Albanian authorities during 2013 and 2014. Parallel to that, UEFA has continued to closely monitor the behaviour of KS Skënderbeu and the betting markets related to its matches.
4. Following the Albanian domestic season 2015/2016, KS Skënderbeu has the sporting merit to be qualified to the UEFA Champions League 2016/2017, in application of the relevant UEFA Regulations.
5. According to Article 4.01.g) of the UEFA Champions Regulations 2016/2017 (the "UCLR"), to be eligible to participate in the competition, a club must fulfil the following criteria:

*"it must not have been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level and must confirm this to the UEFA administration in writing."*

6. On 4 May 2016, the UEFA Ethics and Disciplinary Inspectors informed the UEFA General Secretary that following investigations on the Albanian club KS Skënderbeu's, they had found sufficient evidence to support the instigation of disciplinary proceedings against KS Skënderbeu, including the reports from the UEFA Betting Fraud Detection System which confirm that a number of matches involving this club have been fixed to the financial benefit of numerous individuals who placed bet on the outcome of many games. Subsequently, they asked the UEFA General Secretary that upon upcoming reception of KS Skënderbeu's Admissions Criteria Form for the 2016/17 UEFA club competitions, the case of this club is referred to the UEFA Control, Ethics and Disciplinary Body pursuant to Art. 4.07 UCL Regulations, so that it can consider the final report of their investigation and issue formal decision on KS Skënderbeu's admission to the UCL 2016/17.
7. On 11 May 2016, Skënderbeu sent its Admission Criteria Form for the UEFA Club Competitions 2016/17, signed by the club and its national association.
8. On 13 May 2016 and pursuant to Article 4.07 UCLR, the UEFA General Secretary at the request of the UEFA Ethics and Disciplinary Inspectors referred the above-mentioned Admission Criteria Form and the case itself to the UEFA Control, Ethics and Disciplinary Body.
9. Also on the same date, the UEFA Ethics and Disciplinary Inspectors submitted a report, in which they requested to refer the case to the UEFA Appeals Body in accordance with

Article 34 (3) UEFA Disciplinary Regulations (the "DR") and to preliminarily declare Skënderbeu ineligible to participate in the UEFA Champions League 2016/2017.

10. Also on 13 May 2016 and following the above request made by the UEFA General Secretary and on behalf of the Chairman of the Control, Ethics and Disciplinary Body, KS Skënderbeu was informed that disciplinary proceedings were instigated in accordance with Article 48 of the DR in relation to the infringement of Article 4 (1)(g) UEFA Champions League 2016/2017.
11. On 13 May 2016, the Chairman of the UEFA Control, Ethics and Disciplinary Body informed Skënderbeu that he had decided to submit the case directly to the UEFA Appeals Body in accordance with Article 23(3) DR in conjunction with Article 24(4) DR. A hearing of the UEFA Appeals Body was fixed on 25 May 2016.
12. On 24 May 2016, KS Skënderbeu sent a letter stating in substance that they intended attend the hearing, but nevertheless the club had not received the documents relating to this case as of 20 May 2016, reason why the club reserved his right to request a further hearing and any other procedural or material request to ensure the fairness of the process and due process rights under the UEFA Charter and rules and Swiss law.

## **II. Hearing of 25 May 2016**

13. On 25 May 2016, a hearing was held at UEFA Headquarters in Nyon. The Chairman of the Appeals Body opened the hearing, noted the presence of the Respondent and the UEFA Ethics and Disciplinary Inspectors.
14. The Chairman of the Appeals Body enquired KS Skenderbëu to explain the reasons why allegedly the submission of the documents were not properly received as exposed by the club in its letter sent on 24 May 2016.
15. The club reiterated the arguments put forward in the above mentioned letter. i.e alleged IT problems, and requested a new deadline to submit its position as well as a further hearing to examine the matter.
16. The Ethics and Disciplinary Inspectors contested the arguments of the club, but accepted to grant the club with a new deadline to submit its position as well as accepted to hold a further hearing.
17. On demand of the UEFA Appeals Body, the UEFA Administration exposed the documents sent to the club which were addressed to the key contact included for disciplinary matters by the club. No failure had been reported by the server (Yahoo!) hosting the email of the said key contact. This person was indeed recognized by the club during the hearing as being the Director of the club and being the key person for this kind of matters with UEFA.

18. The Appeals Body, even being comfortably satisfied with the fact that the KS Skenderbëu was properly informed about the opening of the current proceedings and that the documents were properly handed over on 13 May 2016, decides, nevertheless, to grant KS Skenderbëu until 31 May 2016 with a new deadline to submit its position and fixed a new hearing for the 1 June 2016. In this regard, the Chairman of the Appeals Body enquired the Respondent about what it would consider as a fair deadline, being the response of the club that 10 days would suffice.
19. The Chairman of the Appeals Body informed the parties that Responded had been granted with a deadline until 31 May 2016 at 14:00h to submit its position on the current matter. No opposition was raised by any of the parties in this respect.

### **III. Hearing of 1 June 2016**

20. On 1 June 2016, a hearing was held.
21. The Chairman of the Appeals Body opened the appeal hearing, noted the presence of the Respondent and the UEFA Ethics and Disciplinary Inspectors.
22. The floor was given to the parties, who, in substance, reiterated the arguments given in their written pleadings and developed and maintained their requests.
23. In particular and in the course of the hearing, the expert M Tom Mace, Director of Global Security Services at Sportradar, summoned by the Ethics and Disciplinary Inspectors, explained the insights of the Betting Fraud Detection, as well as explained the various reports issued by the BFDS on KS Skenderbëu, specifically those matches relating to the UEFA competitions. This Appeals Body infers that explanations and comments given by the expert will be added to the considerations in further parts of this decision, when necessary.

### **IV. Appeals Body Competence**

24. Article 24 (4) DR states as follows: "The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body."
25. Bearing in mind the sporting situation of KS Skenderbëu at the UCL 16/17 (the first match of the club in this competition is scheduled on 12/13 July 2016), the Appeals Body considers totally appropriated the decision of the Chairman of the Control, Ethics and Disciplinary Body.
26. It follows that the Appeals Body has competence to decide on the present matter.



**V. Overview of the parties' positions**

**a. The UEFA ethics and disciplinary inspectors' report**

27. On 13 May 2016, the UEFA Ethics and Disciplinary Inspectors sent their report and made the following considerations:

- UEFA Betting Fraud Detection System established in 2009 in response to the growing threat of match manipulation in both UEFA and European domestic league competitions, shows that its statistical and mathematical models of the BFDS are accurate in confirming to the comfortable satisfaction of the panel, that the Albanian club Skënderbeu has been continuously involved in match-fixing activities at domestic and at international level over the last six years.
- The BFDS has escalated a number of Skënderbeu matches both at the national and international level, in official and friendly games, reaching the conclusion that the results of at least the following amount of matches have been manipulated for betting purposes: 5 matches of the UEFA Champions League (the "UCL"), 2 matches of the UEFA Europa League (the "UEL"), 41 matches of the domestic Albanian Superleague and Cup and 6 friendly matches. The BFDS results, when considered cumulatively, leave no shadow of a doubt that Skënderbeu has been directly and/or indirectly involved in activities aimed at arranging or influencing the outcome of a considerable amount of matches at both national and international level since April 2007.
- Apart from the betting reports of the European, domestic and friendly matches played by Skënderbeu over the last five years, video-footages of the referenced UEFA competition matches played by Skënderbeu in the UCL and UEL 2015/16 season, and onsite investigation establishing connections between leading persons of the Albanian club, like Ridvan Bode (financial backer, former Minister of Finance), Ardjan, Takaj (club president), and Agim Zeqo (former club president), as well links to betting companies by means of sponsors or several individuals, shall demonstrate that match-fixing took place beyond the comfortable standard of proof.
- Finally, the national and international public perception on KS Skënderbeu shows that from opponent players to supporters, from betting operators to journalists, a conviction was created in that that KS Skënderbeu were and are fixing football matches in Albania and in Europe.

**b. Respondent**

28. On 31 May 2016, the KS Skënderbeu submitted its position with following considerations:

- Regarding the nature of the proceedings, Respondent holds that when an eligibility criterion has to do with the alleged wrongdoing, of a party and leads

to the exclusion from a competition, it is so also clearly of disciplinary nature. Being that the current case, Respondent expressly claims the benefit of all legal rules and standards applicable to proceedings of disciplinary or sanctional nature.

- It is impossible for any party in the Respondent's position, in any legal system submitted to the rule of law, to defend on facts, arguments and a complex mathematical method, in a matter of days, and this in defense against the most damaging outcome of being excluded from the most prominent competition of the association. In the same situation, UEFA would claim exactly the same. Consequently, if the UEFA Appeals Body wants to rely on the BFDS system and findings in the case at hand, and have it established as a precedent which it not yet was, then it must allow the Respondent the time to validly address the issues, accept that the Respondent is granted proceedings respecting due process, this before the two ordinary degrees of UEFA internal instances. This will necessarily extend after the 2016/2107 competition draw and thus not affect the Respondent's eligibility for the 2016/2017 competition.
- It shall thus be acknowledged from its own written admission that the accuracy of the BFDS system, and thus that its findings are legally admissible evidence, are not yet demonstrated through the Inspector Report and Exhibits. So absent an independent assessment or independent technical certification of the BFDS system, and due process compliant adversarial proceedings on this issue, no adverse finding can be made against the Respondent on this basis. That is, until i) the Respondent has had the opportunity to commission its own assessment and to exercise its right to be heard on the issue, including calling on witnesses, and ii) an independent expert appointed by the UEFA Appeals Body or by a Court of law, that is, the CAS, has produced an opinion as to its accuracy in due process compliant and adversarial proceedings.
- In particular on KS Skenderbëu, there is not a single piece of evidence that proves under whatever standard of evidence that Skenderëu have manipulated a long list of football games as inferred by the Ethics and Disciplinary Inspectors. As a matter of fact, KS Skënderbeu has never been prosecuted for any criminal charges. An alleged involvement of the Respondent in match-fixing only concerns 20% of the total reports involved in the Inspector Report in escalated matches. This is, let aside all other issues and arguments, a very shocking bias as to the spectacular assumption that the Respondent was involved in an unprecedented 54 events of match-fixing: in 4/5 of the reports this is simply not alleged and thus not the case.
- Regarding the UEFA competition matches, there is no evidence, neither of match-fixing, nor of the involvement of the Respondent, nor of huge betting profits nor by whom. If there had been match-fixing, there would be evidence in all legally admissible form of precise facts and events, and it would be the UEFA Appeals Body's burden to bring it.

- On Mr. Ardjan Takaj, the President of KF Skënderbeu, he has been a successful businessman for the last 25 years. He has been involved in several economic activities, such as construction, tourism, media, etc. Mr. Takaj had owned betting company Eurobest but this dating back more than 15 years. Mr. Takaj has never been convicted of any criminal charges, as per an attestation of the Tirana District Court. The Tirana Prosecutors Office also certifies that Mr. Takaj was never prosecuted for any criminal charges.
- The Respondent is shocked by the further fiction movie allegations of an underground network of persons who contemplate the manipulation of match results. The links between persons through Facebook or Instagram and secretly control the betting market is a conspiracy scenario completely disconnected from the reality and certainly not demonstrated under whichever standard of evidence.
- As to the standard of proof, the Respondent contests that the applicable standard is comfortable satisfaction. In proceedings which are disciplinary in nature, the standard of proof is of the highest level, that is, beyond reasonable doubt. The Respondent accepted the reference to a comfortable satisfaction in the eligibility declaration - but this does not override fundamental principles for the part which has to do with events and sanctions of disciplinary nature, as explained above.
- So in sum there is absolutely no hard evidence of match-fixing whatsoever, nor a single or the slightest piece evidencing under whichever standard the involvement of persons belonging to the Respondent in that respect, whether directly or indirectly - and being reminded that a legal entity can only be held liable for match-fixing through actions of persons representing or acting on behalf of the legal entity, i.e. its officials.

## **VI. Legal Considerations Of The Appeals Body**

### **A. The legal framework**

29. Under the terms of Article 2 of its Statutes, UEFA's objectives particularly include to prevent all methods or practices which might jeopardise the regularity of matches or competitions or give rise to the abuse of football (letter e).
30. According to Article 50 (3) UEFA Statues:

"The admission to a UEFA competition of a Member Association or club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect, without prejudice to any possible disciplinary measures".

31. According to Article 1.01 UEFA Champions League Regulations (hereinafter “UCL Regulations”), said regulations govern the rights, duties and responsibilities of all parties participating and involved in the preparation and organisation of the 2016/17 UEFA Champions League including its qualifying phase and the play-offs.

32. Article 4.01 UCL Regulations reads as follows:

“To be eligible to participate in the competition, clubs must:

(...)

g) not have been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level and must confirm this to the UEFA administration in writing”.

33. According to Article 4.02 UCL Regulations:

“If, on the basis of all the factual circumstances and information available to UEFA, UEFA concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level, UEFA will declare such club ineligible to participate in the competition. Such ineligibility is effective only for one football season. When taking its decision, UEFA can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court. UEFA can refrain from declaring a club ineligible to participate in the competition if UEFA is comfortably satisfied that the impact of a decision taken in connection with the same factual circumstances by a national or international sporting body, arbitral tribunal or state court has already had the effect to prevent that club from participating in a UEFA club competition.”

34. Article 4.03 UCL Regulations reads as follows:

“In addition to the administrative measure of declaring a club ineligible, as provided for in paragraph 2.08, the UEFA Organs for the Administration of Justice can, if the circumstances so justify, also take disciplinary measures in accordance with the UEFA Disciplinary Regulations”.

35. Preserving the uncertainty of the outcome of football matches is UEFA’s prime concern. Indeed, it is the *raison d’être* of organized football. If supporters would know the result of a match in advance or the goals to be scored there would be no sporting interest in watching and/or attending football games. It would spell the end of football. Therefore, UEFA has a zero tolerance policy towards anyone, including club’s and association’s

officials, players or members, who jeopardize the uncertainty of the outcome of football matches.

B. The administrative measure contemplated in Article 4.02 UCL Regulations

36. First and foremost, this UEFA disciplinary body recalls that recently CAS 2014/A/3625 and CAS 2014/A/3628 clarified the legal nature of the measure of declaring a club ineligible under Article 4.02 UCL Regulations (former 2.08 UCL Regulations, season 2014/2015).
37. This, it shall be recalled is not a trivial semantic question but a very relevant one that has significant implications. As declared by CAS jurisprudence, measures taken by an association with respect to its affiliates can be mainly divided into acts of administration and disciplinary measures (i.e. CAS 2007/A/1381 and CAS 2008/A/1583). To prevent and prosecute match-fixing activities, UEFA has implemented within its regulations a double regulatory regime, establishing two different kind of measures: (i) an administrative measure, being that a new admission criterion according to which a club that has been directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level become automatically ineligible to participate in the corresponding UEFA competition for which it next qualifies, and, (ii) expressly included match fixing offences therein, in order to be able to prosecute and sanction match fixing activities, being any offence of this kind subject to the disciplinary regime established in the UEFA Disciplinary Regulations (CAS 2014/A/3625 and CAS 2014/A/3628).
38. This UEFA disciplinary body complies with the approach made by CAS in the previous cases, as well as in those cited in the latter insofar the measure of ineligibility under article 4.02 UCL Regulations (former Article 2.08 UCL Regulations, season 2014/2015) is of an administrative nature, linked to the organization of UEFA's competitions, being a regulatory provision whose main purpose is to establish the eligibility criteria and the conditions of participation in UEFA competitions and not to punish a club. Thus, it is not of a sanctionatory nature which is implicitly excluded by the wording of Article 50 (3) UEFA Statutes whilst stating that the admission "can be refuse with immediate effect without prejudice to any possible disciplinary measures". It shall be emphasized that the aim is to safeguard and protect the values and objectives of UEFA's competition, its reputation and integrity, "not only to prevent a club which has violated such values from taking part in the competitions organized by UEFA (i.e. to protect the integrity of the competition), but to also dispel any shadow of doubt in the public about the integrity, the values and the fair play of its competitions i.e. to protect the reputation of the competition". Briefly, the ineligibility measure is merely an administrative measure resulting from an infringement of the admission criteria of the UEFA Champions League competition, which deprives the club that has been directly or indirectly involved in match fixing of the right to participate in the UEFA Champions League competition during one year, without prejudice of the potential sanctions that UEFA may impose (CAS 2014/A/3625 and CAS 2014/A/3628).

39. It is in this context that the clubs expressly accept by signing the Admission Criteria Form, that the infringement of this admission criterion would lead to its ineligibility to participate in the UEFA Champions League for one year.

C. The scope of Article 4.02 UCL Regulations

40. The existence of a specific approach made by CAS to this question has also provided important elements to define the margins in which this administrative measure may be imposed. In this regard, it is worth to note that the conduct described in Article 4.02 UCL Regulations is very broad and needs to be determined on a case by case basis.
41. It follows that this admission criterion is meant to cover all the potential activities “aimed at arranging or influencing the outcome of a match”, including hereby those activities intended to fraudulently determine the result of a match, but also those activities that could somehow have an unlawful influence in the match.

D. The burden of proof

42. The UEFA Appeals Body notes that the parties agree on the fact that it is UEFA in this particular case who bears the burden of proof as to establish that the club was involved in activities aimed at arranging and/or influencing the outcome of a match. Even being so, the Appeals Body finds it as appropriate to briefly summarize the legal background that shall lead to this conclusion.
43. The said burden of proof, is regulated under Swiss law in Article 8 of the Swiss Civil Code (hereinafter referred to as “CC”), which, by stipulating which party carries such burden, determines the consequences of the lack of evidence, i.e. the consequences of a relevant fact remaining unproven. It stipulates that, unless the law provides otherwise, each party must prove the facts upon which it is relying to invoke a right, thereby implying that the case must be decided against the party that fails to adduce such evidence. Furthermore, the burden of proof not only allocates the risk among the parties of a given fact not being ascertained but also allocates the duty to submit the relevant facts before the relevant deciding body (CAS 2011/A/2384 & 2386).
44. Consequently, as already established above, the burden of proof to primarily demonstrate that the club was directly and/or indirectly involved in activities aimed at arranging or influencing the outcome of a match lies in the case at hand on UEFA’s side.

E. The standard of proof

45. As stated above, Article 4.01(g) UCLR stipulates that to be eligible to participate in the competition, a club must fulfil the following criteria:

*“it must not have been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level and must confirm this to the UEFA administration in writing”.*

46. Article 4.02 UCLR states:

*“If, on the basis of all the factual circumstances and information available to UEFA, UEFA concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level, UEFA will declare such club ineligible to participate in the competition. Such ineligibility is effective only for one football season. When taking its decision, UEFA can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court. UEFA can refrain from declaring a club ineligible to participate in the competition if UEFA is comfortably satisfied that the impact of a decision taken in connection with the same factual circumstances by a national or international sporting body, arbitral tribunal or state court has already had the effect to prevent that club from participating in a UEFA club competition.”*

47. There is no doubt that the standard of proof at these proceedings is the “comfortable satisfaction, which as shown above is in this particular case contemplated in Article 4.01 UCL Regulations, i.e. the “comfortable satisfaction”, and agreed by clubs when signing the Admission Criteria Form.
48. For the sake of clarity, violations analysed under this standard shall be established in a level greater than a balance of probabilities but less than proof beyond reasonable doubt (recently, CAS 2013/A/3258 and CAS 2014/A/3628).
49. The Appeals Body emphasizes that the current case deals strictly with the involvement of a club in match fixing activities in the light of the 4.02 UCL Regulations, being the examination of match fixing as contemplated in the UEFA Disciplinary Regulations left to a further moment, if any. Thus, the term involvement in connection to match fixing activities used in Article 4.02 UCL Regulations is broader than the definition of match fixing established in Article 12 DR and, by that, the conditions to reach standard of comfortable satisfaction are also different.
50. As a preliminary remark, it needs to be stressed that Article 4.02 UCL Regulations is embedded in what is commonly known as “zero tolerance principle” which, according to CAS jurisprudence presents one of the most important values and principles of behaviour in football (CAS 2010/A/2267). The observance of values and principles conforming the fight against match fixing is indispensable for the protection and improvement of the integrity of the game (CAS 2013/A/3258). Not only the competition needs to be clean from match fixing it needs also to be perceived as such by the public, which is mainly the

aim of having incorporated a provision banning the mere involvement of clubs in match fixing activities.

51. In this context, the weighing up of the evidence plays a major role when deciding on a comfortable satisfaction standard. Summarily, it is not solely that it is more probable that a fact occurred in a given manner, but the evidence shall internally satisfy the decisional body in the same sense, even accepting that a different and less convincing explanation may also be at stake.
52. Important elements to reach this conclusion are all the relevant circumstances of the case assessed individually and/or combined, what is commonly known as the context (CAS 2013/A/3324 and 3369). As part of this context and for cases dealing with match fixing activities, special attention shall be given to the paramount importance of fighting corruption of any kind in sport and also to the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities (CAS 2009/A/1920). In addition, it is undeniable that corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing (CAS 2010/A/2172). Consequently, direct evidence in relation to match fixing activities will be rather the exception and indirect evidence the standard situation.
53. As a matter of fact, UEFA disciplinary bodies assume this particular context, which shall not hinder at all its task of reaching the desired standard of comfortable satisfaction, every time the weight of the evidence is sufficiently powerful. In this respect, the Appeals Body notes as done by the UEFA Ethics and Disciplinary Inspectors when bringing forward the CAS 2015/A/4059, that evidence considered cumulatively may satisfy the test of comfortable satisfaction. In particular, the fact that it is in the nature of circumstantial evidence that single items of evidence may each be capable of an innocent explanation but, taken together, establish guilt beyond reasonable doubt, is completely appropriate in cases dealing with match fixing activities, where, as explained above, bribers use evasive means, the sporting bodies have restrictive investigative powers and direct evidence on match fixing activities is rare.

F. Merits

54. The Appeals Body has been requested to examine a number of documents and expert opinions that may allegedly lead to the conclusion that in fact match fixing activities involving the KS Skenderbëu took place in accordance with Article 4.02 UCL Regulations. The disciplinary consequence as mentioned above is to declare the club ineligible to participate at the next UEFA competition, i.e. the UCL 2016/2017.
55. Three factors have been put forward to the attention of the Appeals Body: a high number of reports coming from the Betting Fraud Detection System (the "BFDS"), the relation of individuals linked simultaneously with the club and the betting market, their personal background i.e. accusations on different integrity matters like tax evasion, criminal



proceedings, participation in other match fixing investigations, and the national and international perception of the club in relation to match fixing.

56. Briefly the club argues that its right to be heard has not been respected due to the fact that, in substance, it is impossible for any party in the Respondent's position, in any legal system submitted to the rule of law, to defend on facts, arguments and a complex mathematical method, in a matter of days, and this in defence against the most damaging outcome of being excluded from the most prominent competition of UEFA.
57. Furthermore, the club deems that the allegations against it are without substance, mainly because there is not a single piece of evidence that proves under whatever standard of evidence that KS Skenderbëu have manipulated a long list of football games as inferred by the Ethics and Disciplinary Inspectors.
58. In this context, the Appeals Body considers it necessary to first refer to the issue about the right to be heard of the Respondent, second to proceed to the analysis and weighing up of the allegations, individually and/or combined, submitted by the Ethics and Disciplinary Inspectors confronting them to the Respondent's position.

1. The right to be heard

59. As stated in different parts of this decision, Respondent claims that its right to be heard has been put at risk due to the fact that it is impossible to submit a proper defence in a complex and serious matter. If the case is ruled upon to the Respondent's detriment in these circumstances, that is, without new extended deadlines and full evidentiary proceedings, and the Respondent is excluded from the 2016/2017 competition, there will be a violation of due process and of applicable rules, principles and law.
60. The UEFA Appeals Body reminds that UEFA has the sole discretion in deciding when to open disciplinary proceedings against a club (CAS 2013/A/3256). In addition, this UEFA disciplinary body does not agree that the Respondent would have effectively lost the opportunity to a fair trial if the Appeals Body would not remit the case back to the Control, Ethics and Disciplinary Body. Furthermore, the Respondent had the opportunity to submit a defence, have two hearings and hear witnesses in the proceedings before UEFA's disciplinary bodies. It shall be reminded that Respondent when asked by the Chairman of the Appeals Body during the first hearing of 25 May 2016 about which would be for the club a fair deadline to be given to properly prepare the case, the Respondent indicated that ten days would be sufficient for that purpose and did, finally, not oppose to the final deadline established until 30 May 2016 by the UEFA Appeals Body.
61. Summarily, the Respondent was given in an overall 28 days (starting from 13 May 2016) since the notification of the opening of proceedings, which is for instance an extraordinary deadline in the scope of disciplinary proceedings and more than the deadline granted by CAS in its Article R55 for submitting the answer of the Respondent in the context of an appeal proceedings.

62. Bearing the above in mind, the Appeals Body rejects the procedural flows raised by the club.

2. The Betting Fraud Detection System (BFDS)

- i. The importance of BFDS

63. The Appeals Body notes that the case file contains relevant, accurate information on the UEFA Betting Detection System, which has also being supported by the testimony of the expert summoned by the Ethics and Disciplinary Inspectors, Mr. Tom Mace, Director of Global Security Services at Sportradar.
64. The UEFA Betting Fraud Detection System (BFDS) was established in 2009 in response to the growing threat of match manipulation in both UEFA and European domestic league competitions.
65. The role of the BFDS is to highlight irregular betting movements, both pre-match and in-game (live), in the core betting markets by monitoring all major European and Asian bookmakers. The core betting markets are; the Asian handicap (AHC); Totals (number of goals in a match) and 1X2 (home win, draw, away win). The monitoring of the betting markets covers all UEFA competition matches (approximately 2'000 per season) and matches of the top two divisions and cup competition of UEFA's member associations (approximately 30'000 matches per season).
66. The monitoring uses algorithms and mathematical models to compare calculated odds with actual bookmakers' odds to determine whether the odds in a specific minute or time period are irregular and therefore potentially suspicious.
67. If a match displays irregular betting patterns the match is 'escalated' and a report generated. These reports include detailed information from the monitored betting operators together with match specific information, for example, the current form of the teams involved, on-field action, player data, and information regarding the match officials as well as motivational factors (promotion/relegation needs or potential qualification for a UEFA competition the following season). The reports contain a textual analysis and conclusion of the observations made by the specialists as well as graphical representations of market movements.
68. UEFA's primary BFDS partner and information provider is the Swiss-based company Sportradar. Founded in 2001, this company employs a team of highly trained sports betting analysts dealing exclusively with European football. The company was awarded ISO 9001 certification in 2014 .
69. UEFA has two additional partners providing betting-related information, these are Betfair, the UK based betting exchange and the Global Lotteries Monitoring System

(GLMS). UEFA has a long standing Memorandum of Understanding (MoU) with both organisations.

70. To further enhance the BFDS, UEFA signed a MoU with Europol in 2014 aimed at establishing a mutual framework of cooperation between the two organisations. Information is exchanged via a secure internet platform, with Europol providing expertise in the areas of match-fixing in football and related organised crime.
71. The Appeals Body notes that according to the information at hand, of the approximately 32'000 matches that are monitored, escalated matches represent less than 1% (around 200 matches per season, the vast majority concerning domestic league games) therefore over 99% of monitored matches display no irregular betting patterns. Matches are analysed in what roughly could be defined as a three level filtering procedure. First, games are evaluated whether there were anomalous patterns of activity and the corresponding thresholds used to define which matches needed further consideration. Second, analysts filter out cases (a large majority) where they perceive a ready, legitimate explanation for apparent anomalies. Third, all sports and betting data are checked and further relevant information obtained. Those still then regarded as potentially suspicious are referred on for more detailed scrutiny, which involves group decision-taking on whether to report a match as likely to have been manipulated.
72. Regarding the reliability of the results provided by the BFDS, the inspectors have submitted an independent review of the Sportradar Fraud Detection System carried out by David Forrest, Professor of Economics at the University of Liverpool and Prof. Ian G. McHale, Reader in Statistics, University of Manchester, in the UK. This in-depth study, published in 2015, analysed each component of the system including the quality, scope and reliability of the data used, the mathematical models in place, the alerting process and the expertise of the analysts themselves. The BFDS, so the Professors, reflect a cautious attitude where sensitivity was implicitly sacrificed in favour of specificity: only matches where a compelling case could be made were in the end reported as suspicious to UEFA. Also remarkable is the statement by means of which it is established that that the procedures for reaching a decision are rigorously set out and followed. The qualifications and collective experience of the team of analysts equip shall produce reliable assessments of the evidence.
73. Some doubts have been raised by the Respondent about the accuracy of the BFDS reports based mainly on the independency of its primary partner, Sportradar, deeming that persons to be summoned to the hearing related to this company and paid by it cannot legally be regarded as an expert.
74. The Appeals Body cannot comply with the assertion of Respondent. First, Respondent has not identified the person/s not to be deemed as expert/s. The Appeals Body understands that those person may be Mr Tom Mace, Director of Global Security Services at Sportradar and the Professor in Economics, David Forrester and Professor in Statistics, Ian G. Mc Hale, who are fully respected experts and scholars which authority in the matter of reference and their integrity has not been compromised by any evidence or prove in

the current proceedings. If these individuals' integrity, as the one of any other, are put into question, such allegations shall be based in reliable evidence than just a lost accusation based on an alleged lack of independence and criteria, at least as a matter of respect towards such high ranked figures and their professional career. And third, accusations based on a lack of integrity inferred against a company like Sportradar which exactly has been created to combat integrity issues in sport as, for instance, match fixing, shall not be done freely and without any evidence.

75. Bearing the above in mind, the Appeals Body considers that evidence based on BFDS conclusions needs to be weighed up in the light of the above mentioned background. Summarily, the figures show that only 1% of matches are flagged as suspicious and are afterwards filtered in a comprehensive, analytical and highly accurate manner. Anomalies of betting patterns are not directly drawn to the attention of UEFA, but are targeted in a three level filter procedure, which includes algorithms as well as the participation of expert manpower where sensitivity is sacrificed in favour of specificity. All these supported and confirmed by two internationally reputed Professors and, during the hearing, by the Director of Global Security Services at Sportradar. Consequently, the Appeals Body is at least comfortable satisfied that reports provided by the BFDS contain reliable information on potential match fixing activities.

ii. BFDS on KS Skenderbëu

76. While the Ethics and Disciplinary Inspectors address in general terms that the BFDS reported that KS Skenderbëu was involved in more than 50 football matches, Respondent notes that BFDS reports are categorized into four different categories which in sum an alleged involvement of the Respondent in match-fixing would only concern 20% of the total reports involved.
77. Notwithstanding the fact that only one match would suffice to declare KS Skenderbëu ineligible for the next UEFA competition in accordance with Article 4.01 UCL Regulations (Respondent is suggesting a 20% of the matches = around 10 matches), and contrary to the four groups defined by Respondent in the light of the BFDS reports, the Appeals Body wishes to clarify that for the purpose of the current proceedings these reports are to be distributed into two different categories, each of these groups having a different evidential weight at the current proceedings.
78. This distribution is the consequence of weighing up the explanations contained in the reports and the conclusions submitted by the BFDS. The aim is obviously to put emphasis more on the potential existence of match fixing activities which in combination with other circumstances, i.e number of similar cases, particular links to the betting market of the club, etc, shall provide the required standard of proof.
79. First, matches connected to reports containing terms such as "overwhelming evidence", "deeply suspicious", "inexplicable", "against all expectations" and "unrealistic betting" which include a comprehensive explanation by the BFDS, are to be deemed as highly probable of having being manipulated ("First group"). Indeed, a UEFA disciplinary body

may reach this conclusion if this kind of suspicion is not an isolated one, but has been raised in a number of different matches.

80. Second, matches containing less obvious but still solid indications that they were manipulated (“Second group”), such as “highly suspicious” and “most likely manipulated” connected with the appropriate explanations, even if individually no straight answer is to be drawn to the involvement of the club in this activities for a particular match, the combination with other circumstances may allow to reach this conclusion, e.g high number of matches reported similarly, proven links of match officials to betting companies, scandals, the general negative public perception.
81. Turning back to the case in hand, the Appeals Body finds after thoroughly examining the different documentation similar terms and comprehensive explanations as the ones referred above for the “First group” have been continuously reported by BFDS in relation to KS Skënderbeu. This UEFA disciplinary body notes that the factual circumstances and the expert explanations given by the BFDS were remarkable in the following matches:

- UEFA competitions matches:

1. **UCL 2015/2016 (21/07/2015) Crusaders FC vs. KF Skënderbeu:** Conclusion BFDS Match-report: It is suspected that Skënderbeu manipulated the closing portion of the match once their progress to the next round was already secure, i.e once they led 1:2 (6:2 on aggregate) they could deliberately conceded goals in the closing period without risking their progress in the competition. Such manipulation is very opportunistic but also is clearly premeditated.
2. **UCL 2015/2016 (25/08/2015) NK Dinamo Zagreb vs. KF Skënderbeu:** Conclusion BFDS Match-report: The profit for this criminal set-up must once again have been huge. There were absolutely no sportive or betting reasons why bettors would place such extraordinary amounts of money on Skënderbeu to concede another goal as betting against severe time constraints is of course completely illogical, suggesting Skënderbeu were ready to exploit the match for corrupt betting purposes whenever the opportunity presented itself, indicating an overwhelming evidence for a premeditated and carefully planned scheme.
3. **UEL 2015/2016 (22/10/2015) Sporting Club de Portugal vs. KF Skënderbeu:** Conclusion BFDS Match-report: there is substantial evidence to support the conclusion that this match was targeted for betting related manipulation. It strongly bears the hallmarks of other highly suspicious matches, and although the suspicious betting only produced mixed results, this match was clearly targeted for the purpose of generating corrupt betting profits.

4. **UEL 2015/2016 (10/12/2015) KF Skënderbeu vs. FC Lokomotiv Moskva:** Conclusion BFDS Match-report: Extremely suspicious live betting for at least three and two goals to be scored. Further highly suspicious live betting for KS Skënderbeu to lose by at least two goals. Extremely questionable defensive performance of KS Skënderbeu, in particular Bajram Jashanica. Highly suspicious history of KS Skënderbeu. In summary, there is overwhelming evidence that this match was manipulated for betting purposes in a precise, orchestrated manner, with corrupt betting profits generated as a result.

- Domestic matches:

1. **12/12/2010: Skënderbeu vs. Shkumbini:** Conclusion BFDS Match-report: Given that both the pre-match support for Shkumbini + 1,5 (goals HCP – KD) and the live (betting – KD) support for KS Skënderbeu -0.75 (goal HCP – KD) were both successful (at least partially), with no apparent justification for the switch in betting opinion this match is considered highly suspicious and most likely manipulated.
2. **06/02/2011: KS Kastrioti vs. Skënderbeu:** Conclusion BFDS Match-report: To conclude, there is substantial evidence to support the conclusion that this match was targeted for betting-related manipulation. It strongly bears the hallmarks of others highly suspicious matches, and although the betting ultimately proved unsuccessful, this match was clearly targeted for the purpose of generating corrupt betting profits.
3. **15/04/2011: KS Dinamo Tirana vs. Skënderbeu:** Conclusion BFDS Match-report: In summary, there is overwhelming evidence that this match was manipulated for betting purposes in a precise, orchestrated manner, with corrupt betting profits generated as a result.
4. **31/01/2015: Skënderbeu vs. KF Laçi:** To conclude, the betting on this match is considered highly suspicious and bears all the hallmarks of other suspected manipulated matches. With the betting ultimately proving unsuccessful, this match is almost certainly a failed attempt at manipulation.
5. **16/10/2015: Skënderbeu vs. KS Teuta:** To conclude, there is substantial evidence to support the conclusion that this match was targeted for betting related manipulation. It strongly bears the hallmarks of other highly suspicious matches, and although the betting ultimately proved unsuccessful, this match was clearly targeted for the purpose of generating corrupt betting profits.
6. **22/11/2015: Skënderbeu vs. Terbuni Puke:** Conclusion BFDS Match-report: In summary, there is overwhelming evidence that

this match was manipulated for betting purposes in a precise, orchestrated manner, with corrupt betting profits generated as a result.

82. It is the opinion of the Appeals Body that in this particular case in which 10 matches (interestingly a similar 20% adduced by Respondent) present blatant figures of having being manipulated. When assessing all these matches globally, there can be no doubt that the club was indeed involved in match fixing activities, at least in a standard of comfortable satisfaction.
83. Furthermore, the Appeals Body finds no reason why it shall deviate from the conclusions reached by the BFDS, being the club not able to provide any reasonable argument as to explain the anomalous betting patterns and the lack of any other reason that contradict the existence of manipulation, apart from those arguments based on alleged normal football aspects and these given only in relation to two matches (out of more than 50 matches), here an alleged normal decrease of concentration in relation to the Crusaders FC vs. KF Skënderbeu, and a difference of football skills between the contenders in relation to the Sporting Club de Portugal vs. KF Skënderbeu.
84. Briefly, even given the benefit of the doubt to KS Skenderbëu analysing each of the two matches separately, this is not possible when taken all the matches together, those two also included, let alone when the BFDS submitted strong and clear arguments against the club's assertions. Again, the Appeals Body highlights that the BFDS is a high profile company aimed exactly to detect manipulated matches, which implements a highly sophisticated system for this purpose. Therefore, the Appeals Body deems that in cases involving up to 10 matches reported by the BFDS with strong statements as the ones exposed above, the only objective and reasonable conclusion is that in fact the club was involved in match fixing activities.
85. In the eyes of the UEFA Appeals Body, this situation was also confirmed by the convincing explanations given at the hearing by the betting expert summoned by the UEFA Ethics and Disciplinary Inspectors.
86. Furthermore and in relation to the above mentioned "Second group" of BFDS reports, the case file contains a large number of reports of this kind which in terms of the Betting Fraud Detection system were highly suspicious and a more than likely manipulated:
- Domestic matches:
    1. **23/07/2013: UEFA Champions League Qualification: Skënderbeu vs. Neftçi PKF:** Conclusion BFDS match-report: To conclude, the betting on this match is considered suspicious and bears all the hallmarks of other suspected manipulated matches, even though the majority of the betting was unsuccessful.

2. **30/07/2013: UEFA Champions League Qualification: FC Shakther Karagandy v. Skënderbeu:** Conclusion BFDS match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
3. **06/08/2013: UEFA Champions League Qualification: Skënderbeu vs. FC Shakther Karagandy:** To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
4. **13/11/2010: Skënderbeu vs. Dinamo Tirana:** This match should be considered highly suspicious and most likely manipulated for betting purposes.
5. **08/12/2010: Teuta vs. Skënderbeu:** Conclusion BFDS Match-report: This match is considered highly suspicious and most likely to be manipulated.
6. **03/02/2011: KF Tirana vs. Skënderbeu:** Conclusion BFDS Match-report: In conclusion, elements of this match appear suspicious with a possibility of manipulation.
7. **25/02/2011: KS Dinamo Tirana vs. Skënderbeu:** Conclusion BFDS Match-report: in conclusion, this match is highly suspicious and is most likely to have been manipulated.
8. **07/03/2011: Skënderbeu vs. Bylis Ballsh:** Conclusion BFDS Match-report: To conclude, elements of this match appear suspicious with a chance it was manipulated for betting purposes.
9. **20/04/2011: Skënderbeu vs. KF Laçi:** Conclusion BFDS Match-report: To conclude, this match is very likely to have been manipulated for betting purposes.
10. **26/10/2011: Skënderbeu vs. KS Kastrioti:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result and score-line. This match is considered highly suspicious and most likely manipulated for betting purposes.
11. **05/12/2011: Skënderbeu vs. Bylis Ballsh:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
12. **04/02/2012: KF Laçi vs. Skënderbeu:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the



other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.

13. **08/02/2012: Skënderbeu vs. KS Pogradeci:** Conclusion BFDS Match-report: Overall, the betting on this match suggests that bettors may have had prior knowledge of the final result. This match should be considered suspicious and possibly manipulated for betting purposes.
14. **07/03/2012: Skënderbeu vs. KS Vllaznia:** Conclusion BFDS Match-report: To conclude, the betting on this match is considered suspicious and bears all the hallmarks of other suspected manipulated matches, even though the majority of the betting was unsuccessful.
15. **21/03/2012: Skënderbeu vs. KF Laçi:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
16. **26/03/2012: Dajti Kamza vs. Skënderbeu:** Conclusion BFDS Match-report: To conclude, the betting on this match is considered suspicious and bears the hallmarks of other suspected manipulated matches, even though the majority of the betting was unsuccessful.
17. **25/04/2012: Skënderbeu vs. KS Vllaznia:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
18. **24/08/2012: KS Vllaznia vs. Skënderbeu:** Conclusion BFDS Match-report: Overall, the betting on this match suggests that bettors may have had prior knowledge of the final result. This match should be considered suspicious and possibly manipulated for betting purposes.
19. **24/09/2012: Skënderbeu vs. KF Laçi:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
20. **08/12/2012: KS Shkumbini vs. Skënderbeu:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This

- match is considered highly suspicious and most likely manipulated for betting purposes.
21. **15/12/2012: Skënderbeu vs. KS Kukesi:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
  22. **19/12/2012: KS Kastrioti vs. Skënderbeu:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
  23. **04/02/2013: Skënderbeu vs. KS Kastrioti:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
  24. **17/02/2013: Apolonia Fier vs. Skënderbeu:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
  25. **20/02/2013: KS Shkumbini vs. Skënderbeu:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
  26. **01/03/2013: KF Laçi vs. Skënderbeu:** Conclusion BFDS Match-report: To conclude, the betting on this match is considered suspicious and bears all the hallmarks of other suspected manipulated matches, even though it was ultimately unsuccessful.
  27. **06/03/2013: KS Kukesi vs. Skënderbeu:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
  28. **12/03/2014: Skënderbeu vs. KS Kastrioti:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear

- indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
29. **30/04/2014: Skënderbeu vs. KS Kukesi:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
  30. **11/09/2014: FK Partizani vs. Skënderbeu:** Conclusion BFDS Match-report: Overall, the betting on this match suggests that bettors may have had prior knowledge of the final result. This match should be considered suspicious and possibly manipulated for betting purposes.
  31. **29/10/2014: Skënderbeu vs. KF Elbasani:** Conclusion BFDS Match-report: Overall, the betting on this match suggests that bettors may have had prior knowledge of the final result. This match should be considered suspicious and possibly manipulated for betting purposes.
  32. **21/12/2014: KS Vllaznia vs. Skënderbeu:** Conclusion BFDS Match-report: Overall, the betting on this match suggests that bettors may have had prior knowledge of the final result. This match should be considered suspicious and possibly manipulated for betting purposes.
  33. **25/01/2015: KF Elbasani vs. Skënderbeu:** Conclusion BFDS Match-report: Overall, the betting on this match suggests that bettors may have had prior knowledge of the final result. This match should be considered suspicious and possibly manipulated for betting purposes.
  34. **18/02/2015: Skënderbeu vs. KS Flamurtari:** Conclusion BFDS Match-report: To conclude, the betting on this match suggest that bettors may have had prior knowledge of the final result. This match should be considered suspicious and possibly manipulated for betting purposes.
  35. **21/09/2015: Skënderbeu vs. KF Tirana:** Conclusion BFDS Match-report: In summary, there is overwhelming evidence that this match was manipulated for betting purposes in a precise, orchestrated manner, with corrupt betting profits generated as a result.
  36. **17/02/2016: Skënderbeu vs. Vllaznia:** Conclusion BFDS Match-report: In summary, there is overwhelming evidence that this match was manipulated for betting purposes in a precise, orchestrated manner, with corrupt betting profits generated as a result.
  37. **20/04/2016: Skënderbeu vs. KF Laçi:** Conclusion BFDS Match-report: In summary, there is overwhelming evidence that this

match was manipulated for betting purposes in a precise, orchestrated manner, with corrupt betting profits generated as a result.

- Friendly matches:
  1. **24/01/2013: Skënderbeu vs. Silkeborg IF:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
  2. **31/01/2013: Skënderbeu vs. SV Mattersburg:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
  3. **04/07/2013: FC Energie Cottbus vs. Skënderbeu:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
  4. **25/06/2014: FC Shakhtar Donetsk vs. Skënderbeu:** Conclusion BFDS Match-report: To conclude, the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result. This match is considered highly suspicious and most likely manipulated for betting purposes.
  5. **11/01/2015: Skënderbeu vs. KV Oostende:** Conclusion BFDS Match-report: In summary, there is overwhelming evidence that this match was manipulated for betting purposes in a precise, orchestrated manner, with corrupt betting profits generated as a result.
  6. **06/07/2015: FC Dynamo Kyiv vs. Skënderbeu:** Conclusion BFDS Match-report: In summary, there is overwhelming evidence that this match was manipulated for betting purposes in a precise, orchestrated manner, with corrupt betting profits generated as a result.

87. Here, the Appeals Body draws the attention to the fact it is undeniable that the combination of a high number of matches of this same kind with other undisputed factors as those to be analysed in further paragraphs, e.g connections of club's officials to betting companies, scandals, the general negative public perception, etc, shall lead to the certain conclusion that indeed the club was involved in match fixing activities. All this without taken into consideration the fact that these matches are to be put together with

those appertaining to the “First group”, which as a matter of fact provides definitely even a more higher standard of confidence over these reports.

iii. Conclusion

88. This UEFA disciplinary body recalls again, as already pointed out by CAS in the above mentioned referred award CAS 2010/A/2172, that evidence considered cumulatively may satisfy the test of comfortable satisfaction, even beyond any reasonable doubt.
89. In this regard, this UEFA disciplinary body has no doubts that the club was involved in match fixing activities in the light of the BFDS reports. Even assuming the categorization made by the Respondent into four different groups of BFDS report, as made by the BFDS itself, the club is implicitly accepting that “an alleged involvement of the Respondent in match-fixing only concerns 20% of the total reports”. This UEFA disciplinary body recalls that only one match is enough to trigger the consequences of Article 4.02 UCL Regulations, accepting Respondent without the combination of other factors that 20% of the reported matches may be aimed to such involvement.
90. For the reasons explained above, the global number of matches is outstanding, as well as when dividing them into two groups as proposed by this UEFA disciplinary body: one group of ten matches in which the conclusions and explanations of the BFDS leave no doubt about the existence of match fixing activities, and another group of matches in which the probabilities of match fixing are very high and definitely confirmed in combination with other factors (with or without the combination with those matches linked to the “First group”).
91. Bearing the above in mind, the Appeals Body is already comfortable satisfied that the club was involved in activities aimed at arranging the outcome of matches in accordance with Article 4.02 UCL Regulations and shall therefore be declared ineligible to participate in the next UEFA Champions League competition 2016/2017.

3. The other factors

iv. The connections between KS Skenderbëu and/or its officials

92. The Appeals Body notes that the special relation of a number of individuals connected to KS Skenderbëu and the alleged match fixing activities has been put in the front line by the inspectors as well.
93. Briefly the Ethics and Disciplinary Inspectors focus on two main individuals that might reinforce the conclusions reached by the BFDS in its reports: Ridvan Bode (financial backer, former Minister of Finance) and Ardjan Takaj (club president).
94. For the sake of clarification, the Appeals Body stresses that the following information derives from the undisputed and accurate information contained in the case file. In

addition, relevant information about other individuals will also be analysed, mainly in connection with the current president Ardjan Takaj.

1) Ridvan Bode

95. The links with the match fixing plot is implicitly established by means of the political background of Mr Ridvan Bode. He was responsible for privatizing the state lottery and to assign it to an Austrian company with which he keeps still close links. In addition, he endured accusations in 2013 for falsifying the accounts of the country for not showing the true debt. In this context, the integrity of Mr Ridvan Bode has been put in question.
96. Significantly, Mr Bode is presumed to have influenced the outcome of matches played by KS Skenderbëu against Dinamo Tirana. The coach of the latter team, Luis Manuel Blanco, had publicly confirmed this extent.
97. The Appeals Body notes that BFDS escalated three matches on 13/11/2010, 25/02/2011 and 15/04/2011 involving Dinamo Tirana and Skënderbeu. Significantly, the BFDS reported in relation to the third match that there was "overwhelming evidence that this match was manipulated for betting purposes in a precise, orchestrated manner, with corrupt betting profits generated as a result". This report is to be embedded within the above explained "First group" of reports in which it has been established that probabilities of manipulation are certainly high.
98. Also links between M Bode and the main donor of another club, KS Shkumbini, have been established based on their past common membership at the Albanian Parliament and at the same party. Two matches played by KS Skenderbëu against this club were also flagged by BFDS.

2) Ardan Takaj

99. The evidence provided by the inspectors in relation to M Ardan Takaj is overwhelming and puts the current president of KS Skenderbëu in the centre of the plot. In substance and according to the inspectors, the Takaj family have connections with all levels of match-fixing including betting, agents and wider government and society which shall show their ability to control and influence all activity at the club
100. The Respondent holds mainly that on Mr. Ardjan Takaj, the President of KF Skënderbeu, he has been a successful businessman for the last 25 years. He has been involved in several economic activities, such as construction, tourism, media, etc. Mr. Takaj had owned betting company Eurobest but this dating back more than 15 years. Mr. Takaj has never been convicted of any criminal charges, as per an attestation of the Tirana District Court. The Tirana Prosecutors Office also certifies that Mr. Takaj was never prosecuted for any criminal charges. In addition and regarding the alleged relationships with different individuals, Mr. Ardjan Takaj is a public figure and lots of people whom he does not know connect with him through Facebook or Instagram. Interpreting a friendship on Facebook as a proof of secret network of match manipulators is, the Respondent, not

serious. Mr. Takaj does not even know persons mentioned in the claim, such as: Fatjon Grava, Ilir Dokle, [GK], Renis Cerga, etc, Mr. Ilir Vrenosi does attend some training sessions and the matches but is mentally impaired.

101. First, the Appeals Body deems that connections have been proved between the former president, Aquim Zeqo and Ardan Takaj. This link between the former president and the current president of the club is relevant insofar it establishes a thread of a previous and alleged match fixing situation with the current leadership of the club. It has been alleged by the inspectors that these activities shall have been persistent since 2011 and even more intense since M Ardan Takaj has taking over the control of the club.
102. In this regard, the Appeals Body notes that the link between Mr Ardan Takaj and Agim Zeqo is notorious due to the fact that they have business connections. Both are share partners of the company "Media 99".
103. Further on, the personal and close relationship between Mr Ardan Takaj with the team coach Mirel Josa since their youth has also been put on the spotlight and established. Interestingly, the coach had already been involved in suspicious activities related to match fixing while he was coach of KS Vllaznia, being even interrogated by the Prosecutor of Krujës for fixing the match between KS Kastrioti and KS Vllaznia played on 2 February 2011. Remarkably, the BFDS reported in relation to this match that it had been manipulated for betting purposes.
104. For obvious reasons, the existence of a relation between a president of a team and its coach is a standard. However, the Appeal Body complies that in this particular case based on long shared common personal experience and not contested by the Respondent the relationship between M Ardan Tarkaj and Mirel Josa appears to be more intense than the normal and reasonable president-coach association.
105. Also the connection between M Arda Takaj and the KS Skenderbëu players Orges Sheshi (goalkeeper), Renato Arapi (defender), Bledi Shkempi (captain) and Tefik Osmani has been blended out. In this regard, the UEFA Appeals Body considers that there are reasons based on common personal ties like a shared history that lead this UEFA Appeals Body, here as well, to be comfortable satisfied that indeed this closeness between these players and the president has been established.
106. Remarkably the performance of all these players has been acknowledged as poor in several of the BFDS reports. This backed up with the video footage of some of these matches indicates that in fact those games flagged by the BFDS were indeed manipulated, or at least have very high chances of having been fixed.
107. In particular, the Appeals Body underlines that in relation to the video footage provided for the match Sporting Clube de Portugal vs. Skënderbeu (UEL, 22/10/2015) and Skënderbeu vs. FC Lokomotiv Moskva (UEL, 10/12/2015), and taking into account the above mentioned background, mainly the reports of BFDS on anomalous betting patters

and their respective conclusions, it is difficult to understand, if not by a highly suspicious existence of match fixing, why the players performed in that manner.

108. Finally and regarding the alleged relationship of KF Skënderbeu with some betting companies alleged by the Ethics and Disciplinary Inspectors, the club stresses that it had a sponsor agreement with a betting company, Top-Bast sh.p.k, agreement which has expired. Anyway, continues Respondent, this is of no relevance absent other evidence because football clubs are common marketing targets for betting companies and which does not constitute in any form a sport integrity violation.

109. Nevertheless, this UEFA disciplinary body notes that Mr Arda Tajak and KS Skenderbëu have, according to the inspectors and not disputed by the parties, a substantial background and current links to betting companies. This might likely be a factor to take into consideration and certainly contributes to the fact that match-fixing activities for betting purposes is a solid possibility. These have been established and can be summarized in the following manner:

- **Eurobest Sh.a:** Ardjan Takaj was the founder of EuroBest Sh.a (with registered domain [www.eurobest.net](http://www.eurobest.net)), an Albanian betting company started in 2000, which now has declared bankruptcy
- **Star Bet:** Ardjan Takaj also became a shareholder of Star Bet. This company was created as a merger of several companies. The main shareholder was Gazmend Demi (NRC). Of note, Gazmend Demi is the president of club Partizani of the Albania Superleague. The company was suspended for reasons including the non-payment of taxes and also other legal problems
- **Top-Bast:** It is an Albanian betting company and a sponsor of Skënderbeu. It is likely that some of the sites linked to the company have been set up as sites where only invited users can bet and are only used by those who are given the website address and login details.
- **SBObet:** Top-Bast is a “front” for the Asian bookmaker SBObet, which will therefore be indirectly connected to one of the sponsors of KS Skenderbëu. In 30 of the 49 matches it has been identified that SBObet has been the first bookmaker to move their odds on the escalated match
- **Baste Live:** Is also identified as being a sponsor of Skënderbeu.
  1. **Baste Live shareholders:** As of 2015 listed for the company indicate that M Ilir Dokle 25% and the brothers M Gramoz Murataj 20% and M Besnik Murataj 15%, all of them hold the majority of the shares (60%):
    - a. Ilir Dokle: The email address [idokle@yahoo.com](mailto:idokle@yahoo.com) is also used to register the domain [www.tropikalresort.com](http://www.tropikalresort.com), which is the domain associated with the resort “Tropical Resort Durres” owned by Ardjan Takaj and, therefore, suggests that M Ilir Dokle and M Ardjan Takaj are business associates.
    - b. The brothers Gramoz Murataj and Besnik Murataj: Gramoz Murataj was jailed in 2004 by an Italian court in



the southern town of Lecce for narcotics trafficking and association in organized crime for four years and six months. He fled detention in 2013 when extradition to Italy was granted. In addition, Besnik Murataj among other criminal accusations was under investigation in 2011 for financial fraud in relation to the creation of a 'shell' company exporting from Albania. The Appeals Body underlines again that both are shareholders of Baste Live which is a sponsor of KS Skenderbëu.

2. Baste Live employees:

- a. Ilir Vrenozi: His profile on the Facebook network shows he has been employed by Baste Live from 1 March 2011 up to the present. He is 'friends' on Facebook with a number of personnel at Skënderbeu including president Ardjan Takaj and players Bledi Shkempi, Sabien Lilaj, and Gerhard Progni among others. He has posted photos of himself with them. For example he has posted photos as recently as 27/04/2016 with player Bledi Shkempi. The Appeals Body notes also that Bledi Shkempi is one of the suspected players of having committed match fixing activities.
- b. Armando Mando Janko: He is 'friends' with Ilir Vrenozi from Baste-Live, as well as Skënderbeu players Orges Shehi and Bledi Shkempi, both also under the suspicion of having fixed matches. Remarkably, his profile also indicates that he likes the Facebook community 'Match-fixing Germany Mafia.'

- **Super Bast:** It has signed a one-year deal with Skënderbeu to advertise their name in the team's venue.

3) Conclusion

110. At this stage of the proceedings, the Appeals Body considers that the above account of the different direct interconnections between a number individuals linked to KS Skenderbëu and the betting market draws a highly concerning picture of the situation at hand. It is undeniable that all the elements which may be needed to create an organization aimed at fixing matches are definitely present in this case. It has been proven without any possible doubt that that KS Skenderbëu and/or its officials, mainly the current president Ardjan Tarkaj and his specific environment i.e personal relations with players and coaches and direct links with the betting market (ownership of a betting company, sponsors of the club being betting companies, relations of the shareholders of this companies and their employees with KS Skenderbëu players and officials, etc), had the means to influence matches and to gain high benefits from the betting market.

111. In addition, the integrity of some of these individuals has seriously been put in question by the public and criminal authorities, e.g. Ridvan Bode, the president Ardjan Tarkaj and

his family, the brothers Gramoz Murataj and Besnik Murataj. The KS Skenderbëu coach himself has been interrogated by the public prosecutor of Albania for alleged match fixing activities in the past. It means that it is by no means improbable, rather contrary, that individuals facing criminal accusations or evasion of taxes even match fixing accusations, may have been engaged by the idea of gaining high amounts of money by manipulating matches for betting purposes.

112. Taking the above into account, the Appeals Body deems that added to the above considerations about the evidential weigh of the BFDS reports, the Appeals Body is more then convinced that the case in hand demonstrates that match fixing activities took place in the sense of Article 4.02 UCL Regulations.

v. The public national and international perception

113. It has been proven by the inspectors that from opponent players to supporters, from betting operators to journalists, all have been aware about the fact that Skënderbeu were fixing football matches in Albania and in Europe, at least have had a strong suspicion.
114. In particular the existence of statements given by an opponent player, Sean O’Neal, in the context of the match played between KS Skenderbëu and FC Crusaders, who claimed for an investigation on the side of UEFA on match fixing after the match, is the less remarkable. Also significant is the fact that supporters of this team expressed their doubts publicly, like it derives from the case file e.g the statements of the fan Stuart Briers. In addition, banners have been displayed by supporters of Albania complaining about the alleged match fixing activities of KS Skenderbëu. Illustrative is also the fact that some betting operators like Hong Kong Jockey Club don’t offer matches involving this club, or like GLSM recommends their members to exercise caution in this respect. Finally, worth to note is the fact that journalists worldwide put the match fixing activities in the front page when reporting about KS Skenderbëu, see for instance press releases from “El Pais”, and “ESPN” in the case file.
115. All these objective and undisputed facts leads this UEFA disciplinary body to express its regret that this situation can only be conceived from an objective and reasonable observation as against the rules and the integrity of football. The public perception is simply another factor, which reinforces this conclusion and puts it to another level, if possible.
116. As stated in previous paragraphs, UEFA cannot allow that competitions organized under its auspices are shadowed by the insisting and confirmed fact that a club participating in them has been involved in match fixing activities.
117. The Appeals Body has deep concerns with KS Skenderbëu, which not solely has been proven that it was involved in match fixing activities, but has been generally known so by the general public. This obviously puts the image of UEFA and the integrity of its competitions into disrepute.

G. Global assessment of the evidence

118. The Appeals Body wishes to stress that even if taken the evidence provided by the BFDS separately is enough to conclude that KS Skenderbëu was involved in match fixing activities, the global assessment of all the evidence in hand leaves no doubt about the involvement of the club in these activities. Nothing provided by the club has cast any doubt on this opinion.
119. Summarily, this case puts forward more than 50 reports of the BFDS which connect KS Skenderbëu in match fixing activities, a number of them with straight conclusions and assessments, undisputed links of the club and its officials with betting companies, their stakeholders and agents - some of them accused of integrity offenses, and undisputed personal links with players and the coach, having connections with the mentioned betting companies' agents and even being involved in match fixing investigations as it is the case of the coach. All of it, in a context in which the unanimous perception of supporters, opponent teams and players, and national and international press is that this team has been involved in match fixing activities.
120. As expressed above, the case in hand shows that all the elements characterizing the creation of an organization designed to fix matches and to gain high benefits from the betting market are present. All the components of it have been widely demonstrated, even the occurrence of match fixing activities by means of an accurate and high profile system created for this purpose, i.e Betting Fraud Detection System, which has been explained in detail and in a convince manner by the expert summoned by the UEFA Ethics and Disciplinary Inspectors and independently assessed by a very respected university professor.
121. The Appeals Body cannot find any reasonable argument which may in this context in any standard of proof lead to a different decision apart from the one concluding that KS Skenderbëu was involved in match fixing activities. Even more when the question to be assessed is rightly the involvement of the club in such activities which is different in terms of weight of evidence and legal approach as the one contemplated in the UEFA Disciplinary Regulations when analysing match fixing activities in accordance to Article 12 DR. For the reasons expressed above, this UEFA disciplinary body is convinced that KS Skenderbëu has been involved in match fixing activities, as per Article 4.02 UCL Regulations and shall, therefore, bear the legal consequences.

H. Determination of the administrative measure

122. Again, the aim of the provision contemplated in Article 4.02 UCL Regulations is not only to prevent a club which has violated such values from taking part in the competitions organized by UEFA (i.e. to protect the integrity of the competition), but to also to dispel any shadow of doubt in the public about the integrity, the values and the fair play of its competitions i.e. to protect the reputation of the competition (CAS 2013/A/3258).

123. According to Article 4.02 UCL Regulations, if, on the basis of all the factual circumstances and information available to UEFA, UEFA concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level, UEFA will declare such club ineligible to participate in the competition.
124. As stated above, UEFA applies a principle of zero tolerance towards match-fixing activities. It results that, as the one year exclusion of UEFA competitions is deemed as a minimum (as determined in CAS 2013/A/3256), the Appeals Body deems, therefore, that KS Skenderbëu shall be excluded from participating in the next UEFA Champions League competition 2016/2017 in accordance with Article 4.02 UEFA Europa League Regulations.

## **VII. Costs**

125. The allocation of the costs of proceedings before the Appeals Body depends on the outcome of those proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated to the various parties or borne by UEFA. The appeal fee is either deducted from the costs of proceedings or reimbursed (Article 44 (2) DR).
126. It is considered justified to charge all of the costs of this case to the Respondent, whose appeal is rejected on all counts.
127. It shall be beard in mind that the current proceedings held two hearing which comports an exceptional circumstance and increased substantively the rates if costs. Consequently, the costs of the proceedings are € 5.000.

## Decision of 21 June 2016

FC Barcelona

(illicit banners and chants)

### **Circumstances of the case**

In substance, according to the report of the UEFA match delegate and the UEFA Venue Director at the match between FC Barcelona and BATE Borisov on 4 November 2015, 30'000 Estelada-flags were distributed by ANC (NB: "*Assemblea Nacional Catalana*") volunteers within the vicinity of the stadium. During the said match, but also during the UEFA Champions League match between FC Barcelona and AS Roma on 24 November 2015, Estelada-flags were displayed by the supporters of the Appellant throughout the course of both matches. Some of the flags were displayed constantly, hanging from the fences on the upper tiers, some were displayed at different occasions during the matches. Moreover, before both matches, it was reported that during the UEFA Champions League hymn before kick-off, there was a massive whistling and chanting from FC Barcelona's supporters. At both matches, in minute 17:14 of the first half and the second half, chants of "independencia" were heard around the ground from FC Barcelona's supporters for approximately 30 seconds, combined again with the displaying and waving of the Estelada-flags.

**Legal framework** Article 16 (2) DR.

### **Decision**

In its decision of 30 May 2016, the Control, Ethics and Disciplinary Body considered that the Estelada-flags displayed by the Appellant's supporters constituted illicit political banners which were not fit for a sports event and therefore fell under the scope of Article 16 (2) (e) of the UEFA Disciplinary Regulations, whereas the chants for independence by the Appellant's supporters at minutes 17:14 of both halves at both matches equally constituted a violation of Article 16 (2) (e) DR. As a result, the Control, Ethics and Disciplinary Body decided to fine FC Barcelona €100'000 and to fine FC Barcelona an additional €50'000, the latter fine being suspended for a probationary period of two (2) years.

The Appeals Body decides that the appeal lodged by FC Barcelona is dismissed. Consequently, the UEFA Control, Ethics and Disciplinary Body's decision of 30 May 2016 is confirmed.

Ad-hoc Chairman: Michael Maessen (Netherlands)

Members: Björn Ahlberg (Sweden)  
João Leal (Portugal)

### **I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body on 30 May 2016 (the "Decision"), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course

of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.

2. In substance, according to the report of the UEFA match delegate and the UEFA Venue Director at the match between FC Barcelona (hereinafter: "FC Barcelona" or "the Appellant") and BATE Borisov on 4 November 2015, 30'000 Estelada-flags were distributed by ANC (NB: "*Assemblea Nacional Catalana*") volunteers within the vicinity of the stadium. During the said match, but also during the UEFA Champions League match between FC Barcelona and AS Roma on 24 November 2015, Estelada-flags were displayed by the supporters of the Appellant throughout the course of both matches. Some of the flags were displayed constantly, hanging from the fences on the upper tiers, some were displayed at different occasions during the matches.
3. Moreover, before both matches, it was reported that during the UEFA Champions League hymn before kick-off, there was a massive whistling and chanting from the Appellant's supporters.
4. At both matches, in minute 17:14 of the first half and the second half, chants of "independencia" were heard around the ground from the Appellant's supporters for approximately 30 seconds, combined again with the displaying and waving of the Estelada-flags.
5. In its decision of 30 May 2016, the Control, Ethics and Disciplinary Body considered that the Estelada-flags displayed by the Appellant's supporters constituted illicit political banners which were not fit for a sports event and therefore fell under the scope of Article 16 (2) (e) of the UEFA Disciplinary Regulations, whereas the chants for independence by the Appellant's supporters at minutes 17:14 of both halves at both matches equally constituted a violation of Article 16 (2) (e) of the UEFA Disciplinary Regulations. As a result, the Control, Ethics and Disciplinary Body decided to fine FC Barcelona €100'000 and to fine FC Barcelona an additional €50'000, the latter fine being suspended for a probationary period of two years.
6. The Decision with grounds was notified to the Appellant on 3 June 2016.

## **II. The report of the UEFA Ethics and Disciplinary Inspector**

7. The Appeals Body recalled that the Control, Ethics and Disciplinary Body had decided to appoint Jean-Samuel Leuba, UEFA Ethics and Disciplinary Inspector, to produce a report, after the abovementioned incidents had been reported following the relevant matches.
8. Likewise, the Appeals Body noted that in the course of these proceedings before the Control, Ethics and Disciplinary Body, a UEFA Ethics and Disciplinary Inspector was appointed to investigate the incidents of the two referenced matches. The said report

lead to the opening of disciplinary proceedings. The report can be summarized as follows:

- a. The Estelada-flag is commonly displayed as a symbol for the pro-independence movement of Catalonia, which is why it is not surprising that the said flag was handed out before the match of relevance by the pro-independence organization ANC, an organization which is also rallying for the independence of Catalonia from Spain.
- b. Therefore, the flag was displayed by the Appellant's supporters in order to make a political statement which is not allowed by the UEFA Disciplinary Regulations and in particular it's Article 16 (2).
- c. In the previous proceedings (e.g. in the proceedings before the Control, Ethics and Disciplinary Body on 11 October 2015) before the UEFA disciplinary bodies, the Appellant has admitted the political character of the Estelada-flags which was also confirmed by the Control, Ethics and Disciplinary Body in the relevant decision.
- d. Regarding the chants which obviously make reference to the year 1714 when Catalonia lost its independence from Spain, a circumstance which was admitted by the Appellant in the abovementioned proceedings of 11 October 2015, it is obvious that such chants have no relation to football whatsoever and are therefore not fit for a sports event.
- e. By allowing its supporters to make the abovementioned political statements via the displaying of the flags and the chants, the Appellant does not only not prevent such prohibited behaviour, but on the contrary directly supports the abuse of football matches for political purposes by its supporters, which is explicitly prohibited by the UEFA Disciplinary Regulations.
- f. UEFA in the past has imposed sanctions on numerous clubs for a similar behaviour occurring at the occasion of UEFA competition matches. As a participant in matches organized by UEFA and by signing the relevant admittance form, the Appellant has accepted to respect the competition rules and the applicable disciplinary regulations, which is why it cannot be accepted that the Appellant now refuses to apply the very rules.
- g. Regarding the disciplinary sanction itself, it needs to be taken into account that the Appellant has already been sanctioned in the past for the same infringement (e.g. by decisions of 30 October 2015 and 23 July 2015, the latter was not appealed by the Appellant), the last time with a fine of €40'000.
- h. In view of the above and the long disciplinary history of the Appellant for the same infringement, a fine in the amount of €150'000 was deemed appropriate by the Ethics and Disciplinary Inspector.

**III. Summary of the proceedings before the Appeals Body and the grounds for the Appeal**

9. On 10 June 2016, the Appellant lodged its intention to appeal the first instance decision in relation to the sanction imposed on it for the displaying of illicit banners and the illicit chants.
10. In the grounds for the appeal, submitted also on 10 June 2016 together with the intention to appeal, the Appellant argued several considerations.
11. According to the Appellant, the displaying of Estelada-flags and the chants performed by its supporters after 17:14 minutes of the first and second half were not political acts as the flag merely represents a historic, cultural and historical group.
12. The Appellant further argued that it is not responsible for the fact that the “ANC” has distributed those Estelada-flags in front of the stadium before the match against BATE Borisov, as it is only responsible for what happens inside the stadium.
13. Moreover, the Appellant stressed that the definition of a “political message” should be interpreted as an “action intended to promote active conduct among the receivers of said message”. However, the mere waving of the Estelada-flag does not seek support for any message as the waving is a tradition in the stadium without any political connotations.
14. The Appellant further disputes the applicability of Article 16 (2) (e) of the Disciplinary Regulations, arguing that the use of Estelada-flags and the chants of independence were neither aggressive nor provocative, which is why it cannot be prohibited by the abovementioned article which was put in place to secure the security at the stadium. The Appellant emphasizes that the waving of the Estelada-flags has no influence or negative effect on the security in the stadium, as it can be established by the relevant reports of the UEFA Security Officers and Match Delegates who confirmed that the organization of the match by the Appellant was excellent.
15. Finally, and in relation to the interruption of the UEFA Champions League anthem, the Appellant mentions that the freedom of expression enshrined in the Spanish Constitution, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and even the Swiss Constitution supports the displaying of the flag and the chants during football matches. Given that the UEFA Statutes imperatively order the application of Swiss law, taking into account that all of the abovementioned legal regimes are ranked higher than the UEFA Disciplinary Regulations, the latter cannot prevail in the present scenario. Moreover, the Appellant made reference to a recent decision of a Spanish Court in which the Estelada-flags and their showing was declared legal during matches in Spain.



16. Consequently, and in view of all of the above, the Appellant requests that the decision of the Control, Ethics and Disciplinary Body of 30 May 2016 is overturned and that the Appeal is accepted.

#### **IV. Hearing**

17. No hearing was held, since the Appellant requested that the proceedings be conducted in writing only and the Appeals Body did not raise any objection to this request.
18. The Appeals Body examined the entire case file, in particular the challenged decision, the grounds for appeal and the UEFA Ethics and Disciplinary Inspector's report of 4 May 2016 which lead to the opening of disciplinary proceedings against the Appellant.
19. The parties' arguments are set out and examined below, in so far as they are relevant to the decision.

#### **V. Appeals Body Competence and Admissibility of the Appeal**

20. Article 24 (4) of the UEFA Disciplinary Regulations states as follows: "The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body."
21. The Appellant lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
22. The Appeals Body noted that the Appellant in its grounds for the Appeal also provided legal arguments regarding the offense "disruption of competition anthems". However, as it could be established from the decision of the Control, Ethics and Disciplinary Body, no sanction was imposed on the Appellant for such violation which is why it could also not be challenged by means of this appeal. Therefore, the Appeals Body did not deem it necessary to go into the matter of substance in this regard.
23. It follows that the Appeals Body has competence to decide on the present appeal and that the appeal is admissible. The Appeals Body may therefore consider its merits and can therefore re-examine the case in full, both factually and legally (Article 58 (2) of the UEFA Disciplinary Regulations).

#### **VI. Legal Considerations Of The Appeals Body**

##### The displaying of illicit banners and use of illicit chants

##### A. The legal framework.

25. According to Article 16 (2) (e) of the UEFA Disciplinary Regulations, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the

absence of any negligence in relation to the organisation of the match: the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature.

26. According to Article 38 of the UEFA Disciplinary Regulations, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

B. In the case in hand

27. To begin with, the Appeals Body recalled that neither the presence of the banners under scrutiny nor the occurrence of the chants for independence by its supporters were disputed by the Appellant. Hence, the Appeals Body concluded that it needed to deal only with the legal interpretation of such Estelada-flags and the chants in order to answer the following questions:
- a. Are the Estelada-flags and the chants by the Appellant's supporters of a political nature and not fit for a sports event, as stipulated in Article 16 (2) (e) of the UEFA Disciplinary Regulations and as established by the first instance decision of the Control, Ethics and Disciplinary Body?
  - b. Are the showing and the waving of the Estelada-flags and the chants for independence by the Appellant's supporters covered and protected by the right for freedom of speech?
  - c. Is the Appellant responsible or not for the distribution of the Estelada-flags by the ANC in front of the stadium before the match against BATE Borisov?

Are the Estelada-flags and the chants by the Appellant's supporters of a political nature and not fit for a sports event, as stipulated in Article 16 (2) (e) of the UEFA Disciplinary Regulations?

28. The Appeals Body first recalled the well-established basic principle that football matches organised by UEFA cannot become forums for people who want to abuse the game's popularity to publicise opinions which are not fit for sporting events, irrespective if the latter are of a political, religious, offensive, violent, social or whatsoever nature. This is the reason why Article 16 (2) (e) of the UEFA Disciplinary Regulations expressly forbids the transmission of any messages which are not fit for a sport's event during football matches.
29. In this regard, the Appeals Body on a preliminary basis emphasized that contrary to what the Appellant had argued, Art. 16 (2) (e) of the UEFA Disciplinary Regulations does not require that the messages who are not deemed to be fit for a sports event due to their political nature additionally have a negative effect on the security in the stadium. The requirement of having a negative effect on order and security inside and around the stadium, before during and after matches, is only incorporated in Art. 16 (1) of the UEFA Disciplinary Regulations which connects such requirement to the possible negligence of clubs and associations. However, the rule examples incorporated in Art. 16 (2) of the UEFA

Disciplinary Regulations tie in with the principle of strict liability, allowing the UEFA disciplinary bodies to hold clubs and associations liable for the behaviour of their supporters, as it is the case in the proceedings at hand.

30. With this being established, the Appeals Body concluded that a violation of Art. 16 (2) (e) of the UEFA Disciplinary Regulations can already be assumed if it was to be found that the Estelada-flags displayed by the Appellant's supporters in the stadium during the relevant matches were in fact of a political nature and therefore not fit for a sports event – without any further requirements. In particular, it is not required that banners or flags which are not fit for a sports event are additionally provocative. Art. 16 (2) (e) of the UEFA Disciplinary Regulations *in fine* stipulates rule examples which messages are particularly (emphasis added) not fit for a sports event, such as political, ideological, religious, offensive or provocative messages. However, these rule examples obviously don't have to be fulfilled cumulatively, i.e. a political messages which are not fit for a sports event do not to be provocative at the same time.
31. Turning its attention to the Estelada-flags, the Appeals Body noted that the same issue with the same circumstances was already the object of disciplinary proceedings leading to a decision of the Appeals Body, by means of which the Estelada-flags were deemed to have a political connotation and were not fit for a sports event, leading to a financial sanction for the Appellant.
32. However, as it was already acknowledged and noted by the Control, Ethics and Disciplinary Body in its decision of 30 May 2016 in par. 39, the Appellant appears to have changed his own mind regarding the legal interpretation of the Estelada-flags. In this regard, the Appeals Body first recalled that the displaying of the Estelada-flags was put under scrutiny by the Control, Ethics and Disciplinary Body for the first time following the UEFA Champions League finale 2014/2015 by decision of 23 July 2015. However, the Appellant accepted UEFA's decision at that time, by neither requesting a motivated decision in this case, nor by appealing the decision before the Appeals Body or CAS.
33. The Appeals Body further recalled that during the following proceedings precedent to the one at hand, in which the Estelada-flags were put under scrutiny (cf. disciplinary case 28736, decision of the Control, Ethics and Disciplinary Body of 30 October 2015), the Appellant had argued that that it is within the pro-independence movement existing in Catalonia that the so called Estelada-flag plays a major role, becoming the flag pro-independence which people of Catalonia use to demonstrate their agreement to the said movement. The Appeals Body further recalled the Appellant's explanations that the chants for independence at the 17:14 min in both halves of each match played by the Appellant are supposed to remember 1714, when Catalonia lost its special legal status after the War of Succession. In summary, the Appeals Body recalled that in the said proceedings, the Appellant had in fact admitted that the Estelada-flag has indeed political connotations and is displayed for such purposes.
34. Bearing these argumentations from the precedent proceedings in mind, despite the fact that the abovementioned argumentation and explanations for the Estelada-flags and the

chants for independence were an essential part in the legal defence of the Appellant, none of these arguments are now to be found in the legal deliberations of the Appellant and are quite on the contrary replaced by a completely different interpretation and argumentation.

35. With this being established, the Appeals Body noted the new arguments of the Appellant that the showing of the Estelada-flags has to be regarded as manifestations of a historic, cultural and linguistic group dating back to the 10<sup>th</sup> century.
36. However, after thorough analysis of the arguments provided by the Appellant, the Appeals Body could not concur with such an interpretation and had to agree with the decision of the Control, Ethics and Disciplinary Body in this regard.
37. As it was established by the first instance body, the Estelada-flag is an unofficial flag which is typically displayed by the Catalan separatist movement, intending to express their support for a Catalonia independent from Spain. In the view of the Appeals Body this concept is already clearly proven when analysing the Estelada-flags and their background which is clearly of a political nature and connotation. Moreover, bearing in mind the well-established principle of CAS that “context in law is everything” (cf. CAS 2013/A/3324 & 3369) which basically means that in order to determine the true nature and character of a chant or a banner, the relevant disciplinary body also needs to take into account the factual and legal circumstances, the accompanying fact that at minutes 17:14 in both halves of the match the Appellant’s supporters did not only wave this pro-independence flag but also accompanied this behaviour with the chants for “independencia”, an objective and neutral observer could only have the impression that these behaviours were of a political nature. In view of this context, the Appeals Body could not only not agree with the explanation of the Appellant that such behaviour was a pure manifestation of unity of a historic, cultural and linguistic group, but could only reiterate and emphasize that the said behaviour is clearly of a political nature.
38. Bearing in mind the foregoing, and by further analysing the submissions of the Appellant, the Appeals Body further recalled the content of the decision of the Spanish court of Madrid nr. 11 of 20 May 2016, which was quoted by the Appellant and in which the waving of Estelada-flags during a football match, namely the Spanish King’s Cup, was put under scrutiny as to its legality. In the said decision the court had *inter alia* stated that by not allowing the Estelada-flag at the occasion of football matches, “*the Administration generates damage to the appellant, as it avoids the peaceful manifestation and expression of its political ideology, with the display of the Estelada flag, not concurring reasons with enough entity to restrict the exercise of a fundamental right recognized (...)*”. The Appeals Body takes note that the relevant Spanish court considers that by waving the Estelada-flag the supporters of the Appellant “express their political ideology”. In this context, the Appeals Body understood that even the Spanish court deems that the Estelada-flag is waved at the occasion of football matches for political reasons, namely as an expression of a political ideology.

39. Likewise, as it was established in paragraph 44 of the decision of the Control, Ethics and Disciplinary Body and also admitted by the Appellant, the Estelada-flags which were displayed by the Appellant's supporters at the occasion of the match against BATE Borisov, had been distributed to the supporters by the political group "*Assemblea Nacional Catalana*" which is known for seeking political independence of Catalonia from Spain. The Appeals Body strongly agreed with the arguments of the Control, Ethics and Disciplinary Body that it is difficult to imagine a more political scenario than the displaying and waving of Estelada-flags, which are a) known to be a Catalan pro-independence flag, which were b) handed out by an organization which is known to rally for the independence of Catalonia from Spain, which were c) later waved by the supporters at the same time when the same supporters shouted "independencia" at minutes 17:14, which is a landmark day for the pro-independence movement of Catalonia.
40. The Appeals Body strongly emphasized that each of these three elements a) to c) would most likely already be sufficient to assume the political nature and a separate violation of Article 16 (2) (e) of the UEFA Disciplinary Regulations, but the chain of facts and events, looked at within the political and factual background as well as the procedural history of the club, can lead an objective, reasonable observer necessarily and solely to the conclusion that the waving of the Estelada-flags and the chants of "independencia" combined are of a political nature.
41. Also, the Appeals Body took into account the Appellant's argument that by showing the Estelada-flags, its supporters didn't intend to transfer a political message and that it was not perceived as such. The Appeals Body then referred to the conclusions of the Control, Ethics and Disciplinary Body which had made reference to the long standing case law of the UEFA disciplinary bodies as regards the use of "illicit" banners at European football stadiums, who had considered that football stadiums are not the right place to display political, religious and ideological or any other messages that are not fit for sport events. It has been established on numerous occasions that the relevant factor in each case when determining the potential illicit nature of a flag or banner is the relationship between the potential message and the football match and how the said potential message can be understood not only by the home and away supporters at the stadium also by the objective viewers on television. This principle is even more relevant in a competition like the UEFA Champions League, which is followed by millions of supporters all around the world by different platforms. Consequently, it is not even required beyond reasonable doubt that a banner or chant is intended to be political, but it would already be sufficient that to an objective viewer, the chants and banners would appear political.
42. Assuming *quod non* that the Estelada-flag and the chants were hypothetically not intended to transfer a political message, as it is alleged by the Appellant, it is not unlikely that to an objective observer, such banners and chants might appear political and therefore inappropriate for sporting event. This is inter alia confirmed by the mere fact that the UEFA match delegate at the occasion of the match against AS Roma clearly stated that the behaviour of the clubs supporters was a political demonstration, even though he regarded it not as strong as expected.

43. The Appeals Body also noted that the Appellant has not provided any convincing argument as to explain how the chants claiming for “independence” could have any other background than a political one.
44. In view of all of the above, the Appeals Body concurred with the conclusion of the Control, Ethics and Disciplinary Body that by displaying the Estelada-flags and by its chants for independence by its supporters, the Appellant has clearly violated Article 16 (2) (e) of the UEFA Disciplinary Regulations since both behaviours constitute expressions of political opinions and as such have to be regarded as political demonstrations which are obviously not allowed during football matches as they are not fit for any sport events.

Are the showing and the waving of the Estelada-flags and the chants for independence by the Appellant’s supporters covered and protected by the right for freedom of speech and other national or supranational statutory law?

45. Regarding the Appellant’s argument that the Estelada-flag was declared legal in Spain and also covered by the principle of freedom of speech, the Appeals Body could only repeat what was already established by the Control, Ethics and Disciplinary Body. It is not required that the gesture or the messages are illegal or prohibited by national statutory law or do not create any sort of security issue during national competitions, given that the UEFA competitions are not governed by national law or by national regulations, as the relevant Regulations when it comes to determining whether the relevant gesture and/or the message is in fact suitable for a sport’s event, are solely the UEFA Disciplinary Regulations and, if applicable, the Regulations of the relevant UEFA competition, as it was confirmed on numerous occasions by the CAS. Only very recently, the CAS in an award (CAS 2015/A/3926 FC Gelsenkirchen-Schalke 04 v. UEFA) had stated that “the Swiss law of private associations provides in Art. 60 et seq. Swiss Civil Code (CC) a very wide degree of self-determination, autonomy and independence”. It continues by stating that “private associations may issue rules concerning their governance, membership and their own competitions”.
46. Likewise, the Appeals Body agreed with the arguments of the Control, Ethics and Disciplinary Body that the legality of a flag, banner or chant in a specific country have neither an influence on the question whether a banner is political, nor on the question whether it is fit for a sports event. In the view of the Appeals Body, it is clear that a Spanish court will have a different approach than UEFA on the showing of political flags as the expression of political opinions is an important element of a functioning pluralistic democracy, as it was stated in the relevant decision of the Spanish court, which was provided by the Appellant. However, whereas it might the responsibility of a Spanish court to safeguard these democratic principles in this political context in Spain, the UEFA disciplinary bodies as the organizer of a football event and a football competition such as the UEFA Champions League are not bound by the same legal rules, principles and requirements as a Spanish court, which is bound by the Spanish constitution and the relevant statutory law, as UEFA wishes to achieve different goals with its Disciplinary Regulations. UEFA as the organizer of the UEFA Champions League and the relevant

matches under scrutiny here in these proceedings, is responsible for the smooth running of its competitions and for safeguarding its own goals, principles and regulations such as the UEFA Statutes and the UEFA Disciplinary Regulations. Consequently, the decision of the Spanish court, which might be correct and well-founded within the legal, political and factual circumstances in Spain, has no direct effect and particularly no legal binding character for UEFA and its decision making bodies.

47. Moreover, as to the argument of the Appellant that UEFA as a Swiss private organization is subject and bound by imperative laws such as the Swiss Confederation Constitution, which is why a principle like the freedom of speech which is stipulated in the Swiss Federation Constitution should prevail over the UEFA Disciplinary Regulations, the Appeals Body emphasized that in Swiss law, the basic rights, and in particular the fundamental freedom rights such as the freedom of expression (cf. Article 16 of the Swiss Federation Constitution), have to be regarded as defensive freedom rights protecting the individual against the state<sup>1</sup> and not against other private individuals.

Is the Appellant responsible or not for the distribution of the Estelada-flags by the ANC in front of the stadium before the match against BATE Borisov?

48. Regarding this question, the Appeals agrees with the legal opinion of the Control, Ethics and Disciplinary Body does equally not agree with the Appellant's submission that it is not responsible what third-party organizations do outside of the stadium perimeters. According to Article 44 of the UEFA Safety and Security Regulations, the promotion or announcement, by any means, of political messages or of any other political actions inside or in the immediate vicinity of the stadium is strictly prohibited before, during and after the match. In this context, the Appeals Body stressed that it was most likely only due on oversight of the UEFA administration that no separate disciplinary proceedings have been opened against the Appellant for the violation of the said Article 44 of the UEFA Safety and Security Regulations. Just as the first instance Control, Ethics and Disciplinary Body, this Appeals Body was convinced that it would have been the responsibility of the Appellant to ensure that no political organisation like the ANC was able to promote its political rally for the independence of Catalonia outside and in immediate vicinity of the stadium, as it occurred undisputedly.
49. Consequently, the Appeals Body came to the conclusion that the club was not only responsible for the prevention of the political activities outside of the stadium, but it was additionally accountable for its supporter's behaviour once they took the Estelada-flags inside the stadium during the UEFA competition matches which are under scrutiny in the present proceedings.
50. In view of all of the above, the Appeals Body agreed with the legal interpretation of the Control, Ethics and Disciplinary Body as regards the violation of Article 16 (2) (e) of the UEFA Disciplinary Regulations by its supporters. In this regard, it therefore remained for the Appeals Body to examine whether the Control, Ethics and Disciplinary Body respected

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<sup>1</sup> Jean-François Aubert, Pascal Mahon, Petit Commentaire de la Constitution fédérale de la Confédération suisse, note 2 ad chapitre 1, page 60).

the regulations and legal principles, in particular those of legality and proportionality, or whether it abused its power of discretion to fine the Appellant € 100'000 plus another € 50'000 under a probationary period of two years.

C. Determination of the disciplinary measure

51. It is the Appeals Body's constant practice to consider the Control, Ethics and Disciplinary Body's power of discretion to have been abused or exceeded if the first-instance body bases its decision on untrue or erroneous elements, does not apply fundamental legal principles, considers irrelevant facts or does not consider essential circumstances whose evaluation is compelling. In the opinion of the Appeals Body, none of this applies here.
52. In this regard, the Appeals Body recalled that the appeal of the Appellant was not directed against the proportionality of the fine in the amount of € 100'000 plus another € 50'000 under a probationary period of two years, as it was imposed on the Appellant by the Control, Ethics and Disciplinary Body.
53. Bearing in mind the above, the Appeals Body further took note of the previous record of the Appellant and the quite recent conviction of the Appellant by UEFA's disciplinary bodies for the exact same violations, as well as the fact that the Appellant already acknowledged that the displaying of the Estelada-flags and the chants in favour of the independence of Catalonia are prohibited under the current UEFA Disciplinary Regulations, since the Appellant was already sanctioned for the use of the cited banners on two occasions, one of which only three months prior to the current case.
54. After reviewing the explanations and legal deliberations of the Control, Ethics and Disciplinary Body in the first instance proceedings, the Appeals Body is of the opinion that the Control, Ethics and Disciplinary Body neither abused nor exceeded its broad powers of discretion. Putting the amount by which the Appellant was fined in context with the repetitive violations of the same Article by the Appellant and the fines previously imposed on the Appellant by the UEFA disciplinary bodies, the decision of the Control, Ethics and Disciplinary Body decision complies with the principles of legality – to the extent of its power of appreciation – and proportionality.
55. On the basis of the above, the Appeals Body has no option but to uphold the initial decision and reject the appeal.

**VII. Costs**

56. The allocation of the costs of proceedings before the Appeals Body depends on the outcome of those proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated to the various parties or borne by UEFA. The appeal fee is either deducted from the costs of proceedings or reimbursed (Article 44 (2) of the UEFA Disciplinary Regulations).



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57. It is considered justified to charge all of the costs of this case to the Appellant, whose appeal is rejected on all counts.
58. In this case, since these proceedings were conducted by the Appeals Body with a Panel of four members, the costs of the proceedings are € 1'000.



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